Chapter 130A.

Public Health.

Article 1.

Definitions, General Provisions and Remedies.

Part 1. General Provisions.

§ 130A-1. Title.

This Chapter shall be known as the Public Health Law of North Carolina. (1983, c. 891, s. 2.)

§ 130A-1.1. Mission and essential services.

(a) The General Assembly recognizes that unified purpose and direction of the public health system is necessary to ensure that all citizens in the State have equal access to essential public health services. The General Assembly declares that the mission of the public health system is to promote and contribute to the highest level of health possible for the people of North Carolina by:

(1) Preventing health risks and disease;
(2) Identifying and reducing health risks in the community;
(3) Detecting, investigating, and preventing the spread of disease;
(4) Promoting healthy lifestyles;
(5) Promoting a safe and healthful environment;
(6) Promoting the availability and accessibility of quality health care services through the private sector; and
(7) Providing quality health care services when not otherwise available.

(b) A local health department shall ensure that the following 10 essential public health services are available and accessible to the population in each county served by the local health department:

(1) Monitoring health status to identify community health problems.
(2) Diagnosing and investigating health hazards in the community.
(3) Informing, educating, and empowering people about health issues.
(4) Mobilizing community partnerships to identify and solve health problems.
(5) Developing policies and plans that support individual and community health efforts.
(6) Enforcing laws and regulations that protect health and ensure safety.
(7) Linking people to needed personal health care services and ensuring the provision of health care when otherwise unavailable.
(8) Ensuring a competent public health workforce and personal health care workforce.
(9) Evaluating effectiveness, accessibility, and quality of personal and population-based health services.
(10) Conducting research.

(c) The General Assembly recognizes that there are health-related services currently provided by State and local government and the private sector that are important to maintaining a healthy social and ecological environment but that are not included on the list of essential public health services required under this section. Omission of these

services from the list of essential public health services shall not be construed as an intent to prohibit or decrease their availability. Rather, such omission means only that the omitted services may be more appropriately assured by government agencies or private entities other than the public health system.

(d) The list of essential public health services required by this section shall not be construed to limit or restrict the powers and duties of the Commission for Public Health or the Departments of Environmental Quality and Health and Human Services as otherwise conferred by State law. (1991, c. 299, s. 1; 1997-443, s. 11A.54; 2007-182, s. 2; 2009-442, s. 1; 2012-126, s. 4; 2012-194, s. 62; 2015-241, s. 14.30(u).)

§ 130A-2. Definitions.

The following definitions shall apply throughout this Chapter unless otherwise specified:

(1) "Accreditation board" or "Board" means the Local Health Department Accreditation Board.

(1a) "Commission" means the Commission for Public Health.

(1b) "Communicable condition" means the state of being infected with a communicable agent but without symptoms.

(1c) "Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host, or vector, or through the inanimate environment.

(2) "Department" means the Department of Health and Human Services.

(3) "Imminent hazard" means a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.

(3a) "Isolation authority" means the authority to issue an order to limit the freedom of movement or action of persons or animals that are infected or reasonably suspected to be infected with a communicable disease or communicable condition for the period of communicability to prevent the direct or indirect conveyance of the infectious agent from the person or animal to other persons or animals who are susceptible or who may spread the agent to others.

(4) "Local board of health" means a district board of health or a public health authority board or a county board of health.

(5) "Local health department" means a district health department or a public health authority or a county health department.

(6) "Local health director" means the administrative head of a local health department appointed pursuant to this Chapter.

(6a) "Outbreak" means an occurrence of a case or cases of a disease in a locale in excess of the usual number of cases of the disease.

(7) "Person" means an individual, corporation, company, association, partnership, unit of local government or other legal entity.

(7a) "Quarantine authority" means the authority to issue an order to limit the freedom of movement or action of persons or animals which have been exposed to or are reasonably suspected of having been exposed to a communicable disease or communicable condition for a period of time as may be necessary to

prevent the spread of that disease. Quarantine authority also means the authority to issue an order to limit access by any person or animal to an area or facility that may be contaminated with an infectious agent. The term also means the authority to issue an order to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease when the State Health Director or a local health director determines that the immunizations are required to control an outbreak of that disease.

(8) "Secretary" means the Secretary of Health and Human Services.

(9) "Unit of local government" means a county, city, consolidated city-county, sanitary district or other local political subdivision, authority or agency of local government.

(10) "Vital records" means birth, death, fetal death, marriage, annulment and divorce records registered under the provisions of Article 4 of this Chapter. (1957, c. 1357, s. 1; 1963, c. 492, ss. 5, 6; 1967, c. 343, s. 2; c. 1257, s. 1; 1973, c. 476, s. 128; 1975, c. 751, s. 1; 1981, c. 130, s. 1; c. 340, ss. 1-4; 1983, c. 891, s. 2; 1989, c. 727, s. 141; 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991, c. 631, s. 1; 1997-443, s. 11A.55; 1997-502, s. 2(a), (b); 2002-179, s. 4; 2004-80, s. 1; 2005-369, s. 1(a); 2007-182, s. 2.)

§ 130A-3. Appointment of the State Health Director.

The Secretary shall appoint the State Health Director. The State Health Director shall be a physician licensed to practice medicine in this State. The State Health Director shall perform duties and exercise authority assigned by the Secretary. (1983, c. 891, s. 2.)

§ 130A-4. Administration.

(a) Except as provided in subsection (c) of this section, the Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission. A local health director shall administer the programs of the local health department and enforce the rules of the local board of health.

(b) When requested by the Secretary, a local health department shall enforce the rules of the Commission under the supervision of the Department. The local health department shall utilize local staff authorized by the Department to enforce the specific rules.

(c) The Secretary of Environmental Quality shall administer and enforce the provisions of Articles 9 and 10 of this Chapter and the rules of the Commission.

(d) When requested by the Secretary of Environmental Quality, a local health department shall enforce the rules of the Commission and the rules adopted by the Environmental Management Commission pursuant to G.S. 87-87 under the supervision of the Department of Environmental Quality. The local health department shall utilize local staff authorized by the Department of Environmental Quality to enforce the specific rules. (1983, c. 891, s. 2; 1995, c. 123, s. 2; 1997-443, s. 11A.56; 2001-474, s. 18; 2006-202, s. 5; 2006-255, s. 13.1; 2011-145, s. 13.3(pp); 2015-241, ss. 14.30(u), (v).)

§ 130A-4.1. State funds for maternal and child health care/nonsupplanting.

(a) The Department shall ensure that local health departments do not reduce county appropriations for maternal and child health services provided by the local health departments because they have received State appropriations for this purpose.

(b) All income earned by local health departments for maternal and child health programs supported in whole or in part from State or federal funds, received from the Department, shall be budgeted and expended by local health departments to further the objectives of the program that generated the income. (1991, c. 689, s. 170; 1997-443, s. 11A.57.)

§ 130A-4.2. State funds for health promotion/nonsupplanting.

The Department shall ensure that local health departments do not reduce county appropriations for health promotion services provided by the local health departments because they have received State appropriations for this purpose. (1991, c. 689, s. 171; 1997-443, s. 11A.58.)

§ 130A-4.3. State funds for school nurses.

(a) The Department shall use State funds appropriated for the School Nurse Funding Initiative to supplement and not supplant other State, local, or federal funds appropriated or allocated for this purpose. The Department shall ensure that communities maintain their current level of effort and funding for school nurses. These funds shall not be used to fund nurses for State agencies. These funds shall be distributed to local health departments according to a formula that includes all of the following:

(1) School nurse-to-student ratio.
(2) Percentage of students eligible for free or reduced-price meals.
(3) Percentage of children in poverty.
(4) Per capita income.
(5) Eligibility as a low-wealth county.
(6) Mortality rates for children between one and 19 years of age.
(7) Percentage of students with chronic illnesses.
(8) Percentage of county population consisting of minority persons.

(b) The Division of Public Health shall ensure that school nurses funded with State funds (i) do not assist in any instructional or administrative duties associated with a school's curriculum and (ii) perform all of the following with respect to school health programs:

(1) Serve as the coordinator of the health services program and provide nursing care.
(2) Provide health education to students, staff, and parents.
(3) Identify health and safety concerns in the school environment and promote a nurturing school environment.
(4) Support healthy food services programs.
(5) Promote healthy physical education, sports policies, and practices.
(6) Provide health counseling, assess mental health needs, provide interventions, and refer students to appropriate school staff or community agencies.
(7) Promote community involvement in assuring a healthy school and serve as school liaison to a health advisory committee.
(8) Provide health education and counseling and promote healthy activities and a healthy environment for school staff.
(9) Be available to assist the county health department during a public health emergency. (2017-57, s. 11E.1.)

§ 130A-4.4. Funds for AIDS Drug Assistance Program.

The Department shall work with the Department of Public Safety to use Department of Public Safety funds to purchase pharmaceuticals for the treatment of individuals in the custody of the Department of Public Safety who have been diagnosed with Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome (HIV/AIDS) in a manner that allows these funds to be accounted for as State matching funds in the Department of Health and Human Services drawdown of federal Ryan White funds earmarked for the AIDS Drug Assistance Program also known as ADAP. (2017-57, s. 11E.7.)

§ 130A-5. Duties of the Secretary.

The Secretary shall have the authority:

(1) To enforce the State health laws and the rules of the Commission;

(2) To investigate the causes of epidemics and of infectious, communicable and other diseases affecting the public health in order to control and prevent these diseases; to provide, under the rules of the Commission, for the prevention, detection, reporting and control of communicable, infectious or any other diseases or health hazards considered harmful to the public health;

(3) To develop and carry out reasonable health programs that may be necessary for the protection and promotion of the public health and the control of diseases. The Commission is authorized to adopt rules to carry out these programs;

(4) To make sanitary and health investigations and inspections;

(5) To investigate occupational health hazards and occupational diseases and to make recommendations for the elimination of the hazards and diseases. The Secretary shall work with the Industrial Commission and shall file sufficient reports with the Industrial Commission to enable it to carry out all of the provisions of the Workers' Compensation Act with respect to occupational disease.

(6) To receive donations of money, securities, equipment, supplies, realty or any other property of any kind or description which shall be used by the Department for the purpose of carrying out its public health programs;

(7) To acquire by purchase, devise or otherwise in the name of the Department equipment, supplies and other property, real or personal, necessary to carry out the public health programs;

(8) To use the official seal of the Department. Copies of documents in the possession of the Department may be authenticated with the seal of the Department, attested by the signature or a facsimile of the signature of the Secretary, and when authenticated shall have the same evidentiary value as the originals;

(9) To disseminate information to the general public on all matters pertaining to public health; to purchase, print, publish, and distribute free, or at cost, documents, reports, bulletins and health informational materials. Money collected from the distribution of these materials shall remain in the Department to be used to replace the materials;

(10) To be the health advisor of the State and to advise State officials in regard to the location, sanitary construction and health management of all State institutions; to direct the attention of the State to health matters which affect the industries, property, health and lives of the people of the State; to inspect at least annually State institutions and facilities; to make a report as to the health conditions of these institutions or facilities with suggestions and recommendations to the appropriate State agencies. It shall be the duty of the persons in immediate charge of these institutions or facilities to furnish all assistance necessary for a thorough inspection;

(11) To establish a schedule of fees based on income to be paid by a recipient for services provided by Migrant Health Clinics and Development Evaluation Centers;

(12) To establish fees for the sale of specimen containers, vaccines and other biologicals. The fees shall not exceed the actual cost of such items, plus transportation costs;

(13) To establish a fee to cover costs of responding to requests by employers for industrial hygiene consultation services and occupational consultation services. The fee shall not exceed two hundred dollars ($200.00) per on site inspection; and

(14) To establish a fee for companion animal certificate of examination forms to be distributed, upon request, by the Department to licensed veterinarians. The fee shall not exceed the cost of the form and shipping costs.

(15) To establish a fee not to exceed the cost of analyzing clinical Pap smear specimens sent to the State Laboratory by local health departments and State-owned facilities and for reporting the results of the analysis. This fee shall be in addition to the charge for the Pap smear test kit.

(16) To charge a fee of up to seventy-four dollars ($74.00) for analyzing private well-water samples sent to the State Laboratory of Public Health by local health departments. The fee shall be imposed for analyzing samples from newly constructed and existing wells. The fee shall be computed annually by the Director of the State Laboratory of Public Health by analyzing the previous year's testing at the State Laboratory of Public Health, and applying the amount of the total cost of the private well-water testing, minus State appropriations that support this effort. The fee includes the charge for the private well-water panel test kit. (1957, c. 1357, s. 1; 1961, c. 51, s. 4; c. 833, s. 14; 1969, c. 982; 1973, c. 476, ss. 128, 138; 1979, c. 714, s. 2; 1981, c. 562, s. 4; 1983, c. 891, s. 2; 1985, c. 470, s. 1; 1991, c. 227, s. 1; 1993 (Reg. Sess., 1994), c. 715, s. 1; 2003-284, s. 34.13(a); 2006-66, s. 10.20(a); 2007-115, s. 2; 2014-100, s. 12E.3(a).)

§ 130A-5.1. State health standards.

(a) The Secretary shall adopt measurable standards and goals for community health against which the State's actions to improve the health status of its citizens will be measured. The Secretary shall report annually to the General Assembly upon its convening or reconvening and to the Governor on all of the following:

(1) How the State compares to national health measurements and established State goals for each standard. Comparisons shall be reported using disaggregated data for health standards.
(2) Steps taken by State and non-State entities to meet established goals.
(3) Additional steps proposed or planned to be taken to achieve established goals.

(b) The Secretary may coordinate and contract with other entities to assist in the establishment of standards and preparation of the report. The Secretary may use resources available to implement this section. (2000-67, s. 11.)

§ 130A-6. Delegation of authority.

Whenever authority is granted by this Chapter upon a public official, the authority may be delegated to another person authorized by the public official. (1983, c. 891, s. 2.)

§ 130A-7. Grants-in-aid.

The State is authorized to accept, allocate and expend any grants-in-aid for public health purposes which may be made available to the State by the federal government. This Chapter is to be liberally construed in order that the State and its citizens may benefit fully from these grants-in-aid. The Commission is authorized to adopt rules, not inconsistent with the laws of this State, as required by the federal government for receipt of federal funds. Any federal funds received are to be deposited with the State Treasurer and are to be appropriated by the General Assembly for the public health purposes specified. (1957, c. 1357, s. 1; 1983, c. 891, s. 2.)

§ 130A-8. Counties to recover indirect costs on certain federal public health or mental health grants.

(a) The Department shall include in its request for federal funds applicable to public health or mental health grants from the federal government to the State or any of its agencies, indirect costs incurred by counties acting as subgrantees under the grants or otherwise providing services to the Department with regard to the grants to the full extent permitted by OMB Circular A-87 or its successor. The Department shall allow counties to claim and recover their indirect costs on these grants to the full extent permitted by the Circular.

(b) This section shall not apply to those federal public health or mental health grants which are formula grants to the State or which are otherwise limited as to the maximum amounts receivable on a statewide basis. (1977, c. 876, ss. 1, 2; 1983, c. 891, s. 2.)

§ 130A-9. Standards.

The Commission is authorized to establish reasonable standards governing the nature and scope of public health services rendered by local health departments. (1957, c. 1357, s. 1; 1973, c. 110; 1975, c. 83; 1979, c. 504, s. 15; 1983, c. 891, s. 2.)

§ 130A-10. Advisory Committees.

The Secretary is authorized to establish and appoint as many special advisory committees as may be necessary to advise and confer with the Department concerning the public health. Members of any special advisory committee shall serve without compensation but may be allowed travel and subsistence expenses in accordance with G.S. 138-6. (1957, c. 1357, s. 1; 1975, c. 281; 1983, c. 891, s. 2.)

§ 130A-11. Residencies in public health.

The Department shall establish a residency program designed to attract dentists into the field of public health and to train them in the specialty of public health practice. The program shall include practical experience in public health principles and practices. (1975, c. 945, s. 1; 1983, c. 891, s. 2; 1991, c. 342, s. 6.)

§ 130A-12. Confidentiality of records.

All records containing privileged patient medical information, information protected under 45 Code of Federal Regulations Parts 160 and 164, and information collected under the authority of Part 4 of Article 5 of this Chapter that are in the possession of the Department of Health and Human Services or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1. Notwithstanding G.S. 8-53, the information contained in the records may be disclosed for purposes of treatment, payment, research, or health care operations to the extent that disclosure is permitted under 45 Code of Federal Regulations §§ 164.506 and 164.512(i). For purposes of this section, the terms "treatment," "payment," "research," and "health care operations" have the meanings given those terms in 45 Code of Federal Regulations § 164.501. (1985, c. 470, s. 2; 1991 (Reg. Sess., 1992), c. 890, s. 9; 1995, c. 428, s. 1.1; 2004-80, s. 4; 2006-255, s. 13.2; 2011-145, s. 13.3(qq); 2011-314, s. 3.)

§ 130A-13. Application for eligibility for Department medical payment program constitutes assignment to the State of right to third party benefits.

(a) Notwithstanding any other provisions of law, by applying for financial eligibility for any Department medical payment program administered under this Chapter, the recipient patient or responsible party for the recipient patient shall be deemed to have made an assignment to the State of the right to third party benefits, contractual or otherwise, to which he may be entitled to the extent of the amount of the Department's payment on behalf of the recipient patient. Any attorney retained by the recipient patient shall be compensated for his services in accordance with the following schedule and in the following order of priority from any amount of such third party benefits obtained on behalf of the recipient by settlement, with judgment against, or otherwise from a third party:

(1) First to the payment of any court costs taxed by the judgment;

(2) Second to the payment of the fee of the attorney representing the beneficiary making the settlement or obtaining the judgment, but this fee shall not exceed one-third of the amount obtained or recovered to which the right of subrogation applies;

(3) Third to the payment of the amount of assistance received by the beneficiary as prorated with other claims against the amount obtained or received from the third party to which the right of subrogation applies, but the amount shall not exceed one-third of the amount obtained or recovered to which the right of subrogation applies; and

(4) Fourth to the payment of any amount remaining to the beneficiary or his personal representative.

The United States and the State of North Carolina shall be entitled to shares in each net recovery under this section. Their shares shall be promptly paid under this section and their

proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) The Department shall establish a third party resources collection unit that is adequate to ensure collection of third party resources.

(c) The Commission may adopt rules necessary to implement this section.

(d) Notwithstanding any other law to the contrary, in all actions brought by the State pursuant to subsection (a) of this section to obtain reimbursement for payments for medical services, liability shall be determined on the basis of the same laws and standards, including bases for liability and applicable defenses, as would be applicable if the action were brought by the individual on whose behalf the medical services were rendered. (1989, c. 483, s. 1; 1995, c. 508, s. 1.)

§ 130A-14. Department may assist private nonprofit foundations.

(a) The Secretary may allow employees of the Department to assist any private nonprofit foundation that works directly with services or programs of the Department and whose sole purpose is to support the services and programs of the Department, and may provide other appropriate services to any such foundation. No employee of the Department may work with a foundation for more than 20 hours in any one month. Chapter 150B of the General Statutes does not apply to any assistance or services provided to a private nonprofit foundation pursuant to this section.

(b) The board of directors of any private nonprofit foundation that receives assistance or services pursuant to this section shall secure and pay for the services of the Department of State Auditor or shall employ a certified public accountant to conduct an annual audit of the financial accounts of the foundation. The board of directors of the foundation shall transmit a copy of the annual financial audit report to the Secretary. (1991, c. 761, s. 37.3; 1993, c. 553, s. 40.1)

§ 130A-15. Access to information.

(a) Health care providers and persons in charge of health care facilities or laboratories shall, upon request and proper identification, permit the State Health Director to examine, review, and obtain a copy of records containing privileged medical information or information protected under the Health Information Portability and Accountability Act (HIPAA) medical privacy rule, 45 C.F.R. Parts 160 and 164, that the State Health Director deems are necessary to prevent, control, or investigate a disease or health hazard that may present a clear danger to the public health.

(b) Privileged medical information or protected health information received by the State Health Director pursuant to this section shall be confidential and is not a public record under G.S. 132-1. The information shall not be released, except when the release is made pursuant to any other provision of law, to another federal, state, or local public health agency for the purpose of preventing or controlling a disease or public health hazard or to a court or law enforcement official or law enforcement officer for the purpose of enforcing the provisions of this Chapter or for the purpose of investigating a disease or public health hazard.

(c) A person who permits examination, review, or copying of records or who provides copies of the records pursuant to subsection (a) of this section is immune from any civil or criminal liability that might otherwise be incurred or imposed. (2007-115, s. 1.)

§ 130A-16. Collection and reporting of race and ethnicity data.

All medical care providers required by the provisions of this Chapter to report to the Division of Public Health shall collect and document patient self-reported race and ethnicity data and shall include such data in their reports to the Division. (2008-119, s. 1.)

Part 2. Remedies.

§ 130A-17. Right of entry.

(a) The Secretary and a local health director shall have the right of entry upon the premises of any place where entry is necessary to enforce the provisions of this Chapter or the rules adopted by the Commission or a local board of health. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained pursuant to G.S. 15-27.2. However, if an imminent hazard exists, no warrant is required for entry upon the premises.

(b) The Secretary of Environmental Quality and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 10 of this Chapter. (1983, c. 891, s. 2; 1997-443, s. 11A.60; 2001-474, s. 19; 2006-255, s. 13.3; 2011-145, s. 13.3(rr); 2015-241, s. 14.30(v).)

§ 130A-18. Injunction.

(a) If a person shall violate any provision of this Chapter, the rules adopted by the Commission or rules adopted by a local board of health, or a condition or term of a permit or order issued under this Chapter, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(b) The Secretary of Environmental Quality and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 10 of this Chapter. (1983, c. 891, s. 2; 1997-443, s. 11A.61; 2001-474, s. 20; 2006-255, s. 13.4; 2007-550, s. 2(a); 2011-145, s. 13.3(ss); 2015-241, s. 14.30(v).)

§ 130A-19. Abatement of public health nuisance.

(a) If the Secretary or a local health director determines that a public health nuisance exists, the Secretary or a local health director may issue an order of abatement directing the owner, lessee, operator or other person in control of the property to take any action necessary to abate the public health nuisance. If the person refuses to comply with the order, the Secretary or the local health director may institute an action in the superior court of the county where the public health nuisance exists to enforce the order. The action shall be calendared for trial within 60 days after service of the complaint upon the defendant. The court may order the owner to abate the nuisance or direct the Secretary or the local health director to abate the nuisance. If the Secretary or the local health director is ordered to abate the nuisance, the Department or the local health department shall have a lien on the property for the costs of the abatement of the nuisance in the nature of a mechanic's and materialmen's lien as provided in Chapter 44A of the General Statutes and the lien may be enforced as provided therein.

(b) The Secretary of Environmental Quality and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 10 of this Chapter. (1893, c. 214, s. 22; Rev., ss. 3446, 4450; 1911, c. 62, ss. 12, 13; 1913, c. 181, s. 3; C.S., ss. 7071, 7072; 1957, c. 1357, s. 1; 1983, c. 891, s. 2; 1997-443, s. 11A.62; 2006-255, s. 13.5; 2011-145, s. 13.3(tt); 2015-241, s. 14.30(v).)

§ 130A-20. Abatement of an imminent hazard.

(a) If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may order the owner, lessee, operator, or other person in control of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify the owner, lessee, operator, or other person in control of the property enter upon any property and take any action necessary to abate the imminent hazard. If the Secretary or a local health director abates the imminent hazard, the Department or the local health department shall have a lien on the property of the owner, lessee, operator, or other person in control of the property where the imminent hazard existed for the cost of the abatement of the imminent hazard. The lien may be enforced in accordance with procedures provided in Chapter 44A of the General Statutes. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Secretary or the local health director took the action. The owner, lessee, operator, or any other person against whose property the lien has been filed may defeat the lien by showing that that person was not culpable in the creation of the imminent hazard.

(b) The Secretary of Environmental Quality and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 10 of this Chapter. (1893, c. 214, s. 22; Rev., ss. 3446, 4450; 1911, c. 62, ss. 12, 13; 1913, c. 181, s. 3; C.S., ss. 7071, 7072; 1957, c. 1357, s. 1; 1983, c. 891, s. 2; 1997-443, s. 11A.63; 2002-179, s. 6; 2006-255, s. 13.6; 2011-145, s. 13.3(uu); 2015-241, s. 14.30(v).)

§ 130A-20.01. Action for the recovery of costs of hazardous materials emergency medical response.

A person who causes the release of a hazardous material that results in the activation of one or more State Medical Assistance Teams (SMATs) or the Epidemiology Section of the Division of Public Health of the Department of Health and Human Services shall be liable for all reasonable costs incurred by each team or the Epidemiology Section that responds to or mitigates the incident. The Secretary of Health and Human Services shall invoice the person liable for the hazardous materials release and, in the event of nonpayment, may institute an action to recover those costs in the superior court of the county in which the release occurred. (2007-107, s. 3.1(b).)

§ 130A-21. Embargo.

(a) In addition to the authority of the Department of Agriculture and Consumer Services pursuant to G.S. 106-125, the Secretary or a local health director has authority to exercise embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when the food or drink is in an establishment that is subject to regulation by the Department of Health and Human Services pursuant to this Chapter, that is subject to rules

adopted by the Commission, or that is the subject of an investigation pursuant to G.S. 130A-144; however, no such action shall be taken in any establishment or part of an establishment that is under inspection or otherwise regulated by the Department of Agriculture and Consumer Services or the United States Department of Agriculture other than the part of the establishment that is subject to regulation by the Department of Health and Human Services pursuant to this Chapter. Any action under this section shall only be taken by, or after consultation with, Department of Health and Human Services regional environmental health specialists, or the Director of the Division of Public Health or the Director's designee, in programs regulating food and drink pursuant to this Chapter or in programs regulating food and drink that are subject to rules adopted by the Commission. Authority under this section shall not be delegated to individual environmental health specialists in local health departments otherwise authorized and carrying out laws and rules pursuant to G.S. 130A-4. When any action is taken pursuant to this section, the Department of Health and Human Services or the local health director shall immediately notify the Department of Agriculture and Consumer Services. For the purposes of this subsection, all duties and procedures in G.S. 106-125 shall be carried out by the Secretary of Health and Human Services or the local health director and shall not be required to be carried out by the Department of Agriculture and Consumer Services. It shall be unlawful for any person to remove or dispose of the food or drink by sale or otherwise without the permission of a Department of Health and Human Services regional environmental health specialist, the Director of the Division of Public Health or the Director's designee, the local health director, or a duly authorized agent of the Department of Agriculture and Consumer Services, or by the court in accordance with the provisions of G.S. 106-125.

(b) Recodified as G.S. 106-266.36 by Session Laws 2011-145, s. 13.3(s), effective July 1, 2011.

(c) Recodified as G.S. 113-221.4 by Session Laws 2011-145, s. 13.3(ttt), effective July 1, 2011.

(d) Nothing in this section is intended to limit the embargo authority of the Department of Agriculture and Consumer Services. The Department of Health and Human Services and the Department of Agriculture and Consumer Services are authorized to enter agreements respecting the duties and responsibilities of each agency in the exercise of their embargo authority.

(e) For the purpose of this section, a food or drink is adulterated if the food or drink is deemed adulterated under G.S. 106-129; and food or drink is misbranded if it is deemed misbranded under G.S. 106-130. (1983, c. 891, s. 2; 1997-261, s. 109; 1997-443, s. 11A.63A; 2006-80, s. 1; 2007-7, s. 1; 2011-145, ss. 13.3(s), (vv), (ww), (ttt).)

§ 130A-22. Administrative penalties.

(a) The Secretary of Environmental Quality may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any term or condition of a permit or order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifteen thousand dollars ($15,000) per day in the case of a violation involving

nonhazardous waste. The penalty shall not exceed thirty-two thousand five hundred dollars ($32,500) per day in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed thirty-two thousand five hundred dollars ($32,500) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). For violations of Part 7 of Article 9 of this Chapter and G.S. 130A-309.10(m): (i) a warning shall be issued for a first violation; (ii) the penalty shall not exceed two hundred dollars ($200.00) for a second violation; and (iii) the penalty shall not exceed five hundred dollars ($500.00) for subsequent violations. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environmental Quality shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to the determination of civil liability or penalty pursuant to subsection (a) of this section.

(b) The Secretary of Environmental Quality may impose an administrative penalty on a person who violates G.S. 130A-325. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed twenty-five thousand dollars ($25,000) for each day the violation continues.

(b1) The Secretary may impose an administrative penalty on a person who violates Article 19 of this Chapter or a rule adopted pursuant to that Article. Except as provided in subsection (b2) of this section, the penalty shall not exceed one thousand dollars ($1,000) per day per violation. Until the Department has notified the person of the violation, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation.

In determining the amount of a penalty under this subsection or subsection (b2) of this section, the Secretary shall consider all of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
(2) The duration and gravity of the violation.
(3) The effect on air quality.
(4) The cost of rectifying the damage.
(5) The amount of money the violator saved by noncompliance.
(6) The prior record of the violator in complying or failing to comply with Article 19 of this Chapter or a rule adopted pursuant to that Article.
(7) The cost to the State of the enforcement procedures.
(8) If applicable, the size of the renovation and demolition involved in the violation.

(b2) The penalty for violations of the asbestos NESHAP for demolition and renovation, as defined in G.S. 130A-444, shall not exceed ten thousand dollars ($10,000) per day per violation. Until the Department has provided the person with written notification of the violation of the asbestos NESHAP for demolition and renovation that describes the violation, recommends a general course of action, and establishes a time frame in which to correct the violations, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation. A violation of the asbestos NESHAP for demolition and renovation is not considered to continue during the period a person who has received the notice of violation is following the general course of action and complying with the time frame set forth in the notice of violation.

(b3) The Secretary may impose an administrative penalty on a person who violates Article 19A or 19B of this Chapter or any rules adopted pursuant to Article 19A or 19B of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed five thousand dollars ($5,000) for each day the violation continues for Article 19A of this Chapter. The penalty shall not exceed five thousand dollars ($5,000) for each day the violation continues for Article 19B of this Chapter. The penalty authorized by this section does not apply to a person who is not required to be certified under Article 19A or 19B.

(c) The Secretary may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

(c1) The Secretary may impose a monetary penalty on a vendor who violates rules adopted by the Commission pursuant to Article 13 of this Chapter when the Secretary determines that disqualification would result in hardship to participants in the Women, Infants, and Children (WIC) program. The penalty shall be calculated using the following formula: multiply five percent (5%) times the average dollar amount of the vendor's monthly redemptions of WIC food instruments for the 12-month period immediately preceding disqualification, then multiply that product by the number of months of the disqualification period determined by the Secretary.

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary and the Secretary of Environmental Quality shall consider all of the following factors:

(1) Type of violation.

(2) Type of waste involved.
(3) Duration of the violation.
(4) Cause (whether resulting from a negligent, reckless, or intentional act or omission).
(5) Potential effect on public health and the environment.
(6) Effectiveness of responsive measures taken by the violator.
(7) Damage to private property.
(8) The degree and extent of harm caused by the violation.
(9) Cost of rectifying any damage.
(10) The amount of money the violator saved by noncompliance.
(11) The violator's previous record in complying or not complying with the provisions of Article 9 of this Chapter, Article 11 of this Chapter, or G.S. 130A-325, and any regulations adopted thereunder, as applicable to the violation in question.

(e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-23(a) not later than 30 days after receipt by the petitioner of the document which constitutes agency action, be entitled to an administrative hearing and judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(f) The Commission shall adopt rules concerning the imposition of administrative penalties under this section.

(g) The Secretary or the Secretary of Environmental Quality may bring a civil action in the superior court of the county where the violation occurred or where the defendant resides to recover the amount of an administrative penalty authorized under this section whenever a person:

(1) Who has not requested an administrative hearing in accordance with subsection (e) of this section fails to pay the penalty within 60 days after being notified of the penalty; or
(2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the final agency decision.

(h) A local health director may impose an administrative penalty on any person who willfully violates the wastewater collection, treatment, and disposal rules of the local board of health adopted pursuant to G.S. 130A-335(c) or who willfully violates a condition imposed upon a permit issued under the approved local rules. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. The local health director shall establish and recover the amount of the administrative penalty in accordance with subsections (d) and (g). Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling. A person contesting a penalty imposed under this subsection shall be entitled to an administrative hearing and

judicial review in accordance with G.S. 130A-24. A local board of health shall adopt rules concerning the imposition of administrative penalties under this subsection.

(h1) A local health director may take the following actions and may impose the following administrative penalty on a person who manages, operates, or controls a public place or place of employment and fails to comply with the provisions of Part 1C of Article 23 of this Chapter or with rules adopted thereunder or with local ordinances, rules, laws, or policies adopted pursuant to Part 2 of Article 23 of this Chapter:

(1) First violation. – Provide the person in violation with written notice of the person's first violation and notification of action to be taken in the event of subsequent violations.

(2) Second violation. – Provide the person in violation with written notice of the person's second violation and notification of administrative penalties to be imposed for subsequent violations.

(3) Subsequent violations. – Impose on the person in violation an administrative penalty of not more than two hundred dollars ($200.00) for the third and subsequent violations.

Each day on which a violation of this Article or rules adopted pursuant to this Article occurs may be considered a separate and distinct violation. Notwithstanding G.S. 130A-25, a violation of Article 23 of this Chapter shall not be punishable as a criminal violation.

(i) The clear proceeds of penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(j) The Secretary of Environmental Quality may also assess the reasonable costs of any investigation, inspection, or monitoring associated with the assessment of the civil penalty against any person who is assessed a civil penalty under this section. (1983, c. 891, s. 2; 1987, c. 269, s. 2; c. 656; c. 704, s. 1; c. 827, s. 247; 1989, c. 742, s. 4; 1991, c. 691, s. 1; c. 725, s. 8; 1991 (Reg. Sess., 1992), c. 944, s. 11; 1993 (Reg. Sess., 1994), c. 686, s. 1; 1995, c. 504, s. 8; 1997-443, s. 11A.64; 1997-523, s. 2; 1998-215, s. 54(a); 2001-474, s. 21; 2002-154, s. 1; 2007-550, ss. 3(a), 4(a); 2009-27, s. 2; 2009-163, s. 2; 2009-488, s. 2; 2010-180, s. 14(c); 2011-145, s. 13.3(xx); 2013-378, s. 7; 2013-413, s. 49; 2015-241, s. 14.30(v); 2017-209, s. 19(b).)

§ 130A-23. Suspension and revocation of permits and program participation.

(a) The Secretary may suspend or revoke a permit issued under this Chapter upon a finding that a violation of the applicable provisions of this Chapter, the rules of the Commission or a condition imposed upon the permit has occurred. A permit may also be suspended or revoked upon a finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue the permit.

(b) The Secretary may suspend or revoke a person's participation in a program administered under this Chapter upon a finding that a violation of the applicable provisions of this Chapter or the rules of the Commission has occurred. Program participation may also be suspended or revoked upon a finding that participation was based upon incorrect or inadequate information that materially affected the decision to grant program participation.

(c) A person shall be given notice that there has been a tentative decision to suspend or revoke the permit or program participation and that an administrative hearing will be

held in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act, at which time the person may challenge the tentative decision.

(d) A permit shall be suspended or revoked immediately if a violation of the Chapter, the rules or a condition imposed upon the permit presents an imminent hazard. An operation permit issued pursuant to G.S. 130A-281 shall be immediately suspended for failure of a public swimming pool to maintain minimum water quality or safety standards or design and construction standards pertaining to the abatement of suction hazards which result in an unsafe condition. A permit issued pursuant to G.S. 130A-248 shall be revoked immediately for failure of an establishment to maintain a minimum grade of C. The Secretary of Environmental Quality shall immediately give notice of the suspension or revocation and the right of the permit holder or program participant to appeal the suspension or revocation under G.S. 150B-23.

(e) The Secretary of Environmental Quality shall have all of the applicable rights enumerated in this section to enforce the provisions of Articles 9 and 10 of this Chapter. (1983, c. 891, s. 2; 1987, c. 827, s. 1; c. 438, s. 3; 1993, c. 211, s. 2; 1993 (Reg. Sess., 1994), c. 732, s. 2; 1995, c. 123, s. 15; 1997-443, s. 11A.65; 2011-145, s. 13.3(yy); 2015-241, s. 14.30(v).)

§ 130A-24. Appeals procedure.

(a) Appeals concerning the enforcement of rules adopted by the Commission, concerning the suspension and revocation of permits and program participation by the Secretary and concerning the imposition of administrative penalties by the Secretary shall be governed by Chapter 150B of the General Statutes, the Administrative Procedure Act.

(a1) Any person appealing an action taken by the Department pursuant to this Chapter or rules of the Commission shall file a petition for a contested case with the Office of Administrative Hearings as provided in G.S. 150B-23(a). The petition shall be filed not later than 30 days after notice of the action which confers the right of appeal unless a federal statute or regulation provides for a different time limitation. The time limitation imposed under this subsection shall commence when notice of the agency decision is given to all persons aggrieved. Such notice shall be provided to all persons known to the agency by personal delivery or by the placing of notice in an official depository of the United States Postal Service addressed to the person at the latest address provided to the agency by the person.

(b) Appeals concerning the enforcement of rules adopted by the local board of health and concerning the imposition of administrative penalties by a local health director shall be conducted in accordance with this subsection and subsections (c) and (d) of this section. The aggrieved person shall give written notice of appeal to the local health director within 30 days of the challenged action. The notice shall contain the name and address of the aggrieved person, a description of the challenged action and a statement of the reasons why the challenged action is incorrect. Upon filing of the notice, the local health director shall, within five working days, transmit to the local board of health the notice of appeal and the papers and materials upon which the challenged action was taken.

(c) The local board of health shall hold a hearing within 15 days of the receipt of the notice of appeal. The board shall give the person not less than 10 days' notice of the date, time and place of the hearing. On appeal, the board shall have authority to affirm, modify or reverse the challenged action. The local board of health shall issue a written decision based on the evidence presented at the hearing. The decision shall contain a concise statement of the reasons for the decision.

(d) A person who wishes to contest a decision of the local board of health under subsection (b) of this section shall have a right of appeal to the district court having jurisdiction within 30 days after the date of the decision by the board. The scope of review in district court shall be the same as in G.S. 150B-51.

(e) The appeals procedures enumerated in this section shall apply to appeals concerning the enforcement of rules, the imposition of administrative penalties, or any other action taken by the Department of Environmental Quality pursuant to Articles 8, 9, 10, 11, and 12 of this Chapter. (1983, c. 891, s. 2; 1987, c. 482; c. 827, s. 248; 1993, c. 211, s. 1; 1997-443, s. 11A.66; 1998-217, s. 33; 2015-241, s. 14.30(u).)

§ 130A-25. Misdemeanor.

(a) Except as otherwise provided, a person who violates a provision of this Chapter or the rules adopted by the Commission or a local board of health shall be guilty of a misdemeanor.

(b) A person convicted under this section for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be sentenced under Article 81B of Chapter 15A of the General Statutes but shall instead be sentenced to a term of imprisonment of no more than two years and shall serve any prison sentence in McCain Hospital, Section of Prisons of the Division of Adult Correction and Juvenile Justice, McCain, North Carolina; the North Carolina Correctional Center for Women, Section of Prisons of the Division of Adult Correction and Juvenile Justice, Raleigh, North Carolina; or any other confinement facility designated for this purpose by the Secretary of Public Safety after consultation with the State Health Director. The Secretary of Public Safety shall consult with the State Health Director concerning the medical management of these persons.

(c) Notwithstanding G.S. 148-4.1, G.S. 148-13, or any other contrary provision of law, a person imprisoned for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be released prior to the completion of the person's term of imprisonment unless and until a determination has been made by the District Court that release of the person would not create a danger to the public health. This determination shall be made only after the medical consultant of the confinement facility and the State Health Director, in consultation with the local health director of the person's county of residence, have made recommendations to the Court.

(d) A violation of Part 7 of Article 9 of this Chapter or G.S. 130A-309.10(m) shall be punishable as a Class 3 misdemeanor. (1983, c. 891, s. 2; 1987, c. 782, s. 19; 1991, c. 187, s. 1; 1993, c. 539, s. 946; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 767, s. 18; 2010-180, s. 14(d); 2011-145, s. 19.1(h), (i), (j); 2017-186, ss. 2(vvvvv), 3(a).)

§ 130A-26: Repealed by Session Laws 1995, c. 311, s. 1.

§ 130A-26.1. Criminal violation of Article 9.

(a) The definition of "person" set out in G.S. 130A-290 shall apply to this section. In addition, for purposes of this section, the term "person" shall also include any responsible corporate or public officer or employee.

(b) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(c) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(d) For the purposes of the felony provisions of this section, a person's state of mind shall not be found "knowingly and willfully" or "knowingly" if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

(1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.

(2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.

(3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department of Environmental Quality. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.

(4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.

(5) Violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department of Environmental Quality at the time, including but not limited to, guidelines for the pretreatment permit civil penalties. This subdivision shall not be construed to require the Department of Environmental Quality to develop or use written civil enforcement guidelines.

(e) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under State criminal offenses may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(f) Any person who knowingly and willfully does any of the following shall be guilty of a Class I felony, which may include a fine not to exceed one hundred thousand dollars ($100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars ($500,000) for each period of 30 days during which a violation continues:

(1) Transports or causes to be transported any hazardous waste identified or listed under G.S. 130A-294(c) to a facility which does not have a permit or interim status under G.S. 130A-294(c) or 42 U.S.C. § 6921, et seq.

(2) Transports or causes to be transported such hazardous waste with the intent of delivery to a facility without a permit.

(3) Treats, stores, or disposes of such hazardous waste without a permit or interim status under G.S. 130A-294(c) or 42 U.S.C. §6921, et seq., or in knowing violation of any material condition or requirement or such permit or applicable interim status rules.

(g) Any person who knowingly and willfully does any of the following shall be guilty of a Class I felony, which may include a fine not to exceed one hundred thousand dollars ($100,000) per day of violation, provided that the fine shall not exceed a cumulative total of five hundred thousand dollars ($500,000) for each period of 30 days during which a violation continues:

(1) Transports or causes to be transported hazardous waste without a manifest as required under G.S. 130A-294(c).

(2) Transports hazardous waste without a United States Environmental Protection Agency identification number as required by rules promulgated under G.S. 130A-294(c).

(3) Omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with rules promulgated under G.S. 130A-294(c).

(4) Generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste or any used oil burned for energy recovery and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with rules promulgated under G.S. 130A-294(c).

(5) Provides false information or fails to provide information relevant to a decision by the Department as to whether or not to enter into a brownfields agreement under Part 5 of Article 9 of this Chapter.

(6) Provides false information or fails to provide information required by a brownfields agreement under Part 5 of Article 9 of this Chapter.

(7) Provides false information relevant to a decision by the Department pursuant to:

a. G.S. 130A-308(b).

b. G.S. 130A-310.7(c).

c. G.S. 143-215.3(f).

d. G.S. 143-215.84(e).

(h) For the purposes of subsections (f) and (g) of this section, the phrase "knowingly and willfully" shall mean intentionally and consciously as the courts of this State, according to the principles of common law interpret the phrase in the light of reason and experience.

(i) (1) Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste or used oil regulated under G.S. 130A-294(c) in violation of subsection (f) or (g) of this section, who knows at the time that he thereby places another person in imminent danger of death or personal bodily injury shall be guilty of a Class C felony which may include a fine not to exceed two hundred fifty thousand dollars ($250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars ($1,000,000) for each period of 30 days during which a violation continues.

(2) For the purposes of this subsection, a person's state of mind is knowing with respect to:

a. His conduct, if he is aware of the nature of his conduct;

b. An existing circumstance, if he is aware or believes that the circumstance exists; or

c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:

a. The person is responsible only for actual awareness or actual belief that he possessed; and

b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

(4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

(j) Any person convicted of an offense under subsection (f), (g), or (h) of this section following a previous conviction under this section shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine, or twice the term of imprisonment provided in the subsection under which the second or subsequent conviction occurs. (1989 (Reg. Sess., 1990), c. 1045, s. 9; 1993, c. 539, ss. 1303-1305; 1994, Ex. Sess., c. 24, s. 14(c); 1997-357, s. 3; 1997-443, s. 11A.67; 2015-241, s. 14.30(u).)

§ 130A-26.2. Penalty for false reporting under Article 9.

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Article 9 of this Chapter or rules adopted under Article 9 of this Chapter; or who knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under Article 9 of this Chapter; or who falsifies, tampers with, or knowingly renders inaccurate any recording or

monitoring device or method required to be operated or maintained under Article 9 of this Chapter or rules adopted under Article 9 of this Chapter is guilty of a Class 2 misdemeanor. The maximum fine that may be imposed for an offense under this section is ten thousand dollars ($10,000). (1993 (Reg. Sess., 1994), c. 598, s. 3.)

§ 130A-26.3. Limitations period for certain groundwater contamination actions.

The 10-year period set forth in G.S. 1-52(16) shall not be construed to bar an action for personal injury, or property damages caused or contributed to by groundwater contaminated by a hazardous substance, pollutant, or contaminant, including personal injury or property damages resulting from the consumption, exposure, or use of water supplied from groundwater contaminated by a hazardous substance, pollutant, or contaminant. For purposes of this section, "contaminated by a hazardous substance, pollutant, or contaminant" means the concentration of the hazardous substance, pollutant, or contaminant exceeds a groundwater quality standard set forth in 15A NCAC 2L .0202. (2014-17, s. 3; 2014-44, ss. 1(b), (c).)

§ 130A-26A. Violations of Article 4.

(a) A person who commits any of the following acts shall be guilty of a Class 1 misdemeanor:

(1) Willfully and knowingly makes any false statement in a certificate, record, or report required by Article 4 of this Chapter;

(2) Removes or permits the removal of a dead body of a human being without authorization provided in Article 4 of this Chapter;

(3) Refuses or fails to furnish correctly any information in the person's possession or furnishes false information affecting a certificate or record required by Article 4 of this Chapter;

(4) Fails, neglects, or refuses to perform any act or duty required by Article 4 of this Chapter or by the instructions of the State Registrar prepared under authority of the Article.

(5) Charges a fee for performing any act or duty required by Article 4 of this Chapter or by the State Registrar pursuant to Article 4 of this Chapter, other than fees specifically authorized by law.

(b) A person who commits any of the following acts shall be guilty of a Class I felony:

(1) Willfully and knowingly makes any false statement in an application for a certified copy of a vital record, or who willfully and knowingly supplies false information intending that the information be used in the obtaining of any copy of a vital record;

(2) Without lawful authority and with the intent to deceive makes, counterfeits, alters, amends, or mutilates a certificate, record, or report required by Article 4 of this Chapter or a certified copy of the certificate, record, or report;

(3) Willfully and knowingly obtains, possesses, sells, furnishes, uses, or attempts to use for any purpose of deception, a certificate, record, or report required by Article 4 of this Chapter or a certified copy of the certificate, record, or report, which is counterfeited, altered, amended, or mutilated, or which is false in whole or in part or which relates to the birth of another person, whether living or deceased;

(4) When employed by the Vital Records Section of the Department or designated under Article 4 of this Chapter, willfully and knowingly furnishes or processes a certificate of birth, death, marriage, or divorce, or certified copy of a certificate of birth, death, marriage, or divorce with the knowledge or intention that it be used for the purposes of deception;

(5) Without lawful authority possesses a certificate, record, or report required by Article 4 of this Chapter or a certified copy of the certificate, record, or report knowing that it was stolen or otherwise unlawfully obtained;

(6) Willfully alters, except as provided by G.S. 130A-118, or falsifies a certificate or record required by Article 4 of this Chapter; or willfully alters, falsifies, or changes a photocopy, certified copy, extract copy, or any document containing information obtained from an original or copy of a certificate or record required by Article 4 of this Chapter; or willfully makes, creates, or uses any altered, falsified or changed record, reproduction, copy or document for the purpose of attempting to prove or establish for any purpose whatsoever any matter purported to be shown on it;

(7) Without lawful authority, manufactures or possesses the seal of: (i) the Vital Records Section, (ii) a county register of deeds, or (iii) a county health department, or without lawful authority, manufactures or possesses a reproduction or a counterfeit copy of the seal;

(8) Without lawful authority prepares or issues any certificate which purports to be an official certified copy of a vital record;

(9) Without lawful authority, manufactures or possesses Vital Records Section, county register of deeds, or county health department vital records forms or safety paper used to certify births, deaths, marriages, and divorces, or reproductions or counterfeit copies of the forms or safety paper; or

(10) Willfully and knowingly furnishes a certificate of birth or certified copy of a record of birth with the intention that it be used by an unauthorized person or for an unauthorized purpose. (1995, c. 311, s. 2.)

§ 130A-27. Recovery of money.

The Secretary or the Secretary of Environmental Quality may institute an action in the county where the action arose or the county where the defendant resides to recover any money, other property or interest in property or the monetary value of goods or services provided or paid for by the Department or the Secretary of Environmental Quality which are wrongfully paid or transferred to a person under a program administered by the Department or the Secretary of Environmental Quality pursuant to this Chapter. (1983, c. 891, s. 2; 1997-443, s. 11A.68; 2015-241, s. 14.30(v).)

§ 130A-28. Forfeiture of gain.

In the case of a violation of this Chapter or the rules adopted by the Commission, money or other property or interest in property so acquired shall be forfeited to the State unless ownership by an innocent person may be established. An action may be instituted by the Attorney General or a district attorney pursuant to G.S. 1-532. (1983, c. 891, s. 2.)

Article 1A.

Commission for Public Health.

§ 130A-29. Commission for Public Health – Creation, powers and duties.

(a) The Commission for Public Health is created with the authority and duty to adopt rules to protect and promote the public health.

(b) The Commission is authorized to adopt rules necessary to implement the public health programs administered by the Department as provided in this Chapter.

(c) The Commission shall adopt rules:

(1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.

(2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o).

(3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522.

(4) Establishing requirements for the sanitation of local confinement facilities as provided in Part 2 of Article 10 of Chapter 153A of the General Statutes.

(5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1.

(5a) Establishing eligibility standards for participation in Department reimbursement programs.

(6) Repealed by Session Laws 2014-122, s. 11(a), effective September 20, 2014.

(7) Establishing statewide health outcome objectives and delivery standards.

(8) Establishing permit requirements for the sanitation of premises, utensils, equipment, and procedures to be used by a person engaged in tattooing, as provided in Part 11 of Article 8 of this Chapter.

(9) Implementing immunization requirements for adult care homes as provided in G.S. 131D-9 and for nursing homes as provided in G.S. 131E-113.

(10) Pertaining to the biological agents registry in accordance with G.S. 130A-479.

(11) For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.

(d) The Commission is authorized to create:

(1) Metropolitan water districts as provided in G.S. 162A-33;

(2) Sanitary districts as provided in Part 2 of Article 2 of this Chapter; and

(3) Mosquito control districts as provided in Part 2 of Article 12 of this Chapter.

(e) Rules adopted by the Commission shall be enforced by the Department. (1973, c. 476, s. 123; 1975, c. 19, s. 57; c. 694, s. 6; 1979, c. 41, s. 1; 1981, c. 614, s. 9; 1983, c. 891, s. 15; 1983 (Reg. Sess., 1984), c. 1022, s. 5; 1989, c. 727, ss. 175, 176; 1989 (Reg. Sess., 1990), c. 1004, s. 50; c. 1075, s. 1; 1991, c. 548, s. 2; 1993, c. 321, s. 274; 1993 (Reg. Sess., 1994), c. 670, s. 3; 2000-112, s. 6; 2001-469, s. 2; 2002-179, s. 2(b); 2007-182, s. 2; 2012-143, s. 2(i); 2014-122, s. 11(a).)

§ 130A-30. Commission for Public Health – Members; selection; quorum; compensation.

(a) The Commission for Public Health shall consist of 13 members, four of whom shall be elected by the North Carolina Medical Society and nine of whom shall be appointed by the Governor.

(b) One of the members appointed by the Governor shall be a licensed pharmacist, one a registered engineer experienced in sanitary engineering or a soil scientist, one a licensed veterinarian, one a licensed optometrist, one a licensed dentist, and one a registered nurse. The initial members of the Commission shall be the members of the State Board of Health who shall serve for a period equal to the remainder of their current terms on the State Board of Health, three of whose appointments expire May 1, 1973, and two of whose appointments expire May 1, 1975. At the end of the respective terms of office of initial members of the Commission, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) The North Carolina Medical Society shall have the right to remove any member elected by it for misfeasance, malfeasance, or nonfeasance, and the Governor shall have the right to remove any member appointed by him for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13. Vacancies on said Commission among the membership elected by the North Carolina Medical Society shall be filled by the executive committee of the Medical Society until the next meeting of the Medical Society, when the Medical Society shall fill the vacancy for the unexpired term. Vacancies on said Commission among the membership appointed by the Governor shall be filled by the Governor for the unexpired term.

(d) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(e) The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 476, s. 124; c. 1367, ss. 1, 2; 1981, c. 553; 1989, c. 727, ss. 175, 177; 1989 (Reg. Sess., 1990), c. 1004, s. 51; 1995, c. 507, s. 26.8(d); 2007-182, s. 2.)

§ 130A-31. Commission for Public Health – Officers.

The Commission for Public Health shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 125; 1989, c. 727, s. 175; 2007-182, s. 2.)

§ 130A-32. Commission for Public Health – Election meetings.

The meeting of the Commission for Public Health for the election of vice-chairman shall be at the first regular meeting after the joint session of the Commission for Public Health and the North Carolina Medical Society at the annual meeting of the North Carolina Medical Society each odd-numbered year. (1973, c. 476, s. 126; 1989, c. 727, s. 175; 2007-182, s. 2.)

§ 130A-33. Commission for Public Health – Regular and special meetings.

Each year there shall be four regular meetings of the Commission for Public Health, one of which shall be held conjointly with a general session of the annual meeting of the North Carolina Medical Society. The State Health Director shall submit an annual report on public health at this meeting. The other three meetings shall be at such times and places as the chairman of the Commission shall designate. Special meetings of the Commission may be called by the chairman, or by a majority of the members of the Commission. (1973, c. 476, s. 127; 1989, c. 727, ss. 175, 178; 1993, c. 513, s. 6; 2007-182, s. 2.)

§ 130A-33.1: Reserved for future codification purposes.

§ 130A-33.2: Reserved for future codification purposes.

§ 130A-33.3: Reserved for future codification purposes.

§ 130A-33.4: Reserved for future codification purposes.

§ 130A-33.5: Reserved for future codification purposes.

§ 130A-33.6: Reserved for future codification purposes.

§ 130A-33.7: Reserved for future codification purposes.

§ 130A-33.8: Reserved for future codification purposes.

§ 130A-33.9: Reserved for future codification purposes.

§ 130A-33.10: Reserved for future codification purposes.

§ 130A-33.11: Reserved for future codification purposes.

§ 130A-33.12: Reserved for future codification purposes.

§ 130A-33.13: Reserved for future codification purposes.

§ 130A-33.14: Reserved for future codification purposes.

§ 130A-33.15: Reserved for future codification purposes.

§ 130A-33.16: Reserved for future codification purposes.

§ 130A-33.17: Reserved for future codification purposes.

§ 130A-33.18: Reserved for future codification purposes.

§ 130A-33.19: Reserved for future codification purposes.

§ 130A-33.20: Reserved for future codification purposes.

§ 130A-33.21: Reserved for future codification purposes.

§ 130A-33.22: Reserved for future codification purposes.

§ 130A-33.23: Reserved for future codification purposes.

§ 130A-33.24: Reserved for future codification purposes.

§ 130A-33.25: Reserved for future codification purposes.

§ 130A-33.26: Reserved for future codification purposes.

§ 130A-33.27: Reserved for future codification purposes.

§ 130A-33.28: Reserved for future codification purposes.

§ 130A-33.29: Reserved for future codification purposes.

Article 1B.

Commissions and Councils.

Part 1. Commission of Anatomy.

§ 130A-33.30. Commission of Anatomy – Creation; powers and duties.

There is created the Commission of Anatomy in the Department with the power and duty to adopt rules for the distribution of dead human bodies and parts thereof for the purpose of promoting the study of anatomy in the State of North Carolina. The Commission is authorized to receive dead bodies pursuant to G.S. 130A-412.13 and to be a donee of a body or parts thereof pursuant to Part 3A, Article 16 of Chapter 130A of the General Statutes known as the Revised Uniform Anatomical Gift Act and to distribute such bodies or parts thereof pursuant to the rules adopted by the Commission. (1975, c. 694, s. 2; 1989, c. 727, ss. 182(a), 183; 1989 (Reg. Sess., 1990), c. 1024, s. 29; 1997-443, s. 11A.69; 2007-538, s. 9.)

§ 130A-33.31. Commission of Anatomy – Members; selection; term; chairman; quorum; meetings.

(a) The Commission of Anatomy shall consist of six members, one representative from the field of mortuary science, and one each from The University of North Carolina School of Medicine, East Carolina University School of Medicine, Duke University School of Medicine, Bowman Gray School of Medicine, and Campbell University School of

Osteopathic Medicine. The dean of each school shall make recommendations and the Secretary shall appoint from such recommendations a member to the Commission. The president of the State Board of Funeral Service shall appoint the representative from the field of mortuary science to the Commission. The members shall serve terms of four years except two of the original members shall serve a term of one year, one shall serve a term of two years, one shall serve a term of three years, and one shall serve a term of four years. The Secretary shall determine the terms of the original members.

(b) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) The Secretary shall remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance.

(d) The Commission shall elect a chair annually from its own membership.

(e) A majority of the Commission shall constitute a quorum for the transaction of business.

(f) The Commission shall meet at any time and place within the State at the call of the chair or upon the written request of three members.

(g) All clerical and other services required by the Commission shall be supplied by the Secretary. (1975, c. 694, s. 2; 1989, c. 727, ss. 182(a), 184; 1995, c. 123, s. 5; 1997-443, s. 11A.70; 2003-420, s. 1; 2015-264, s. 70.)

§ 130A-33.32. Commission of Anatomy – Reference to former Board of Anatomy in testamentary disposition.

A testamentary disposition of a body or part thereof to the former Board of Anatomy shall be deemed in all respects to be a disposition to the Commission of Anatomy. (1975, c. 694, s. 2; 1989, c. 727, ss. 182(a), 185.)

§ 130A-33.33: Reserved for future codification purposes.

§ 130A-33.34: Reserved for future codification purposes.

§ 130A-33.35: Reserved for future codification purposes.

§ 130A-33.36: Reserved for future codification purposes.

§ 130A-33.37: Reserved for future codification purposes.

§ 130A-33.38: Reserved for future codification purposes.

§ 130A-33.39: Reserved for future codification purposes.

Part 2. Governor's Council on Physical Fitness and Health.

§ 130A-33.40: Repealed by Session Laws 2011-266, s. 1.30(a), effective July 1, 2011.

§ 130A-33.41: Repealed by Session Laws 2011-266, s. 1.30(a), effective July 1, 2011.

§ 130A-33.42. Reserved for future codification purposes.

Part 3. Minority Health Advisory Council.

§ 130A-33.43. Minority Health Advisory Council.

There is established the Minority Health Advisory Council in the Department. The Council shall have the following duties and responsibilities:

(1) To make recommendations to the Governor and the Secretary aimed at improving the health status of North Carolina's minority populations;

(2) To identify and examine the limitations and problems associated with existing laws, regulations, programs and services related to the health status of North Carolina's minority populations;

(3) To examine the financing and access to health services for North Carolina's minority populations;

(4) To identify and review health promotion and disease prevention strategies relating to the leading causes of death and disability among minority populations; and

(5) To advise the Governor and the Secretary upon any matter which the Governor or Secretary may refer to it. (1991 (Reg. Sess., 1992), c. 900, s. 166; 1997-443, s. 11A.73.)

§ 130A-33.44. Minority Health Advisory Council – members; selection; quorum; compensation.

(a) The Minority Health Advisory Council in the Department shall consist of 15 members to be appointed as follows:

(1) Five members shall be appointed by the Governor. Members appointed by the Governor shall be representatives of the following: health care providers, public health, health related public and private agencies and organizations, community-based organizations, and human services agencies and organizations.

(2) Five members shall be appointed by the Speaker of the House of Representatives, two of whom shall be members of the House of Representatives, and at least one of whom shall be a public member. The remainder of the Speaker's appointees shall be representative of any of the entities named in subdivision (1) of this subsection.

(3) Five members shall be appointed by the President Pro Tempore of the Senate, two of whom shall be members of the Senate, and at least one of whom shall be a public member. The remainder of the President Pro Tempore's appointees shall be representative of any of the entities named in subdivision (1) of this subsection.

(4) Of the members appointed by the Governor, two shall serve initial terms of one year, two shall serve initial terms of two years, and one shall serve an initial term of three years. Thereafter, the Governor's appointees shall serve terms of four years.

(5) Of the nonlegislative members appointed by the Speaker of the House of Representatives, two shall serve initial terms of two years, and one shall serve

an initial term of three years. Thereafter, nonlegislative members appointed by the Speaker of the House of Representatives shall serve terms of four years. Of the nonlegislative members appointed by the President Pro Tempore of the Senate, two shall serve initial terms of two years, and one shall serve an initial term of three years. Thereafter, nonlegislative members appointed by the President Pro Tempore of the Senate shall serve terms of four years. Legislative members of the Council shall serve two-year terms.

(b) The Chairperson of the Council shall be elected by the Council from among its membership.

(c) The majority of the Council shall constitute a quorum for the transaction of business.

(d) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or G.S. 138-6, or travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, as applicable.

(e) All clerical support and other services required by the Council shall be provided by the Department. (1991 (Reg. Sess., 1992), c. 900, s. 166; 1997-443, s. 11A.74.)

§§ 130A-33.45 through 130A-33.49. Reserved for future codification purposes.

Part 4. Advisory Committee on Cancer Coordination and Control.

§ 130A-33.50. Advisory Committee on Cancer Coordination and Control established; membership, compensation.

(a) The Advisory Committee on Cancer Coordination and Control is established in the Department.

(b) The Committee shall have up to 34 members, including the Secretary of the Department or the Secretary's designee. The members of the Committee shall elect a chair and vice-chair from among the Committee membership. The Committee shall meet not more than twice a year at the call of the chair. Six of the members shall be legislators, three of whom shall be appointed by the Speaker of the House of Representatives, and three of whom shall be appointed by the President Pro Tempore of the Senate. Four of the members shall be cancer survivors, two of whom shall be appointed by the Speaker of the House of Representatives, and two of whom shall be appointed by the President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

(1) One member from the Department of Environmental Quality;

(2) Three members, one from each of the following: the Department, the Department of Public Instruction, and the North Carolina Community College System;

(3) Four members representing the cancer control programs at North Carolina medical schools, one from each of the following: the University of North Carolina at Chapel Hill School of Medicine, the Bowman Gray School of Medicine, the Duke University School of Medicine, and the East Carolina University School of Medicine;

(4) One member who is an oncology nurse representing the North Carolina Nurses Association;

(5) One member representing the Cancer Committee of the North Carolina Medical Society;

(6) One member representing the Old North State Medical Society;
(7) One member representing the American Cancer Society, North Carolina Division, Inc.;
(8) One member representing the North Carolina Hospital Association;
(9) One member representing the North Carolina Association of Local Health Directors;
(10) One member who is a primary care physician licensed to practice medicine in North Carolina;
(11) One member representing the American College of Surgeons;
(12) One member representing the North Carolina Oncology Society;
(13) One member representing the Association of North Carolina Cancer Registrars;
(14) One member representing the Medical Directors of the North Carolina Association of Health Plans; and
(15) Up to four additional members at large.

Except for the Secretary, the members shall be appointed for staggered four-year terms and until their successors are appointed and qualify. The Governor may remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term.

(c) The Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor shall make their appointments to the Committee not later than 30 days after the adjournment of the 1993 Regular Session of the General Assembly. A vacancy on the Committee shall be filled by the original appointing authority, using the criteria set out in this section for the original appointment.

(d) To the extent that funds are made available, members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(e) A majority of the Committee shall constitute a quorum for the transaction of its business.

(f) The Committee may use funds allocated to it to employ an administrative staff person to assist the Committee in carrying out its duties. The Secretary shall provide clerical and other support staff services needed by the Committee. (1993, c. 321, s. 288; 1997-443, s. 11A.75; 1998-212, s. 12.48(a); 2013-360, s. 12A.10; 2015-241, s. 14.30(u).)

§ 130A-33.51. Advisory Committee on Cancer Coordination and Control; responsibilities.

(a) The Advisory Committee on Cancer Coordination and Control has the following responsibilities:

(1) To recommend to the Secretary a plan for the statewide implementation of an interagency comprehensive coordinated cancer control program;
(2) To identify and examine the limitations and problems associated with existing laws, regulations, programs, and services related to cancer control;
(3) To examine the financing and access to cancer control services for North Carolina's citizens, and advise the Secretary on a coordinated and efficient use of resources;

(4) To identify and review health promotion and disease prevention strategies relating to the leading causes of cancer mortality and morbidity;

(5) To recommend standards for:

a. Oversight and development of cancer control services;

b. Development and maintenance of interagency training and technical assistance in the provision of cancer control services;

c. Program monitoring and data collection;

d. Statewide evaluation of locally based cancer control programs;

e. Coordination of funding sources for cancer control programs; and

f. Procedures for awarding grants to local agencies providing cancer control services.

(b) The Committee shall submit a written report not later than May 1, 1994, and not later than October 1 of each subsequent year, to the Secretary. The report shall address the progress in implementation of a cancer control program. The report shall include an accounting of funds expended and anticipated funding needs for full implementation of recommended programs. (1993, c. 321, s. 288; 2013-360, s. 12A.9.)

§ 130A-33.52: Reserved for future codification purposes.

§ 130A-33.53: Reserved for future codification purposes.

§ 130A-33.54: Reserved for future codification purposes.

§ 130A-33.55: Reserved for future codification purposes.

§ 130A-33.56: Reserved for future codification purposes.

§ 130A-33.57: Reserved for future codification purposes.

§ 130A-33.58: Reserved for future codification purposes.

§ 130A-33.59: Reserved for future codification purposes.

Part 5. Maternal Mortality Review Committee.

§ 130A-33.60. Maternal Mortality Review Committee; membership, compensation.

(a) The Maternal Mortality Review Committee is established in the Department. The purpose of the committee is to reduce maternal mortality in this State by conducting multidisciplinary maternal death reviews and developing recommendations for the prevention of future maternal deaths.

(b) The Secretary shall appoint a multidisciplinary committee comprised of nine members who represent several academic disciplines and professional specializations essential to reviewing cases of mortality due to complications from pregnancy or childbirth. Committee members shall serve without compensation, but may receive travel reimbursement from funds available to the Department.

(c) The duties of the committee shall include:

(1) Identifying maternal death cases.

(2) Reviewing medical records and other relevant data.

(3) Contacting family members and other affected or involved persons to collect additional relevant data.

(4) Consulting with relevant experts to evaluate relevant data.

(5) Making nonindividual determinations with no legal meaning regarding the preventability of maternal deaths.

(6) Making recommendations for the prevention of maternal deaths.

(7) Disseminating findings and recommendations to policy makers, health care providers, health care facilities, and the general public. Reports shall include only aggregated, nonindividually identifiable data.

(d) Licensed health care providers, health care facilities, and pharmacies shall provide reasonable access to the committee to all relevant medical records associated with a case under review by the committee. A health care provider, health care facility, or pharmacy providing access to medical records pursuant to this Part shall not be held liable for civil damages or be subject to any criminal or disciplinary action for good faith efforts to provide such records.

(e) Except as provided in subsection (h) of this section, information, records, reports, statements, notes, memoranda, or other data collected pursuant to this Part shall not be admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency, or person, nor shall they be exhibited nor their contents disclosed in any way, in whole or in part, by any officer or representative of the Department or any other person, except as may be necessary for the purpose of furthering the committee's review of the case to which they relate. No person participating in such review shall disclose, in any manner, the information so obtained except in strict conformity with the review process.

(f) All information, records of interviews, written reports, statements, memoranda, or other data obtained by the Department, the committee, and other persons, agencies, or organizations so authorized by the Department pursuant to this Part shall be confidential.

(g) All proceedings and activities of the committee pursuant to this Part, opinions of committee members formed as a result of such proceedings and activities, and records obtained, created, or maintained pursuant to this Part, including records of interviews, written reports, and statements procured by the Department or any other person, agency, or organization acting jointly or under contract with the Department in connection with the requirements of this Part, shall be confidential and shall not be subject to statutes relating to open meetings and open records, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding.

(h) Nothing in this Part shall be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source.

(i) Members of the committee shall not be questioned in any civil or criminal proceeding regarding the information presented or opinions formed as a result of a meeting or communication of the committee; provided, however, that nothing in this Part shall be

construed to prevent a member of the committee from testifying to information obtained independently of the committee or which is public information. (2015-62, s. 6(a).)

§ 130A-33.61: Reserved for future codification purposes.

§ 130A-33.62: Reserved for future codification purposes.

§ 130A-33.63: Reserved for future codification purposes.

§ 130A-33.64: Reserved for future codification purposes.

Part 6. Taylor's Law Establishing the Advisory Council on Rare Diseases.

§ 130A-33.65. Advisory Council on Rare Diseases; membership; terms; compensation; meetings; quorum.

(a) There is established the Advisory Council on Rare Diseases within the School of Medicine of the University of North Carolina at Chapel Hill to advise the Governor, the Secretary, and the General Assembly on research, diagnosis, treatment, and education relating to rare diseases. This Part shall be known as Taylor's Law Establishing the Advisory Council on Rare Diseases. For purposes of this Part, "rare disease" has the same meaning as provided in 21 U.S.C. § 360bb.

(b) Advisory Council Membership.

(1) Upon the recommendation of the Dean of the School of Medicine of the University of North Carolina at Chapel Hill, the Secretary shall appoint members to the advisory council as follows:

a. A physician licensed and practicing in this State with experience researching, diagnosing, or treating rare diseases.

b. A medical researcher with experience conducting research concerning rare diseases.

c. A registered nurse or advanced practice registered nurse licensed and practicing in the State with experience treating rare diseases.

d. One rare diseases survivor.

e. One member who represents a rare diseases foundation.

f. One representative from each academic research institution in this State that receives any grant funding for rare diseases research.

(2) The chairs of the Joint Legislative Oversight Committee on Health and Human Services, or the chairs' designees, shall serve on the advisory council. A member of the advisory council who is designated by the chairs of the Joint Legislative Oversight Committee on Health and Human Services may be a member of the General Assembly.

(3) The Secretary, or the Secretary's designee, shall serve as an ex officio, nonvoting member of the advisory council.

(c) Members appointed pursuant to subsection (b) of this section shall serve for a term of three years, and no member shall serve more than two consecutive terms.

(d) Members of the advisory council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or G.S. 138-6 or travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, as applicable.

(e) All administrative support and other services required by the advisory council shall be provided by the School of Medicine of the University of North Carolina at Chapel Hill.

(f) Upon the recommendation of the Dean of the School of Medicine of the University of North Carolina at Chapel Hill, the Secretary shall select the chair of the advisory council from among the members of the council.

(g) The chair shall convene the first meeting of the advisory council no later than October 1, 2015. A majority of the council members shall constitute a quorum. A majority vote of a quorum shall be required for any official action of the advisory council. Following the first meeting, the advisory council shall meet upon the call of the chair or upon the request of a majority of council members. (2015-199, s. 1; 2016-30, s. 3.)

§ 130A-33.66. Advisory Council on Rare Diseases; powers and duties; reports.

The advisory council shall have the following powers and duties:

(1) Advise on coordinating statewide efforts for the study of the incidence of rare diseases within the State and the status of the rare disease community.

(2) Report to the Secretary, the Governor, and the Joint Legislative Oversight Committee on Health and Human Services on behalf of the General Assembly not later than January 1, 2016, and annually thereafter, on the activities of the advisory council and its findings and recommendations regarding rare disease research and care in North Carolina, including any recommendations for statutory changes and amendments to the structure, organization, and powers or duties of the advisory council. (2015-199, s. 1.)

Article 2.

Local Administration.

Part 1. Local Health Departments.

§ 130A-34. Provision of local public health services.

(a) A county shall provide public health services.

(b) A county shall operate a county health department, establish a consolidated human services agency pursuant to G.S. 153A-77, participate in a district health department, or contract with the State for the provision of public health services. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C.S., s. 7604; 1931, c. 149; 1941, c. 185; 1945, c. 99; c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; 1957, c. 1357, s. 1; 1963, c. 359; 1967, c. 1224, s. 1; 1969, c. 719, s. 1; 1971, c. 175, s. 1; 1973, c. 137, s. 1; c. 1151; 1975, c. 272; 1979, c. 621; 1983, c. 891, s. 2; 1995 (Reg. Sess., 1996), c. 690, s. 13.)

§ 130A-34.1. Accreditation of local health departments; board established.

(a) The Local Health Department Accreditation Board is established within the North Carolina Institute for Public Health. The Board shall be composed of 17 members appointed by the Secretary of the Department of Health and Human Services as follows:

(1) Four shall be county commissioners recommended by the North Carolina Association of County Commissioners, and four shall be members of a local board of health as recommended by the Association of North Carolina Boards of Health.
(2) Three local health directors.
(3) Three staff members from the Division of Public Health, Department of Health and Human Services.
(4) Repealed by Session Laws 2011-145, s. 13.3(zz), effective July 1, 2011.
(5) Three at large.

(b) Members shall serve four-year terms except that initial terms shall be staggered such that three members are appointed for one year, four members are appointed for two years, four members are appointed for three years, and six members are appointed for four years. An appointment to fill a vacancy on the Board created by the resignation, dismissal, ineligibility, death, or disability of any member shall be made for the balance of the unexpired term. The Secretary may remove any member for misfeasance, malfeasance, or nonfeasance. The chair shall be designated by the Secretary and shall designate the times and places at which the Board shall meet. The Board shall meet as often as necessary to carry out its duty to develop and review periodically accreditation standards, to engage in activities necessary to assign accreditation status to local health departments, and to engage in other activities necessary to implement this section.

(c) Members of the Board who are not officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Board who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

(d) The Board shall assign an accreditation status to each local health department that applies for initial accreditation, reaccreditation, or relief from conditional accreditation. The Board shall assign the appropriate accreditation status, as follows:

(1) Accredited, which means that the local health department has satisfied the accreditation standards adopted by the Board and applicable rules adopted by the Commission.
(2) Conditionally accredited, which means that the local health department has failed to meet one or more accreditation standards and has therefore been granted short-term accreditation subject to conditions specified by the Board.
(3) Unaccredited, which means that the local health department has continued to fail to meet one or more accreditation standards after a period of conditional accreditation.

(e) The Commission shall, after reviewing standards developed by and consulting with the Board, adopt rules establishing accreditation standards for local health departments. The accreditation standards shall include at least all of the following:

(1) An accreditation process that consists of the following components:

a. A self-assessment conducted by the local health department seeking accreditation.
b. A site visit by a team of experts to clarify, verify, and amplify the information in the self-assessment.
c. Final action by the Board on the local health department's accreditation status.

(2) The local health department's capacity to provide the essential public health services, as follows:
a. Monitoring health status to identify community health problems.
b. Diagnosing and investigating health hazards in the community.
c. Informing, educating, and empowering people about health issues.
d. Mobilizing community partnerships to identify and solve health problems.
e. Developing policies and plans that support individual and community health efforts.
f. Enforcing laws and regulations that protect health and ensure safety.
g. Linking people to needed personal health care services and assuring the provision of health care when otherwise unavailable.
h. Assuring a competent public health workforce and personal health care workforce.
i. Evaluating effectiveness, accessibility, and quality of personal and population-based health services.
j. Conducting research.

(3) The local health department's facilities and administration.

(4) The local health department's staff competencies and training procedures or programs.

(5) The local health department's governance and fiscal management; and

(6) Informal procedures for reviewing Board decisions.

(f) All local health departments shall obtain and maintain accreditation in accordance with this section. The Board shall implement accreditation over a period of eight years, beginning January 1, 2006. The Board shall establish a schedule specifying when each local health department shall apply for initial accreditation and ensuring that all local health departments have applied for initial accreditation by December 1, 2014.

(g) The Board shall assign the following accreditation status, as applicable:

(1) "Accredited" to a local health department that satisfies the accreditation standards. The initial period of accreditation shall expire four calendar years after initial accreditation is granted.

(2) "Conditionally accredited" to a local health department that, in its initial accreditation application, fails to satisfy the accreditation standards. The period of conditional accreditation shall expire two calendar years after conditional accreditation is granted. The Board shall provide to the local health department a written statement of the conditions that must be satisfied in order for the local health department to be accredited. At any time during the two-year period, the local health department may request that its status be reviewed and changed from "conditionally accredited" to "accredited." If the Board finds that the conditions have been met, the Board shall change the local health department's

status to "accredited" with the accreditation period to expire four calendar years after the conditional accreditation was initially granted. If the Board finds that the conditions have not been satisfied, the local health department shall continue under its grant of conditional accreditation. During the conditional accreditation period, the local health department may apply again for accreditation in accordance with rules adopted by the Commission.

(h) Each accredited local health department shall apply for reaccreditation in accordance with rules adopted by the Commission.

(i) When the Board assigns the status "unaccredited" to a local health department, the Board shall send written notification of that status to the local health department and to the Secretary.

(j) The Commission shall adopt rules to implement this section. (2005-369, s. 1(b); 2011-145, s. 13.3(zz).)

§ 130A-34.2. Billing of Medicaid.

(a) Local health departments, district health departments, and consolidated human services agencies shall have the following two options to bill public health program services to Medicaid:

(1) Submit claim data to HIS and manage 837/835 billing files within HIS.

(2) Submit claim data to any approved Medicaid clearinghouse and manage 837/835 billing files within that system.

(b) The Division of Public Health may require local health departments, district health departments, and consolidated human services agencies, regardless of how those entities choose to bill public health program services to Medicaid, to submit aggregate data to the Division of Public Health. These data shall be provided in a format specified by the Division of Public Health.

(c) Local health departments, district health departments, and consolidated human services agencies shall make available encounter-level data for the Division of Public Health as necessary to comply with federal grant reporting requirements. These data shall be provided in a format specified by the Division of Public Health. However, local health departments shall not be required to use Common Name Data System (CNDS) for any purpose.

(d) Local health departments, district health departments, and consolidated human services agencies that bill services through a Medicaid clearinghouse shall be entitled to the same reimbursement rates negotiated for agencies classified as public health entities and the same Medicaid cost settlement reimbursement as those agencies that bill services through HIS.

(e) The Division of Public Health shall provide aggregate data requirements for the purposes of Medicaid cost study reimbursement on behalf of the local health departments, district health departments, and consolidated human services agencies that choose to bill services through a Medicaid clearinghouse. Those local health departments, district health departments, and consolidated human services agencies shall submit to the Division of Public Health the data required for the purposes of Medicaid cost study reimbursement and shall retain responsibility to supply the Division of Medical Assistance and/or Centers for

Medicare and Medicaid Services (CMS) documentation to support audit processes and procedures to confirm and validate cost study reimbursement data, as defined by CMS cost find regulations.

(f) As used in this section, unless otherwise specified, the following definitions apply:

(1) "Aggregate data" means high-level reports about services provided by local health departments, district health departments, and consolidated human services agencies, such as the number of patients meeting particular criteria served by a health department or consolidated human service agency or the count of and dollars received for each particular service being performed by a health department or consolidated human service agency, by funding source program and appropriate service code and that comply with appropriate State and federal regulations.

(2) "Encounter-level data" means patient-identified data specific to each medical encounter used to bill medical services.

(3) "Health Information System" or "HIS" means the system operated by the North Carolina Division of Public Health and used by local health departments to record information about services the local health departments provide.

(4) "Public health program services" means services normally provided by a local health department under agreements with the North Carolina Division of Public Health or the North Carolina Division of Medical Assistance. (2011-90, s. 1.)

§ 130A-34.3. Incentive program for public health improvement.

(a) In order to promote efficiency and effectiveness of the public health delivery system, the Department shall establish a Public Health Improvement Incentive Program. The Program shall provide monetary incentives for the creation and expansion of multicounty local health departments serving a population of not less than 75,000.

(b) The Commission shall adopt rules to implement the Public Health Improvement Incentive Program. (2012-126, s. 3.)

§ 130A-34.4. Strengthening local public health infrastructure.

(a) By July 1, 2014, in order for a local health department to be eligible to receive State and federal public health funding from the Division of Public Health, the following criteria shall be met:

(1) A local health department shall obtain and maintain accreditation pursuant to G.S. 130A-34.1.

(2) Repealed by Session Laws 2015-246, s. 2.5(a), effective July 1, 2016.

(b) The criteria established in subsection (a) of this section shall be in addition to any other funding criteria established by State or federal law. (2012-126, s. 3; 2015-246, s. 2.5(a).)

§ 130A-35. County board of health; appointment; terms.

(a) A county board of health shall be the policy-making, rule-making and adjudicatory body for a county health department.

(b) The members of a county board of health shall be appointed by the county board of commissioners. The board shall be composed of 11 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include: one physician licensed to practice medicine in this State, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse, one licensed pharmacist, one county commissioner, one professional engineer, and three representatives of the general public. Except as otherwise provided in this section, all members shall be residents of the county. If there is not a licensed physician, a licensed dentist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer available for appointment, an additional representative of the general public shall be appointed. If however, one of the designated professions has only one person residing in the county, the county commissioners shall have the option of appointing that person or a member of the general public. In the event a licensed optometrist who is a resident of the county is not available for appointment, then the county commissioners shall have the option of appointing either a licensed optometrist who is a resident of another county or a member of the general public.

(c) Except as provided in this subsection, members of a county board of health shall serve three-year terms. No member may serve more than three consecutive three-year terms unless the member is the only person residing in the county who represents one of the professions designated in subsection (b) of this section. The county commissioner member shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a resident licensed optometrist or a nonresident licensed optometrist as authorized by subsection (b) of this section, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer, that member shall serve only until a licensed physician, a licensed dentist, a licensed resident or nonresident optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer becomes available for appointment. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a three-year term.

(d) Vacancies shall be filled for any unexpired portion of a term.

(e) A chairperson shall be elected annually by a county board of health. The local health director shall serve as secretary to the board.

(f) A majority of the members shall constitute a quorum.

(g) A member may be removed from office by the county board of commissioners for:

(1) Commission of a felony or other crime involving moral turpitude;
(2) Violation of a State law governing conflict of interest;
(3) Violation of a written policy adopted by the county board of commissioners;
(4) Habitual failure to attend meetings;
(5) Conduct that tends to bring the office into disrepute; or
(6) Failure to maintain qualifications for appointment required under subsection (b) of this section.

A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

(h) A member may receive a per diem in an amount established by the county board of commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of commissioners.

(i) The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C.S., s. 7604; 1931, c.

149; 1941, c. 185; 1945, c. 99; c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; 1957, c. 1357, s. 1; 1963, c. 359; 1967, c. 1224, s. 1; 1969, c. 719, s. 1; 1971, c. 175, s. 1; c. 940, s. 1; 1973, c. 137, s. 1; c. 1151; 1975, c. 272; 1979, c. 621; 1981, c. 104; 1983, c. 891, s. 2; 1985, c. 418, s. 1; 1987, c. 84, s. 1; 1989, c. 764, s. 2; 1995, c. 264, s. 1; 2009-447, s. 1.)

§ 130A-36. Creation of district health department.

(a) A district health department including more than one county may be formed in lieu of county health departments upon agreement of the county boards of commissioners and local boards of health having jurisdiction over each of the counties involved. A county may join a district health department upon agreement of the boards of commissioners and local boards of health having jurisdiction over each of the counties involved. A district health department shall be a public authority as defined in G.S. 159-7(b)(10).

(b) Upon creation of or addition to a district health department, the existing rules of the former board or boards of health shall continue in effect until amended or repealed by the district board of health. (1957, c. 1357, s. 1; 1969, c. 719, s. 2; 1971, c. 175, s. 2; 1973, c. 143, ss. 1-4; c. 476, s. 128; 1975, c. 396, s. 1; 1981, c. 238; c. 408; 1983, c. 891, s. 2.)

§ 130A-37. District board of health.

(a) A district board of health shall be the policy-making, rule-making and adjudicatory body for a district health department and shall be composed of 15 members; provided, a district board of health may be increased up to a maximum number of 18 members by agreement of the boards of county commissioners in all counties that comprise the district. The agreement shall be evidenced by concurrent resolutions adopted by the affected boards of county commissioners.

(b) The county board of commissioners of each county in the district shall appoint one county commissioner to the district board of health. The county commissioner members of the district board of health shall appoint the other members of the board, including at least one physician licensed to practice medicine in this State, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse, one licensed pharmacist, and one professional engineer. The composition of the board shall reasonably reflect the population makeup of the entire district and provide equitable district-wide representation. All members shall be residents of the district. If there is not a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer available for appointment, an additional representative of the general public shall be appointed. If however, one of the designated professions has only one person residing in the district, the county commissioner members shall have the option of appointing that person or a member of the general public.

(c) Except as provided in this subsection, members of a district board of health shall serve terms of three years. Two of the original members shall serve terms of one year and two of the original members shall serve terms of two years. No member shall serve more than three consecutive three-year terms unless the member is the only person residing in the district who represents one of the professions designated in subsection (b) of this section. County commissioner members shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist,

or a professional engineer becomes available for appointment. The county commissioner members may appoint a member for less than a three-year term to achieve a staggered term structure.

(d) Whenever a county shall join or withdraw from an existing district health department, the district board of health shall be dissolved and a new board shall be appointed as provided in subsection (c).

(e) Vacancies shall be filled for any unexpired portion of a term.

(f) A chairperson shall be elected annually by a district board of health. The local health director shall serve as secretary to the board.

(g) A majority of the members shall constitute a quorum.

(h) A member may be removed from office by the district board of health for:

(1) Commission of a felony or other crime involving moral turpitude;

(2) Violation of a State law governing conflict of interest;

(3) Violation of a written policy adopted by the county board of commissioners of each county in the district;

(4) Habitual failure to attend meetings;

(5) Conduct that tends to bring the office into disrepute; or

(6) Failure to maintain qualifications for appointment required under subsection (b) of this section.

A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

(i) A member may receive a per diem in an amount established by the county commissioner members of the district board of health. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county commissioner members of the district board of health.

(j) The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting.

(k) A district board of health is authorized to provide liability insurance for the members of the board and the employees of the district health department. A district board of health is also authorized to contract for the services of an attorney to represent the board, the district health department and its employees, as appropriate. The purchase of liability insurance pursuant to this subsection waives both the district board of health's and the district health department's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function. By entering into a liability insurance contract with the district board of health, an insurer waives any defense based upon the governmental immunity of the district board of health or the district health department. (1957, c. 1357, s. 1; 1969, c. 719, s. 2; 1971, c. 175, s. 2; c. 940, s. 1; 1973, c. 143, ss. 1-4; c. 476, s. 128; 1975, c. 396, s. 1; 1981, cc. 104, 238, 408; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 1077; 1985, c. 418, s. 2; 1987, c. 84, s. 2; 1989, c. 764, s. 3; 1995, c. 264, s. 2.)

§ 130A-38. Dissolution of a district health department.

(a) Whenever the board of commissioners of each county constituting a district health department determines that the district health department is not operating in the best health interests of the respective counties, they may direct that the district health department be dissolved. In addition, whenever a board of commissioners of a county which is a member of a district health department determines that the district health department is not operating in the best health interests of that county, it may withdraw from the district health department. Dissolution of a

district health department or withdrawal from the district health department by a county shall be effective only at the end of the fiscal year in which the action of dissolution or withdrawal transpired.

(b) Notwithstanding the provisions of subsection (a), no district health department shall be dissolved without prior written notification to the Department.

(c) Any budgetary surplus available to a district health department at the time of its dissolution shall be distributed to those counties comprising the district on the same pro rata basis that the counties appropriated and contributed funds to the district health department budget during the current fiscal year. Distribution to the counties shall be determined on the basis of an audit of the financial record of the district health department. The district board of health shall select a certified public accountant or an accountant who is subsequently certified by the Local Government Commission to conduct the audit. The audit shall be performed in accordance with G.S. 159-34. The same method of distribution of funds described above shall apply when one or more counties of a district health department withdraw from a district.

(d) Upon dissolution or withdrawal, all rules adopted by a district board of health shall continue in effect until amended or repealed by the new board or boards of health. (1971, c. 858; 1975, c. 396, s. 2; c. 403; 1983, c. 891, s. 2.)

§ 130A-39. Powers and duties of a local board of health.

(a) A local board of health shall have the responsibility to protect and promote the public health. The board shall have the authority to adopt rules necessary for that purpose.

(b) A local board of health may adopt a more stringent rule in an area regulated by the Commission for Public Health or the Environmental Management Commission where, in the opinion of the local board of health, a more stringent rule is required to protect the public health; otherwise, the rules of the Commission for Public Health or the rules of the Environmental Management Commission shall prevail over local board of health rules. However, a local board of health may not adopt a rule concerning the grading, operating, and permitting of food and lodging facilities as listed in Part 6 of Article 8 of this Chapter and as defined in G.S. 130A-247(1), and a local board of health may adopt rules concerning wastewater collection, treatment and disposal systems which are not designed to discharge effluent to the land surface or surface waters only in accordance with G.S. 130A-335(c).

(c) The rules of a local board of health shall apply to all municipalities within the local board's jurisdiction.

(d) Not less than 10 days before the adoption, amendment or repeal of any local board of health rule, the proposed rule shall be made available at the office of each county clerk within the board's jurisdiction, and a notice shall be published in a newspaper having general circulation within the area of the board's jurisdiction. The notice shall contain a statement of the substance of the proposed rule or a description of the subjects and issues involved, the proposed effective date of the rule and a statement that copies of the proposed rule are available at the local health department. A local board of health rule shall become effective upon adoption unless a later effective date is specified in the rule.

(e) Copies of all rules shall be filed with the secretary of the local board of health.

(f) A local board of health may, in its rules, adopt by reference any code, standard, rule or regulation which has been adopted by any agency of this State, another state, any agency of the United States or by a generally recognized association. Copies of any material adopted by reference shall be filed with the rules.

(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this Chapter, "Public Swimming Pools", for services performed pursuant to Part 11, Article 8 of this Chapter, "Tattooing", and for services performed pursuant to G.S. 87-97. Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C.S., s. 7065; 1957, c. 1357, s. 1; 1959, c. 1024, s. 1; 1963, c. 1087; 1973, c. 476, s. 128; c. 508; 1977, c. 857, s. 2; 1981, c. 130, s. 2; c. 281; c. 949, s. 4; 1983, c. 891, s. 2; 1985, c. 175, s. 1; 1989, c. 577, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 10; 1993 (Reg. Sess., 1994), c. 670, s. 2; 1995, c. 507, s. 26.8(c); 2006-202, s. 6; 2007-182, s. 2.)

§ 130A-40. Appointment of local health director.

(a) A local board of health, after consulting with the appropriate county board or boards of commissioners, shall appoint a local health director. All persons who are appointed to the position of local health director on or after January 1, 1992, must possess minimum education and experience requirements for that position, as follows:

(1) A medical doctorate; or

(2) A masters degree in Public Health Administration, and at least one year of employment experience in health programs or health services; or

(3) A masters degree in a public health discipline other than public health administration, and at least three years of employment experience in health programs or health services; or

(4) A masters degree in public administration, and at least two years of experience in health programs or health services; or

(5) A masters degree in a field related to public health, and at least three years of experience in health programs or health services; or

(6) A bachelors degree in public health administration or public administration and at least three years of experience in health programs or health services.

(b) Before appointing a person to the position of local health director under subsection (a)(5) of this section, the local board of health shall forward the application and other pertinent materials of such candidate to the State Health Director. If the State Health Director determines that the candidate's masters degree is in a field not related to public health, the State Health Director shall so notify the local board of health in writing within 15 days of the State Health Director's receipt of the application and materials, and such candidate shall be deemed not to meet the education requirements of subsection (a)(5) of this section. If the State Health Director fails to act upon the application within 15 days of receipt of the application and materials from the local board of health, the application shall be deemed approved with respect to the education requirements of subsection (a)(5) of this section, and the local board of health may proceed with appointment process.

(c) The State Health Director shall review requests of educational institutions to determine whether a particular masters degree offered by the requesting institution is related to public health for the purposes of subsection (a)(5) of this section. The State Health Director shall act upon such requests within 90 days of receipt of the request and pertinent materials from the institution, and shall notify the institution of its determination in writing within the 90-day review period. If the State Health Director determines that an institution's particular masters degree is not related to public health, the State Health Director shall include the reasons therefor in his written determination to the institution.

(d) When a local board of health fails to appoint a local health director within 60 days of the creation of a vacancy, the State Health Director may appoint a local health director to serve until the local board of health appoints a local health director in accordance with this section. (1957, c. 1357, s. 1; 1973, c. 152; c. 476, s. 128; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 75; 1991, c. 612.)

§ 130A-40.1. Pilot program for nurse as health director.

(a) Notwithstanding G.S. 130A-40, a local board of health, after consulting with the appropriate county board of commissioners, and with the approval of the Secretary of Health and Human Services, may appoint a local health director who meets the following education and experience requirements for that position:

(1) Graduation from a four-year college or university with a Bachelor of Science in Nursing degree that includes a public health nursing rotation; or

(2) A candidate with an RN but not a bachelors degree if the candidate has at least 10 years' experience, at least seven years of which must be in an administrative or supervisory role, and of this seven years, at least five years must be at the agency at which the candidate is an applicant for employment as local health director.

(b) The Secretary of Health and Human Services may approve only one request under subsection (a) of this section, this section being designed as a pilot program concerning alternative qualifications for a local health director. The Secretary of Health and Human Services shall report any approval under this section to the Joint Legislative Oversight Committee on Health and Human Services.

(c) All bachelors level candidates appointed under this section shall have a total of 10 years' public health experience, at least five years of which must be in a supervisory capacity at the agency at which the candidate is an applicant for employment as a local health director. Bachelor of Science in Nursing candidates with a public health rotation may use this BSN degree as credit for one year's public health experience.

(d) In addition to possessing the qualifications required in this section, all Bachelor of Science, Bachelor of Arts, or Registered Nurse candidates must complete at least six contact hours of continuing education annually on the subject of local and State government finance, organization, or budgeting. The training must be in a formal setting offered through the State or local government or through an accredited educational institution. This training is in addition to any other required training for local health director or other continuing education required to maintain other professional credentials. If during the course of employment as local health director the employee meets the requirements of

this subsection, the additional training requirements of this section are waived. (2003-284, s. 10.33C; 2011-266, s. 1.16(b); 2011-291, s. 2.46; 2012-194, s. 27.)

§ 130A-41. Powers and duties of local health director.

(a) A local health director shall be the administrative head of the local health department, shall perform public health duties prescribed by and under the supervision of the local board of health and the Department and shall be employed full time in the field of public health.

(b) A local health director shall have the following powers and duties:

(1) To administer programs as directed by the local board of health;
(2) To enforce the rules of the local board of health;
(3) To investigate the causes of infectious, communicable and other diseases;
(4) To exercise quarantine authority and isolation authority pursuant to G.S. 130A-145;
(5) To disseminate public health information and to promote the benefits of good health;
(6) To advise local officials concerning public health matters;
(7) To enforce the immunization requirements of Part 2 of Article 6 of this Chapter;
(8) To examine and investigate cases of venereal disease pursuant to Parts 3 and 4 of Article 6 of this Chapter;
(9) To examine and investigate cases of tuberculosis pursuant to Part 5 of Article 6 of this Chapter;
(10) To examine, investigate and control rabies pursuant to Part 6 of Article 6 of this Chapter;
(11) To abate public health nuisances and imminent hazards pursuant to G.S. 130A-19 and G.S. 130A-20;
(12) To employ and dismiss employees of the local health department in accordance with Chapter 126 of the General Statutes; [and]
(13) To enter contracts, in accordance with The Local Government Finance Act, G.S. Chapter 159, on behalf of the local health department. Nothing in this paragraph shall be construed to abrogate the authority of the board of county commissioners.

(c) Authority conferred upon a local health director may be exercised only within the county or counties comprising the local health department. (1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1985, c. 175, s. 2; 1999-110, s. 1.)

§ 130A-42. Personnel records of district health departments.

Employee personnel records of a district health department shall have the same protections from disclosure as county employee personnel records under G.S. 153A-98. For the purposes of this section, the local health director shall perform the duties assigned to the county manager pursuant to G.S. 153A-98 and the district board of health shall perform the duties assigned to the county board of commissioners pursuant to G.S. 153A-98. (1983, c. 891, s. 2.)

Part 1A. Consolidated Human Services Agency.

§ 130A-43. Consolidated human services agency; board; director.

(a) Except as otherwise provided by this section and subject to any limitations that may be imposed by the board of county commissioners under G.S. 153A-77, a consolidated human services agency created pursuant to G.S. 153A-77 shall have the responsibility to carry out the duties of a local health department and the authority to administer the local public health programs established in this Chapter in the same manner as a local health department.

(b) In addition to the powers conferred by G.S. 153A-77(d), a consolidated human services board shall have all the powers and duties of a local board of health as provided by G.S. 130A-39, except that the consolidated human services board may not:

(1) Appoint the human services director.

(2) Transmit or present the budget for local health programs.

(c) In addition to the powers conferred by G.S. 153A-77(e), a human services director shall have all the powers and duties of a local health director provided by G.S. 130A-41, except that the human services director may:

(1) Serve as the executive officer of the consolidated human services agency only to the extent and in the manner authorized by the county manager.

(2) Appoint staff of the consolidated human services agency only upon the approval of the county manager. (1995 (Reg. Sess., 1996), c. 690, s. 14.)

§ 130A-44. Reserved for future codification purposes.

Part 1B. Public Health Authorities Authorized.

§ 130A-45. Title and purpose.

(a) This Part shall be known and may be cited as the "Public Health Authorities Act".

(b) The purpose of this Part is to provide an alternative method for counties to provide public health services. This Part shall not be regarded as repealing any powers now existing under any other law, either general, special, or local.

(c) It is the policy of the General Assembly that Public Health Authorities should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. (1997-502, s. 1.)

§ 130A-45.01. Definitions.

As used in this Part, unless otherwise specified:

(1) "Authority service area" means the area within the boundaries of the authority as provided for in G.S. 130A-45.4.

(2) "Board" means a public health authority board created under this Part.

(3) "County" means the county which is, or is about to be, included in the territorial boundaries of a public health authority when created hereunder.

(4) "County board of commissioners" means the legislative body charged with governing the county.

(5) "Department" means the Department of Health and Human Services.

(6) "Federal government" means the United States of America, or any agency, instrumentality, corporate or otherwise, of the United States of America.

(7) "Government" means the State and federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(8) "Public health authority" means a public body and a body corporate and politic organized under the provisions of this Part.

(9) "Public health facility" means any one or more buildings, structures, additions, extensions, improvements, or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for providing public health services; and includes, without limitation, local public health departments or centers; public health clinics and outpatient facilities; nursing homes, including skilled nursing facilities and intermediate care facilities, adult care homes for the aged and disabled; public health laboratories; administration buildings, central service and other administrative facilities; communication, computer and other electronic facilities; pharmaceutical facilities; storage space; vehicular parking lots and other such public health facilities, customarily under the jurisdiction of or provided by public health departments, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities.

(10) "Real property" means lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(11) "State" means the State of North Carolina. (1997-502, s. 1.)

§ 130A-45.02. Creation of a public health authority.

(a) A public health authority may be created upon joint resolution of the county board of commissioners and the local board of health that it is in the interest of the public health and welfare to create a public health authority to provide public health services as required under G.S. 130A-34.

(b) A public health authority including more than one county may be formed upon joint resolution of the county boards of commissioners and local boards of health having jurisdiction over each of the counties involved.

(c) After the adoption of a resolution creating a public health authority, a public health authority board shall be appointed in accordance with G.S. 130A-45.1.

(d) A county may join a public health authority upon joint resolution of the boards of commissioners and local boards of health having jurisdiction over each of the counties involved.

(e) A public health authority board shall govern the public health authority. All powers, duties, functions, rights, privileges, or immunities conferred on the public health authority may be exercised by the authority board.

(f) The public health authority board shall absorb the functions, assets, and liabilities of the county or district boards of health, and that board is dissolved.

(g) For the purpose of Chapter 159 of the General Statutes, a public health authority is a public authority as defined in G.S. 159-7(b)(10).

(h) Before adopting a resolution creating a public health authority, the county board of commissioners shall hold a public hearing with notice published at least 10 days before the hearing.

(i) For the purposes of Article 9 of Chapter 131E of the General Statutes, a public health authority is a person as defined in G.S. 131E-176(19). (1997-502, s. 1; 2001-92, s. 3.)

§ 130A-45.1. Membership of the public health authority board.

(a) A public health authority board shall be the policy-making, rule-making, and adjudicatory body for a public health authority and shall be composed of no fewer than seven members and no more than nine members; except that in an authority comprising two or more counties, the board shall be composed of no more than 11 members. Boards which intend to pursue federally qualified health center (or look-alike) status may have no fewer than nine and no more than 25 members.

(b) In a single county authority, the county board of commissioners shall appoint the members of the board; in an authority comprising two or more counties, the chair of the county board of commissioners of each county in the authority shall appoint one county commissioner, or the commissioner's express designee, to the authority board and these members shall jointly appoint the other members of the board.

(c) The members of the board shall include:

(1) At least one physician licensed under Chapter 90 of the General Statutes to practice medicine in this State, and at least one dentist licensed under Article 2 of Chapter 90 of the General Statutes to practice dentistry in this State;

(2) At least one county commissioner or the commissioner's express designee from each county in the authority;

(3) At least two licensed or registered professionals from any of the following professions: optometry, veterinary science, nursing, pharmacy, engineering, or accounting;

(4) At least one member from the administrative staff of a hospital serving the authority service area; and

(5) At least one member from the general public.

(d) Except as provided in this subsection, members of the board shall serve terms of three years. In order to establish a uniform staggered term structure for the Board, a member may be appointed for less than a three-year term.

(e) Any member who is a county commissioner serves on the board in an ex officio capacity.

(f) Whenever a county shall join or withdraw from an existing public health authority, the board shall be dissolved and a new board shall be appointed as provided in subsection (b) of this section.

(g) Vacancies shall be filled within 120 days for any unexpired portion of a term.

(h) A chair shall be elected annually by a board. The authority director shall serve as secretary to the board.

(i) A majority of the members shall constitute a quorum.

(j) A member may be removed from office by the board for any of the following:

(1) Commission of a felony or other crime involving moral turpitude.

(2) Violation of a State law governing conflict of interest.

(3) Violation of a written policy adopted by the county board of commissioners of each county in the authority.

(4) Habitual failure to attend meetings.

(5) Conduct that tends to bring the office into disrepute.

(6) Failure to maintain qualifications for appointment required under subsection (c) of this section.

A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

(k) Board members may receive per diem in an amount established by the county commissioner members of the Public Health Authority Board. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county commissioner members of the Public Health Authority Board.

(l) The board shall meet at least quarterly. The chair or three of the members may call a special meeting. (1997-502, s. 1; 2005-459, s. 2; 2007-229, s. 1.)

§ 130A-45.2. Dissolution of a public health authority.

(a) Whenever the board of commissioners of each county constituting a public health authority determines that the authority is not operating in the best health interests of the authority service area, they may direct that the authority be dissolved. In addition, whenever a board of commissioners of a county which is a member of an authority determines that the authority is not operating in the best health interests of that county, it may withdraw from the authority. Dissolution of an authority or withdrawal from the authority by a county shall be effective only at the end of the fiscal year in which the action of dissolution or withdrawal transpired.

(b) Notwithstanding the provisions of subsection (a) of this section, no public health authority shall be dissolved without prior written notification to the Department.

(c) Any budgetary surplus available to a public health authority at the time of its dissolution shall be distributed to those counties comprising the authority on the same pro rata basis that the counties appropriated and contributed funds to the authority's budget during the current fiscal year. Distribution to the counties shall be determined on the basis of an audit of the financial record of the authority. The public health authority board shall select a certified public accountant or an accountant who is subsequently certified by the Local Government Commission to conduct the audit. The audit shall be performed in accordance with G.S. 159-34. The same method of distribution of funds described above shall apply when one or more counties of an authority withdraw from the authority.

(d) Upon dissolution or withdrawal, all rules adopted by the board continue in effect until amended or repealed by the new authority board or boards of health. (1997-502, s. 1.)

§ 130A-45.3. Powers and duties of authority board.

(a) A public health authority shall have all the powers necessary or convenient to carry out the purposes of this Part, including the following powers to:

(1) Protect and promote the public health. The board shall have the authority to adopt rules necessary for that purpose.
(2) Construct, equip, operate, and maintain public health facilities.
(3) Use property owned or controlled by the authority.
(4) Acquire real or personal property, including existing public health facilities, by purchase, grant, gift, devise, lease or, with the permission of the county commissioners, condemnation.
(5) Establish a fee schedule for services received from public health facilities and make services available regardless of ability to pay.
(6) Appoint a public health authority director to serve at the pleasure of the authority board.

(7) Establish a salary plan which shall set the salaries for employees of the area authority.

(8) To adopt and enforce a professional reimbursement policy which may include the following provisions: (i) require that fees for the provision of services received directly under the supervision of the public health authority shall be paid to the authority, (ii) prohibit employees of the public health authority from providing services on a private basis which require the use of the resources and facilities of the public health authority, and (iii) provide that employees may not accept dual compensation and dual employment unless they have the written permission of the public health authority director.

(9) Delegate to its agents or employees any powers or duties as it may deem appropriate.

(10) Employ its own counsel and legal staff.

(11) Adopt, amend, and repeal bylaws for the conduct of its business.

(12) Enter into contracts for necessary supplies, equipment, or services for the operation of its business.

(13) Act as an agent for the federal, State, or local government in connection with the acquisition, construction, operation, or management of a public health facility, or any part thereof.

(14) Insure the property or the operations of the authority against risks as the authority may deem advisable.

(15) Sue and be sued.

(16) Accept donations or money, personal property, or real estate for the benefit of the authority and to take title to the same from any person, firm, corporation, or society.

(17) Appoint advisory boards, committees, and councils composed of qualified and interested residents of the authority service area to study, interpret, and advise the public health authority board.

(18) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20.

(b) A public health authority shall have the power to establish and operate health care networks and may contract with or enter into any arrangement with other public health authorities or local health departments of this or other states, federal, or other public agencies, or with any person, private organization, or nonprofit corporation or association for the provision of public health services, including managed health care activities; provided, however, that for the purposes of this subsection only, a public health authority shall be permitted to and shall comply with the requirements of Article 67 of Chapter 58 of the General Statutes to the extent that such requirements apply to the activities undertaken by the public health authority pursuant to this subsection. The public health authority may pay for or contribute its share of the cost of any such contract or arrangement from revenues available for these purposes, including revenues arising from the provision of public health services.

(c) A public health authority may lease any public health facility, or part, to a nonprofit association on terms and conditions consistent with the purposes of this Part. The authority will determine the length of the lease. No lease executed under this subsection shall be deemed to convey a freehold interest.

(d) A public health authority shall neither sell nor convey any rights of ownership the county has in any public health facility, including the buildings, land, and equipment associated with the facility, to any corporation or other business entity operated for profit, except that nothing herein shall prohibit the sale of surplus buildings, surplus land, or surplus equipment by an authority to any corporation or other business entity operated for profit. For purposes of this subsection, "surplus" means any building, land, or equipment which is not required for use in the delivery of public health care services by a public health facility at the time of the sale or conveyance of ownership rights.

(e) A public health authority may lease any public health facility, or part, to any corporation, foreign or domestic, authorized to do business in North Carolina on terms and conditions consistent with the purposes of this Part and with G.S. 160A-272.

(f) A public health authority may exercise any or all of the powers conferred upon it by this Part, either generally or with respect to any specific public health facility or facilities, through or by designated agents, including any corporation or corporations which are or shall be formed under the laws of this State.

(g) An authority may contract to insure itself and any of its board members, agents, or employees against liability for wrongful death or negligent or intentional damage to person or property or against absolute liability for damage to person or property caused by an act or omission of the authority or of any of its board members, agents, or employees when acting within the scope of their authority and the course of their employment. The board shall determine what liabilities and what members, agents, and employees shall be covered by any insurance purchased pursuant to this subsection.

Purchase of insurance pursuant to this subsection waives the authority's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function. Participation in a local government risk pool pursuant to Article 23 of Chapter 58 of the General Statutes shall be deemed to be the purchase of insurance for the purposes of this section. By entering into an insurance contract with the authority, an insurer waives any defense based upon the governmental immunity of the authority.

(h) If an authority has waived its governmental immunity pursuant to subsection (g) of this section, any person, or in the event of death, their personal representative, sustaining damages as a result of an act or omission of the authority or any of its board members, agents, or employees, occurring in the exercise of a governmental function, may sue the authority for recovery of damages. To the extent of the coverage of insurance purchased pursuant to subsection (g) of this section, governmental immunity may not be a defense to the action. Otherwise, however, the authority has all defenses available to private litigants in any action brought pursuant to this section without restriction, limitation, or other effect, whether the defense arises from common law or by virtue of a statute.

Despite the purchase of insurance as authorized by subsection (g) of this section, the liability of an authority for acts or omissions occurring in the exercise of governmental functions does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. The judge shall hear and determine these issues without resort to a jury, and the jury shall be absent during any motion, argument, testimony, or announcement of findings of fact or conclusions of law relating to these issues unless the defendant requests a jury trial on them. (1997-502, s. 1; 2007-229, s. 2.)

§ 130A-45.4. Appointment of a public health authority director.

(a) A public health authority board, after consulting with the appropriate county board or boards of commissioners, shall appoint a public health authority director.

(b) All persons who are appointed to the position of public health authority director must possess minimum education and experience requirements for that position, as follows:

(1) A medical doctorate; or

(2) A masters degree in Public Health Administration, and at least one year of employment experience in health programs or health services; or

(3) A masters degree in a public health discipline other than public health administration, and at least three years of employment experience in health programs or health services; or

(4) A masters degree in public administration, and at least two years of experience in health programs or health services; or

(5) A masters degree in a field related to public health, and at least three years of experience in health programs or health services; or

(6) A bachelors degree in public health administration or public administration and at least three years of experience in health programs or health services.

(c) Before appointing a person to the position of public health authority director under subdivision (a)(5) of this section, the authority board shall forward the application and other pertinent materials of such candidate to the State Health Director. If the State Health Director determines that the candidate's masters degree is in a field not related to public health, the State Health Director shall so notify the authority board in writing within 15 days of the State Health Director's receipt of the application and materials, and such candidate shall be deemed not to meet the education requirements of subdivision (a)(5) of this section. If the State Health Director fails to act upon the application within 15 days of receipt of the application and materials from the authority board, the application shall be deemed approved with respect to the education requirements of subdivision (a)(5) of this section, and the authority board may proceed with the appointment process.

(d) The State Health Director shall review requests of educational institutions to determine whether a particular masters degree offered by the requesting institution is related to public health for the purposes of subdivision (a)(5) of this section. The State Health Director shall act upon such requests within 90 days of receipt of the request and pertinent materials from the institution, and shall notify the institution of its determination in writing within the 90-day review period. If the State Health Director determines that an institution's particular masters degree is not related to public health, the State Health Director shall include the reasons therefor in his written determination to the institution.

(e) When an authority board fails to appoint a public health authority director within 60 days of the creation of a vacancy, the State Health Director may appoint an authority director to serve until the authority board appoints an authority director in accordance with this section. (1997-502, s. 1.)

§ 130A-45.5. Powers and duties of a public health authority director.

(a) The public health authority director is an employee of the authority board and shall serve at the pleasure of the authority board.

(b) An authority health director shall perform public health duties prescribed by and under the supervision of the public health authority board and the Department and shall be employed full time in the field of public health.

(c) An authority health director shall have the following powers and duties:

(1) To administer programs as directed by the public health authority board;
(2) To enforce the rules of the public health authority board;
(3) To investigate the causes of infectious, communicable, and other diseases;
(4) To exercise quarantine authority and isolation authority pursuant to G.S. 130A-145;
(5) To disseminate public health information and to promote the benefits of good health;
(6) To advise local officials concerning public health matters;
(7) To enforce the immunization requirements of Part 2 of Article 7 of this Chapter;
(8) To examine and investigate cases of venereal disease pursuant to Parts 3 and 4 of Article 6 of this Chapter;
(9) To examine and investigate cases of tuberculosis pursuant to Part 5 of Article 6 of this Chapter;
(10) To examine, investigate, and control rabies pursuant to Part 6 of Article 6 of this Chapter;
(11) To abate public health nuisances and imminent hazards pursuant to G.S. 130A-19 and G.S. 130A-20; and
(12) To employ, discipline, and dismiss employees of the public health authority.

(d) Authority conferred upon a public health authority director may be exercised only within the county or counties comprising the public health authority. (1997-502, s. 1.)

§ 130A-45.6. Boundaries of the authority.

A public health authority may provide or contract to provide public health services and to acquire, construct, establish, enlarge, improve, maintain, own, or operate, and contract for the operation of any public health facilities outside the territorial limits, within reasonable limitation, of the county or counties creating the authority, but in no case shall a public health authority be held liable for damages to those outside the territorial limits of the county or counties creating the authority for failure to provide any public health service. (1997-502, s. 1.)

§ 130A-45.7. Medical review committee.

(a) A member of a duly appointed medical review committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(b) The proceedings of a medical review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records" defined, and shall not be subject to discovery or introduction into evidence in any civil action against a public health authority or a provider of professional health services which results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. A member of the committee or a person

who testifies before the committee may testify in a civil action but cannot be asked about his testimony before the committee or any opinions formed as a result of the committee hearings. (1997-502, s. 1.)

§ 130A-45.8. Confidentiality of patient information.

(a) Medical records compiled and maintained by public health authorities in connection with the admission, treatment, and discharge of individual patients are not public records as defined by Chapter 132 of the General Statutes.

(b) Charges, accounts, credit histories, and other personal financial records compiled and maintained by public health authorities in connection with the admission, treatment, and discharge of individual patients are not public records as defined by Chapter 132 of the General Statutes. (1997-502, s. 1.)

§ 130A-45.9. Confidentiality of personnel information.

(a) Except as provided in subsection (b) of this section, the personnel files of employees or former employees and the files of applicants for employment maintained by a public health authority are not public records as defined by Chapter 132 of the General Statutes.

(b) The following information with respect to each employee of a public health authority is a matter of public record: name; age; date of original employment or appointment; beginning and ending dates, position title, position descriptions, and total compensation of current and former positions; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the authority has the written contract or a record of the oral contract in its possession, and date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification. In addition, the following information with respect to each licensed medical provider employed by or having privileges to practice in a public health facility shall be a matter of public record: educational history and qualifications, date and jurisdiction or original and current licensure; and information relating to medical board certifications or other qualifications of medical specialists. For the purposes of this subsection, the term "total compensation" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Information regarding the qualifications, competence, performance, character, fitness, or conditions of appointment of an independent contractor who provides health care services under a contract with a public health authority is not a public record as defined by Chapter 132 of the General Statutes. Information regarding a hearing or investigation of a complaint, charge, or grievance by or against an independent contractor who provides health care services under a contract with a public health authority is not a public record as defined by Chapter 132 of the General Statutes. Final action making an appointment or discharge or removal by a public health authority having final authority for the appointment or discharge or removal shall be taken in an open meeting, unless otherwise exempted by law. The following information with respect to each independent contractor of health care services of a public health authority is a matter of public record: name; age; date of original contract; beginning and ending dates; position title; position descriptions; and total compensation of current and former positions; and the date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification. (1997-502, s. 1; 2007-508, s. 5.)

§ 130A-45.10. Confidentiality of credentialing information.

Information acquired by a public health authority or by persons acting for or on behalf of a public health authority in connection with the credentialing and peer review of persons having or applying for privileges to practice in a public health facility is confidential and is not a public record under Chapter 132 of the General Statutes; provided that information otherwise available to the public shall not become confidential merely because it was acquired by the authority or by persons acting for or on behalf of the authority. (1997-502, s. 1.)

§ 130A-45.11. Confidentiality of competitive health care information.

Information relating to competitive health care activities by or on behalf of public health authorities shall be confidential and not a public record under Chapter 132 of the General Statutes; provided that any contract entered into by or on behalf of a public health authority shall be a public record unless otherwise exempted by law. (1997-502, s. 1.)

§ 130A-45.12. Personnel.

Employees under the supervision of the public health authority director are employees of the public health authority and shall be exempt from Chapter 126 of the General Statutes, unless otherwise provided in this Part. (2001-92, s. 1.)

§ 130A-45.13. Authority to contract directly with private providers to operate billing system for county Medicaid claims.

A public health authority board may contract directly with private vendors to operate the authority's Medicaid billing system as an alternative to the State-operated health services information system. The contract may provide for the private vendor to bill directly the State Medicaid billing system (MMIS), thereby bypassing the State health services information system (HSIS). The public health authority shall issue a "request for proposal" to solicit private vendor bids for contracts authorized under this section. Information systems authorized under this section shall be consistent with and interface with relevant statewide public health data systems to address State cost containment and service reporting needs. (2005-459, s. 1.)

§ 130A-46. Reserved for future codification purposes.

Part 2. Sanitary Districts.

§ 130A-47. Creation by Commission.

(a) For the purpose of preserving and promoting the public health and welfare, the Commission may create sanitary districts without regard for county, township or municipal lines. However, no municipal corporation or any part of the territory in a municipal corporation shall be included in a sanitary district except at the request of the governing board of the municipal corporation. If the municipal corporation has not levied any tax nor performed any official act nor held any elections within a period of four years preceding the date of the petition for the sanitary district, a request of the governing board shall not be required.

(b) For the purposes of this Part, the term "Department" means the Department of Environmental Quality, and the term "Secretary" means the Secretary of Environmental Quality. (1927, c. 100, s. 1; 1955, c. 1307; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2007-187, s. 1; 2015-241, ss. 14.30(u), (v).)

§ 130A-48. Procedure for incorporating district.

A sanitary district shall be incorporated as follows. Either fifty-one percent (51%) or more of the resident freeholders within a proposed sanitary district or fifty-one percent (51%) or more of the freeholders within a proposed sanitary district, whether or not the freeholders are residents of the proposed sanitary district, may petition the county board of commissioners of the county in which all or the largest portion of the land of the proposed district is located. This petition shall set forth the boundaries of the proposed sanitary district and the objectives of the proposed district. For the purposes of this Part, the term "freeholder" shall mean a person holding a deed to a tract of land within the district or proposed district, and also shall mean a person who has entered into a contract to purchase a tract of land within the district or proposed district, is making payments pursuant to a contract and will receive a deed upon completion of the contractual payments. The contracting purchaser, rather than the contracting seller, shall be deemed to be the freeholder. The county tax office shall be responsible for checking the freeholder status of those persons signing the petition. That office shall also be responsible for confirming the location of the property owned by those persons. Upon receipt of the petition, the county board of commissioners, through its chairperson, shall notify the Department and the chairperson of the county board of commissioners of any other county or counties in which any portion of the proposed district lies of the receipt of the petition. The chairperson shall request that the Department hold a joint public hearing with the county commissioners of all the counties in which a portion of the district lies concerning the creation of the proposed sanitary district. The Secretary and the chairperson of the county board of commissioners shall name a time and place within the proposed district to hold the public hearing. The chairperson of the county board of commissioners shall give prior notice of the hearing by posting a notice at the courthouse door of the county and also by publication at least once a week for four successive weeks in a newspaper published in the county. In the event the hearing is to be before a joint meeting of the county boards of commissioners of more than one county, or in the event the land to be affected lies in more than one county, publication and notice shall be made in each of the affected counties. In the event that all matters pertaining to the creation of this sanitary district cannot be concluded at the hearing, the hearing may be continued at a time and place within the proposed district named by the Department. (1927, c. 100, ss. 2-4; 1951, c. 178, s. 1; 1957, c. 1357, s. 1; 1959, c. 1189, s. 1; 1965, c. 135; 1967, c. 24, s. 21; 1973, c. 476, s. 128; 1975, c. 536; 1983, c. 891, s. 2; 2002-159, s. 55(f).)

§ 130A-49. Declaration that district exists; status of industrial villages within boundaries of district.

(a) If, after the required public hearing, the Commission and the county commissioners determine that a district shall be created for the purposes stated in the petition, the Commission shall adopt a resolution defining the boundaries of the district and declaring the territory within the boundaries to be a sanitary district. The Commission may make minor deviation in defining the boundaries from those prescribed in the petition when it determines the change to be in the interest of the public health.

(b) The owner or controller of an industrial plant may make application requesting that the plant or the plant and its contiguous village be included within or excluded from the sanitary district. The application shall be filed with the Commission on or before the date of the public hearing. If an application is properly filed, the Commission shall include or exclude the industrial plant and contiguous village in accordance with the application.

(c) Each district when created shall be identified by a name or number assigned by the Commission. (1927, c. 100, s. 5; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-49.5. Ethics.

(a) The governing board shall adopt a resolution or policy containing a code of ethics, as required by G.S. 160A-86.

(b) All members of the governing board, whether elected or appointed, shall receive the ethics education required by G.S. 160A-87. (2009-403, s. 6.)

§ 130A-50. Election and terms of office of sanitary district boards.

(a) The Department shall send a copy of the resolution creating the sanitary district to the board or boards of county commissioners of the county or counties in which all or part of the district is located. The Department shall file or cause to be filed with the county board or boards of elections in the same county or counties a map of the district. With the map it shall include supporting documents. That map and documents shall be filed within 10 business days after the creation of the district and amended within 10 days after any change to the boundaries of the district. The board or boards of commissioners shall hold a meeting or joint meeting for the purpose of electing the members of the sanitary district board.

(b) The sanitary district board shall be composed of either three or five members as the county commissioners in their discretion shall determine. The members first appointed shall serve as the governing body of the sanitary district until the next regular election for municipal and special district officers as provided in G.S. 163A-1585, which occurs more than 90 days after their appointment. At that election, their successors shall be elected. The terms of the members shall be for two years or four years and may be staggered as determined by the county board of commissioners so that some members are elected at each biennial election. The members of the sanitary district board shall be residents of the district. The county board of commissioners shall notify the county board of elections of any decision made under this subsection.

If the sanitary district board consists of three members, the county commissioners may at any time increase the sanitary district board to five members. The increase shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the expansion to five members. The effective date of the expansion is the organizational meeting of the sanitary district board after the election.

The county commissioners may provide for staggering terms of an existing sanitary district board whose members serve two-year terms by providing for some of the members to be elected at the next election to be for four-year terms. The change shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the staggering of terms.

The sanitary district board may provide for staggering its terms if its members serve unstaggered four-year terms by providing for some of the members to be elected at the next election for two-year terms. The change shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the staggering of terms.

The county commissioners may provide for changing a sanitary district board from two-year terms to unstaggered four-year terms. This may be done either by providing that at the next election, all members shall be elected for four-year terms, or by extending the terms of existing members from two years to four years. The change shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the change of length of terms.

(b1) If a sanitary district:

1. Does not share territory with any city as defined by G.S. 160A-1(2), and
2. The sanitary district is in more than one county,

the boards of county commissioners in all counties with territory in the sanitary district may set the sanitary district elections to be held on the same date as general elections in even-numbered years under G.S. 163A-700 and may extend the terms of any sanitary district board members who are in office at the ratification of this act until the next even-year general election can been [be] held and successors qualified.

(b2) If a sanitary district:

(1) Is located entirely within a county which has no incorporated city as defined by G.S. 160A-1(2) located within that county; and
(2) Has a sanitary district board whose members serve four-year terms which are not staggered and which next expire in 1991,

the board of commissioners of that county may, by resolution adopted prior to December 31, 1989, set the sanitary district election to be held on the same date as general elections in even-numbered years under G.S. 163A-700. Such resolution shall extend the terms of office of the then serving members of the sanitary district board by one year, so that they will expire on the first Monday in December following the 1992 general election. Other than as provided by this subsection, sanitary district elections shall continue to be conducted in accordance with this Article and Subchapter III of Chapter 163A of the General Statutes.

(c) The election shall be nonpartisan and decided by simple plurality as provided in G.S. 163A-1616 and shall be held and conducted by the county board of elections in accordance with the applicable provisions of Article 27 of Chapter 163A of the General Statutes. If the district is in more than one county, then the county board of elections of the county including the largest part of the district shall conduct the election for the entire district with the assistance and full cooperation of the boards of elections in the other counties.

(d) The board of elections shall certify the results of the election to the clerk of superior court. The clerk of superior court shall take and file the oaths of office of the board members elected.

(e) The elected members of the board shall take the oath of office on the first Monday in December following their election and shall serve for the term elected and until their successors are elected and qualified. (1927, c. 100, s. 6; 1943, c. 602; 1953, c. 798; 1955, c. 1073; 1957, c. 1357, s. 1; 1963, c. 644; 1973, c. 476, s. 128; 1981, c. 186, s. 1; 1983, c. 891, s. 2; 1987, c. 22, s. 1; 1989, c. 310; 1993 (Reg. Sess., 1994), c. 736, s. 1.1; 1997-117, s. 1; 2007-391, s. 15; 2017-6, s. 3.)

§ 130A-51. City governing body acting as sanitary district board.

(a) When the General Assembly incorporates a city or town that includes within its territory fifty percent (50%) or more of the territory of a sanitary district, the governing body of the city or town shall become ex officio the governing board of the sanitary district if the General Assembly provides for this action in the incorporation act and if the existing sanitary district board adopts a final resolution pursuant to this section. The resolution may be adopted at any time within the period beginning on the day the incorporation act becomes law and ending 270 days after that date.

(b) To begin the process leading to the city or town board becoming ex officio the sanitary district board, the board of the sanitary district shall first adopt a preliminary resolution finding that the interests of the citizens of the sanitary district and of the city or town will be best served if both units of local government are governed by a single governing body. This resolution shall also set the time and place for a public hearing on the preliminary resolution.

(c) Upon adoption of this preliminary resolution, the chairperson of the sanitary district board shall publish a notice of the public hearing once at least 10 days before the hearing in a newspaper of general circulation within the sanitary district. This notice shall set forth the time and place of the hearing and shall briefly describe its purpose. At the hearing, the board shall hear any citizen of the sanitary district or of the city or town who wishes to speak to the subject of the preliminary resolution.

(d) Within 30 days after the day of the public hearing, the sanitary district board may adopt a final resolution finding that the interests of the citizens of the sanitary district and of the city or town will be best served if both units are governed by a single board. This resolution shall set the date on which the terms of office of the members of the sanitary district board end and that board is dissolved and service by the ex officio board begins. This date may be the effective date of the incorporation of the city or town or any date within one year after the effective date. At that time, the sanitary district board is dissolved and the mayor and members of the governing body of the city or town become ex officio the board of the sanitary district. The mayor shall act ex officio as chairperson of the sanitary district board.

(e) The chairperson of the sanitary district board that adopts a final resolution shall within 10 days after the day the resolution is adopted, send a copy of the resolution to the mayor and each member of the city or town governing board and to the Department. (1981, c. 201; 1983, c. 891, s. 2; 1995, c. 20, s. 15.)

§ 130A-52. Special election if election not held in November of 1981.

(a) If in a sanitary district, an election of board members was required to be held in November of 1981 under G.S. 130A-50 but was not held, the board of commissioners of the county or counties in which the district is located may by resolution order a special election of all the board members to be held at the same time as the General Election in November of 1982.

(b) The election shall be held under the procedures of Article 27 of Chapter 163A of the General Statutes and in accordance with G.S. 130A-50, except that filing shall open at noon on Monday, August 9, 1982, and close at noon on Monday, August 23, 1982.

(c) In the election held under this section, all of the members of the board shall be elected. If the board of commissioners has provided for two- or four-year terms, the members elected in 1982 shall serve until the 1983 or 1985 election, respectively, and then

their successors shall be elected for the two-or four-year terms provided by the county board or boards of commissioners.

(d) Any resolution adopted under subsection (a) of this section shall be filed with the Department. (1981 (Reg. Sess., 1982), c. 1271, s. 1; 1983, c. 891, s. 2; 2017-6, s. 3.)

§ 130A-52.1. Action if 1983 election not held.

If any sanitary district held an election in 1982 under G.S. 130A-52, but failed to hold the 1983 election, then the persons elected in 1982 shall hold office until the terms that were to begin in 1983 have expired. (1983 (Reg. Sess., 1984), c. 1021, s. 1.)

§ 130A-53. Actions validated.

Any action of a sanitary district taken prior to July 1, 1984, shall not be invalidated by failure to hold an election for members of the board. (1981 (Reg. Sess., 1982), c. 1271, s. 1; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 1021, s. 2.)

§ 130A-54. Vacancy appointments to district boards.

Any vacancy in a sanitary district board shall be filled by the county commissioners until the next election for sanitary district board members. If the district is located in more than one county, the vacancy shall be filled by the county commissioners of the county from which the vacancy occurred. (1935, c. 357, s. 2; 1957, c. 1357, s. 1; 1981, c. 186, s. 2; 1983, c. 891, s. 2.)

§ 130A-55. Corporate powers.

A sanitary district board shall be a body politic and corporate and may sue and be sued in matters relating to the sanitary district. Notwithstanding any limitation in the petition under G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e, each sanitary district may exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary district board shall have the following powers:

(1) To acquire, construct, maintain and operate sewage collection, treatment and disposal systems of all types, including septic tank systems or other on-site collection, treatment or disposal facilities or systems; water supply systems; water purification or treatment plants and other utilities necessary for the preservation and promotion of the public health and sanitary welfare within the district. The utilities shall be constructed, operated and maintained in accordance with applicable statutes and rules.

(2) To acquire, construct, maintain and operate sewage collection, treatment and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems, water supply systems; water purification or treatment plants and other utilities, within and outside the corporate limits of the district, as may be necessary for the preservation of the public health and sanitary welfare outside the corporate limits of the district, within reasonable limitation. The utilities shall be constructed, operated and maintained in accordance with applicable statutes and rules.

a. The authority granted to a sanitary district by the provisions of this subsection is supplemental to the authority granted to a sanitary district by other provisions of law.

b. Actions taken by a sanitary district to acquire, construct, maintain and operate sewage collection, treatment and disposal systems of all types; water supply systems; water purification or treatment plants and other utilities within and outside the corporate limits to provide service outside the corporate limits are approved and validated.

c. This subsection shall apply only in counties with a population of 70,000 or greater, as determined by the most recent decennial federal census.

(3) To levy taxes on property within the district in order to carry out the powers and duties conferred and imposed on the district by law, and to pay the principal of and interest on bonds and notes of the district.

(4) To acquire either by purchase, condemnation or otherwise and hold real and personal property, easements, rights-of-way and water rights in the name of the district within or without the corporate limits of the district, necessary or convenient for the construction or maintenance of the works of the district.

(5) To employ and compensate engineers, counsel and other persons as may be necessary to carry out projects.

(6) To negotiate and enter into agreements with the owners of existing water supplies, sewage systems or other utilities as may be necessary to carry out the intent of this Part.

(7) To adopt rules necessary for the proper functioning of the district. However, these rules shall not conflict with rules adopted by the Commission for Public Health, Environmental Management Commission, or the local board of health having jurisdiction over the area. Further, such sanitary district board rules shall be no more restrictive than or conflict with requirements or ordinances of any county having jurisdiction over the area, and, if a conflict should arise, the requirements or ordinances of the county having jurisdiction over the area shall control.

(8) a. To contract with any person within or outside the corporate limits of the district to supply raw water without charge to the person in return for an agreement to allow the district to discharge sewage in the person's previous water supply. The district may so contract and construct at its expense all improvements necessary or convenient for the delivery of the water when, in the opinion of the sanitary district board and the Department, it will be for the best of the district.

b. To contract with any person within or outside the corporate limits of the district to supply raw or filtered water and sewer service to the person where the service is available. For service supplied outside the corporate limits of the district, the sanitary district board may fix a different rate from that charged within the corporate limits but shall not be liable for damages for failure to furnish a sufficient supply of water and adequate sewer service.

c. To contract with any person within or outside the corporate limits of the district for the treatment of the district's sewage in a sewage disposal or treatment plant owned and constructed or to be constructed by that person.

(9) After adoption of a plan as provided in G.S. 130A-60, the sanitary district board may, in its discretion, alter or modify the plan if the Department determines that the alteration or modification does not constitute a material deviation from the objective of the plan and is in the public health interest of the district. The alteration or modification must be approved by the Department. The sanitary district board may appropriate or reappropriate money of the district for carrying out the altered or modified plan.

(10) To take action, subject to the approval of the Department, for the prevention and eradication of diseases transmissible by vectors by instituting programs for the eradication of the mosquito.

(11) To collect and dispose of garbage, waste and other refuse by contract or otherwise.

(12) To establish a fire department, or to contract for firefighting apparatus and personnel for the protection of life and property within the district.

(13) To provide or contract for rescue service, ambulance service, rescue squad or other emergency medical services for use in the district. The sanitary district shall be subject to G.S. 153A-250.

(14) To have privileges and immunities granted to other governmental units in exercise of the governmental functions.

(15) To use the income of the district, and if necessary, to levy and collect taxes upon all the taxable property within the district sufficient to pay the costs of collecting and disposing of garbage, waste and other refuse, to provide fire protection and rescue services in the district, and to acquire, construct, maintain, operate, and regulate roads and streets within the district. Taxes shall be levied and collected at the same time and in the same manner as taxes for debt service as provided in G.S. 130A-62.

(16) To adopt rules for the promotion and protection of the public health and for these purposes to possess the following powers:

a. To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the district and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the district to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by a district only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the district is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the district has installed water or sewer lines or a combination thereof directly available to the property, the district may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. In

accordance with G.S. 87-97.1, when developed property is located so as to be served by a sanitary district water line and the property owner has connected to that water line, the property owner may continue to use any private water well located on the property for nonpotable purposes as long as the water well is not interconnected to the sanitary district water line and the sanitary district shall not require the owner of any such water well to abandon, cap, or otherwise compromise the integrity of the water well.

b. To require any person owning, occupying or controlling improved real property within the district where the water or sewage systems of the district are not immediately available or it is impractical with the systems, to install sanitary toilets, septic tanks and other health equipment or installations in accordance with applicable statutes and rules.

c. To order a person to abate a public health nuisance of the district. If the person being ordered to abate the nuisance refuses to comply with the order, the sanitary district board may institute an action in the superior court of the county where the public health nuisance exists to enforce the order.

d. To abolish or regulate and control the use and occupancy of all pigsties and other animal stockyards or pens within the district and for an additional distance of 500 feet beyond the outer boundaries of the district, unless the 500 feet is within the corporate limits of a city or town.

e. Upon the noncompliance by a person of a rule adopted by the sanitary district board, the board shall notify the person of the rule being violated and the facts constituting the violation. The person shall have a reasonable time to comply with the rule as determined by the local health director of the person's residence. Upon failure to comply within the specified time or within a time extended by the sanitary district board, the person shall be guilty of a Class 1 misdemeanor.

f. The sanitary district board is authorized to enforce the rules adopted pursuant to this Part by criminal action or civil action, including injunctive relief.

(17) For the purpose of promoting and protecting the public health, safety and the general welfare of the State, a sanitary district board is authorized to establish as zoning units any portions of the sanitary district not under the control of the United States or this State or any agency or instrumentality of either, in accordance with the following:

a. No sanitary district board shall designate an area a zoning area until a petition signed by two-thirds of the qualified voters in the area, as shown by the registration books used in the last general election, and with a petition signed by two-thirds of the owners of real property in the area, as shown by the records in the office of the register of deeds for the county, is filed with the sanitary district board. The petition must be accompanied by a map of the proposed zoning area. The board shall

hold a public hearing to obtain comment on the proposed creation of the zoning area. A notice of public hearing must be published in a newspaper of general circulation in the county at least two times, and a copy of the notice shall be posted at the county courthouse and in three other public places in the sanitary district.

b. When a zoning area is established within a sanitary district, the sanitary district board as to the zoning area shall have all rights, privileges, powers and duties granted to municipal corporations under Part 3, Article 19, Chapter 160A of the General Statutes. However, the sanitary district board shall not be required to appoint any zoning commission or board of adjustment. If neither a zoning commission nor board of adjustment is appointed, the sanitary district board shall have all rights.

c. A sanitary district board may enter into an agreement with any city, town or sanitary district for the establishment of a joint zoning commission.

d. A sanitary district board is authorized to use the income of the district and levy and collect taxes upon the taxable property within the district necessary to carry out and enforce the rules and provisions of this subsection.

e. This subsection shall apply only to sanitary districts which adjoin and are contiguous to an incorporated city or town and are located within three miles or less of the boundaries of two other cities or towns.

(18) To negotiate for and acquire by contract any distribution system located outside the district when the water for the distribution system is furnished by the district. If the distribution system is acquired by a district, the district may continue the operation of the system even though it remains outside the district.

(19) To accept gifts of real and personal property for the purpose of operating a nonprofit cemetery; to own, operate and maintain cemeteries with the donated property; and to establish perpetual care funds for the cemeteries in the manner provided by G.S. 160A-347.

(20) To dispose of real or personal property belonging to the district according to the procedures prescribed in Article 12 of Chapter 160A of the General Statutes. For purposes of this subsection, references in Article 12 of Chapter 160A to the "city," the "council," or a specific city official refer, respectively, to the sanitary district, the sanitary district board, and the sanitary district official who most nearly performs the same duties performed by the specified city official. For purposes of this subsection, references in G.S. 160A-266(c) to "one or more city officials" are deemed to refer to one or more sanitary district officials designated by the sanitary district board.

(21) To acquire, renovate property for or construct a medical clinic to serve the district, and to maintain real and personal property for a medical clinic to serve the district.

(22) To make special assessments against benefitted property within the corporate limits of the sanitary district and within the area served or to be served by the sanitary district for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and

sewage disposal systems, in the same manner that a county may make special assessments under authority of Article 9 of Chapter 153A of the General Statutes, except that the language appearing in G.S. 153A-185 reading as follows: "A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project," shall not apply to assessments levied by sanitary districts. For the purposes of this paragraph, references in Article 9 of Chapter 153A of the General Statutes, to the "county," the "board of county commissioners," "the board" or a specific county official or employee are deemed to refer respectively to the sanitary district and to the official or employee of the sanitary district who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term "county tax collector" wherever used in G.S. 153A-195 and G.S. 153A-196, shall mean the officer designated by the sanitary district to perform the functions described in said sections of the statute. This subdivision applies only to sanitary districts with a population of 15,000 or over.

(23) To acquire (by purchase, lease, gift, or otherwise, but not by condemnation), construct, maintain, operate, and regulate roads and streets within the sanitary district which are not State-maintained. Not all of these powers need be exercised.

(24) Expired.

(25) To negotiate and enter into agreements with other municipal corporations or sanitary districts for the purpose of developing and implementing an economic development plan. The agreement may provide for the establishment of a special fund, in which monies not expended at the end of a fiscal year shall remain in the fund. The lead agency designated under the agreement shall be responsible for examination of the fund and compliance with sound accounting principles, including the annual independent audit under G.S. 159-34. The audit responsibilities of the other municipal corporations and sanitary districts extend only to the verification of the contribution to the fund created under the agreement. The procedural requirements of G.S. 158-7.1(c) shall apply to actions of a sanitary district under this subdivision as if it were a city. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2; 1935, c. 287, ss. 1, 2; 1941, c. 116; 1945, c. 651, ss. 1, 2; 1947, c. 476; 1949, c. 880, s. 1; cc. 1130, 1145; 1951, c. 17, s. 1; c. 1035, s. 1; 1957, c. 1357, s. 1; 1961, cc. 669, 865, 1155; 1963, c. 1232; 1965, c. 496, s. 1; 1967, c. 632; c. 637, s. 1; c. 798, s. 2; 1969, cc. 478, 700, 944; 1971, c. 780, s. 29; 1973, c. 476, s. 128; 1979, c. 520, s. 2; c. 619, s. 7; 1981, cc. 629, 655; c. 820, ss. 1-3; c. 898, ss. 1-4; 1981 (Reg. Sess., 1982), c. 1237; 1983, c. 891, s. 2; c. 925, s. 2; 1993, c. 539, s. 948; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 422, ss. 1-4; 2001-221, s. 1; 2006-214, s. 1; 2007-182, s. 2; 2011-256, s. 2; 2011-394, s. 22; 2015-246, s. 3.5(g).)

§ 130A-55.1: Repealed by Session Laws 1997, c. 443, s. 11A.2.

§ 130A-56. Election of officers; board compensation.

(a) Upon election, a sanitary district board shall meet and elect one of its members as chairperson and another member as secretary.

(b) The board may employ a clerk or other assistants as necessary and may fix duties of and compensation for employees. A sanitary district board may remove employees and fill vacancies.

(c) The board may fix the compensation and allowances of the chairman and other members of the board by adoption of the annual budget ordinance, payable from the funds of the district, but no increase may become effective earlier than the first meeting of the board following the next election of board members after adoption of the ordinance. Until adoption of an ordinance under this subsection, each member of the board may receive compensation as provided for members of State boards under G.S. 138-5, payable from funds of the district. (1927, c. 100, s. 8; 1957, c. 1357, s. 1; 1967, c. 723; 1977, c. 183; 1983, c. 891, s. 2; 1985, c. 29, ss. 1, 2; 1995, c. 422, s. 5; 2003-185, s. 1.)

§ 130A-57. Power to condemn property.

A sanitary district board may purchase real estate, right-of-way or easement within or outside the corporate limits of the district for improvements authorized by this Part. If a purchase price cannot be agreed upon, the board may condemn the real estate, right-of-way or easement in accordance with Chapter 40A of the General Statutes. (1927, c. 100, s. 9; 1933, c. 8, s. 3; 1957, c. 1357, s. 1; 1981, c. 919, s. 13; 1983, c. 891, s. 2.)

§ 130A-58. Construction of systems by corporations or individuals.

When it is inadvisable or impractical for the sanitary district to build a water supply, sewage system or part of either to serve an area within the sanitary district, a corporation or residents within the sanitary district may build and operate a system at its or their own expense. The system shall be constructed and operated under plans and specifications approved by the district board and by the Department. The system shall also be constructed and operated in accordance with applicable rules and statutes. (1927, c. 100, s. 10; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-59. Reports.

Upon the election of a sanitary district board, the board shall employ engineers licensed by this State to make a report on the problems of the sanitary district. The report shall be prepared and filed with the sanitary district board and shall include the following:

(1) Comprehensive maps showing the boundaries of the sanitary district and, in a general way, the location of the various parts of the work that is proposed to be done and information as may be useful for a thorough understanding of the proposed undertaking;

(2) A general description of existing facilities for carrying out the purposes of the district;

(3) A general description of the various plans which might be adopted for accomplishment of the purposes of the district;

(4) General plans and specifications for the work;

(5) General description of property proposed to be acquired or which may be damaged in carrying out the work;
(6) Comparative detail estimates of cost for the various construction plans; and
(7) Recommendations. (1927, c. 100, s. 11; 1957, c. 1357, s. 1; 1983, c. 891, s. 2.)

§ 130A-60. Consideration of reports and adoption of a plan.

(a) A report filed by the engineers pursuant to G.S. 130A-59 shall be given consideration by the sanitary district board and the board shall adopt a plan. Before adopting a plan the board may hold a public hearing for the purpose of considering objections to the plan. Once adopted, the sanitary district board shall submit the plan to the Department. The plan shall not become effective until it is approved by the Department.

(b) The provisions of this section and of G.S. 130A-58 shall apply when the sanitary district board determines that adoption of the plan requires the issuance of bonds. However, these provisions shall not apply to a proposed purchase of firefighting equipment and apparatus. Failure to observe or comply with these provisions shall not, however, affect the validity of the bonds of a sanitary district. (1927, c. 100, s. 12; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-61. Bonds and notes authorized.

A sanitary district is authorized to issue bonds and notes under the Local Government Finance Act. (1927, c. 100, s. 13; 1949, c. 880, s. 1; 1951, c. 17, s. 1; c. 846, s. 1; 1957, c. 1357, s. 1; 1963, c. 1247, s. 1; 1971, c. 780, s. 27; 1983, c. 891, s. 2.)

§ 130A-62. Annual budget; tax levy.

(a) A sanitary district shall operate under an annual balanced budget adopted in accordance with the Local Government Budget and Fiscal Control Act.

(b) A sanitary district has the option of either collecting its own taxes or having its taxes collected by the county or counties in which it is located. Unless a district takes affirmative action to collect its own taxes, taxes shall be collected by the county.

(c) For sanitary districts whose taxes are collected by the county, before May 1 of each year, the assessor of each county in which the district is located shall certify to the district board the total assessed value of property in the county subject to taxation by the district. By July 1 or upon adoption of its annual budget ordinance, the district board shall certify to the county board of commissioners the rate of ad valorem tax levied by the district on property in that county. Upon receiving the district's certification of its tax levy, the county commissioners shall compute the district tax for each taxpayer and shall separately state the district tax on the county tax receipts for the fiscal year. The county shall collect the district tax in the same manner that county taxes are collected and shall remit these collections to the district at least monthly. Partial payments shall be proportionately divided between the county and the district. The district budget ordinance may include an appropriation to the county for the cost to the county of computing, billing, and collecting the district tax. The amount of the appropriation shall be agreed upon by the county and the district, but may not exceed five percent (5%) of the district levy. Any agreement shall remain effective until modified by mutual agreement. The amount due the county for collecting the district tax may be deducted by the county from its monthly remittances to the district or may be paid to the county by the district.

(d) Sanitary districts electing to collect their own taxes shall be deemed cities for the purposes of the Machinery Act, Subchapter II of Chapter 105 of the General Statutes. (1927, c. 100, s. 17; 1935, c. 287, ss. 3, 4; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1; 1959, c. 994; 1963, c. 1226; 1965, c. 496, s. 3; 1971, c. 780, s. 29; 1983, c. 891, s. 2; 1987, c. 45, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 38.)

§ 130A-63. Engineers to provide plans and supervise work; bids.

(a) The sanitary district board shall retain engineers licensed by this State to provide detailed plans and specifications and to supervise the work undertaken by the district. The work or any portion of the work may be done by the sanitary district board by purchasing the material and letting a contract for the work or by letting a contract for furnishing all the materials and doing the work.

(b) All contracts for work performed for construction or repair and for the purchase of materials by sanitary districts shall be in accordance with the provisions of Article 8, Chapter 143 of the General Statutes which are applicable to counties and municipal corporations.

(c) All work done shall be in accordance with the plans and specifications prepared by the engineers in conformity with the plan adopted by the sanitary district board. (1927, c. 100, s. 19; 1957, c. 1357, s. 1; 1977, c. 544, s. 1; 1983, c. 891, s. 2.)

§ 130A-64. Service charges and rates.

(a) A sanitary district board shall apply service charges and rates based upon the exact benefits derived. These service charges and rates shall be sufficient to provide funds for the maintenance, adequate depreciation and operation of the work of the district. If reasonable, the service charges and rates may include an amount sufficient to pay the principal and interest maturing on the outstanding bonds and, to the extent not otherwise provided for, bond anticipation notes of the district. Any surplus from operating revenues shall be set aside as a separate fund to be applied to the payment of interest on or to the retirement of bonds or bond anticipation notes. The sanitary district board may modify and adjust these service charges and rates.

(b) The district board may require system development fees only in accordance with Article 8 of Chapter 162A of the General Statutes. (1927, c. 100, s. 20; 1933, c. 8, s. 5; 1957, c. 1357, s. 1; 1965, c. 496, s. 4; 1983, c. 891, s. 2; 2017-138, s. 2.)

§ 130A-64.1. Notice of new or increased charges and rates; public comment period.

(a) A sanitary district shall provide notice to interested parties of the imposition of or increase in service charges or rates applicable solely to the construction of development subject to Part 2 of Article 19 of Chapter 160A or Part 2 of Article 18 of Chapter 153A of the General Statutes for any service provided by the sanitary district at least seven days prior to the first meeting where the imposition of or increase in the charges or rates is on the agenda for consideration. The sanitary district shall employ at least two of the following means of communication in order to provide the notice required by this section:

(1) Notice of the meeting in a prominent location on a Web site managed or maintained by the sanitary district.

(2) Notice of the meeting in a prominent physical location, including, but not limited to, the district's headquarters or any government building, library, or courthouse located within the sanitary district.

(3) Notice of the meeting by electronic mail to a list of interested parties that is created by the sanitary district for the purpose of notification as required by this section.

(4) Notice of the meeting by facsimile to a list of interested parties that is created by the sanitary district for the purpose of notification as required by this section.

(a1) If a sanitary district does not maintain its own Web site, it may employ the notice option provided by subdivision (1) of subsection (a) of this section by submitting a request to a county or counties in which the district is located to post such notice in a prominent location on a Web site that is maintained by the county or counties. Any sanitary district that elects to provide such notice shall make its request to the county or counties at least 15 days prior to the date of the first meeting where the imposition of or increase in the fees or charges is on the agenda for consideration.

(b) During the consideration of the imposition of or increase in service charges or rates as provided in subsection (a) of this section, the governing body of the sanitary district shall permit a period of public comment.

(c) This section shall not apply if the imposition of or increase in service charges or rates is contained in a budget filed in accordance with the requirements of G.S. 159-12. (2009-436, s. 3; 2010-180, s. 11(c).)

§ 130A-65. Liens for sewer service charges in sanitary districts not operating water distribution system; collection of charges; disconnection of sewer lines.

In sanitary districts which maintain and operate a sewage system but do not maintain and operate a water distribution system, the charges made for sewer service or for use of sewer service facilities shall be a lien upon the property served. If the charges are not paid within 15 days after they become due and payable, suit may be brought in the name of the sanitary district in the county in which the property served is located, or the property, subject to the lien, may be sold by the sanitary district under the same rules, rights of redemption and savings as are prescribed by law for the sale of land for unpaid ad valorem taxes. A sanitary district is authorized to adopt rules for the use of sewage works and the collection of charges. A sanitary district is authorized in accordance with its rules to enter upon the premises of any person using the sewage works and failing to pay the charges, and to disconnect the sewer line of that person from the district sewer line or disposal plant. A person who connects or reconnects with district sewer line or disposal plant without a permit from the sanitary district shall be guilty of a Class 1 misdemeanor. (1965, c. 920, s. 1; 1983, c. 891, s. 2; 1993, c. 539, s. 949; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 130A-66. Removal of member of board.

A petition with the signatures of twenty-five percent (25%) or more of the voters within a sanitary district which requests the removal from office of one or more members of a sanitary district board for malfeasance or nonfeasance in office may be filed with the board of commissioners of the county in which all or the greater portion of the voters of a sanitary district are located. Upon receipt of the petition, the county board of commissioners shall meet and adopt a resolution to hold an election on the question of removal. In the event that more than one member

of a sanitary district board is subjected to recall in an election, the names of each member of the board subjected to recall shall appear upon separate ballots. If in a recall election, a majority of the votes within the sanitary district are cast for the removal of a member or members of the sanitary district board subject to recall, the member or members shall cease to be a member or members of the sanitary district board. A vacancy shall be immediately filled. The expenses of holding a recall election shall be paid from the funds of the sanitary district. (1927, c. 100, s. 21; 1957, c. 1357, s. 1; 1981, c. 186, s. 3; 1983, c. 891, s. 2.)

§ 130A-67. Rights-of-way granted.

A right-of-way in, along or across a county or State highway, street or property within a sanitary district is granted to a sanitary district in case the board finds it necessary or convenient for carrying out the work of the district. Any work done in, along or across a State highway shall be done in accordance with the rules of the Board of Transportation. (1927, c. 100, s. 22; 1933, c. 172, s. 17; 1957, c. 1357, s. 1; 1973, c. 507, s. 5; 1983, c. 891, s. 2.)

§ 130A-68. Returns of elections.

In all elections provided for in this Part, the board of elections shall file copies of the returns with the county boards of commissioners, sanitary district board and clerk of superior court in which the district is located. (1927, c. 100, s. 23; 1957, c. 1357, s. 1; 1981, c. 186, s. 4; 1983, c. 891, s. 2.)

§ 130A-69. Procedure for extension of district.

(a) If after a sanitary district has been created or the provisions of this Part have been made applicable to a sanitary district, a petition signed by not less than fifteen percent (15%) of the resident freeholders within any territory contiguous to and adjoining the sanitary district may be presented to the sanitary district board requesting annexation of territory described in the petition. The sanitary district board shall send a copy of the petition to the board of commissioners of the county or counties in which the district is located and to the Department. The sanitary district board shall request that the Department hold a joint public hearing with the sanitary district board on the question of annexation. The Secretary and the chairperson of the sanitary district board shall name a time and place for the public hearing. The chairperson of the sanitary district board shall publish a notice of public hearing once in a newspaper or newspapers published or circulating in the sanitary district and the territory proposed to be annexed. The notice shall be published not less than 15 days prior to the hearing. If after the hearing, the Commission approves the annexation of the territory described in the petition, the Department shall advise the board or boards of commissioners of the approval. The board or boards of commissioners shall order and provide for the holding of a special election in accordance with G.S. 163A-1592 upon the question of annexation within the territory proposed to be annexed.

(b) If at or prior to the public hearing, a petition is filed with the sanitary district board signed by not less than fifteen percent (15%) of the freeholders residing in the sanitary district requesting an election be held on the annexation question, the sanitary district board shall send a copy of the petition to the board or boards of commissioners who shall order and provide for the submission of the question to the voters within the sanitary

district. This election may be held on the same day as the election in the territory proposed to be annexed, and both elections and registrations may be held pursuant to a single notice. A majority of the votes cast is necessary for a territory to be annexed to a sanitary district.

(c) The election shall be held by the county board or boards of elections in accordance with G.S. 163A-1592 after the board or boards of commissioners orders the election. The cost of the election shall be paid by the sanitary district. Registration in the area proposed for annexation shall be under the same procedure as G.S. 163A-1596.

(d) Notice of the election shall be given as required by G.S. 163A-769(8) and shall include a statement that the boundary lines of the territory to be annexed and the boundary lines of the sanitary district have been prepared by the district board and may be examined. The notice shall also state that if a majority of the those voting in the election favor annexation, then the territory annexed shall be subject to all debts of the sanitary district.

(e) The ballot shall be substantially as follows:

"• FOR annexation to the ____ Sanitary District

• AGAINST annexation to the ____ Sanitary District."

The board or boards of elections shall certify the results of the election to the sanitary district board and the board or boards of commissioners of the county or counties in which the district is located.

(f) Notwithstanding any other provisions of this section, if a petition for extension of the boundaries of a sanitary district is signed by not less than fifty-one percent (51%) of the resident freeholders within the territory proposed to be annexed, it shall not be necessary to hold an election provided for by this section on the question of the extension of the boundaries of the sanitary district.

(g) Notwithstanding any other provisions of this section, if a petition for extension of the boundaries of a sanitary district is signed by the owners of all the real property within the territory proposed to be annexed, it shall not be necessary to hold any election or any hearings provided for by this section on the question of the extension of the boundaries of the sanitary district.

(h) No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court on any ground unless the action or proceeding is commenced within 30 days after the certification of the results by the board or boards of elections.

(i) When additional territory has been annexed to a sanitary district and the proposition of issuing bonds of the sanitary district after the annexation has been approved by the voters at an election held within one year subsequent to annexation, fifty-one percent (51%) or more of the resident freeholders within the annexed territory may petition the sanitary district board for the removal and exclusion of the territory from the sanitary district. No petition may be filed after bonds of the sanitary district have been approved in an election held at any time after annexation. If the sanitary district board approves the petition, it shall send a copy to the Department requesting that the petition be granted and shall send additional copies to the county board or boards of commissioners. A public hearing shall be conducted under the same procedure provided for the annexation of additional territory. If the Commission deems it advisable to comply with the request of the petition, the Commission shall adopt a resolution to that effect and shall redefine the

boundaries of the sanitary district. (1927, c. 100, s. 24; 1943, c. 543; 1947, c. 463, s. 1; 1951, c. 897, s. 1; 1957, c. 1357, s. 1; 1959, c. 1189, s. 2; 1961, c. 732; 1973, c. 476, s. 128; 1981, c. 186, s. 5; 1983, c. 891, s. 2; 2013-381, s. 10.20; 2017-6, s. 3.)

§ 130A-70. District and municipality extending boundaries and corporate limits simultaneously.

(a) When the boundaries of a sanitary district lie entirely within or are coterminous with the corporate limits of a city or town and the sanitary district provides the only public water supply and sewage disposal system for the city or town, the boundaries of the sanitary district and the corporate limits of the city or town may be extended simultaneously as provided in this section.

(b) Twenty-five percent (25%) or more of the resident freeholders within the territory proposed to be annexed to the sanitary district and to the city or town may petition the sanitary district board and the governing board of the city or town setting forth the boundaries of the area proposed to be annexed and the objects annexation is proposed to accomplish. The petition may also include any area already within the corporate limits of the city or town but not already within the boundaries of the sanitary district. Upon receipt of the petition, the sanitary district board and the governing board of the city or town shall meet jointly and shall hold a public hearing prior to approval of the petition. Notice of the hearing shall be made by posting a notice at the courthouse door of the county or counties and by publishing a notice at least once a week for four consecutive weeks in a newspaper with a circulation in the county or counties. If at or after the public hearing the sanitary district board and the governing board of the city or town, acting jointly, shall each approve the petition, the petition shall be submitted to the Commission for approval. If the Commission approves the petition, the question shall be submitted to a vote of all voters in the area or areas proposed to be annexed voting as a whole. The election shall be held on a date approved by the sanitary district board and by the governing board of the city or town.

(c) The words "For Extension" and "Against Extension" shall be printed on the ballots for the election. A majority of all the votes cast is necessary for a district and municipality to extend boundaries and corporate limits simultaneously.

(d) After declaration of the extension, the territory and its citizens and property shall be subject to all debts, ordinances and rules in force in the sanitary district and in the city or town, and shall be entitled to the same privileges and benefits as other parts of the sanitary district and the city or town. The newly annexed territory shall be subject to the sanitary district and the city or town taxes levied for the fiscal year following the date of annexation.

(e) The costs of holding and conducting the election for annexation pursuant to this section, shall be shared equally by the sanitary district and by the city or town.

(f) The sanitary district board and the governing board of the city or town acting jointly, may order the board or boards of elections of the county or counties in which the sanitary district and the city or town are located, to call, hold, conduct and certify the result of the election, according to the provisions of Subchapter III of Chapter 163A of the General Statutes.

(g) When the boundaries of a sanitary district and the corporate limits of a city or town are extended as provided in this section, and the proposition of issuing bonds of the sanitary district as enlarged has not been approved by the voters at an election held within one year subsequent to the extension, the annexed territory may be removed and excluded from the sanitary district in the manner provided in G.S. 130A-69. If the petition includes areas within the present corporate limits of the city or town but not within the present boundaries of the sanitary district, these areas shall not be removed or excluded from the city or town under the provisions of this section.

(h) The powers granted by this section shall be supplemental and additional to powers conferred by any other law and shall not be regarded as in derogation to any powers now existing. (1953, c. 977; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 186, s. 6; 1983, c. 891, s. 2; 2017-6, s. 3.)

§ 130A-70.1. Satellite annexation in conjunction with municipal annexation in certain sanitary districts.

(a) This section only applies to a sanitary district where one or more municipalities lie within its boundaries.

(b) Whenever a municipality which lies within a sanitary district receives a petition for annexation under Part 4 of Article 4A of Chapter 160A of the General Statutes, the municipality may petition the sanitary district for that sanitary district to also annex the same area. In such case, the sanitary district may, by resolution, annex the same area, but the annexation shall only become effective if the territory is annexed by the requesting municipality.

(c) If G.S. 160A-58.5 allows the municipality to fix and enforce schedules of rents, rates, fees, charges, and penalties in excess of those fixed and enforced within the primary corporate limits, the sanitary district may do likewise as if G.S. 160A-58.5 applied to it.

(d) If the annexed area contains utility lines constructed or operated by the county and the sanitary district is to assume control, operation, or management of those lines, the sanitary district and county may by contract agree for the sanitary district to assume the pro rata or otherwise mutually agreeable portion of indebtedness incurred by the county for such purpose, or to contractually agree with the county to reimburse the county for any debt service. (2001-301, s. 1.)

§ 130A-71. Procedure for withdrawing from district.

Fifty-one percent (51%) or more of the resident freeholders of a portion of a sanitary district which has no outstanding indebtedness, with the approval of the sanitary district board, may petition the county board of commissioners of the county in which a major portion of the petitioners reside, that the identified portion of the district be removed and excluded from the district. If the county board of commissioners approves the petition, an election shall be held in the entire district on the question of exclusion. A majority of all the votes cast is necessary for a district to be removed and excluded from a sanitary district. The county board of commissioners shall notify the Commission who shall remove and exclude the portion of the district, and redefine the limits accordingly. (1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-72. Dissolution of certain sanitary districts.

Fifty-one percent (51%) or more of the resident freeholders of a sanitary district which has no outstanding indebtedness may petition the board of commissioners of the county in which all or

the greater portion of the resident freeholders of the district are located to dissolve the district. Upon receipt of the petition, the county board of commissioners shall notify the Department and the chairperson of the county board of commissioners of any other county or counties in which any portion of the district lies, of the receipt of the petition, and shall request that the Department hold a joint public hearing with the county commissioners concerning the dissolution of the district. The Secretary and the chairperson of the county board of commissioners shall name a time and place within the district for the public hearing. The county board of commissioners shall give prior notice of the hearing by posting a notice at the courthouse door of the county or counties and by publication in a newspaper or newspapers with circulation in the county or counties at least once a week for four consecutive weeks. If all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, the hearing may be continued to a time and place determined by the Department. If after the hearing, the Commission and the county board or boards of commissioners deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution to dissolve the sanitary district. The sanitary district board of the dissolved district is authorized to convey all assets, including cash, to any county, municipality, or other governmental unit, or to any public utility company operating or to be operated under the authority of a certificate of public convenience and necessity granted by the North Carolina Utilities Commission in return for the assumption of the obligation to provide water and sewage services to the area served by the district at the time of dissolution. (1943, c. 620; 1951, c. 178, s. 2; 1957, c. 1357, s. 1; 1967, c. 4, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-73. Dissolution of sanitary districts having no outstanding indebtedness and located wholly within or coterminous with corporate limits of city or town.

When the boundaries of a sanitary district which has no outstanding indebtedness are entirely located within or coterminous with the corporate limits of a city or town, fifty-one percent (51%) or more of the resident freeholders within the district may petition the board of commissioners within the county in which all or the greater portion of the resident freeholders of the district are located to dissolve the district. Upon receipt of the petition, the board of commissioners shall notify the Department, the chairperson of the board of commissioners of any other county or counties in which any portion of the district lies and the governing body of the city or town within which the district lies of the receipt of the petition, and shall request that the Department hold a joint public hearing with the board or boards of commissioners and the governing body of the city or town. The Secretary, the chairperson of the board of commissioners of the county in which all or the greater portion of the resident freeholders are located and the presiding officer of the governing body of the city or town shall name a time and place within the boundaries of the district and the city or town for the public hearing. The county board of commissioners shall give notice of the hearing by posting prior notice at the courthouse door of the county or counties and also by publication in a newspaper or newspapers circulating in the district at least once a week for four consecutive weeks. If all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, the hearing may be continued to a time and place determined by the Department. If, after the hearing, the Commission, the county board or boards of commissioners and the governing body of the city or town shall deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution dissolving the district. All taxes levied by the sanitary district which were levied prior to but which are collected after the dissolution shall vest in the city or town. All property held, owned, controlled or used by the sanitary district upon the dissolution or which may later be vested in the sanitary district, and all judgments, liens, rights and

causes of actions in favor of the sanitary district shall vest in the city or town. At the dissolution, taxes owed to the sanitary district shall be collected by the city or town. (1963, c. 512, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-73.1. Dissolution of sanitary districts having no outstanding indebtedness and located wholly within or coterminous with corporate limits of city or town.

(a) When the boundaries of a sanitary district that (i) is located entirely within one county, (ii) has no outstanding indebtedness, (iii) at the time of its creation was not located entirely within or coterminous with the corporate limits of a city or town, (iv) has not provided any water or sewer service for at least five years, (v) did not levy any ad valorem tax in the current year, (vi) has been for at least five years entirely located within or coterminous with the corporate limits of a city or town, and (vii) at the time of the annexation of the area of the district by that city or town, the city or town assumed all assets and liabilities of the district, the board of that district by unanimous vote may petition the board of commissioners of the county in which the district is located to dissolve the district. Upon receipt of the petition, the board of commissioners shall notify the Department and the governing body of the city or town within which the district lies of the receipt of the petition. If the Commission, the county board of commissioners, and the governing body of the city or town shall deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution dissolving the district. All taxes levied by the sanitary district that were levied prior to, but that are collected after, the dissolution shall vest in the city or town. All property held, owned, controlled, or used by the sanitary district upon the dissolution or that may later be vested in the sanitary district, and all judgments, liens, rights, and causes of actions in favor of the sanitary district shall vest in the city or town. At the dissolution, taxes owed to the sanitary district shall be collected by the city or town.

(b) The procedure for the dissolution of a sanitary district set out in this section is an alternative to the procedure set out in G.S. 130A-73 and any sanitary district to which both that section and this section apply may be dissolved under either section. (1998-123, s. 1.)

§ 130A-74. Validation of creation of districts.

All actions prior to June 6, 1961, taken by the county boards of commissioners[,] by the State Board of Health, by any officer or by any other agency, board or officer of the State in the formation and creation of sanitary districts in the State, and the formation and creation, or the attempted formation and creation of any sanitary districts are in all respects validated. These sanitary districts are declared lawfully formed and created and in all respects legal and valid sanitary districts. (1953, c. 596, s. 1; 1957, c. 1357, s. 1; 1961, c. 667, s. 1; 1983, c. 891, s. 2.)

§ 130A-75. Validation of extension of boundaries of districts.

(a) All actions prior to April 1, 1957, taken by the State Board of Health, a county board of commissioners, and a sanitary district board for the purpose of extending the boundaries of a sanitary district where the territory which was annexed contained no resident freeholders, and where the owner or owners of the real property annexed requested of the sanitary district board that the territory be annexed to the sanitary district, are validated, notwithstanding any lack of power to perform these acts or proceedings, and notwithstanding any defect or irregularity in the acts or proceedings.

(b) All actions and proceedings prior to April 1, 1979, taken by the State Board of Health, the Commission, a board of county commissioners and a sanitary district board for the purpose of

annexing additional territory to a sanitary district or with respect to the annexation are validated notwithstanding any lack of power to perform these acts or proceedings or any defect or irregularity in any acts or proceedings; these sanitary districts are lawfully extended to include this additional territory. (1959, c. 415, s. 2; 1975, c. 712, s. 1; 1979, 2nd Sess., c. 1079, s. 1; 1983, c. 891, s. 2.)

§ 130A-76. Validation of dissolution of districts.

All actions prior to January 1, 1981, taken by a county board of commissioners, by the State Board of Health or Commission, by an officer or by any other agency, board or officer of the State in the dissolution of a sanitary district and the dissolution or attempted dissolution of a sanitary district are validated. (1953, c. 596, s. 2; 1957, c. 1357, s. 1; 1981, c. 20, ss. 1, 2; 1983, c. 891, s. 2.)

§ 130A-77. Validation of bonds of districts.

All actions and proceedings prior to April 1, 1979, taken, and all elections held in a sanitary district or in a district purporting to be a legal sanitary district by virtue of the purported authority and acts of a county board of commissioners, State Board of Health, Commission, or any other board, officer or agency for the purpose of authorizing, selling or issuing the bonds of the sanitary district, and all bonds at any time issued by or on behalf of a sanitary district, are in all respects validated. These bonds are declared to be the legal and binding obligations of the sanitary district. (1953, c. 596, s. 3; 1957, c. 1357, s. 1; 1979, 2nd Sess., c. 1079, s. 2; 1983, c. 891, s. 2.)

§ 130A-78. Tax levy for validated bonds.

Sanitary districts are authorized to make appropriations and to levy annually a tax on property having a situs in the district under the rules and according to the procedure prescribed in the Machinery Act for the purpose of paying the principal of and interest on bonds validated in G.S. 130A-77. The tax shall be sufficient for this purpose and shall be in addition to all other taxes which may be levied upon the taxable property in the sanitary district. (1945, c. 89, s. 3; 1957, c. 1357, s. 1; 1973, c. 803, s. 17; 1983, c. 891, s. 2.)

§ 130A-79. Validation of appointment or election of members of district boards.

(a) All actions and proceedings prior to June 6, 1961, taken in the appointment or election of members of a sanitary district board are validated. Members of these boards shall have all the powers and may perform all the duties required or permitted of them to be pursuant to this Part.

(b) All actions and proceedings prior to May 1, 1959, taken in the appointment or election of members of a sanitary district board and the appointment or election of members are validated. Members of these boards shall have all the powers and may perform all the duties required or permitted of them pursuant to the provisions of this Part. (1953, c. 596, s. 4; 1957, c. 1357, s. 1; 1959, c. 415, s. 1; 1961, c. 667, s. 2; 1983, c. 891, s. 2.)

§ 130A-80. Merger of district with contiguous city or town; election.

A sanitary district may merge with a contiguous city or town in the following manner:

(1) The sanitary district board and the governing board of the city or town may resolve that it is advisable to call an election within both the sanitary district and the city or town to determine if the sanitary district and the city or town should merge;

(2) If the sanitary district board and the governing board of the city or town resolve that it is advisable to call for an election, both boards shall adopt a resolution requesting the board of commissioners in the county or counties in which the district and the town or city or any portion is located to hold an election on a date named by the sanitary district board and the governing board of the city or town after consultation with the appropriate board or boards of elections. The election shall be held within the sanitary district and the city or town on the question of merger;

(3) The county board or boards of commissioners shall request the appropriate board or boards of elections to hold and conduct the election. All voters of the city or town and the sanitary district shall be eligible to vote if the election is called in both areas as authorized in subsection (1);

(4) Notice of the election shall be given as required in G.S. 163A-769(8). The board or boards of elections may use either method of registration set out in G.S. 163A-1596;

(5) If an election is called as provided in subsection (2), the board or boards of elections shall provide ballots for the election in substantially the following form:

"• FOR merger of the Town of ____ and the ____ Sanitary District, if a majority of the registered voters of both the Sanitary District and the Town vote in favor of merger, the combined territories to be known as the Town of ____ and to assume all of the obligations of the Sanitary District and to receive from the Sanitary District all the property rights of the District; from and after merger residents of the District would enjoy all of the benefits of the municipality and would assume their proportionate share of the obligations of the Town as merged.

• AGAINST merger."

(6) A majority of all the votes cast by voters of the sanitary district and a majority of all the votes cast by voters of the city or town is necessary for the merger of a sanitary district with the city or town. The merger shall be effective on July 1 following the election. If a majority of the votes cast in either the sanitary district or the city or town vote against the merger, any election on similar propositions of merger may not occur until one year from the date of the last election.

(7) Upon the merger of a sanitary district and a city or town pursuant to this section, the city or town shall assume all obligations of the sanitary district and the sanitary district shall convey all property rights to the city or town. The vote for merger shall include a vote for the city or town to assume the obligations of the district. The sanitary district shall cease to exist as a political subdivision from and after the effective date of the merger. After the merger, the residents of the sanitary district enjoy all of the benefits of the municipality and shall assume their share of the obligations of the city or town. All taxes levied and collected by the city or town from and after the effective date of the merger shall be levied and collected uniformly in all the territory included in the enlarged municipality; and

(8) If merger is approved, the governing board of the city or town shall determine the proportion of the district's indebtedness, if any, which was incurred for the

construction of water systems and the proportion which was incurred for construction of sewage disposal systems. The governing board shall send a certified copy of the determination to the local government commission in order that the Commission and the governing body of the merged municipality can determine the net debt of the merged municipality as required by G.S. 159-55. (1961, c. 866; 1981, c. 186, s. 7; 1983, c. 891, s. 2; 1987, c. 314, s. 1; 2017-6, s. 3.)

§ 130A-80.1. Merger of district with coterminous city or town; election.

A sanitary district may merge with a coterminous city or town in the following manner:

(1) The sanitary district board and the governing board of the city or town may resolve that it is advisable to call an election within the area of the sanitary district and the city or town to determine if the sanitary district and the city or town should merge;

(2) If the sanitary district board and the governing board of the city or town resolve that it is advisable to call for an election, both boards shall adopt a resolution requesting the board of commissioners in the county or counties in which the district and the town or city or any portion is located to hold an election on a date named by the sanitary district board and the governing board of the city or town after consultation with the appropriate board or boards of elections. The election shall be held within the sanitary district and the city or town on the question of merger;

(3) The county board or boards of commissioners shall request the appropriate board or boards of elections to hold and conduct the election. All voters of the city or town and the sanitary district shall be eligible to vote;

(4) Notice of the election shall be given as required in G.S. 163A-769(8);

(5) The board or boards of elections shall provide ballots for the election in substantially the following form:

"• FOR merger of the Town of ____ and the ____ Sanitary District, if a majority of the registered voters vote in favor of merger, the area to be known as the Town of ____ and to assume all of the obligations of the Sanitary District and to receive from the Sanitary District all the property rights of the District.

• AGAINST merger."

(6) A majority of all the votes cast is necessary for the merger of a sanitary district with the city or town. The merger shall be effective on July 1 following the election. If a majority of the votes cast is not in favor of the merger, an election on merger may not occur until one year from the date of the last election.

(7) Upon the merger of a sanitary district and a city or town pursuant to this section, the city or town shall assume all obligations of the sanitary district and the sanitary district shall convey all property rights to the city or town. The vote for merger shall include a vote for the city or town to assume the obligations of the district. The sanitary district shall cease to exist as a political subdivision from and after the effective date of the merger; and

(8) If merger is approved, the governing board of the city or town shall determine the proportion of the district's indebtedness, if any, which was incurred for the construction of water systems and the proportion which was incurred for

construction of sewage disposal systems. The governing board shall send a certified copy of the determination to the Local Government Commission in order that the Commission and the governing body of the merged municipality can determine the net debt of the merged municipality as required by G.S. 159-55. (1989, c. 194, s. 1; 2017-6, s. 3.)

§ 130A-80.2. Merger of district with noncoterminous city or town it is contained wholly within; election.

A sanitary district may merge with a city or town which it is contained wholly within, but where the sanitary district and the city or town do not have coterminous boundaries, in the following manner:

(1) The sanitary district board and the governing board of the city or town may resolve that it is advisable to call an election within both the sanitary district and the city or town to determine if the sanitary district and the city or town should merge;

(2) If the sanitary district board and the governing board of the city or town resolve that it is advisable to call for an election, both boards shall adopt a resolution requesting the board of commissioners in the county or counties in which the district and the town or city or any portion is located to hold an election on a date named by the sanitary district board and the governing board of the city or town after consultation with the appropriate board or boards of elections. The election shall be held within the sanitary district and the city or town on the question of merger;

(3) The county board or boards of commissioners shall request the appropriate board or boards of elections to hold and conduct the election. All voters of the city or town and the sanitary district shall be eligible to vote if the election is called in both areas as authorized in subdivision (1);

(4) Notice of the election shall be given as required in G.S. 163A-769(8). The board or boards of elections may use either method of registration set out in G.S. 163A-1596;

(5) If an election is called as provided in subsection (2), the board or boards of elections shall provide ballots for the election in substantially the following form:

"• FOR merger of the Town of ____ and the ____ Sanitary District, if a majority of the registered voters of both the Sanitary District and the Town vote in favor of merger, the combined territories to be known as the Town of ____ and to assume all of the obligations of the Sanitary District and to receive from the Sanitary District all the property rights of the District; from and after merger residents of the District would enjoy all of the benefits of the municipality and would assume their proportionate share of the obligations of the Town as merged.

• AGAINST merger."

(6) A majority of all the votes cast by voters of the sanitary district and a majority of all the votes cast by voters of the city or town is necessary for the merger of a sanitary district with the city or town. The merger shall be effective on July 1 following the election. If a majority of the votes cast in either the sanitary

district or the city or town vote against the merger, any election on similar propositions of merger may not occur until one year from the date of the last election.

(7) Upon the merger of a sanitary district and a city or town pursuant to this section, the city or town shall assume all obligations of the sanitary district and the sanitary district shall convey all property rights to the city or town. The vote for merger shall include a vote for the city or town to assume the obligations of the district. The sanitary district shall cease to exist as a political subdivision from and after the effective date of the merger. After the merger, the residents of the sanitary district enjoy all of the benefits of the municipality and shall assume their share of the obligations of the city or town. All taxes levied and collected by the city or town from and after the effective date of the merger shall be levied and collected uniformly in all the territory included in the enlarged municipality; and

(8) If merger is approved, the governing board of the city or town shall determine the proportion of the district's indebtedness, if any, which was incurred for the construction of water systems and the proportion which was incurred for construction of sewage disposal systems. The governing board shall send a certified copy of the determination to the Local Government Commission in order that the Commission and the governing body of the merged municipality can determine the net debt of the merged municipality as required by G.S. 159-55. (1989, c. 194, s. 2; 2017-6, s. 3.)

§ 130A-80.3. Merger of district with contiguous metropolitan water district.

(a) A sanitary district may merge with a contiguous, but not coterminous, metropolitan water district organized under Article 4 of Chapter 162A of the General Statutes in the following manner, but only if the metropolitan water district has no outstanding indebtedness:

(1) The sanitary district board and the district board of the metropolitan water district shall resolve that it is advisable for the sanitary district and the metropolitan water district should merge;

(2) If the sanitary district board and the district board of the metropolitan water district resolve that it is advisable to merge, they shall call a public hearing on the merger. Each of such boards shall hold a public hearing on the question of merger, and advertisement of the public hearing shall be published at least 10 days before the public hearing;

(3) After the public hearing, if the sanitary district board and the district board of the metropolitan water district by resolution approve the merger, the merger shall be effective on July 1 following the adoption of the resolution;

(4) Upon the merger of a sanitary district and a metropolitan water district pursuant to this section, the sanitary district shall assume all obligations of the metropolitan water district, and the metropolitan water district shall convey all property rights to the sanitary district. The metropolitan water district shall cease to exist as a political subdivision from and after the effective date of the merger. After the merger, the residents of the metropolitan water district enjoy all of the benefits of the sanitary district and shall assume their share of the obligations of the sanitary district. All taxes levied and collected by the sanitary

district from and after the effective date of the merger shall be levied and collected uniformly in all the territory included in the enlarged sanitary district; and

(5) Certified copies of the merger resolutions shall be filed with the Commission for Public Health.

(b) At the same time as approving the resolution of merger, the district board of the metropolitan water district shall designate by resolution two of its members to serve on an expanded sanitary district board from and after the date of the merger.

(c) If the sanitary district board serves staggered four-year terms, the resolution shall designate one of those two persons to serve until the organizational meeting after the next election of a sanitary district board, and the other to serve until the organizational meeting after the second succeeding election of a sanitary district board. Successors shall be elected by the qualified voters of the sanitary district for four-year terms.

(d) If the sanitary district board serves nonstaggered four-year terms, or serves two-year terms, the two persons shall serve until the organizational meeting after the next election of a sanitary district board. Successors shall be elected by the qualified voters of the sanitary district for terms of the same length as other sanitary district board members.

(e) When a sanitary district and metropolitan water district are merged under this section, the sanitary district board may change the name of the sanitary district. Notice of such name change shall be filed with the Commission for Public Health. (1989, c. 194, s. 3; 2007-182, s. 2.)

§ 130A-81. Incorporation of municipality and simultaneous dissolution of sanitary district, with transfer of assets and liabilities from the district to the municipality.

The General Assembly may incorporate a municipality, which includes within its boundaries or is coterminous with a sanitary district and provide for the simultaneous dissolution of the sanitary district and the transfer of the district's assets and liabilities to the municipality, in the following manner:

(1) The incorporation act shall define the boundaries of the proposed municipality; shall set the date for and provide for a referendum on the incorporation of the proposed municipality and dissolution of the sanitary district; shall provide for registration of voters in the area of the proposed municipality in accordance with G.S. 163A-1596; shall set a proposed effective date for the incorporation of the municipality and the dissolution of the sanitary district; shall establish the form of government for the proposed municipality and the composition of its governing board, and provide for transitional arrangements for the sanitary district to the municipality; and may include any other matter appropriate to a municipal charter.

(1a) As an alternate to subdivision (1) of this section, the incorporation act shall define the boundaries of the proposed municipality; shall provide that the incorporation is not subject to referendum; shall set a proposed effective date for the incorporation of the municipality and the dissolution of the sanitary district; shall establish the form of government for the proposed municipality and the composition of its governing board, and provide for transitional arrangements for the sanitary district to the municipality, and may include any other matter appropriate to a municipal charter. If this subdivision is followed

instead of subdivision (1), then the municipality shall be incorporated and the sanitary district simultaneously dissolved at 12 noon on the date set for incorporation in the incorporation act, and the provisions of paragraphs a through g of subdivision (5) of this section shall apply.

(2) The referendum shall be conducted by the board of elections of the county in which the proposed municipality is located. If the proposed municipality is located in more than one county, the board of elections of the county which has the greatest number of residents of the proposed municipality shall conduct the referendum. The board of election shall conduct the referendum in accordance with this section and the provisions of the incorporation act.

(3) The form of the ballot for a referendum under this section shall be substantially as follows:

"[] FOR incorporation of the Town (City) of ____ and the simultaneous dissolution of the ____ Sanitary District, with transfer of the District's assets and liabilities to the Town (City), and assumption of the District's indebtedness by the Town (City).

[] AGAINST incorporation of the Town (City) of ____ and the simultaneous dissolution of the ____ Sanitary District, with transfer of the District's assets and liabilities, to the Town (City), and assumption of the District's indebtedness by the Town (City)."

(4) If a majority of those voting in the referendum vote in favor of incorporating the proposed municipality and dissolving the sanitary district, the board of elections shall notify the Department and the Local Government Commission of the date on which the municipality will be incorporated and the sanitary district dissolved and shall state that all assets and liabilities of the sanitary district will be transferred to the municipality and that the municipality will assume the district's indebtedness.

(5) If a majority of those voting in the referendum vote in favor of incorporating the proposed municipality and dissolving the sanitary district, the municipality shall be incorporated and the sanitary district shall be simultaneously dissolved at 12 noon on the date set for incorporation in the incorporation act. At that time:

a. The sanitary district shall cease to exist as a body politic and corporate;

b. All property, real, personal and mixed, belonging to the sanitary district vests in and is the property of the municipality;

c. All judgments, liens, rights and courses of action in favor of the sanitary district vest in favor of the municipality;

d. All rentals, taxes, assessments and other funds, charges or fees owed to the sanitary district are owed to and may be collected by the municipality;

e. Any action, suit, or proceeding pending against, or instituted by the sanitary district shall not be abated by its dissolution, but shall be continued and completed in the same manner as if dissolution had not occurred. The municipality shall be a party to these actions, suits and proceedings in the place of the sanitary district and shall pay any judgment rendered against the sanitary district in any of these actions or

proceedings. No new process need be served in any of the actions, suits or proceedings;

f. All obligations of the sanitary district, including outstanding indebtedness, are assumed by the municipality, and all the obligations and outstanding indebtedness are constituted obligations and indebtedness of the municipality. The full faith and credit of the municipality is deemed to be pledged for the payment of the principal of and interest on all general obligation bonds and bond anticipation notes of the sanitary district, and all the taxable property within the municipality shall remain subject to taxation for these payments; and

g. All rules of the sanitary district shall continue in effect until repealed or amended by the governing body of the municipality.

(6) The transition between the sanitary district and the municipality shall be provided for in the incorporation act of the municipality. (1971, c. 737, 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1985, c. 375; 2017-6, s. 3.)

§ 130A-82. Dissolution of sanitary districts; referendum.

(a) A county board of commissioners in counties having a population in excess of 275,000 may dissolve a sanitary district by holding a referendum on the questions of dissolution and assumption by the county of any outstanding indebtedness of the district. The county board of commissioners may dissolve a sanitary district which has no outstanding indebtedness when the members of the district shall vote in favor of dissolution.

(b) Before the dissolution of any district shall be approved, a plan for continued operation and provision of all services and functions being performed or rendered by the district shall be adopted and approved by the board of county commissioners.

(c) No plan shall be adopted unless at the time of its adoption any water system or sanitary sewer system being operated by the district is in compliance with all local, State and federal rules and regulations, and if the system is to be serviced by a municipality, the municipality shall first approve the plan.

(d) When all actions relating to dissolution of the sanitary district have been completed, the chairperson of the county board of commissioners shall notify the Department. (1973, c. 476, s. 128; c. 951; 1983, c. 891, s. 2.)

§ 130A-83. Merger of two contiguous sanitary districts.

Two contiguous sanitary districts may merge in the following manner:

(1) The sanitary district board of each sanitary district must first adopt a common proposed plan of merger. The plan shall contain the name of the new or successor sanitary district, designate the members of the merging boards who shall serve as the interim sanitary district board for the new or successor district until the next election required by G.S. 130A-50(b) and 163A-1585, and any other matters necessary to complete the merger.

(2) The merger may become effective only if approved by the voters of the two sanitary districts. In order to call an election, both boards shall adopt a resolution calling upon the board of county commissioners in the county or counties in which the districts are located to call for an election on a date named by the sanitary district boards after consultation with the appropriate boards of

election. The board or boards of commissioners shall hold an election on the proposed merger of the sanitary districts.

(3) The county board or boards of commissioners shall request the appropriate board of elections to hold and conduct the elections. All voters of the two sanitary districts shall be eligible to vote.

(4) Notice of the elections shall be given as required in G.S. 163A-769(8). The board of elections may use the method of registration set out in G.S. 163A-1596.

(5) If an election is called as provided in subsection (2), the board or boards of elections shall provide ballots for the election in substantially the following form:

"• FOR the merger of the ____ Sanitary District and the ____ Sanitary District into a single district to be known as the ____ Sanitary District, in which all the property, assets, liabilities, obligations, and indebtedness of the two districts become the property, assets, liabilities, obligations, and indebtedness of the ____ Sanitary District.

• AGAINST the merger of the ____ Sanitary District and the ____ Sanitary District into a single district to be known as the ____ Sanitary District, in which all the property, assets, liabilities, obligations, and indebtedness of the two districts become the property, assets, liabilities, obligations, and indebtedness of the ____ Sanitary District."

(6) If a majority of all the votes cast in each sanitary district vote in favor of the merger, the two sanitary districts shall be merged on July 1 following the election. Should the majority of the votes cast in either sanitary district be against the proposition, the sanitary districts shall not be merged. If a majority of the votes cast in either sanitary district are against the merger, any election on similar propositions of merger may not occur until one year from the date of the last election.

(7) Upon the merger of two sanitary districts pursuant to this section and the creation of a new district, the merger becomes effective at 12 noon on the following July 1. At that time:

a. The two sanitary districts shall cease to exist as bodies politic and corporate, and the new sanitary district exists as a body politic and corporate.

b. All property, real, personal and mixed, belonging to the sanitary districts vests in and is the property of the new sanitary district.

c. All judgments, liens, rights of liens and causes of action in favor of either sanitary district vest in the new sanitary district.

d. All rentals, taxes, assessments and other funds, charges or fees owed to either of the sanitary districts are owed to and may be collected by the new sanitary district.

e. Any action, suit, or proceeding pending against, or having been instituted by, either of the sanitary districts shall not be abated by its dissolution, but shall be continued and completed in the same manner as if dissolution had not occurred. The new sanitary district shall be a party to all these actions, suits and proceedings in the place of the

dissolved sanitary district and shall pay any judgment rendered against either of the sanitary districts in any of these actions or proceedings. No new process need be served in any of the actions, suits or proceedings.

f. All obligations of either of the sanitary districts, including any outstanding indebtedness, are assumed by the new sanitary district and all the obligations and outstanding indebtedness are constituted obligations and indebtedness of the new sanitary district. The full faith and credit of the new sanitary district is deemed to be pledged for the punctual payment of the principal of and interest on all general obligation bonds and bond anticipation notes of either of the sanitary districts, and all the taxable property within the new sanitary district shall remain subject to taxation for these payments.

g. All rules of either of the sanitary districts shall continue in effect until repealed or amended by the governing body of the new sanitary district.

(8) Upon the merger of two sanitary districts pursuant to this section when one district is to be dissolved and the other district is to be a successor covering the territory of both, the merger becomes effective at 12 noon on the following July 1. At that time:

a. One sanitary district shall cease to exist as a body politic and corporate, and the successor sanitary district continues to exist as a body politic and corporate.

b. All property, real, personal and mixed, belonging to the sanitary districts vests in, and is the property of the successor sanitary district.

c. All judgments, liens, rights of liens and causes of action in favor of either sanitary district vest in the successor sanitary district.

d. All rentals, taxes, assessments and other funds, charges or fees owed either of the sanitary districts are owed to and may be collected by the successor sanitary district.

e. Any action, suit, or proceeding pending against, or instituted by either of the sanitary districts shall not be abated by its dissolution, but shall be continued and completed in the same manner as if dissolution had not occurred. The successor sanitary district shall be a party to all these actions, suits and proceedings in the place of the dissolved sanitary district and shall pay any judgment rendered against the sanitary district in any of these actions or proceedings. No new process need be served in any of the actions, suits or proceedings.

f. All obligations of either of the sanitary districts, including any outstanding indebtedness, are assumed by the successor sanitary district and all the obligations and outstanding indebtedness are constituted obligations and indebtedness of the successor sanitary district. The full faith and credit of the successor sanitary district is deemed to be pledged for the punctual payment of the principal of and interest on all general obligation bonds and bond anticipation notes of either of the sanitary districts, and all the taxable property within the successor sanitary district shall be and remain subject to taxation for these payments.

g. All rules of either of the sanitary districts shall continue in effect until repealed or amended by the governing body of the successor sanitary district. (1981, c. 951; 1983, c. 891, s. 2; 1987, c. 314, s. 2; 2017-6, s. 3.)

§ 130A-84. Withdrawal of water.

A sanitary district is empowered to engage in litigation or to join with other parties in litigation opposing the withdrawal of water from a river or other water supply. (1983, c. 891, s. 2.)

§ 130A-85. Further dissolution procedures.

(a) The County Board of Commissioners may dissolve a Sanitary District located entirely within one county upon the following conditions:

(1) There are 500 or less resident freeholders residing within the District;

(2) The District has no outstanding bonded indebtedness;

(3) The Board of Commissioners agrees to assume and pay any other outstanding legal indebtedness of the District;

(4) The Board of Commissioners adopts a plan providing for continued operation and provision of all services previously being performed or rendered to the District. No plan shall be adopted unless at the time of its adoption any water and sewer or sanitary system being operated by the District is in compliance with all local, State, and federal rules and regulations; and

(5) The Board of Commissioners adopts a resolution finding that the interest of the citizens of the Sanitary District and the county will be best served if the operation and the services provided by the District were provided for by the Board of Commissioners.

(a1) The County Board of Commissioners may dissolve a Sanitary District located entirely within one county and for which no District Board members have been elected within eight years preceding dissolution, upon the following conditions:

(1) The District has no outstanding legal indebtedness;

(2) The Board of Commissioners adopts a plan providing for continued operation and provision of all services, if any, previously being performed or rendered to the District. No plan shall be adopted unless at the time of its adoption any water and sewer or sanitary system being operated by the District is in compliance with all local, State, and federal rules and regulations; and

(3) The Board of Commissioners adopts a resolution finding that the interest of the citizens of the Sanitary District and the county will be best served if the operation and the services provided by the District are provided for by the Board of Commissioners.

When all actions relating to dissolution of the sanitary district have been completed, the chairperson of the County Board of Commissioners shall notify the Department.

(b) Prior to taking action to dissolve a Sanitary District, the Board of Commissioners shall hold a public hearing concerning dissolution of the District. The County Board of Commissioners shall give notice of the hearing by publication of notice thereof in a newspaper or newspapers with general circulation in the county, once per week for three consecutive weeks. If, after the hearing, the Board of Commissioners deems it advisable to dissolve the District, they shall thereafter adopt the resolution and plan provided for herein.

During the period commencing with the first publication of notice of the public hearing as herein provided, and for a period of 60 days following the public hearing, the Board of Commissioners of the District may not enter into any contracts, incur any indebtedness or pledge, or encumber any of the District's assets except in the ordinary course of business.

(c) Upon adoption of the resolution provided for herein, all property, real, personal, and mixed, belonging to the District vests in and becomes the property of the county; all judgments, liens, rights of liens and causes of action in favor of the District vests in the county; and all rentals, taxes and assessments and other funds, charges or fees owed to the District may be collected by the county.

(d) Following dissolution of the District, the county may operate, maintain, and extend the services previously provided for by the District either:

(1) As a part of county government; or

(2) As a service district created on or after January 1, 1987, under Article 16 of Chapter 153A of the General Statutes to serve at least the area of the Sanitary District.

In lieu thereof, the services may be provided by any authority or district created after January 1, 1987, under this Article, or Articles 1, 4, 5 or 6 of Chapter 162A of the General Statutes to serve at least the area of the District. In such case, the county may convey the property, including all judgments, liens, rights of liens, causes of action, rentals, taxes and assessments mentioned in subsection (c) of this section, to that authority or District. (1987, c. 521; 1991, c. 417.)

§ 130A-86. Reserved for future codification purposes.

§ 130A-87. Reserved for future codification purposes.

Article 3.

State Laboratory of Public Health.

§ 130A-88. Laboratory established.

(a) A State Laboratory of Public Health is established within the Department. The Department is authorized to make examinations, and provide consultation and technical assistance as the public health may require.

(b) The Commission shall adopt rules necessary for the operation of the State Laboratory of Public Health. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C.S., s. 7056; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1979, c. 788, s. 3; 1983, c. 891, s. 2.)

§ 130A-89. Reserved for future codification purposes.

Article 4.

Vital Statistics.

§ 130A-90. Vital statistics program.

The Department shall maintain a Vital Statistics Program which shall operate the only system of vital records registration throughout this State. (1983, c. 891, s. 2.)

§ 130A-91. State Registrar.

The Secretary shall appoint a State Registrar of Vital Statistics. The State Registrar of Vital Statistics shall exercise all the authority conferred by this Article. (1913, c. 109, s. 2; C.S., s. 7088; 1955, c. 951, s. 5; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1977, c. 163, s. 1; 1983, c. 891, s. 2.)

§ 130A-92. Duties of the State Registrar.

(a) The State Registrar shall secure and maintain all vital records required under this Article and shall do all things necessary to carry out its provisions. The State Registrar shall:

(1) Examine vital records received from local registrars to determine if these records are complete and satisfactory, and require the provision of information necessary to make the records complete and satisfactory;

(2) Permanently preserve the information from the vital records in a systematic manner in adequate fireproof space which shall be provided in a State building by the Department of Administration, and maintain a comprehensive and continuous index of all vital records;

(3) Prepare and supply or approve all forms used in carrying out the provisions of this Article;

(4) Appoint local registrars as required by G.S. 130A-95 and exercise supervisory authority over local registrars, deputy local registrars and sub-registrars;

(5) Enforce the provisions of this Article, investigate cases of irregularity or violations and report violations to law-enforcement officials for prosecution under G.S. 130A-26;

(6) Conduct studies and research and recommend to the General Assembly any additional legislation necessary to carry out the purposes of this Article; and

(7) Adopt rules necessary to carry out the provisions of this Article.

(b) The State Registrar may retain payments made in excess of the fees established by this Article if the overpayment is in the amount of three dollars ($3.00) or less and the payor does not request a refund of the overpayment. The State Registrar is not required to notify the payor of any overpayment of three dollars ($3.00) or less. (1913, c. 109, s. 1; C.S., s. 7086; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1971, c. 444, s. 3; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1985, c. 366; 1993, c. 146, s. 2.)

§ 130A-93. Access to vital records; copies.

(a) Only the State Registrar shall have access to original vital records and to indices to the original vital records. County offices authorized to issue certificates and the North Carolina State Archives also shall have access to indices to these original vital records, when specifically authorized by the State Registrar.

(b) The following birth data, in any form and on any medium, in the possession of the Department, local health departments, or local register of deeds offices shall not be public records pursuant to Chapter 132 of the General Statutes: the names of children and parents, the addresses of parents (other than county of residence and postal code), and the social security numbers of parents. Access to copies and abstracts of these data shall be provided in accordance with G.S. 130A-99, Chapter 161 of the General Statutes, and this section. All other birth data shall be public records pursuant to Chapter 132 of the General

Statutes. All birth records and data are State property and shall be managed only in accordance with official disposition instructions prepared by the Department of Natural and Cultural Resources. The application of this Chapter is subject to the provisions of Article 1 of Chapter 121 of the General Statutes, the North Carolina Archives and History Act. The State Registrar and other officials authorized to issue certified copies of vital records shall provide copies or abstracts of vital records, except those described in subsections (d), (e), (f) and (g) of this section, to any person upon request.

(c) The State Registrar and other officials authorized to issue certified copies of vital records shall provide certified copies of vital records, except those described in subsections (d), (e), (f), and (g) of this section, only to the following:

(1) A person requesting a copy of the person's own vital records or that of the person's spouse, sibling, direct ancestor or descendant, or stepparent or stepchild;

(2) A person seeking information for a legal determination of personal or property rights; or

(3) An authorized agent, attorney or legal representative of a person described above.

(c1) A funeral director or funeral service licensee shall be entitled upon request to a certified copy of a death certificate.

(c2) An agency acting as a confidential intermediary in accordance with G.S. 48-9-104 shall be entitled to a certified copy of a death certificate upon request.

(d) Copies, certified copies or abstracts of birth certificates of adopted persons shall be provided in accordance with G.S. 48-9-107.

(e) Copies or abstracts of the health and medical information contained on birth certificates shall be provided only to a person requesting a copy of the health and medical information contained on the person's own birth certificate, a person authorized by that person, or a person who will use the information for medical research purposes. Copies of or abstracts from any computer or microform database which contains individual-specific health or medical birth data, whether the database is maintained by the Department, a local health department, or any other public official, shall be provided only to an individual requesting his or her own data, a person authorized by that individual, or a person who will use the information for medical research purposes. The State Registrar shall adopt rules providing for the use of this information for medical research purposes. The rules shall, at a minimum, require a written description of the proposed use of the data, including protocols for protecting confidentiality of the data.

(f) Copies, certified copies or abstracts of new birth certificates issued to persons in the federal witness protection program shall be provided only to a person requesting a copy of the person's own birth certificate and that person's supervising federal marshall.

(g) No copies, certified copies or abstracts of vital records shall be provided to a person purporting to request copies, certified copies or abstracts of that person's own vital records upon determination that the person whose vital records are being requested is deceased.

(h) A certified copy issued under the provisions of this section shall have the same evidentiary value as the original and shall be prima facie evidence of the facts stated in the document. The State Registrar may appoint agents who shall have the authority to issue certified copies under a facsimile signature of the State Registrar. These copies shall have the same evidentiary value as those issued by the State Registrar.

(i) Fees for issuing any copy of a vital record or for conducting a search of the files when no copy is made shall be as established in G.S. 130A-93.1 and G.S. 161-10.

(j) No person shall prepare or issue any certificate which purports to be an official certified copy of a vital record except as authorized in this Article or the rules. (1983, c. 891, s. 2; 1985, c. 325, s. 1; 1991, c. 343, s. 1; 1993, c. 146, s. 3; 1995, c. 457, s. 7; 1997-242, s. 1; 2010-116, s. 4; 2015-241, s. 14.30(s).)

§ 130A-93.1. Fees for vital records copies or search; automation fund.

(a) The State Registrar shall collect, process, and utilize fees for services as follows:

(1) A fee not to exceed twenty-four dollars ($24.00) shall be charged for issuing a first copy of a vital record or for conducting a routine search of the files for the record when no copy is made. A fee of fifteen dollars ($15.00) shall be charged for each additional certificate copy requested from the same search. When certificates are issued or searches conducted for statewide issuance by local agencies using databases maintained by the State Registrar, the local agency shall charge and forward to the State Registrar for the purposes established in subsection (b) of this section fourteen dollars ($14.00) and shall charge and retain ten dollars ($10.00) if a copy of the record is made. Provided, however, that a local agency may waive the ten dollar ($10.00) charge for its retention when the copy is issued to a person over the age of 62 years.

(2) A fee not to exceed fifteen dollars ($15.00) for in-State requests and not to exceed twenty dollars ($20.00) for out-of-state requests shall be charged in addition to the fee charged under subdivision (1) of this subsection and to all shipping and commercial charges when expedited service is specifically requested.

(2a) The fee for a copy of a computer or microform database shall not exceed the cost to the agency of making and providing the copy.

(3) Except as provided in subsection (b) of this section, fees collected under this subsection shall be used by the Department for public health purposes.

(b) The Vital Records Automation Account is established as a nonreverting account within the Department. Five dollars ($5.00) of each fee collected pursuant to subdivision (a)(1) shall be credited to this Account. The Department shall use the revenue in the Account to fully automate and maintain the vital records system. When funds sufficient to fully automate and maintain the system have accumulated in the Account, fees shall no longer be credited to the Account but shall be used as specified in subdivision (a)(3) of this section.

(c) Upon verification of voter registration, the State Registrar shall not charge any fee under subsection (a) of this section to a registered voter who signs a declaration stating the registered voter is registered to vote in this State and does not have a certified copy of

that registered voter's birth certificate or marriage license necessary to obtain photo identification acceptable under G.S. 163A-1145. Any declaration shall prominently include the penalty under G.S. 163A-1389(13) for falsely or fraudulently making the declaration. (1991, c. 343, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 5; 1997-242, s. 2; 2002-126, s. 29A.18(a); 2009-451, s. 10.22; 2012-18, s. 2.1; 2013-381, s. 3.2; 2017-6, s. 3.)

§ 130A-94. Local registrar.

The local health director shall serve, ex officio, as the local registrar of each county within the jurisdiction of the local health department. (1983, c. 891, s. 2.)

§ 130A-95. Control of local registrar.

The State Registrar shall direct, control and supervise the activities of local registrars. (1913, c. 109, s. 4; 1915, c. 20; C.S., ss. 7089, 7090; 1955, c. 951, s. 6; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1983, c. 891, s. 2; 1985, c. 462, s. 14.)

§ 130A-96. Appointment of deputy and sub-registrars.

(a) Each local registrar shall immediately upon appointment, appoint a deputy whose duty shall be to assist the local registrar and to act as local registrar in case of absence, illness, disability or removal of the local registrar. The deputy shall be designated in writing and be subject to all rules and statutes governing local registrars. The local registrar shall direct, control and supervise the activities of the deputy registrar and may remove a deputy registrar for cause.

(b) The local registrar may, when necessary and with the approval of the State Registrar, appoint one or more persons to act as sub-registrars. Sub-registrars shall be authorized to receive certificates and issue burial-transit permits in and for designated portions of the county. Each sub-registrar shall enter the date the certificate was received and shall forward all certificates to the local registrar within three days.

(c) The State Registrar shall direct, control and supervise sub-registrars and may remove a sub-registrar for cause. (1913, c. 109, s. 4; C.S., s. 7091; 1955, c. 951, s. 8; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1983, c. 891, s. 2.)

§ 130A-97. Duties of local registrars.

The local registrar shall:

(1) Administer and enforce provisions of this Article and the rules, and immediately report any violation to the State Registrar;

(2) Furnish certificate forms and instructions supplied by the State Registrar to persons who require them;

(3) Examine each certificate when submitted to determine if it has been completed in accordance with the provisions of this Article and the rules. If a certificate is incomplete or unsatisfactory, the responsible person shall be notified and required to furnish the necessary information. All birth and death certificates shall be typed or written legibly in permanent black, blue-black, or blue ink;

(4) Enter the date on which a certificate is received and sign as local registrar;

(5) Transmit to the register of deeds of the county a copy of each certificate registered within seven days of receipt of a birth or death certificate. The copy transmitted shall include the race of the father and mother if that information is

contained on the State copy of the certificate of live birth. Copies transmitted may be on blanks furnished by the State Registrar or may be photocopies made in a manner approved by the register of deeds. The local registrar may also keep a copy of each certificate for no more than two years;

(6) On the fifth day of each month or more often, if requested, send to the State Registrar all original certificates registered during the preceding month; and

(7) Maintain records, make reports and perform other duties required by the State Registrar. (1913, c. 109, s. 18; 1915, c. 85, s. 2; c. 164, s. 2; C.S., s. 7109; Ex. Sess. 1920, c. 58, s. 1; 1931, c. 79; 1933, c. 9, s. 1; 1943, c. 673; 1949, c. 133; 1955, c. 951, ss. 20, 21; 1957, c. 1357, s. 1; 1963, c. 492, ss. 4, 8; 1969, c. 1031, s. 1; 1971, c. 444, s. 8; 1979, c. 95, s. 9; 1981, c. 554; 1983, c. 891, s. 2; 2003-60, s. 1.)

§ 130A-98. Pay of local registrars.

A local health department shall provide sufficient staff, funds and other resources necessary for the proper administration of the local vital records registration program. (1913, c. 109, s. 19; Ex. Sess. 1913, c. 15, s. 1; 1915, c. 85, s. 3; 1919, c. 210, s. 1; C.S., s 7110; Ex. Sess. 1920, c. 58, s. 2; 1949, c. 306; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1983, c. 891, s. 2.)

§ 130A-99. Register of deeds to preserve copies of birth and death records.

(a) The register of deeds of each county shall file and preserve the copies of birth and death certificates furnished by the local registrar under the provisions of G.S. 130A-97, and shall make and keep a proper index of the certificates. These certificates shall be open to inspection and examination. Copies or abstracts of these certificates shall be provided to any person upon request. Certified copies of these certificates shall be provided only to those persons described in G.S. 130A-93(c).

(b) The register of deeds may remove from the records and destroy copies of birth or death certificates for persons born or dying in counties other than the county in which the office of the register of deeds is located, only after confirming that copies of the birth or death certificates removed and destroyed are maintained by the State Registrar or North Carolina State Archives. (1957, c. 1357, s. 1; 1969, c. 80, s. 3; c. 1031, s. 1; 1983, c. 891, s. 2; 1997-309, s. 11.)

§ 130A-100. Register of deeds may perform notarial acts.

(a) The register of deeds is authorized to take acknowledgments, administer oaths and affirmations and to perform all other notarial acts necessary for the registration or issuance of certificates relating to births, deaths or marriages. The register of deeds shall be entitled to a fee as prescribed in G.S. 161-10.

(b) All acknowledgments taken, affirmations or oaths administered or other notarial acts performed by the register of deeds relating to the registration of certificates of births, deaths or marriages prior to June 16, 1959, are validated. (1945, c. 100; 1957, c. 1357, s. 1; 1959, c. 986; 1969, c. 80, s. 9; c. 1031, s. 1; 1983, c. 891, s. 2.)

§ 130A-101. Birth registration.

(a) A certificate of birth for each live birth, regardless of the gestation period, which occurs in this State shall be filed with the local registrar of the county in which the birth

occurs within 10 days after the birth and shall be registered by the registrar if it has been completed and filed in accordance with this Article and the rules.

(b) When a birth occurs in a hospital or other medical facility, the person in charge of the facility shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the local registrar within 10 days after the birth. The physician or other person in attendance shall provide the medical information required by the certificate.

(c) When a birth occurs outside a hospital or other medical facility, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician in attendance at or immediately after the birth, or in the absence of such a person;

(2) Any other person in attendance at or immediately after the birth, or in the absence of such a person;

(3) The father, the mother or, in the absence or inability of the father and the mother, the person in charge of the premises where the birth occurred.

(d) When a birth occurs on a moving conveyance and the child is first moved from the conveyance in this State, the birth shall be registered in the county where the child is first removed from the conveyance, and that place shall be considered the place of birth.

(e) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, except as provided in this subsection. The surname of the child shall be the same as that of the husband, except that upon agreement of the husband and mother, or upon agreement of the mother and father if paternity has been otherwise determined, any surname may be chosen. The name of the putative father shall be entered on the certificate as the father of the child if one of the following conditions exists:

(1) Paternity has been otherwise determined by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

(2) The child's mother, mother's husband, and putative father complete an affidavit acknowledging paternity that contains all of the following:

a. A sworn statement by the mother consenting to the assertion of paternity by the putative father and declaring that the putative father is the child's natural father.

b. A sworn statement by the putative father declaring that he believes he is the natural father of the child.

c. A sworn statement by the mother's husband consenting to the assertion of paternity by the putative father.

d. Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information.

e. The social security numbers of the putative father, mother, and mother's husband.

f. The results of a DNA test that has confirmed the paternity of the putative father.

(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

(1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural father and that the mother was unmarried at all times from the date of conception through the date of birth;

(2) A sworn statement by the father declaring that he believes he is the natural father of the child;

(3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and

(4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth certificate, subject to the declaring father's right to rescind under G.S. 110-132. The executed affidavit shall be filed with the registrar along with the birth certificate. In the event paternity is properly placed at issue, a certified copy of the affidavit shall be admissible in any action to establish paternity. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2).

(g) Each parent shall provide his or her social security number to the person responsible for preparing and filing the certificate of birth.

(h) When a birth occurs, the person responsible for preparing the birth certificate under this section shall provide the mother, father, or legal guardian of the child with information about how to request a protected consumer security freeze for the child under G.S. 75-63.1 and the potential benefits of doing so. (1913, c. 109, s. 13; 1915, c. 85, s. 1; C.S., s. 7010; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 4; c. 417; 1983, c. 891, s. 2; 1989, c. 199, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 1004, s. 6; 1993, c. 333, s. 1; 1995, c. 428, s. 1; 1997-433, s. 4.12; 1998-17, s. 1; 2005-389, s. 4; 2009-285, s. 1; 2013-378, s. 8; 2015-193, s. 4.)

§ 130A-102. Contents of birth certificate.

The certificate of birth shall contain those items recommended by the federal agency responsible for national vital statistics, except as amended or changed by the State Registrar. Medical information contained in a birth certificate shall not be public records open to inspection.

(1913, c. 109, s. 14; C.S., s. 7102; 1949, c. 161, s. 2; 1955, c. 951, s. 15; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 7; 1983, c. 891, s. 2.)

§ 130A-103. Registration of birth certificates more than five days and less than one year after birth.

Any birth may be registered more than five days and less than one year after birth in the same manner as births are registered under this Article within five days of birth. The registration shall have the effect as if the registration had occurred within five days of birth. The registration however, shall not relieve any person of criminal liability for the failure to register the birth within five days of birth as required by G.S. 130A-101. (1941, c. 126; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 5; 1983, c. 891, s. 2.)

§ 130A-104. Registration of birth one year or more after birth.

(a) When the birth of a person born in this State has not been registered within one year after birth, a delayed certificate may be filed with the register of deeds in the county in which the birth occurred. An applicant for a delayed certificate must submit the minimum documentation prescribed by the State Registrar.

(b) A certificate of birth registered one year or more after the date of the birth shall be marked "delayed" and show the date of the delayed registration. A summary statement of evidence submitted in support of the delayed registration shall be endorsed on the certificate. The register of deeds shall forward the original and a duplicate to the State Registrar for final approval. If the certificate complies with the rules and has not been previously registered, the State Registrar shall file the original and return the duplicate to the register of deeds for recording.

(c) When an applicant does not submit the minimum documentation required or when the State Registrar finds reason to question the validity or adequacy of the certificate or documentary evidence, the State Registrar shall not register the delayed certificate and shall advise the applicant of the reasons for this action. If the deficiencies are not corrected, the applicant shall be advised of the right to an administrative hearing and of the availability of a judicial determination under G.S. 130A-106.

(d) Delayed certificates shall have the same evidentiary value as those registered within five days. (1941, c. 126; 1957, c. 1357, s. 1; 1969, c. 80, s. 8; c. 1031, s. 1; 1973, c. 476, s. 128; 1979, c. 95, s. 6; 1983, c. 891, s. 2.)

§ 130A-105. Validation of irregular registration of birth certificates.

The registration and filing with the State Registrar prior to April 1, 1941, of the birth certificate of a person whose birth was not registered within five days of birth is validated. All copies of birth certificates filed prior to April 9, 1941, properly certified by the State Registrar, shall have the same evidentiary value as those registered within five days. (1941, c. 126; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-106. Establishing fact of birth by persons without certificates.

(a) A person born in this State not having a recorded certificate of birth, may file a verified petition with the clerk of the superior court in the county of the petitioner's legal residence or place of birth, setting forth the date, place of birth and parentage, and petitioning the clerk to hear evidence, and to find and adjudge the date, place and parentage of the birth of the petitioner. Upon the filing of a petition, the clerk shall set a hearing date, and shall conduct the proceeding in the

same manner as other special proceedings. At the time set for the hearing, the petitioner shall present evidence to establish the facts of birth. If the evidence offered satisfies the court, the court shall enter judgment establishing the date, place of birth and parentage of the petitioner, and record it in the record of special proceedings. The clerk shall certify the judgment to the State Registrar who shall keep a record of the judgment. A copy shall be certified to the register of deeds of the county in which the petitioner was born.

(b) Repealed by Session Laws 2007-323, s. 30.10(f), effective August 1, 2007, and applicable to all costs assessed or collected on or after that date.

(c) The record of birth established under this section, when recorded, shall have the same evidentiary value as other records covered by this Article. (1941, c. 122; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2007-323, s. 30.10(f).)

§ 130A-107. Establishing facts relating to a birth of unknown parentage; certificate of identification.

(a) A person of unknown parentage whose place and date of birth are unknown may file a verified petition with the clerk of the superior court in the county where the petitioner was abandoned. The petition shall set forth the facts concerning abandonment, the name, date and place of birth of petitioner and the names of any persons acting in loco parentis to the petitioner.

(b) The clerk shall find facts and, if there is insufficient evidence to establish the place of birth, it shall be conclusively presumed that the person was born in the county of abandonment. The clerk shall enter and record judgment in the record of special proceedings. The clerk shall certify the judgment to the State Registrar who shall keep a record of the judgment. A copy shall be certified to the register of deeds of the county of abandonment.

(c) A certificate of identification for a person of unknown parentage shall be filed by the clerk with the local registrar of vital statistics of the district in which the person was found.

(d) Repealed by Session Laws 2007-323, s. 30.10(g), effective August 1, 2007, and applicable to all costs assessed or collected on or after that date. (1959, c. 492; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2007-323, s. 30.10(g).)

§ 130A-108. Certificate of identification for individual of foreign birth.

(a) In the case of an adopted individual born in a foreign country and residing in this State at the time of application, the State Registrar shall, upon the presentation of a certified copy of the original birth certificate from the country of birth and a certified copy of the final order of adoption signed by the clerk of court or other appropriate official, prepare a certificate of identification for the individual. The certificate shall contain the same information required by G.S. 48-9-107(a) for individuals adopted in this State, except that the country of birth shall be specified in lieu of the state of birth.

(b) In the case of an adopted individual born in a foreign country and readopted in this State, the State Registrar shall, upon receipt of a report of that adoption from the Division of Social Services pursuant to G.S. 48-9-102(f), prepare a certificate of identification for that individual. The certificate shall contain the same information required by G.S. 48-9-107(a) for individuals adopted in this State, except the country of birth shall be specified in lieu of the state of birth. (1949, c. 160, s. 2; 1955, c. 951, s. 16; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1983, c. 891, s. 2; 1995, c. 457, s. 8; 1997-215, s. 13; 2001-208, s. 13; 2001-487, s. 101.)

§ 130A-109. Birth certificate as evidence.

Certified copies of birth certificates shall be accepted by public school authorities in this State as prima facie evidence of the age of children registering for school attendance, and no other proof shall be required. In addition, certified copies of birth certificates shall be required by all factory inspectors and employers of youthful labor, as prima facie proof of age, and no other proof shall be required. However, when it is not possible to secure a certified copy of a birth certificate, factory inspectors and employers may accept as secondary proof of age any competent evidence by which the age of persons is usually established. School authorities may accept only competent and verifiable evidence as secondary proof of age, specifically including but not limited to: (i) a certified copy of any medical record of the child's birth issued by the treating physician or the hospital in which the child was born, or (ii) a certified copy of a birth certificate issued by a church, mosque, temple, or other religious institution that maintains birth records of its members. (1913, c. 109, s. 17; C.S., s. 7107; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1983, c. 891, s. 2; 2011-388, s. 3.)

§ 130A-110. Registration of marriage certificates.

(a) On or before the fifteenth day of the month, the register of deeds shall transmit to the State Registrar a record of each marriage ceremony performed during the preceding calendar month for which a license was issued by the register of deeds. The State Registrar shall prescribe a form containing the information required by G.S. 51-16 and additional information to conform with the requirements of the federal agency responsible for national vital statistics. The form shall be the official form of a marriage license, certificate of marriage and application for marriage license.

(b) Each form signed and issued by the register of deeds, assistant register of deeds or deputy register of deeds shall constitute an original or a duplicate original. Upon request, the State Registrar shall furnish a true copy of the marriage registration. The copy shall have the same evidentiary value as the original.

(c) The register of deeds shall provide copies or abstracts of marriage certificates to any person upon request. Certified copies of these certificates shall be provided only to those persons described in G.S. 130A-93(c).

(d) Marriage certificates maintained by the local register of deeds shall be open to inspection and examination. (1961, c. 862; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1977, c. 1110, s. 3; 1983, c. 891, s. 2; 1985, c. 325, s. 2; 2001-62, s. 15; 2001-487, s. 83.)

§ 130A-111. Registration of divorces and annulments.

For each divorce and annulment of marriage granted by a court of competent jurisdiction in this State, a report shall be prepared and filed by the clerk of court with the State Registrar. On or before the fifteenth day of each month, the clerk shall forward to the State Registrar the report of each divorce and annulment granted during the preceding calendar month. (1957, c. 983; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1977, c. 1110, s. 2; 1983, c. 891, s. 2; 1985, c. 325, s. 3.)

§ 130A-112. Notification of death.

A funeral director or person acting as such who first assumes custody of a dead body or fetus of 20 completed weeks gestation or more shall submit a notification of death to the local registrar in the county where death occurred, within 24 hours of taking custody of the body or fetus. The

notification of death shall identify the attending physician responsible for medical certification, except that for deaths under the jurisdiction of the medical examiner, the notification shall identify the medical examiner and certify that the medical examiner has released the body to a funeral director or person acting as such for final disposition. (1913, c. 109, s. 5; 1915, c. 164, s. 1; C.S., s. 7092; 1955, c. 951, s. 9; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 873, s. 1; 1983, c. 891, s. 2.)

§ 130A-113. Permits for burial-transit, authorization for cremation and disinterment-reinterment.

(a) The funeral director or person acting as such who first assumes custody of a dead body or fetus which is under the jurisdiction of the medical examiner shall obtain a burial-transit permit signed by the medical examiner prior to final disposition or removal from the State and within five days after death.

(b) A dead body shall not be cremated or buried at sea unless the provisions of G.S. 130A-388 are met.

(c) A permit for disinterment-reinterment shall be required prior to disinterment of a dead body or fetus except as otherwise authorized by law or rule. The permit shall be issued by the local registrar to a funeral director, embalmer or other person acting as such upon proper application.

(d) No dead body or fetus shall be brought into this State unless accompanied by a burial-transit or disposal permit issued under the law of the state in which death or disinterment occurred. The permit shall be final authority for final disposition of the body or fetus in this State.

(e) The local registrar shall issue a burial-transit permit for the removal of a dead body or fetus from this State if the requirements of G.S. 130A-112 are met and that the death is not under the jurisdiction of the medical examiner. (1973, c. 873, s. 2; 1977, c. 163, s. 2; 1983, c. 891, s. 2.)

§ 130A-114. Fetal death registration; certificate of birth resulting in stillbirth.

(a) Each spontaneous fetal death occurring in the State of 20 completed weeks gestation or more, as calculated from the first day of the last normal menstrual period until the day of delivery, shall be reported within 10 days after delivery to the local registrar of the county in which the delivery occurred. The report shall be made on a form prescribed and furnished by the State Registrar.

(b) When fetal death occurs in a hospital or other medical facility, the person in charge of the facility shall obtain the cause of fetal death and other required medical information over the signature of the attending physician, and shall prepare and file the report with the local registrar.

(c) When a fetal death occurs outside of a hospital or other medical facility, the physician in attendance at or immediately after the delivery shall prepare and file the report. When a fetal death is attended by a person authorized to attend childbirth, the supervising physician shall prepare and file the report. Fetal deaths attended by lay midwives and all other persons shall be treated as deaths without medical attendance as provided for in G.S. 130A-115 and the medical examiner shall prepare and file the report.

(d) For any spontaneous fetal death occurring in this State, either parent of the stillborn child may file an application with the State Registrar requesting a certificate of birth resulting in stillbirth. The certificate of birth resulting in stillbirth (i) shall be based upon the information available from the fetal death report filed pursuant to this section, (ii)

shall not include any reference to the name of the stillborn child if the fetal death report does not include the name of the stillborn child and the parent filing the application does not elect to provide a name, and (iii) shall clearly indicate that it is not proof of a live birth. If the spontaneous fetal death occurred in this State prior to July 1, 2001, the State Registrar may not issue a certificate of birth resulting in stillbirth unless the application for the certificate is accompanied by a certified copy of the fetal death report. Issuance of a certificate of birth resulting in stillbirth does not replace the requirement to file a report of fetal death under this section. (1913, c. 109, s. 6; C.S., s. 7093; 1933, c. 9, s. 2; 1951, c. 1091, s. 1; 1955, c. 951, s. 10; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 873, s. 3; 1979, c. 95, s. 1; 1983, c. 891, s. 2; 1989, c. 199, s. 3; 2011-357, s. 1.)

§ 130A-115. Death registration.

(a) A death certificate for each death which occurs in this State shall be filed with the local registrar of the county in which the death occurred within five days after the death. If the place of death is unknown, a death certificate shall be filed within five days in the county where the dead body is found. If the death occurs in a moving conveyance, a death certificate shall be filed in the county in which the dead body was first removed from the conveyance.

(b) The funeral director or person acting as such who first assumes custody of a dead body shall file the death certificate with the local registrar. The personal data shall be obtained from the next of kin or the best qualified person or source available. The funeral director or person acting as such is responsible for obtaining the medical certification of the cause of death, stating facts relative to the date and place of burial, and filing the death certificate with the local registrar within five days of the death.

(c) The medical certification shall be completed and signed by the physician in charge of the patient's care for the illness or condition which resulted in death, except when the death falls within the circumstances described in G.S. 130A-383. In the absence of the physician or with the physician's approval, the certificate may be completed and signed by an associate physician, a physician assistant in a manner consistent with G.S. 90-18.1(e1), a nurse practitioner in a manner consistent with G.S. 90-18.2(e1), the chief medical officer of the hospital or facility in which the death occurred or a physician who performed an autopsy upon the decedent under the following circumstances: the individual has access to the medical history of the deceased; the individual has viewed the deceased at or after death; and the death is due to natural causes. When specifically approved by the State Registrar, an electronic signature or facsimile signature of the physician, physician assistant, or nurse practitioner shall be acceptable. As used in this section, the term electronic signature has the same meaning as applies in G.S. 66-58.2. The physician, physician assistant, or nurse practitioner shall state the cause of death on the certificate in definite and precise terms. A certificate containing any indefinite terms or denoting only symptoms of disease or conditions resulting from disease as defined by the State Registrar, shall be returned to the person making the medical certification for correction and more definite statement.

(d) The physician, physician assistant, nurse practitioner, or medical examiner making the medical certification as to the cause of death shall complete the medical certification no more than three days after death. The physician, physician assistant, nurse practitioner, or medical examiner may, in appropriate cases, designate the cause of death as unknown pending an autopsy or upon some other reasonable cause for delay, but shall send the supplementary information to the local registrar as soon as it is obtained.

(e) In the case of death or fetal death without medical attendance, it shall be the duty of the funeral director or person acting as such and any other person having knowledge of the death to notify the local medical examiner of the death. The body shall not be disposed of or removed without the permission of the medical examiner. If there is no county medical examiner, the Chief Medical Examiner shall be notified. (1913, c. 109, ss. 7, 9; C.S., ss. 7094, 7096; 1949, c. 161, s. 1; 1955, c. 951, ss. 11, 12; 1957, c. 1357, s. 1; 1963, c. 492, ss. 1, 2, 4; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; c. 873, s. 5; 1979, c. 95, ss. 2, 3; 1981, c. 187, s. 1; 1983, c. 891, s. 2; 1999-247, s. 1; 2011-197, s. 3.)

§ 130A-116. Contents of death certificate.

The certificate of death shall contain those items prescribed and specified on the standard certificate of death as prepared by the federal agency responsible for national vital statistics. The State Registrar may require additional information. (1913, c. 109, s. 7; C.S., s. 7094; 1949, c. 161, s. 1; 1955, c. 951, s. 11; 1957, c. 1357, s. 1; 1963, c. 492, ss. 1, 4; 1969, c. 1031, s. 1; 1983, c. 891, s. 2.)

§ 130A-117. Persons required to keep records and provide information.

(a) All persons in charge of hospitals or other institutions, public or private, to which persons resort for confinement or treatment of diseases or to which persons are committed by process of law, shall make a record of personal data concerning each person admitted or confined to the institution. The record shall include information required for the certificates of birth and death and the reports of spontaneous fetal death required by this Article. The record shall be made at the time of admission from information provided by the person being admitted or confined. When this information cannot be obtained from this person, it shall be obtained from relatives or other knowledgeable persons.

(b) When a dead body or dead fetus of 20 weeks gestation or more is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the decedent, date of death, name and address of the person to whom the body or fetus is released and the date of removal from the institution. If final disposition is made by the institution, the date, place, and manner of disposition shall also be recorded.

(c) A funeral director, embalmer, or other person who removes from the place of death, transports or makes final disposition of a dead body or fetus, shall keep a record which shall identify the body, and information pertaining to the receipt, removal, delivery, burial, or cremation of the body, as may be required by the State Registrar. In addition, that person shall file a certificate or other report required by this Article or the rules of the Commission.

(d) Records maintained under this section shall be retained for a period of not less than three years and shall be made available for inspection by the State Registrar upon request. (1913, c. 109, s. 16; C.S., s. 7104; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 8; 1983, c. 891, s. 2.)

§ 130A-118. Amendment of birth and death certificates.

(a) After acceptance for registration by the State Registrar, no record made in accordance with this Article shall be altered or changed, except by a request for amendment. The State Registrar may adopt rules governing the form of these requests and the type and amount of proof required.

(b) A new certificate of birth shall be made by the State Registrar when:

(1) Proof is submitted to the State Registrar that the previously unwed parents of a person have intermarried subsequent to the birth of the person;

(2) Notification is received by the State Registrar from the clerk of a court of competent jurisdiction of a judgment, order or decree disclosing different or additional information relating to the parentage of a person;

(3) Satisfactory proof is submitted to the State Registrar that there has been entered in a court of competent jurisdiction a judgment, order or decree disclosing different or additional information relating to the parentage of a person; or

(4) A written request from an individual is received by the State Registrar to change the sex on that individual's birth record because of sex reassignment surgery, if the request is accompanied by a notarized statement from the physician who performed the sex reassignment surgery or from a physician licensed to practice medicine who has examined the individual and can certify that the person has undergone sex reassignment surgery.

(c) A new birth certificate issued under subsection (b) may reflect a change in surname when:

(1) A child is legitimated by subsequent marriage and the parents agree and request that the child's surname be changed; or

(2) A child is legitimated under G.S. 49-10 and the parents agree and request that the child's surname be changed, or the court orders a change in surname after determination that the change is in the best interests of the child.

(d) For the amendment of a certificate of birth or death after its acceptance for filing, or for the making of a new certificate of birth under this Article, the State Registrar shall be entitled to a fee not to exceed fifteen dollars ($15.00) to be paid by the applicant.

(e) When a new certificate of birth is made, the State Registrar shall substitute the new certificate for the certificate of birth then on file, and shall forward a copy of the new certificate to the register of deeds of the county of birth. The copy of the certificate of birth on file with the register of deeds, if any, shall be forwarded to the State Registrar within five days. The State Registrar shall place under seal the original certificate of birth, the copy forwarded by the register of deeds and all papers relating to the original certificate of birth. The seal shall not be broken except by an order of a court of competent jurisdiction. Thereafter, when a certified copy of the certificate of birth of the person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth. (1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1975, c. 556; 1977, c. 1110, s. 4; 1983, c. 891, s. 2; 2002-126, s. 29A.18(b).)

§ 130A-119. Clerk of Court to furnish State Registrar with facts as to paternity of children born out of wedlock when judicially determined.

Upon the entry of a judgment determining the paternity of a child born out of wedlock, the clerk of court of the county in which the judgment is entered shall notify the State Registrar in writing of the name of the person against whom the judgment has been entered, together with the other facts disclosed by the record as may assist in identifying the record of the birth of the child as it appears in the office of the State Registrar. If the judgment is modified or vacated, that fact shall be reported by the clerk to the State Registrar in the same manner. Upon receipt of the notification, the State Registrar shall record the information upon the birth certificate of the child. (1941, c. 297, s. 1; 1955, c. 951, s. 19; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1971, c. 444, s. 5; 1983, c. 891, s. 2; 2013-198, s. 26.)

§ 130A-120. Certification of birth dates furnished to veterans' organizations.

Upon application by any veterans' organization in this State in connection with junior or youth baseball, the State Registrar shall furnish certification of dates of birth without the payment of the fees prescribed in this Article. (1931, c. 318; 1939, c. 353; 1945, c. 996; 1955, c. 951, s. 24; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-121. List of deceased residents for county jury commission and Commissioner of Motor Vehicles.

(a) Repealed by Session Laws 2012-180, s. 12, effective July 12, 2012.

(b) The State Registrar shall provide to the Commissioner of Motor Vehicles an alphabetical list of all residents of the State who have died in the two years prior to July 1 of each odd-numbered year, unless an annual jury list is being prepared under G.S. 9-2(a), in which case the list shall be of all residents of the State who have died in the year prior to July 1 of each year. The list shall include the name and address of each deceased resident and may be in either printed or computerized form, as requested by the Commissioner of Motor Vehicles. (2007-512, s. 2; 2012-180, s. 12.)

§ 130A-122. Reserved for future codification purposes.

§ 130A-123. Reserved for future codification purposes.

Article 5.

Maternal and Child Health and Women's Health.

Part 1. In General.

§ 130A-124. Department to establish maternal and child health program.

(a) The Department shall establish and administer a maternal and child health program for the delivery of preventive, diagnostic, therapeutic and habilitative health services to women of childbearing years, children and other persons who require these services. The program may include, but shall not be limited to, providing professional education and consultation, community coordination and direct care and counseling.

(b) The Commission shall adopt rules necessary to implement the program.

(c) Prior year refunds received by the Children's Special Health Services Program that are not encumbered or spent during a fiscal year shall not revert to the General Fund but shall remain in the Department for purchase of care and contracts in the Program. Funds appropriated for the purchase of care and contracts in the Program that are encumbered and not spent during a fiscal year shall not revert to the General Fund but shall remain in the Department for the purchase of care and contracts in the Program. (1983, c. 891, s. 2; 1993, c. 321, s. 275(a); 1997-172, s. 1; 1997-456, s. 54.)

§ 130A-125. Screening of newborns for metabolic and other hereditary and congenital disorders.

(a) The Department shall establish and administer a Newborn Screening Program. The program shall include, but shall not be limited to:

(1) Development and distribution of educational materials regarding the availability and benefits of newborn screening.

(2) Provision of laboratory testing.

(3) Development of follow-up protocols to assure early treatment for identified children, and the provision of genetic counseling and support services for the families of identified children.

(4) Provision of necessary dietary treatment products or medications for identified children as medically indicated and when not otherwise available.

(5) For each newborn, provision of physiological screening in each ear for the presence of permanent hearing loss.

(6) For each newborn, provision of pulse oximetry screening to detect congenital heart defects.

(b) The Commission shall adopt rules necessary to implement the Newborn Screening Program. The rules shall include, but shall not be limited to, the conditions for which screening is required. The Commission shall amend the rules as necessary to ensure that each condition listed on the Recommended Uniform Screening Panel developed by the Secretary of the United States Department of Health and Human Services and the Advisory Committee on Heritable Disorders of Newborns and Children (the RUSP) is included in the Newborn Screening Program, except that the Commission is exempt from rule making with respect to adding screening tests for Pompe disease, Mucopolysaccharidosis Type I (MPS I), and X-Linked Adrenoleukodystrophy (X-ALD). Screening is not required when the parents or the guardian of the infant object to such screening. If the parents or guardian object to the screening, the objection shall be presented in writing to the physician or other person responsible for administering the test, who shall place the written objection in the infant's medical record.

(b1) The Commission shall adopt temporary and permanent rules to include newborn hearing screening and pulse oximetry screening in the Newborn Screening Program established under this section.

(b2) The Commission's rules for pulse oximetry screening shall address at least all of the following:

(1) Follow-up protocols to ensure early treatment for newborn infants diagnosed with a congenital heart defect, including by means of telemedicine. As used in this subsection, "telemedicine" is the use of audio and video between places of

lesser and greater medical capability or expertise to provide and support health care when distance separates participants who are in different geographical locations.

(2) A system for tracking both the process and outcomes of newborn screening utilizing pulse oximetry, with linkage to the Birth Defects Monitoring Program established pursuant to G.S. 130A-131.16.

(c) A fee of one hundred twenty-eight dollars ($128.00) applies to a laboratory test performed by the State Laboratory of Public Health pursuant to this section. The fee for a laboratory test is a departmental receipt of the Department and shall be used to offset the cost of the Newborn Screening Program. The Commission may by rule, and in consultation with the Secretary, increase this fee by no more than the amount necessary to offset the cost of incorporating a condition listed on the RUSP into the Newborn Screening Program. The Commission shall by rule decrease this fee when it determines, in consultation with the Secretary, that current and anticipated fee receipts will exceed current and anticipated recurring operating costs of the Newborn Screening Program by more than ten percent (10%).

(d) The Newborn Screening Equipment Replacement and Acquisition Fund (Fund) is established as a nonreverting fund within the Department. Thirty-one dollars ($31.00) of each fee collected pursuant to subsection (c) of this section shall be credited to this Fund and applied to the Newborn Screening Program to be used as directed in this subsection. The Department shall not use monies in this Fund for any purpose other than to purchase or replace laboratory instruments, equipment, and information technology systems used in the Newborn Screening Program. The Department shall notify and consult with the Joint Legislative Commission on Governmental Operations whenever the balance in the Fund exceeds the following threshold: the sum of (i) the actual cost of new equipment necessary to incorporate conditions listed on the RUSP into the Newborn Screening Program and (ii) one hundred percent (100%) of the replacement value of existing equipment used in the Newborn Screening Program. Any monies in the Fund in excess of this threshold shall be available for expenditure only upon an act of appropriation by the General Assembly.

(e) Annually on March 1, the Department shall report to the House Appropriations Committee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the Newborn Screening Program. The report shall include all of the following information for the preceding fiscal year:

(1) A description of the services funded by the Newborn Screening Program, including a description of the Department's activities with respect to each of the services listed in subsection (a) of this section.

(2) A detailed budget and list of expenditures for the Newborn Screening Program, including all positions funded.

(3) Fees and other receipts collected for the Newborn Screening Program.

(4) Projected fees and other receipts for the Newborn Screening Program for the current and upcoming fiscal year.

(5) Any condition the Department anticipates will be listed on the RUSP within the current or upcoming fiscal year and a description of the following:

a. Any laboratory instruments or equipment the Department will need to purchase in order to perform screening for that condition.

b. Any additional positions the Department will need to establish in order to perform screening for that condition.

(6) The balance in the Newborn Screening Equipment Replacement and Acquisition Fund as of the preceding June 30.

(7) Amounts credited to the Fund.

(8) Amounts expended from the Fund and the purposes of the expenditures.

(9) Proposed expenditures of the monies in the Fund for the current and upcoming fiscal year.

(10) Any other information the Department deems relevant to maintaining the Newborn Screening Program as a fee-supported program. (1991, c. 661, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 6; 1998-131, s. 13; 2000-67, s. 11.31(a); 2005-276, s. 41.1(a); 2007-182, s. 2; 2008-107, s. 29.4(a); 2013-45, s. 1; 2015-241, s. 12E.12(a); 2016-94, s. 12E.5(a); 2018-5, s. 11E.1(a).)

§ 130A-126. Rule-making authority for birth – three-year-old early intervention program.

The rule-making authority for the birth – three-year-old early intervention program through Part C of the Individuals with Disabilities Act (IDEA) is transferred from the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to the Commission for Public Health. (2005-276, s. 10.54A; 2007-182, s. 2.)

Part 2. Perinatal Health Care.

§ 130A-127. Department to establish program.

(a) The Department shall establish and administer a perinatal health care program. The program may include, but shall not be limited to:

(1) Prenatal health care services including health education and identification of high-risk pregnancies;

(2) Prenatal, delivery and newborn health care services provided at hospitals participating at graduated levels of complexity; and

(3) Regionalized perinatal health care services including a plan for effective communication, consultation, referral and transportation links among hospitals, health departments, physicians, schools and other relevant community resources for mothers and infants at high risk for mortality and morbidity.

(b) The Commission shall adopt rules necessary to implement the program. (1973, c. 1240, s. 1; 1983, c. 891, s. 2.)

§ 130A-128: Repealed by Session Laws 1991, c. 518, s. 1.

§ 130A-128.1. Department to provide free educational information about umbilical cord stem cells and umbilical cord blood banking.

(a) As used in this section:

(1) Health care professional. – A person who is licensed pursuant to Chapter 90 of the General Statutes to practice as a physician, physician assistant, or registered

nurse or who is approved pursuant to Chapter 90 of the General Statutes to practice midwifery.

(2) Umbilical cord blood. – The blood that remains in the umbilical cord and placenta after the birth of a newborn child.

(b) Effective January 1, 2010, the Department of Health and Human Services shall make available free of charge to the general public on its Internet Web site printable publications, in a format that can be downloaded, containing medically accurate information regarding umbilical cord stem cells and umbilical cord blood banking that is sufficient to allow a pregnant woman to make an informed decision about whether to participate in a public or private umbilical cord blood banking program. The publications shall include at least all of the following information:

(1) An explanation of the medical processes involved in the collection of umbilical cord blood.

(2) An explanation of any risks associated with umbilical cord blood collection to the mother and the newborn child.

(3) The options available to a mother regarding stem cells contained in the umbilical cord blood after delivery of the mother's newborn child, including:

a. Having the stem cells discarded.

b. Donating the stem cells to a public umbilical cord blood bank.

c. Storing the stem cells in a private umbilical cord blood bank for use by immediate and extended family members.

d. Storing the stem cells for use by the family through a family or sibling donor banking program that provides free collection, processing, and storage of the stem cells where there is a medical need.

(4) The current and potential future medical uses, risks, and benefits of umbilical cord blood collection to (i) the mother, newborn child, and biological family and (ii) individuals who are not biologically related to the mother or newborn child.

(5) An explanation of the differences between public and private umbilical cord blood banking.

(6) Options for ownership and future use of the donated umbilical cord blood.

(c) The Department may satisfy the requirements of subsection (b) of this section by including on its Internet Web site a link to a federally sponsored Internet Web site that North Carolina citizens may access so long as the federally sponsored Internet Web site contains all of the information specified in subdivisions (1) through (6) of subsection (b) of this section.

(d) The Department shall encourage health care professionals who provide health care services that are directly related to a woman's pregnancy to provide each woman with the publications described in subsection (b) of this section prior to the woman's third trimester of pregnancy.

(e) A health care professional or health care institution shall not be liable for damages in a civil action, subject to prosecution in a criminal proceeding, or subject to disciplinary action by the North Carolina Medical Board or the North Carolina Board of Nursing for acting in good faith with respect to informing a pregnant woman prior to her third trimester of pregnancy about the publications described in subsection (b) of this section. (2009-67, s. 1; 2009-570, s. 43.1.)

§ 130A-128A: Recodified as G. S. 130A-128.1 by Session Laws 2009-570, s. 43.1, effective August 28, 2009.

Part 3. Sickle Cell.

§ 130A-129. Department to establish program.

The Department shall establish and administer a Sickle Cell Program. The Commission shall, after consultation with the Council on Sickle Cell Syndrome, adopt rules for the program that shall include, but not be limited to, programs for education, voluntary testing, counseling, and medical reimbursement services for sickle cell syndrome. "Sickle cell syndrome" includes sickle cell disease, sickle cell trait, sickle cell thalassemia and variants. (1987, c. 822, s. 2.)

§ 130A-130. Duties of local health departments.

Local health departments shall provide sickle cell syndrome testing and counseling at no cost to persons requesting these services. If an individual is found to have any aspect of sickle cell syndrome, the local health department shall inform the individual to that effect. The State Laboratory of Public Health shall, upon request, provide a person's sickle cell screening test results to any local health department or Sickle Cell Program contracting agency which has been requested to provide sickle cell services to that person. (1987, c. 822, s. 2.)

Part 3A. Council on Sickle Cell Syndrome.

§ 130A-131. Council on Sickle Cell Syndrome; appointment; expenses; terms.

A Council on Sickle Cell Syndrome is created. The Council shall consist of a chairperson and 14 other members appointed by the Governor. Members shall serve without compensation except for reimbursement for travel and expenses in pursuit of Council business. Except as provided in this subsection, Council members shall serve a term of three years. To achieve a staggered term structure, five members shall be appointed for a term of one year, five members for a term of two years, and five members for a term of three years. (1973, c. 570, s. 1; 1987, c. 822, s. 3; 1989, c. 727, s. 179.)

§ 130A-131.1. Council membership.

In making appointments, consideration shall be given to persons representing the following areas:

(1) Members of community agencies interested in sickle cell syndrome;
(2) State and local officials concerned with public health, social services and rehabilitation;
(3) Teachers and members of State and local school boards;
(4) Physicians in medical centers and physicians in community practice who are interested in sickle cell syndrome; [and]
(5) Persons or relatives of persons with sickle cell disease. (1973, c. 570, s. 2; 1987, c. 822, s. 3; 1989, c. 727, s. 179.)

§ 130A-131.2. Council role.

The Council shall advise the Department and the Commission for Public Health on the needs of persons with sickle cell syndrome, and shall make recommendations to meet these needs. Such recommendations shall include but not be limited to recommendations for legislative action and for rules regarding the services of the Sickle Cell Program. The Council shall develop procedures to facilitate its operation. All clerical and other services required by the Council shall be furnished

by the Department without budget limitations. (1973, c. 570, s. 3; 1987, c. 822, s. 3; 1989, c. 727, ss. 179, 180; 1997-443, s. 11A.76; 2007-182, s. 2.)

§ 130A-131.3. Reserved for future codification purposes.

§ 130A-131.4. Reserved for future codification purposes.

Part 4. Lead Poisoning in Children.

§ 130A-131.5. Commission to adopt rules.

(a) For the protection of the public health, the Commission shall adopt rules for the prevention and control of lead poisoning in children in accordance with this Part.

(b) Repealed by Session Laws 1998-209, s. 1. (1989, c. 333; c. 751, s. 15; 1991, c. 300, s. 1; 1997-506, s. 45; 1998-209, s. 1.)

§ 130A-131.6. Reserved for future codification purposes.

§ 130A-131.7. Definitions.

The following definitions apply in this Part:

(1) "Abatement" means undertaking any of the following measures to eliminate a lead-based paint hazard:
   a. Removing lead-based paint from a surface and repainting the surface.
   b. Removing a component, such as a windowsill, painted with lead-based paint and replacing the component.
   c. Enclosing a surface painted with lead-based paint with paneling, vinyl siding, or another approved material.
   d. Encapsulating a surface painted with lead-based paint with a sealant.
   e. Any other measure approved by the Commission.

(2) "Child-occupied facility" means a building, or portion of a building, constructed before 1978, regularly visited by a child who is less than six years of age. Child-occupied facilities may include, but are not limited to, child care facilities, preschools, nurseries, kindergarten classrooms, schools, clinics, or treatment centers including the common areas, the grounds, any outbuildings, or other structures appurtenant to the facility.

(3) "Confirmed lead poisoning" means a blood lead concentration of 10 micrograms per deciliter or greater determined by the lower of two consecutive blood tests within a 12-month period.

(4) "Department" means the Department of Environmental Quality or its authorized agent.

(5) "Elevated blood lead level" means a blood lead concentration of five micrograms per deciliter or greater determined by the lower of two consecutive blood tests within a 12-month period.

(6) "Lead-based paint hazard" means a condition that is likely to result in exposure to lead-based paint or to soil or dust that contains lead at a concentration that constitutes a lead poisoning hazard.

(7) "Lead poisoning hazard" means any of the following:

a. Any lead-based paint or other substance that contains lead in an amount equal to or greater than 1.0 milligrams lead per square centimeter as determined by X-ray fluorescence or five-tenths of a percent (0.5%) lead by weight as determined by chemical analysis: (i) on any readily accessible substance or chewable surface on which there is evidence of teeth marks or mouthing; or (ii) on any other deteriorated or otherwise damaged interior or exterior surface.

b. Any substance that contains lead intended for use by children less than six years of age in an amount equal to or greater than 0.06 percent (0.06%) lead by weight as determined by chemical analysis.

c. Any concentration of lead dust that is equal to or greater than 40 micrograms per square foot on floors or 250 micrograms per square foot on interior windowsills, vinyl miniblinds, bathtubs, kitchen sinks, or lavatories.

d. Any lead-based paint or other substance that contains lead on a friction or impact surface that is subject to abrasion, rubbing, binding, or damage by repeated contact and where the lead dust concentrations on the nearest horizontal surface underneath the friction or impact surface are equal to or greater than 40 micrograms per square foot on floors or 250 micrograms per square foot on interior windowsills.

e. Any concentration of lead in bare soil in play areas, gardens, pet sleeping areas, and areas within three feet of a residential housing unit or child-occupied facility equal to or greater than 400 parts per million. Any concentration of lead in bare soil in other locations of the yard equal to or greater than 1,200 parts per million.

f. Any ceramic ware generating equal to or greater than three micrograms of lead per milliliter of leaching solution for flatware or 0.5 micrograms of lead per milliliter for cups, mugs, and pitchers as determined by Method 973.32 of the Association of Official Analytical Chemists.

g. Any concentration of lead in drinking water equal to or greater than 15 parts per billion.

(8) "Lead-safe housing" is housing that was built since 1978 or has been tested by a person that has been certified to perform risk assessments and found to have no lead-based paint hazard within the meaning of the Residential Lead-Based Paint Reduction Act of 1992, 42 U.S.C. § 4851b(15).

(9) "Maintenance standard" means the following:

a. Using safe work practices, repairing and repainting areas of deteriorated paint inside a residential housing unit and for single-family and duplex residential dwelling built before 1950, repairing and repainting areas of deteriorated paint on interior and exterior surfaces;

b. Cleaning the interior of the unit to remove dust that constitutes a lead poisoning hazard;

c. Adjusting doors and windows to minimize friction or impact on surfaces;

d. Subject to the occupant's approval, appropriately cleaning any carpets;

e. Taking such steps as are necessary to ensure that all interior surfaces on which dust might collect are readily cleanable; and

f. Providing the occupant or occupants all information required to be provided under the Residential Lead-Based Paint Hazard Reduction Act of 1992, and amendments thereto.

(10) "Managing agent" means any person who has charge, care, or control of a building or part thereof in which dwelling units or rooming units are leased.

(11), (12) Repealed by Session Laws 2003-150, s. 1, effective July 1, 2003.

(13) "Readily accessible substance" means any substance that can be ingested or inhaled by a child less than six years of age or by a pregnant woman. Readily accessible substances include deteriorated paint that is peeling, chipping, cracking, flaking, or blistering to the extent that the paint has separated from the substrate. Readily accessible substances also include soil, water, toys, vinyl miniblinds, bathtubs, lavatories, doors, door jambs, stairs, stair rails, windows, interior windowsills, baseboards, and paint that is chalking.

(14) "Regularly visits" means the presence at a residential housing unit or child-occupied facility on at least two different days within any week, provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours.

(15) "Remediation" means the elimination or control of lead poisoning hazards by methods approved by the Department.

(16) "Residential housing unit" means a dwelling, dwelling unit, or other structure, all or part of which is designed or used for human habitation, including the common areas, the grounds, any outbuildings, or other structures appurtenant to the residential housing unit.

(17) "Supplemental address" means a residential housing unit or child-occupied facility where a child with confirmed lead poisoning regularly visits or attends. Supplemental address also means a residential housing unit or child-occupied facility where a child resided, regularly visited, or attended within the six months immediately preceding the determination of confirmed lead poisoning. (1997-443, ss. 11A.123, 15.30(b); 1998-209, s. 2; 2003-150, s. 1; 2015-241, s. 14.30(u); 2017-57, s. 11E.6(b).)

§ 130A-131.8. Laboratory reports.

(a) All laboratories doing business in this State shall report to the Department all environmental lead test results and blood lead test results for children less than six years of age and for individuals whose ages are unknown at the time of testing. Reports shall be made by electronic submission within five working days after test completion.

(b) Reports of blood lead test results shall contain all of the following:

(1) The child's full name, date of birth, sex, race, ethnicity, address, and Medicaid number, if any.

(2) The name, address, and telephone number of the requesting health care provider.

(3) The name, address, and telephone number of the testing laboratory.

(4) The laboratory results, whether the specimen type is venous or capillary; the laboratory sample number, and the dates the sample was collected and analyzed.

(c) Reports of environmental lead test results shall contain all of the following:

(1) The address where the samples were collected.

(2) Sample type, such as dust, paint, soil, or water.

(3) Surface type, such as floor, window sill, or window trough.

(4) Collection location.

(5) The name, address, and telephone number of the testing laboratory.

(6) The laboratory results, unit of measurement, the laboratory sample number, and the dates the sample was collected and analyzed. (1997-443, s. 15.30(b); 2003-150, s. 2; 2009-484, s. 1.)

§ 130A-131.9. Examination and testing.

When the Department has a reasonable suspicion that a child less than six years of age has an elevated blood lead level or a confirmed lead poisoning, the Department may require that child to be examined and tested within 30 days. The Department shall require from the owner, managing agent, or tenant of the residential housing unit or child-occupied facility information on each child who resides in, regularly visits, or attends, or, who has within the past six months, resided in, regularly visited, or attended the unit or facility. The information required shall include each child's name and date of birth, the names and addresses of each child's parents, legal guardian, or full-time custodian. The owner, managing agent, or tenant shall submit the required information within 10 days of receipt of the request from the Department. (1997-443, s. 15.30(b); 2003-150, s. 3.)

§ 130A-131.9A. Investigation to identify lead poisoning hazards.

(a) When the Department learns of confirmed lead poisoning, the Department shall conduct an investigation to identify the lead poisoning hazards to children and pregnant women. The Department shall investigate the residential housing unit where the child or pregnant woman with confirmed lead poisoning resides. The Department shall also investigate the supplemental addresses of the child or pregnant woman who has confirmed lead poisoning.

(a1) When the Department learns of an elevated blood lead level, the Department shall, upon informed consent, investigate the residential housing unit where the child or pregnant woman with the elevated blood level resides. When consent to investigate is denied, the child or pregnant woman with the elevated blood lead level cannot be located, or the child's parent or guardian fails to respond, the Department shall document the denial of consent, inability to locate, or failure to respond.

(b) The Department shall also conduct an investigation when it reasonably suspects that a lead poisoning hazard to children or pregnant women exists in a residential housing unit or child-occupied facility occupied, regularly visited, or attended by a child less than six years of age or a pregnant woman.

(c) In conducting an investigation, the Department may take samples of surface materials, or other materials suspected of containing lead, for analysis and testing. If samples are taken, chemical determination of the lead content of the samples shall be by atomic absorption spectroscopy or equivalent methods approved by the Department. (1997-443, s. 15.30(b); 2003-150, s. 4; 2017-57, s. 11E.6(c).)

§ 130A-131.9B. Notification.

Upon determination that a lead poisoning hazard exists, the Department shall give written notice of the lead poisoning hazard to the owner or managing agent of the residential housing unit or child-occupied facility and to all persons residing in, attending, or regularly visiting the unit or facility. The written notice to the owner or managing agent shall include a list of possible methods of remediation. (1997-443, s. 15.30(b); 2003-150, s. 5.)

§ 130A-131.9C. Abatement and remediation.

(a) Upon determination that a child less than six years of age or a pregnant woman has a confirmed lead poisoning of 10 micrograms per deciliter or greater and that child or pregnant woman resides in a residential housing unit containing lead poisoning hazards, the Department shall require remediation of the lead poisoning hazards. The Department shall also require remediation of the lead poisoning hazards identified at the supplemental addresses of a child less than six years of age or a pregnant woman with a confirmed lead poisoning of 10 micrograms per deciliter or greater.

(b) When remediation of lead poisoning hazards is required under subsection (a) of this section, the owner or managing agent shall submit a written remediation plan to the Department within 14 days of receipt of the lead poisoning hazard notification and shall obtain written approval of the plan before initiating remediation activities. The remediation plan shall comply with subsections (g), (h), and (i) of this section.

(c) If the remediation plan submitted fails to meet the requirements of this section, the Department shall issue an order requiring submission of a modified plan. The order shall indicate the modifications that shall be made to the remediation plan and the date that the plan as modified shall be submitted to the Department.

(d) If the owner or managing agent does not submit a remediation plan within 14 days, the Department shall issue an order requiring submission of a remediation plan within five days of receipt of the order.

(e) The owner or managing agent shall notify the Department and the occupants of the dates of remediation activities at least three days before commencement of the activities.

(f) Remediation of the lead poisoning hazards shall be completed within 60 days of the Department's approval of the remediation plan. If the remediation activities are not completed within 60 days, the Department shall issue an order requiring completion of the activities. An owner or managing agent may apply to the Department for an extension of the deadline. The Department may issue an order extending the deadline for 30 days upon proper written application by the owner or managing agent.

(g) All of the following methods of remediation of lead-based paint hazards are prohibited:

(1) Stripping paint on-site with methylene chloride-based solutions.
(2) Torch or flame burning.
(3) Heating paint with a heat gun above 1,100 degrees Fahrenheit.
(4) Covering with new paint or wallpaper unless all readily accessible lead-based paint has been removed.

(5) Uncontrolled abrasive blasting, machine sanding, or grinding, except when used with High Efficiency Particulate Air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at ninety-nine and seven-tenths percent (99.7%) or greater efficiency.

(6) Uncontrolled waterblasting.

(7) Dry scraping, unless used in conjunction with heat guns, or around electrical outlets, or when treating no more than two square feet on interior surfaces, or no more than 20 square feet on exterior surfaces.

(h) All lead-containing waste and residue shall be removed and disposed of in accordance with applicable federal, State, and local laws and rules. Other substances containing lead that are intended for use by children less than six years of age or pregnant women and vinyl miniblinds that constitute a lead poisoning hazard shall be removed and disposed of in accordance with applicable federal, State, and local laws and rules.

(i) All remediation plans shall require that the lead poisoning hazards be reduced to the following levels:

(1) Fewer than 40 micrograms per square foot for lead dust on floors.

(2) Fewer than 250 micrograms per square foot for lead dust on interior windowsills, bathtubs, kitchen sinks, and lavatories.

(3) Fewer than 400 micrograms per square foot for lead dust on window troughs.

(4) Fewer than 400 parts per million for lead in bare soil in play areas, gardens, pet sleeping areas, and areas within three feet of the residential housing unit or child-occupied facility. Lead in bare soil in other locations of the yard shall be reduced to less than 1,200 parts per million.

(5) Fewer than 15 parts per billion for lead in drinking water.

(j) The Department shall verify by visual inspection that the approved remediation plan has been completed. The Department may also verify plan completion by residual lead dust monitoring and soil or drinking water lead level measurement.

(j1) Compliance with the maintenance standard satisfies the remediation requirements for confirmed lead poisoning cases identified on or after 1 October 1990 as long as all lead poisoning hazards identified on interior and exterior surfaces are addressed by remediation. Except for owner-occupied residential housing units, continued compliance shall be verified by means of an annual monitoring inspection conducted by the Department. For owner-occupied residential housing units, continued compliance shall be verified (i) by means of an annual monitoring inspection, (ii) by documentation that no child less than six years of age and no pregnant woman has resided in or regularly visited the residential housing unit within the past year, or (iii) by documentation that no child less than six years of age and no pregnant woman residing in or regularly visiting the unit has an elevated blood lead level.

(k) Removal of children or pregnant women from the residential housing unit or removal of children from the child-occupied facility shall not constitute remediation if the property continues to be used for a residential housing unit or child-occupied facility. The remediation requirements imposed in subsection (a) of this section apply so long as the property continues to be used as a residential housing unit or child-occupied facility. (1997-443, s. 15.30(b); 1998-209, s. 3; 2003-150, s. 6; 2017-57, s. 11E.6(d).)

§ 130A-131.9D. Effect of compliance with maintenance standard.

Any owner of a residential housing unit constructed prior to 1978 who is sued by a current or former occupant seeking damages for injuries allegedly arising from exposure to lead-based paint or lead-contaminated dust, shall not be deemed liable (i) for any injuries sustained by that occupant after the owner first complied with the maintenance standard defined under G.S. 130A-131.7 provided the owner has repeated the steps provided for in the maintenance standard annually for units in which children of less than six years of age have resided or regularly visited within the past year and obtained a certificate of compliance under G.S. 130A-131.9E annually during such occupancy; or (ii) if the owner is able to show by other documentation that compliance with the maintenance standard has been maintained during the period when the injuries were sustained; or (iii) if the owner is able to show that the unit was lead-safe housing containing no lead-based paint hazards during the period when the injuries were sustained. (1997-443, s. 15.30(b); 1998-209, s. 4.)

§ 130A-131.9E. Certificate of evidence of compliance.

An owner of a unit who has complied with the maintenance standard may apply annually to the Department for a certificate of compliance. Upon presentation of acceptable proof of compliance, the Department shall provide to the owner a certificate evidencing compliance. The Department may issue a certificate based solely on information provided by the owner and may revoke the certificate upon showing that any of the information is erroneous or inadequate, or upon finding that the unit is no longer in compliance with the maintenance standard. (1997-443, s. 15.30(b).)

§ 130A-131.9F. Discrimination in financing.

(a) No bank or financial institution in the business of lending money for the purchase, sale, construction, rehabilitation, improvement, or refinancing of real property of the lending of money secured by an interest in real property may refuse to make such loans merely because of the presence of lead-based paint on the residential real property or in the residential housing unit provided that the owner is in compliance with the maintenance standard and has obtained a certificate of compliance under G.S. 130A-131.9E annually.

(b) Nothing in this section shall (i) require a financial institution to extend a loan or otherwise provide financial assistance if it is clearly evident that health-related issues, other than those related to lead-based paint, made occupancy of the housing accommodation an imminent threat to the health or safety of the occupant, or (ii) be construed to preclude a financial institution from considering the fair market value of the property which will secure the proposed loan.

(c) Failure to meet the maintenance standard shall not be deemed a default under existing mortgages. (1997-443, s. 15.30(b).)

§ 130A-131.9G. Resident responsibilities.

In any residential housing unit occupied by a child less than six years of age or a pregnant woman who has an elevated blood lead level of five micrograms per deciliter or greater, the Department shall advise, in writing, the owner or managing agent and the pregnant woman or the child's parents or legal guardian of the importance of carrying out routine cleaning activities in the units they occupy, own, or manage. The cleaning activities shall include all of the following:

(1) Wiping clean all windowsills with a damp cloth or sponge at least weekly.
(2) Regularly washing all surfaces accessible to children.
(3) In the case of a leased residential housing unit, identifying any deteriorated paint in the unit and notifying the owner or managing agent of the conditions within 72 hours of discovery.
(4) Identifying and understanding potential lead poisoning hazards in the environment of each child less than six years of age and each pregnant woman in the unit (including toys, vinyl miniblinds, playground equipment, drinking water, soil, and painted surfaces), and taking steps to prevent children and pregnant women from ingesting lead such as encouraging children and pregnant women to wash their faces and hands frequently and especially after playing outdoors. (1997-443, s. 15.30(b); 2003-150, s. 7; 2017-57, s. 11E.6(e).)

§ 130A-131.9H. Application fees for certificates of compliance.

The Department shall collect an application fee of ten dollars ($10.00) for each certificate of compliance. Fee receipts shall be used to support the program that is developed to implement this Part. Fee receipts also may be used to provide for relocation and medical expenses incurred by children with confirmed lead poisoning. (1998-209, s. 5.)

Part 5. Disposition of Remains of Terminated Pregnancies.

§ 130A-131.10. Manner of disposition of remains of pregnancies.

(a) The Commission for Public Health shall adopt rules to ensure that all facilities authorized to terminate pregnancies, and all medical or research laboratories or facilities to which the remains of terminated pregnancies are sent shall dispose of the remains in a manner limited to burial, cremation, or, except as prohibited by subsection (b) of this section, approved hospital type of incineration.

(b) A hospital or other medical facility or a medical or research laboratory or facility shall dispose of the remains of a recognizable fetus only by burial or cremation. The Commission shall adopt rules to implement this subsection.

(c) Repealed by Session Laws 2015-265, s. 1, effective October 1, 2015, and applicable to offenses committed on or after that date.

(d) This section does not impose liability on a permitted medical waste treatment facility for a hospital's or other medical facility's violation of this section nor does it impose any additional duty on the treatment facility to inspect waste received from the hospital or medical facility to determine compliance with this section.

(e) Nothing in this section shall prevent the mother from donating the remains of her unborn child after a spontaneous abortion or miscarriage to a research facility for research or from acquiring the remains of the unborn child after a spontaneous abortion or miscarriage. The mother's informed written consent to allow research to be conducted upon the remains of the unborn child after a spontaneous abortion or miscarriage must be obtained prior to the donation and must be separate from any other prior consent.

(f) Nothing in this section shall prevent the performance of autopsies performed according to law, or any pathological examinations, chromosomal analyses, cultures, or

any other examinations deemed necessary by attending pathologists or treating physicians for diagnostic purposes. (1989, c. 85; 1997-517, s. 4; 2007-182, s. 2; 2015-265, s. 1.)

§§ 130A-131.11 through 130A-131.14. Reserved for future codification purposes.

Part 6. Teen Pregnancy Prevention.

§ 130A-131.15: Repealed by Session Laws 2001-424, s. 21.89(b), effective July 1, 2001.

§ 130A-131.15A. Department to establish program.

(a) The Department shall establish and administer Teen Pregnancy Prevention Initiatives. The Department shall establish initiatives for primary prevention, secondary prevention, and special projects.

(b) The Commission shall adopt rules necessary to implement this section. The rules shall include a maximum annual funding level for initiatives and a requirement for local match.

(c) Initiatives shall be funded in accordance with selection criteria established by the Commission. In funding initiatives, the Department shall target counties with the highest teen pregnancy rates, increasingly higher rates, high rates within demographic subgroups, or greatest need for parenting programs. Grants shall be awarded on an annual basis.

(d) Initiatives shall be funded on a four-year funding cycle. The Department may end funding prior to the end of the four-year period if programmatic requirements and performance standards are not met. At the end of four years of funding, a local initiative shall be eligible to reapply for funding.

(e) Administrative costs in implementing this section shall not exceed ten percent (10%) of the total funds administered pursuant to this section.

(f) Programs are not required to provide a cash match for these funds; however, the Department may require an in-kind match.

(g) The Department shall periodically evaluate the effectiveness of teen pregnancy prevention programs.

(h) The Department's use of State funds for initiatives and projects authorized under this section shall not include the allocation of funds to renew or extend existing contracts or enter into new contracts for the provision of family planning services, pregnancy prevention activities, or adolescent parenting programs with any provider that performs abortions. (2001-424, s. 21.89(c); 2015-265, s. 3.)

Part 7. Birth Defects.

§ 130A-131.16. Birth defects monitoring program established; definitions.

(a) The Birth Defects Monitoring Program is established within the State Center for Health and Environmental Statistics. The Birth Defects Monitoring Program shall compile, tabulate, and publish information related to the incidence and prevention of birth defects.

(b) As used in this Part, unless the context clearly requires otherwise, the term:

(1) "Birth defect" means any physical, functional, or chemical abnormality present at birth that is of possible genetic or prenatal origin.

(2) "Program" means the Birth Defects Monitoring Program established under this Part.

(c) Physicians and persons in charge of licensed medical facilities shall, upon request, permit staff of the Program to examine, review, and obtain a copy of any medical record in their possession or under their control that pertains to a diagnosed or suspected birth defect, including the records of the mother.

(d) A physician or person in charge of a licensed medical facility who permits examination, review, or copying of medical records pursuant to this section shall be immune from civil or criminal liability that might otherwise be incurred or imposed for providing access to these medical records based upon invasion of privacy or breach of physician-patient confidentiality. (1995, c. 268, s. 1.)

§ 130A-131.17. Confidentiality of information; research.

(a) All information collected and analyzed by the Program pursuant to this Part shall be confidential insofar as the identity of the individual patient is concerned. This information shall not be considered public record open to inspection. Access to the information shall be limited to Program staff authorized by the Director of the State Center for Health and Environmental Statistics. The Director of the State Center for Health and Environmental Statistics may also authorize access to this information to persons engaged in demographic, epidemiological, or other similar scientific studies related to health. The Commission shall adopt rules that establish strict criteria for the use of monitoring Program information for scientific research. All persons given authorized access to Program information shall agree, in writing, to maintain confidentiality.

(b) All scientific research proposed to be conducted by persons other than authorized Program staff using the information from the Program, shall first be reviewed and approved by the Director of the State Center for Health and Environmental Statistics and an appropriate committee for the protection of human subjects which is approved by the United States Department of Health and Human Services pursuant to Part 46 of Title 45 of the Code of Federal Regulations. Satisfaction of the terms of the Commission's rules for data access shall entitle the researcher to obtain information from the Program and, if part of the research protocol, to contact case subjects.

(c) Whenever authorized Program staff propose a research protocol that includes contacting case subjects, the Director of the State Center for Health and Environmental Statistics shall submit a protocol describing the research to the State Health Director and to an appropriate committee for the protection of human subjects which is approved by the United States Department of Health and Human Services pursuant to Part 46 of Title 45 of the Code of Federal Regulations. If and when the protocol is approved by the committee and by the State Health Director pursuant to the rules of the Commission, then Program staff shall be entitled to complete the approved project and to contact case subjects.

(d) The Program shall maintain a record of all persons who are given access to the information in the system. The record shall include the following:

(1) The name of the person authorizing access;

(2) The name, title, and organizational affiliation of persons given access;

(3) The dates of access; and

(4) The specific purposes for which information is to be used.

The record required under this subsection shall be open to public inspection during normal operating hours.

(e) Nothing in this section prohibits the Program from publishing statistical compilations relating to birth defects that do not in any way identify individual patients. (1995, c. 268, s. 1.)

§§ 130A-131.18 through 130A-131.24. Reserved for future codification purposes.

Part 8. Office of Women's Health.

§ 130A-131.25. Office of Women's Health established.

(a) There is established in the Department the Office of Women's Health. The purpose of the office is to expand the State's public health concerns and focus to include a comprehensive outlook on the overall health status of women. The primary goals of the Office shall be the prevention of disease and improvement in the quality of life for women over their entire lifespan. The Department shall develop strategies for achieving these goals, which shall include but not be limited to:

(1) Developing a strategic plan to improve public services and programs targeting women;
(2) Conducting policy analyses on specific issues related to women's health;
(3) Facilitating communication among the Department's programs and between the Department and external women's health groups and community-based organizations;
(4) Building public health awareness and capacity regarding women's health issues by providing a series of services including evaluation, recommendation, technical assistance, and training; and
(5) Developing initiatives for modification or expansion of women-oriented services with the intent of establishing meaningful public/private partnerships in the future.

(b) The Office shall study the feasibility of establishing initiatives for:

(1) Early intervention services for women infected with HIV; and
(2) Outreach, treatment, and follow-up services to women at high risk for contracting sexually transmitted diseases.

In conducting the study the Department shall take into consideration related services already in place in the Department and at the local level. (1997-172, s. 2.)

Part 9. Healthy Out-of-School Time (Host) Recognition Program.

§ 130A-131.30. Healthy Out-of-School Program established.

There is created the "Healthy Out-of-School Time (HOST) Recognition Program" to be administered by the Department of Health and Human Services, Division of Public Health, in collaboration with the North Carolina Center for Afterschool Programs based in the Public School Forum. (2016-94, s. 12E.2(a).)

§ 130A-131.31. Definitions.

The following definitions shall apply in this Part:

(1) Department. – The Department of Health and Human Services, Division of Public Health.

(2) HEPA Standards. – The National Institute on Out-of-School Time Healthy Eating and Physical Activity Standards.

(3) Out-of-school time program. – Any nonlicensed program provided to children and youth ages 17 and under that is currently exempt from G.S. 110-91 or any other qualified out-of-school time programs that serve school-age children outside of regular school hours, including before school and on weekends.

(4) Program attendee. – A person enrolled in an exempt out-of-school time program.

(5) Screen time. – Time spent viewing or working on television, videos, computers, or handheld devices, with or without Internet access. (2016-94, s. 12E.2(b).)

§ 130A-131.32. Program development.

(a) The Department shall develop a process, to be administered on its Internet Web site, for an out-of-school time program to be recognized as a program that meets the HEPA Standards as outlined in this section. The Web site shall include all resources and links that an out-of-school time program may use to meet the requirements of this section. Programs being recognized shall demonstrate consistency and implementation of HEPA standards.

(b) The Department shall develop and implement a process for providing minimal verification of self-assessments submitted by out-of-school time programs applying for recognition, which may include a site visit or other form of review. At a minimum, the Department shall review a random sample of program self-assessments within 30 to 60 days of receipt of the assessments.

(c) Periodically, or at least once every five years, the Department shall review, and if necessary, revise and update the program standards to reflect advancements in nutrition science, dietary data, and physical activity standards to ensure consistency with nationally recognized guidelines for out-of-school time programs. (2016-94, s. 12E.2(c).)

§ 130A-131.33. Certificate; program information.

(a) The Department shall provide a certificate to out-of-school time programs that demonstrate that the program meets HEPA standards. If the out-of-school time program is located on a school site, the out-of-school time program shall communicate with the school regarding nutrition education and physical activity, as appropriate, to provide the program attendees with a complete educational experience. All activities shall also adhere to the local school administrative unit's wellness policy, as appropriate.

(b) The Department shall have information about the program available for review by a parent at both the physical location of the out-of-school time program and on the program's Internet Web site, if applicable. The Department shall require that the out-of-school time program maintain in its records a document signed by all parents acknowledging that they are aware of the HOST Recognition Program requirements and policies to institute and reinforce these specific healthy behaviors for all children served in the out-of-school time program. (2016-94, s. 12E.2(d).)

§ 130A-131.34. Certificate renewal.

A certificate issued under this Part shall be valid for one calendar year. An out-of-school time program that wishes to create a new certificate for the subsequent year shall, by January 1 of the following year and thereafter, verify with the Department that the out-of-school time program continues to follow the HOST Recognition Program criteria established in accordance with G.S. 130A-131.33. (2016-94, s. 12E.2(e).)

§ 130A-131.35. List of programs.

The Department shall maintain and update a list of out-of-school time programs that qualify under the provisions of this Part and shall post that list on its Internet Web site, including the date of qualification for each program. (2016-94, s. 12E.2(f).)

Article 6.

Communicable Diseases.

Part 1. In General.

§ 130A-133: Repealed by Session Laws 2002-179, s. 3, effective October 1, 2002.

§ 130A-134. Reportable diseases and conditions.

The Commission shall establish by rule a list of communicable diseases and communicable conditions to be reported. (1983, c. 891, s. 2; 1987, c. 782, s. 4.)

§ 130A-135. Physicians to report.

A physician licensed to practice medicine who has reason to suspect that a person about whom the physician has been consulted professionally has a communicable disease or communicable condition declared by the Commission to be reported, shall report information required by the Commission to the local health director of the county or district in which the physician is consulted. The Commission shall declare confirmed HIV infection to be a reportable communicable condition. (1893, c. 214, s. 11; Rev., s. 3448; 1917, c. 263, s. 7; C.S., s. 7151; 1921, c. 223, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 782, s. 5; 1989, c. 698, s. 3.)

§ 130A-136. School principals and child care operators to report.

A principal of a school and an operator of a child care facility, as defined in G.S. 110-86(3), who has reason to suspect that a person within the school or child care facility has a communicable disease or communicable condition declared by the Commission to be reported, shall report information required by the Commission to the local health director of the county or district in which the school or facility is located. (1979, c. 192, s. 2; 1983, c. 891, s. 2; 1987, c. 782, s. 6; 1997-506, s. 46.)

§ 130A-137. Medical facilities may report.

A medical facility, in which there is a patient reasonably suspected of having a communicable disease or condition declared by the Commission to be reported, may report information specified by the Commission to the local health director of the county or district in which the facility is located. (1983, c. 891, s. 2; 1987, c. 782, s. 7.)

§ 130A-138. Operators of restaurants and other food or drink establishments to report.

An operator of a restaurant or other establishment where food or drink is prepared or served for pay, as defined in G.S. 130A-247(4) and (5), shall report information required by the Commission to the local health director of the county or district in which the restaurant or food establishment is located when the operator has reason to suspect an outbreak of food-borne illness in its customers or employees or when it has reason to suspect that a food handler at the establishment has a food-borne disease or food-borne condition required by the Commission to be reported. (1917, c. 263, s. 9; C.S., s. 7153; 1921, c. 223, s. 3; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1979, c. 192, s. 3; 1983, c. 891, s. 2; 1987, c. 782, s. 8.)

§ 130A-139. Persons in charge of laboratories to report.

A person in charge of a laboratory providing diagnostic service in this State shall report information required by the Commission to a public health agency specified by the Commission when the laboratory makes any of the following findings:

(1) Sputa, gastric contents, or other specimens which are smear positive for acid fast bacilli or culture positive for Mycobacterium tuberculosis;
(2) Urethral smears positive for Gram-negative intracellular diplococci or any culture positive for Neisseria gonorrhoeae;
(3) Positive serological tests for syphilis or positive darkfield examination; [or]
(4) Any other positive test indicative of a communicable disease or communicable condition for which laboratory reporting is required by the Commission. (1981, c. 81, s. 1; 1983, c. 891, s. 2; 1987, c. 782, s. 9; 2001-28, s. 1.)

§ 130A-140. Local health directors to report.

A local health director shall report to the Department all cases of diseases or conditions or laboratory findings of residents of the jurisdiction of the local health department which are reported to the local health director pursuant to this Article. A local health director shall report all other cases and laboratory findings reported pursuant to this Article to the local health director of the county, district, or authority where the person with the reportable disease or condition or laboratory finding resides. (1919, c. 206, s. 2; C.S., s. 7192; 1957, c. 1357, s. 1; 1961, c. 753; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 782, s. 10; 1997-502, s. 10.)

§ 130A-141. Form, content and timing of reports.

The Commission shall adopt rules which establish the specific information to be submitted when making a report required by this Article, time limits for reporting, the form of the reports and to whom reports of laboratory findings are to be made. (1983, c. 891, s. 2; 1987, c. 782, s. 11.)

§ 130A-141.1. Temporary order to report.

(a) The State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information when necessary to conduct a public health investigation or surveillance of an illness, condition, or symptoms that may indicate the existence of a communicable disease or condition that presents a danger to the public health. The order shall specify which health care providers must report, what information is to be reported, and the period of time for which reporting is required. The period of time for which reporting is required pursuant to a temporary

order shall not exceed 90 days. The Commission may adopt rules to continue the reporting requirement when necessary to protect the public health.

(b) For the purposes of this section, the term "health care provider" has the same meaning as that term is defined in G.S. 130A-476(g). (2004-80, s. 5.)

§ 130A-142. Immunity of persons who report.

A person who makes a report pursuant to the provisions of this Article shall be immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of making that report. (1983, c. 891, s. 2; 1987, c. 782, s. 12.)

§ 130A-143. Confidentiality of records.

All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly confidential. This information shall not be released or made public except under the following circumstances:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified;

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardian;

(3) Release is made for purposes of treatment, payment, research, or health care operations to the extent that disclosure is permitted under 45 Code of Federal Regulations §§ 164.506 and 164.512(i). For purposes of this section, the terms "treatment," "payment," "research," and "health care operations" have the meaning given those terms in 45 Code of Federal Regulations § 164.501;

(4) Release is necessary to protect the public health and is made as provided by the Commission in its rules regarding control measures for communicable diseases and conditions;

(5) Release is made pursuant to other provisions of this Article;

(6) Release is made pursuant to subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the case;

(7) Release is made by the Department or a local health department to a court or a law enforcement official for the purpose of enforcing this Article or Article 22 of this Chapter, or investigating a terrorist incident using nuclear, biological, or chemical agents. A law enforcement official who receives the information shall not disclose it further, except (i) when necessary to enforce this Article or Article 22 of this Chapter, or when necessary to conduct an investigation of a terrorist incident using nuclear, biological, or chemical agents, or (ii) when the Department or a local health department seeks the assistance of the law enforcement official in preventing or controlling the spread of the disease or condition and expressly authorizes the disclosure as necessary for that purpose;

(8) Release is made by the Department or a local health department to another federal, state or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or communicable condition;

(9) Release is made by the Department for bona fide research purposes. The Commission shall adopt rules providing for the use of the information for research purposes;

(10) Release is made pursuant to G.S. 130A-144(b); or

(11) Release is made pursuant to any other provisions of law that specifically authorize or require the release of information or records related to AIDS. (1983, c. 891, s. 2; 1987, c. 782, s. 13; 2002-179, s. 7; 2011-314, s. 4.)

§ 130A-144. Investigation and control measures.

(a) The local health director shall investigate, as required by the Commission, cases of communicable diseases and communicable conditions reported to the local health director pursuant to this Article.

(b) Physicians, persons in charge of medical facilities or laboratories, and other persons shall, upon request and proper identification, permit a local health director or the State Health Director to examine, review, and obtain a copy of medical or other records in their possession or under their control which the State Health Director or a local health director determines pertain to the (i) diagnosis, treatment, or prevention of a communicable disease or communicable condition for a person infected, exposed, or reasonably suspected of being infected or exposed to such a disease or condition, or (ii) the investigation of a known or reasonably suspected outbreak of a communicable disease or communicable condition.

(c) A physician or a person in charge of a medical facility or laboratory who permits examination, review or copying of medical records pursuant to subsection (b) shall be immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with a request made pursuant to subsection (b).

(d) The attending physician shall give control measures prescribed by the Commission to a patient with a communicable disease or communicable condition and to patients reasonably suspected of being infected or exposed to such a disease or condition. The physician shall also give control measures to other individuals as required by rules adopted by the Commission.

(e) The local health director shall ensure that control measures prescribed by the Commission have been given to prevent the spread of all reportable communicable diseases or communicable conditions and any other communicable disease or communicable condition that represents a significant threat to the public health. The local health department shall provide, at no cost to the patient, the examination and treatment for tuberculosis disease and infection and for sexually transmitted diseases designated by the Commission.

(f) All persons shall comply with control measures, including submission to examinations and tests, prescribed by the Commission subject to the limitations of G.S. 130A-148.

(g) The Commission shall adopt rules that prescribe control measures for communicable diseases and conditions subject to the limitations of G.S. 130A-148. Temporary rules prescribing control measures for communicable diseases and conditions shall be adopted pursuant to G.S. 150B-13.

(h) Anyone who assists in an inquiry or investigation conducted by the State Health Director for the purpose of evaluating the risk of transmission of HIV or Hepatitis B from an infected health care worker to patients, or who serves on an expert panel established by the State

Health Director for that purpose, shall be immune from civil liability that otherwise might be incurred or imposed for any acts or omissions which result from such assistance or service, provided that the person acts in good faith and the acts or omissions do not amount to gross negligence, willful or wanton misconduct, or intentional wrongdoing. This qualified immunity does not apply to acts or omissions which occur with respect to the operation of a motor vehicle. Nothing in this subsection provides immunity from liability for a violation of G.S. 130A-143. (1893, c. 214, s. 16; Rev., s. 4459; 1909, c. 793, s. 8; C.S., s. 7158; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 782, s. 14; 1991, c. 225, s. 1; 1995, c. 228, s. 1; 2001-28, s. 2; 2004-80, s. 6; 2009-501, s. 2.)

§ 130A-145. Quarantine and isolation authority.

(a) The State Health Director and a local health director are empowered to exercise quarantine and isolation authority. Quarantine and isolation authority shall be exercised only when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.

(b) No person other than a person authorized by the State Health Director or local health director shall enter quarantine or isolation premises. Nothing in this subsection shall be construed to restrict the access of authorized health care, law enforcement, or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties.

(c) Before applying quarantine or isolation authority to livestock or poultry for the purpose of preventing the direct or indirect conveyance of an infectious agent to persons, the State Health Director or a local health director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

(d) When quarantine or isolation limits the freedom of movement of a person or animal or of access to a person or animal whose freedom of movement is limited, the period of limited freedom of movement or access shall not exceed 30 calendar days. Any person substantially affected by that limitation may institute in superior court in Wake County or in the county in which the limitation is imposed an action to review that limitation. The official who exercises the quarantine or isolation authority shall give the persons known by the official to be substantially affected by the limitation reasonable notice under the circumstances of the right to institute an action to review the limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of that request, excluding Saturdays and Sundays. The person substantially affected by that limitation is entitled to be represented by counsel of the person's own choice or if the person is indigent, the person shall be represented by counsel appointed in accordance with Article 36 of Chapter 7A of the General Statutes and the rules adopted by the Office of Indigent Defense Services. The court shall reduce or terminate the limitation unless it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others.

If the State Health Director or the local health director determines that a 30-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the State Health Director or local health director must institute in superior court in the county in which the limitation is imposed an action to obtain an order extending the period of limitation of freedom of movement or access. If the person substantially affected by the limitation has already instituted an action in superior court in Wake County, the State Health Director must institute the action in superior court in Wake County or as a counterclaim in the pending case. Except as provided below

for persons with tuberculosis, the court shall continue the limitation for a period not to exceed 30 days if it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others. The court order shall specify the period of time the limitation is to be continued and shall provide for automatic termination of the order upon written determination by the State Health Director or local health director that the quarantine or isolation is no longer necessary to protect the public health. In addition, where the petitioner can prove by a preponderance of the evidence that quarantine or isolation was not or is no longer needed for protection of the public health, the person quarantined or isolated may move the trial court to reconsider its order extending quarantine or isolation before the time for the order otherwise expires and may seek immediate or expedited termination of the order. Before the expiration of an order issued under this section, the State Health Director or local health director may move to continue the order for additional periods not to exceed 30 days each. If the person whose freedom of movement has been limited has tuberculosis, the court shall continue the limitation for a period not to exceed one calendar year if it determines, by a preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of tuberculosis to others. The court order shall specify the period of time the limitation is to be continued and shall provide for automatic termination of the order upon written determination by the State Health Director or local health director that the quarantine or isolation is no longer necessary to protect the public health. In addition, where the petitioner can prove by a preponderance of the evidence that quarantine or isolation was not or is no longer needed for protection of the public health, the person quarantined or isolated may move the trial court to reconsider its order extending quarantine or isolation before the time for the order otherwise expires and may seek immediate or expedited termination of the order. Before the expiration of an order limiting the freedom of movement of a person with tuberculosis, the State Health Director or local health director may move to continue the order for additional periods not to exceed one calendar year each. (1957, c. 1357, s. 1; 1983, c. 891, s. 2; 1987, c. 782, s. 15; 2002-179, s. 5; 2004-80, s. 2.)

§ 130A-146. Transportation of bodies of persons who have died of reportable diseases.

No person shall transport in this State the remains of any person who has died of a disease declared by the Commission to be reported until the body has been encased in a manner as prescribed by rule by the Commission. Only persons who have complied with the rules of the Commission concerning the removal of dead bodies shall be issued a burial-transit permit. (1893, c. 214, s. 16; Rev., s. 4459; C.S., s. 7161; 1953, c. 675, s. 16; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-147. Rules of the Commission.

For the protection of the public health, the Commission is authorized to adopt rules for the detection, control and prevention of communicable diseases. (1983, c. 891, s. 2.)

§ 130A-148. Laboratory tests for AIDS virus infection.

(a) For the protection of the public health, the Commission shall adopt rules establishing standards for the certification of laboratories to perform tests for Acquired Immune Deficiency Syndrome (AIDS) virus infection. The rules shall address, but not be limited to, proficiency testing, record maintenance, adequate staffing and confirmatory testing. Tests for AIDS virus infection shall be performed only by laboratories certified pursuant to this subsection and only on

specimens submitted by a physician licensed to practice medicine. This subsection shall not apply to testing performed solely for research purposes under the approval of an institutional review board.

(b) Prior to obtaining consent for donation of blood, semen, tissue or organs, a facility or institution seeking to obtain blood, tissue, semen or organs for transfusion, implantation, transplantation or administration shall provide the potential donor with information about AIDS virus transmission, and information about who should not donate.

(c) No blood or semen may be transfused or administered when blood from the donor has not been tested or has tested positive for AIDS virus infection by a standard laboratory test.

(d) No tissue or organs may be transplanted or implanted when blood from the donor has not been tested or has tested positive for AIDS virus infection by a standard laboratory test unless consent is obtained from the recipient, or from the recipient's guardian or a responsible adult relative of the recipient if the recipient is not competent to give such consent.

(e) Any facility or institution that obtains or transfuses, implants, transplants, or administers blood, tissue, semen, or organs shall be immune from civil or criminal liability that otherwise might be incurred or imposed for transmission of AIDS virus infection if the provisions specified in subsections (b), (c), and (d) of this section have been complied with.

(f) Specimens may be tested for AIDS virus infection for research or epidemiologic purposes without consent of the person from whom the specimen is obtained if all personal identifying information is removed from the specimen prior to testing.

(g) Persons tested for AIDS virus infection shall be notified of test results and counseled appropriately. This subsection shall not apply to tests performed by or for entities governed by Article 39 of Chapter 58 of the General Statutes, the Insurance Information and Privacy Protection Act, provided that said entities comply with the notice requirements thereof.

(h) The Commission may authorize or require laboratory tests for AIDS virus infection when necessary to protect the public health.

A test for AIDS virus infection may also be performed upon any person solely by order of a physician licensed to practice medicine in North Carolina who is rendering medical services to that person when, in the reasonable medical judgment of the physician, the test is necessary for the appropriate treatment of the person; however, the person shall be informed that a test for AIDS virus infection is to be conducted, and shall be given clear opportunity to refuse to submit to the test prior to it being conducted, and further if informed consent is not obtained, the test may not be performed. A physician may order a test for AIDS virus infection without the informed consent of the person tested if the person is incapable of providing or incompetent to provide such consent, others authorized to give consent for the person are not available, and testing is necessary for appropriate diagnosis or care of the person.

An unemancipated minor may be tested for AIDS virus infection without the consent of the parent or legal guardian of the minor when the parent or guardian has refused to consent to such testing and there is reasonable suspicion that the minor has AIDS virus or HIV infection or that the child has been sexually abused.

(i) Except as provided in this section, no test for AIDS virus infection shall be required, performed or used to determine suitability for continued employment, housing or public services, or for the use of places of public accommodation as defined in G.S. 168A-3(8), or public transportation.

Further it shall be unlawful to discriminate against any person having AIDS virus or HIV infection on account of that infection in determining suitability for continued employment,

housing, or public services, or for the use of places of public accommodation, as defined in G.S. 168A-3(8), or public transportation.

Any person aggrieved by an act or discriminatory practice prohibited by this subsection relating to housing shall be entitled to institute a civil action pursuant to G.S. 41A-7 of the State Fair Housing Act. Any person aggrieved by an act or discriminatory practice prohibited by this subsection other than one relating to housing may bring a civil action to enforce rights granted or protected by this subsection.

The action shall be commenced in superior court in the county where the alleged discriminatory practice or prohibited conduct occurred or where the plaintiff or defendant resides. Such action shall be tried to the court without a jury. Any relief granted by the court shall be limited to declaratory and injunctive relief, including orders to hire or reinstate an aggrieved person or admit such person to a labor organization.

In a civil action brought to enforce provisions of this subsection relating to employment, the court may award back pay. Any such back pay liability shall not accrue from a date more than two years prior to the filing of an action under this subsection. Interim earnings or amounts earnable with reasonable diligence by the aggrieved person shall operate to reduce the back pay otherwise allowable. In any civil action brought under this subsection, the court, in its discretion, may award reasonable attorney's fees to the substantially prevailing party as a part of costs.

A civil action brought pursuant to this subsection shall be commenced within 180 days after the date on which the aggrieved person became aware or, with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct.

Nothing in this section shall be construed so as to prohibit an employer from:

(1) Requiring a test for AIDS virus infection for job applicants in preemployment medical examinations required by the employer;

(2) Denying employment to a job applicant based solely on a confirmed positive test for AIDS virus infection;

(3) Including a test for AIDS virus infection performed in the course of an annual medical examination routinely required of all employees by the employer; or

(4) Taking the appropriate employment action, including reassignment or termination of employment, if the continuation by the employee who has AIDS virus or HIV infection of his work tasks would pose a significant risk to the health of the employee, coworkers, or the public, or if the employee is unable to perform the normally assigned duties of the job.

(j) It shall not be unlawful for a licensed health care provider or facility to:

(1) Treat a person who has AIDS virus or HIV infection differently from persons who do not have that infection when such treatment is appropriate to protect the health care provider or employees of the provider or employees of the facility while providing appropriate care for the person who has the AIDS virus or HIV infection; or

(2) Refer a person who has AIDS virus or HIV infection to another licensed health care provider or facility when such referral is for the purpose of providing more appropriate treatment for the person with AIDS virus or HIV infection. (1987, c. 782, s. 16; 1989, c. 698, s. 1; 1991, c. 720, s. 78.)

§ 130A-149: Recodified as G.S. 130A-479 by Session Laws 2002-179, s. 2, effective October 1, 2002.

Part 1A. Health Care-Associated Infections.

§ 130A-150. Statewide surveillance and reporting system.

(a) By December 31, 2011, the Department, in consultation with the State HAI Advisory Group and in accordance with rules adopted by the Commission pursuant to subsection (b) of this section, shall establish a statewide surveillance and reporting system for specified health care-associated infections.

(b) The Commission shall adopt rules necessary to implement the statewide surveillance and reporting system established pursuant to subsection (a) of this section. The rules shall specify uniform standards for surveillance and reporting of specified health care-associated infections under the statewide surveillance and reporting system. The uniform standards shall include at least all of the following:

(1) A preference for electronic surveillance of specified health care-associated infections to the greatest extent practicable.

(2) A requirement for electronic reporting of specified health care-associated infections.

(c) Each hospital, as defined in G.S. 131E-76(3), is subject to the statewide surveillance and reporting system established in accordance with subsection (a) of this section and shall be responsible for health care-associated infections surveillance and reporting of specified health care-associated infections data to the Department through the Centers for Disease Control and Prevention National Health Care Safety Network.

(d) The Department shall release to the public aggregated and provider-specific data on health care-associated infections that does not contain social security numbers or other personal identifying information only if it deems the release of this data to be reliable and necessary to protect the public's health.

(e) Repealed by Session Laws 2013-360, s. 12A.8(d), effective July 1, 2013. (2011-386, ss. 1, 2; 2013-360, s. 12A.8(d).)

§ 130A-151. Reserved for future codification purposes.

Part 2. Immunization.

§ 130A-152. Immunization required.

(a) Every child present in this State shall be immunized against diphtheria, tetanus, whooping cough, poliomyelitis, red measles (rubeola) and rubella. In addition, every child present in this State shall be immunized against any other disease upon a determination by the Commission that the immunization is in the interest of the public health. Every parent, guardian, person in loco parentis and person or agency, whether governmental or private, with legal custody of a child shall have the responsibility to ensure that the child has received the required immunization at the age required by the Commission. If a child has not received the required immunizations by the specified age, the responsible person shall obtain the required immunization for the child as soon as possible after the lack of the required immunization is determined.

(b) Repealed by Session Laws 2002-179, s. 10, effective October 1, 2002.

(c) The Commission shall adopt and the Department shall enforce rules concerning the implementation of the immunization program. The rules shall provide for:

(1) The child's age at administration of each vaccine;
(2) The number of doses of each vaccine;
(3) Exemptions from the immunization requirements where medical practice suggests that immunization would not be in the best health interests of a specific category of children;
(4) The procedures and practices for administering the vaccine; and
(5) Redistribution of vaccines provided to local health departments.

(c1) The Commission for Public Health shall, pursuant to G.S. 130A-152 and G.S. 130A-433, adopt rules establishing reasonable fees for the administration of vaccines and rules limiting the requirements that can be placed on children, their parents, guardians, or custodians as a condition for receiving vaccines provided by the State. These rules shall become effective January 1, 1994.

(d) Only vaccine preparations which meet the standards of the United States Food and Drug Administration or its successor in licensing vaccines and are approved for use by the Commission may be used.

(e) When the Commission requires immunization against a disease not listed in paragraph (a) of this section, or requires an additional dose of a vaccine, the Commission is authorized to exempt from the new requirement children who are or who have been enrolled in school (K-12) on or before the effective date of the new requirement. (1957, c. 1357, s. 1; 1971, c. 191; 1973, c. 476, s. 128; c. 632, s. 1; 1975, c. 84; 1977, c. 160; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1985, c. 158; 1993, c. 321, s. 281(a); 2002-179, s. 10; 2007-182, s. 2.)

§ 130A-153. Obtaining immunization; reporting by local health departments; access to immunization information in patient records; immunization of minors.

(a) The required immunization may be obtained from a physician licensed to practice medicine, from a local health department, or in the case of a person at least 18 years of age, from an immunizing pharmacist. Local health departments shall administer required and State-supplied immunizations at no cost to uninsured or underinsured patients with family incomes below two hundred percent (200%) of the federal poverty level. A local health department may redistribute these vaccines only in accordance with the rules of the Commission.

(b) Local health departments shall file monthly immunization reports with the Department. The report shall be filed on forms prepared by the Department and shall state, at a minimum, each patient's age and the number of doses of each type of vaccine administered.

(c) Immunization certificates and information concerning immunizations contained in medical or other records shall, upon request, be shared with the Department, local health departments, an immunizing pharmacist, and the patient's attending physician. In addition, an insurance institution, agent, or insurance support organization, as those terms are defined in G.S. 58-39-15, may share immunization information with the Department. The Commission may, for the purpose of assisting the Department in enforcing this Part, provide by rule that other persons may have access to immunization information, in whole or in part.

(d) A physician or local health department may immunize a minor with the consent of a parent, guardian, or person standing in loco parentis to the minor. A physician or local

health department may also immunize a minor who is presented for immunization by an adult who signs a statement that he or she is authorized by a parent, guardian, or person standing in loco parentis to the minor to obtain the immunization for the minor. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1973, c. 476, s. 128; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1985, c. 743, ss. 1, 2; 1993, c. 134, s. 1; 1999-110, s. 2; 2009-451, s. 10.29A(a); 2010-31, s. 10.13(b); 2013-246, s. 5.)

§ 130A-154. Certificate of immunization.

(a) A physician or local health department administering a required vaccine shall give a certificate of immunization to the person who presented the child for immunization. The certificate shall state the name of the child, the name of the child's parent, guardian, or person responsible for the child obtaining the required immunization, the address of the child and the parent, guardian or responsible person, the date of birth of the child, the sex of the child, the number of doses of the vaccine given, the date the doses were given, the name and address of the physician or local health department administering the required immunization and other relevant information required by the Commission.

(b) Except as otherwise provided in this subsection, a person who received immunizations in a state other than North Carolina shall present an official certificate or record of immunization to the child care facility, school (K-12), or college or university. This certificate or record shall state the person's name, address, date of birth, and sex; the type and number of doses of administered vaccine; the dates of the first MMR and the last DTP and polio; the name and address of the physician or local health department administering the required immunization; and other relevant information required by the Commission. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1999-110, s. 3.)

§ 130A-155. Submission of certificate to child care facility, preschool and school authorities; record maintenance; reporting.

(a) No child shall attend a school (pre K-12), whether public, private or religious, a child care facility as defined in G.S. 110-86(3), unless a certificate of immunization indicating that the child has received the immunizations required by G.S. 130A-152 is presented to the school or facility. The parent, guardian, or responsible person must present a certificate of immunization on the child's first day of attendance to the principal of the school or operator of the facility, as defined in G.S. 110-86(7). If a certificate of immunization is not presented on the first day, the principal or operator shall present a notice of deficiency to the parent, guardian or responsible person. The parent, guardian or responsible person shall have 30 calendar days from the first day of attendance to obtain the required immunization for the child. If the administration of vaccine in a series of doses given at medically approved intervals requires a period in excess of 30 calendar days, additional days upon certification by a physician may be allowed to obtain the required immunization. Upon termination of 30 calendar days or the extended period, the principal or operator shall not permit the child to attend the school or facility unless the required immunization has been obtained.

(b) The school or child care facility shall maintain on file immunization records for all children attending the school or facility which contain the information required for a certificate of immunization as specified in G.S. 130A-154. These certificates shall be open to inspection by the Department and the local health department during normal business hours. When a child transfers to another school or facility, the school or facility which the child previously attended shall, upon

request, send a copy of the child's immunization record at no charge to the school or facility to which the child has transferred.

(c) The school shall file an annual immunization report with the Department by November 1. The child care facility shall file an immunization report annually with the Department. The report shall be filed on forms prepared by the Department and shall state the number of children attending the school or facility, the number of children who had not obtained the required immunization within 30 days of their first attendance, the number of children who received a medical exemption and the number of children who received a religious exemption.

(d) Any adult who attends school (pre K-12), whether public, private or religious, shall obtain the immunizations required in G.S. 130A-152 and shall present to the school a certificate in accordance with this section. The physician or local health department administering a required vaccine to the adult shall give a certificate of immunization to the person. The certificate shall state the person's name, address, date of birth and sex; the number of doses of the vaccine given; the date the doses were given; the name and addresses of the physician or local health department administering the required immunization; and other relevant information required by the Commission. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1973, c. 632, s. 2; 1979, c. 56, s. 1; 1981, c. 44; 1983, c. 891, s. 2; 1997-506, s. 47; 1999-110, s. 4; 2007-187, s. 2.)

§ 130A-155.1. Submission of certificate to college or universities.

(a) Except as otherwise provided in this section, no person shall attend a college or university, whether public, private, or religious, unless a certificate of immunization or a record of immunization from a high school located in North Carolina indicating that the person has received immunizations required by G.S. 130A-152 is presented to the college or university. The person shall present a certificate or record of immunization on or before the date the person first registers for a quarter or semester during which the student will reside on the campus or first registers for more than four traditional day credit hours to the registrar of the college or university. If a certificate or record of immunization is not in the possession of the college or university on the date of first registration, the college or university shall present a notice of deficiency to the student. The student shall have 30 calendar days from the date of the student's first registration to obtain the required immunization. If immunization requires a series of doses and the period necessary to give the vaccine at standard intervals extends beyond the date of the first registration, the student shall be allowed to attend the college or university upon written certification by a physician that the standard series is in progress. The physician shall state the time period needed to complete the series. Upon termination of this time period, the college or university shall not permit the student to continue in attendance unless the required immunization has been obtained.

(b) The college or university shall maintain on file immunization records for all students attending the school which contain the information required for a certificate of immunization as specified in G.S. 130A-154. These certificates shall be open to inspection by the Department and the local health department during normal business hours. When a student transfers to another college or university, the college or university which the student previously attended shall, upon request, send a copy of the student's immunization record at no charge to the college or university to which the student has transferred.

(c) Within 60 calendar days after the commencement of a new school year, the college or university shall file an immunization report with the Department. The report shall be filed on forms prepared by the Department and shall state the number of students attending the school or facility, the number of students who had not obtained the required immunization within 30 days of their

first attendance, the number of students who received a medical exemption and the number of students who received a religious exemption.

(d) Repealed by Session Laws 1999-110, s. 5.

(e) The provisions of this section shall not apply to:

(1) Educational institutions established under Chapter 115D of the General Statutes.

(2) Students residing off-campus and registering for any combination of:

a. Off-campus courses.

b. Evening courses.

c. Weekend courses.

d. No more than four traditional day credit hours in on-campus courses. (1985, c. 692, s. 1; 1987, c. 782, s. 17; 1991, c. 381, s. 1; 1999-110, s. 5; 2007-99, s. 1.)

§ 130A-156. Medical exemption.

The Commission for Public Health shall adopt by rule medical contraindications to immunizations required by G.S. 130A-152. If a physician licensed to practice medicine in this State certifies that a required immunization is or may be detrimental to a person's health due to the presence of one of the contraindications adopted by the Commission, the person is not required to receive the specified immunization as long as the contraindication persists. The State Health Director may, upon request by a physician licensed to practice medicine in this State, grant a medical exemption to a required immunization for a contraindication not on the list adopted by the Commission. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1987, c. 782, s. 18; 1989, c. 122; 1999-110, s. 6; 2007-182, s. 2.)

§ 130A-157. Religious exemption.

If the bona fide religious beliefs of an adult or the parent, guardian or person in loco parentis of a child are contrary to the immunization requirements contained in this Chapter, the adult or the child shall be exempt from the requirements. Upon submission of a written statement of the bona fide religious beliefs and opposition to the immunization requirements, the person may attend the college, university, school or facility without presenting a certificate of immunization. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1985, c. 692, s. 2; 2002-179, s. 17.)

§ 130A-158. Restitution required when vaccine spoiled due to provider negligence.

Immunization program providers shall be liable for restitution to the State for the cost of replacement vaccine when vaccine in the provider's inventory has become spoiled or unstable due to the provider's negligence and unreasonable failure to properly handle or store the vaccine. (2001-424, s. 21.86(a).)

§ 130A-159. Reserved for future codification purposes.

Part 3. Venereal Disease.

§§ 130A-160 through 130A-166: Repealed by Session Laws 1991, c. 225, s. 2.

§§ 130A-167 through 130A-170. Reserved for future codification purposes.

Part 4. Inflammation of Eyes of Newborn.

§ 130A-171: Repealed.

§ 130A-172: Repealed.

§ 130A-173: Repealed.

§ 130A-174: Repealed.

§ 130A-175. Reserved for future codification purposes.

§ 130A-176. Reserved for future codification purposes.

Part 5. Tuberculosis.

§ 130A-177: Repealed.

§ 130A-178: Repealed.

§ 130A-179. Repealed by Session Laws 1987, c. 782, s. 20.

§§ 130A-180 through 130A-183. Reserved for future codification purposes.

Part 6. Rabies.

§ 130A-184. Definitions.

The following definitions apply in this Part:

(1) Animal Control Officer. – A city or county employee whose responsibility includes animal control. The term "Animal Control Officer" also includes agents of a private organization that is operating an animal shelter under contract with a city or county whenever those agents are performing animal control functions at the shelter.

(2) Cat. – A domestic feline of the genus and species Felis catus.

(3) Certified rabies vaccinator. – A person appointed and certified to administer rabies vaccine to animals in accordance with this Part.

(4) Dog. – A domestic canine of the genus, species, and subspecies Canis lupus familiaris.

(4a) Feral. – An animal that is not socialized.

(4b) Ferret. – A domestic mammal of the genus, species, and subspecies Mustela putorius furo.

(5) Rabies vaccine. – An animal rabies vaccine licensed by the United States Department of Agriculture and approved for use in this State by the Commission.

(6) State Public Heath Veterinarian. – A person appointed by the Secretary to direct the State public health veterinary program.

(6a) Stray. – An animal that meets both of the following conditions:

a. Is beyond the limits of confinement or lost.

b. Is not wearing any tags, microchips, tattoos, or other methods of identification.

(7) Vaccination. – The administration of rabies vaccine by a person authorized to administer it under G.S. 130A-185. (1935, c. 122, s. 1; 1949, c. 645, s. 1; 1953, c. 876, s. 1; 1957, c. 1357, s. 3; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2009-304, s. 2; 2009-327, s. 1.)

§ 130A-185. Vaccination required.

(a) Vaccination required. – The owner of an animal listed in this subsection over four months of age shall have the animal vaccinated against rabies:

(1) Cat.

(2) Dog.

(3) Ferret.

(b) Vaccination. – Only animal rabies vaccine licensed by the United States Department of Agriculture and approved by the Commission shall be used on animals in this State. A rabies vaccine may only be administered by one or more of the following:

(1) A licensed veterinarian.

(2) A registered veterinary technician under the direct supervision of a licensed veterinarian.

(3) A certified rabies vaccinator. (1935, c. 122, s. 1; 1941, c. 259, s. 2; 1953, c. 876, s. 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2009-327, s. 2.)

§ 130A-186. Appointment and certification of certified rabies vaccinator.

In those counties where licensed veterinarians are not available to participate in all scheduled county rabies control clinics, the local health director shall appoint one or more persons for the purpose of administering rabies vaccine to animals in that county. Whether or not licensed veterinarians are available, the local health director may appoint one or more persons for the purpose of administering rabies vaccine to animals in their county and these persons will make themselves available to participate in the county rabies control program. The State Public Health Veterinarian shall provide at least four hours of training to those persons appointed by the local health director to administer rabies vaccine. Upon satisfactory completion of the training, the State Public Health Veterinarian shall certify in writing that the appointee has demonstrated a knowledge and procedure acceptable for the administration of rabies vaccine to animals. A certified rabies vaccinator shall be authorized to administer rabies vaccine to animals in the county until the appointment by the local health director has been terminated. (1935, c. 122, s. 3; 1941, c. 259, s. 3; 1953, c. 876, s. 3; 1957, c. 1357, s. 4; 1983, c. 891, s. 2.)

§ 130A-187. County rabies vaccination clinics.

(a) Local Clinics. – The local health director shall organize or assist other county departments to organize at least one countywide rabies vaccination clinic per year for the purpose of vaccinating animals required to be vaccinated under this Part. Public notice of the time and place of rabies vaccination clinics shall be published in a newspaper having general circulation within the area.

(b) Fee. – The county board of commissioners may establish a fee to be charged for a rabies vaccination given at a county rabies vaccination clinic. The fee amount may consist of the following:

(1) A charge for administering and storing the vaccine, not to exceed ten dollars ($10.00).

(2) The actual cost of the rabies vaccine, the vaccination certificate, and the rabies vaccination tag. (1983, c. 891, s. 2; 1987, c. 219; 2009-327, s. 3.)

§ 130A-188: Repealed by Session Laws 2009-327, s. 4, effective October 1, 2009.

§ 130A-189. Rabies vaccination certificates.

A person who administers a rabies vaccine shall complete a rabies vaccination certificate. The Commission shall adopt rules specifying the information that must be included on the certificate. An original rabies vaccination certificate shall be given to the owner of the animal that receives the rabies vaccine. A copy of the rabies vaccination certificate shall be retained by the licensed veterinarian or the certified rabies vaccinator. A copy shall also be given to the county agency responsible for animal control, provided the information given to the county agency shall not be used for commercial purposes. (1935, c. 122, s. 6; 1941, c. 259, s. 5; 1959, c. 352; 1983, c. 891, s. 2; 1993, c. 245, s. 1; 2009-327, s. 5.)

§ 130A-190. Rabies vaccination tags.

(a) Issuance. – A person who administers a rabies vaccine shall issue a rabies vaccination tag to the owner of the animal. The rabies vaccination tag shall show the year issued, a vaccination number, the words "North Carolina" or the initials "N.C." and the words "rabies vaccine." Dogs shall wear rabies vaccination tags at all times. Cats and ferrets must wear rabies vaccination tags unless they are exempt from wearing the tags by local ordinance.

(b) Fee. – Rabies vaccination tags, links, and rivets may be obtained from the Department of Health and Human Services. The Secretary is authorized to collect a fee for the rabies tags, links, and rivets in accordance with this subsection. The fee for each tag is the sum of the following:

(1) The actual cost of the rabies tag, links, and rivets.

(2) Transportation costs.

(3) Fifteen cents (15¢). This portion of the fee shall be used to fund rabies education and prevention programs.

(4) Repealed by Session Laws 2010-31, s. 11.4(h), effective October 1, 2010.

(c) Repealed by Session Laws 2007-487, s. 1, effective January 1, 2008. (1935, c. 122, s. 6; 1941, c. 259, s. 5; 1959, c. 352; 1983, c. 891, s. 2; 1997-69, s. 1; 2000-163, s. 2; 2007-487, s. 1; 2009-327, s. 6; 2010-31, s. 11.4(h).)

§ 130A-191. Possession and distribution of rabies vaccine.

It shall be unlawful for persons other than licensed veterinarians, certified rabies vaccinators and persons engaged in the distribution of rabies vaccine to possess rabies vaccine. Persons engaged in the distribution of vaccines may distribute, sell and offer to sell rabies vaccine only to licensed veterinarians and certified rabies vaccinators. (1987, c. 218.)

§ 130A-192. Animals not wearing required rabies vaccination tags.

(a) The Animal Control Officer shall canvass the county to determine if there are any animals not wearing the required rabies vaccination tag. If an animal required to wear a tag is found not wearing one, the Animal Control Officer shall check to see if the owner's identification can be found on the animal. If the animal is wearing an owner identification tag with information enabling the owner of the animal to be contacted, or if the Animal Control Officer otherwise knows who the owner is, the Animal Control Officer shall notify the owner in writing to have the animal vaccinated against rabies and to produce the required rabies vaccination certificate to the Animal Control Officer within three days of the notification. If the animal is not wearing an owner identification tag and the Animal Control Officer does not otherwise know who the owner is, the Animal Control Officer may impound the animal. The duration of the impoundment of these animals shall be established by the county board of commissioners, but the duration shall not be less than 72 hours. During the impoundment period, the Animal Control Officer shall make a reasonable effort to locate the owner of the animal. If the Animal Control Officer has access at no cost or at a reasonable cost to a microchip scanning device, the Animal Control Officer shall scan the animal and utilize any information that may be available through a microchip to locate the owner of the animal, if possible. If the animal is not reclaimed by its owner during the impoundment period, the animal shall be disposed of in one of the following manners: returned to the owner; adopted as a pet by a new owner; or put to death by a procedure approved by rules adopted by the Department of Agriculture and Consumer Services or, in the absence of such rules, by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association.

(a1) Before an animal may be put to death, it shall be made available for adoption as provided in G.S. 19A-32.1.

(a2) Repealed by Session Laws 2013-377, s. 3, effective July 29, 2013.

(a3) The Animal Control Officer shall maintain a record of all animals impounded under this section which shall include the date of impoundment, the length of impoundment, the method of disposal of the animal and the name of the person or institution to whom any animal has been released.

(b) through (e) Repealed by Session Laws 2013-377, s. 3, effective July 29, 2013.

(1935, c. 122, s. 8; 1983, c. 891, s. 2; 2009-304, s. 1; 2009-327, s. 7; 2013-377, s. 3.)

§ 130A-193. Vaccination and confinement of animals brought into this State.

(a) Vaccination Required. – An animal brought into this State that is required to be vaccinated under this Part shall immediately be securely confined and shall be vaccinated against rabies within one week after entry. The animal shall remain confined for two weeks after vaccination.

(b) Exceptions. – The provisions of subsection (a) shall not apply to:

(1) An animal brought into this State for exhibition purposes if the animal is confined and not permitted to run at large.

(2) An animal brought into this State accompanied by a certificate issued by a licensed veterinarian showing that the animal is apparently free from and has not been exposed to rabies and that the animal is currently vaccinated against rabies. (1935, c. 122, s. 11; 1983, c. 891, s. 2; 2009-327, s. 8.)

§ 130A-194. Quarantine of districts infected with rabies.

An area may be declared under quarantine against rabies by the local health director when the disease exists to the extent that the lives of persons are endangered. When quarantine is declared, each animal in the area that is required to be vaccinated under this Part shall be confined on the premises of the owner or in a veterinary hospital unless the animal is on a leash or under the control and in the sight of a responsible adult. (1935, c. 122, s. 12; 1941, c. 259, s. 9; 1949, c. 645, s. 3; 1953, c. 876, s. 8; 1957, c. 1357, s. 8; 1983, c. 891, s. 2; 2009-327, s. 9.)

§ 130A-195. Destroying stray or feral animals in quarantine districts.

When quarantine has been declared and stray or feral animals continue to run uncontrolled in the area, any peace officer or Animal Control Officer shall have the right, after reasonable effort has been made to apprehend the animals, to destroy the stray or feral animals and properly dispose of their bodies. (1935, c. 122, s. 13; 1953, c. 876, s. 9; 1983, c. 891, s. 2; 2009-327, s. 10.)

§ 130A-196. Notice and confinement of biting animals.

(a) Notice. – When a person has been bitten by an animal required to be vaccinated under this Part, the person or parent, guardian or person standing in loco parentis of the person, and the person owning the animal or in control or possession of the animal shall notify the local health director immediately and give the name and address of the person bitten and the owner of the animal. If the animal that bites a person is a stray or feral animal, the local agency responsible for animal control shall make a reasonable attempt to locate the owner of the animal. If the owner cannot be identified within 72 hours of the event, the local health director may authorize the animal be euthanized, and the head of the animal shall be immediately sent to the State Laboratory of Public Health for rabies diagnosis. If the event occurs on a weekend or State holiday the time period for owner identification shall be extended 24 hours.

A physician who attends a person bitten by an animal known to be a potential carrier of rabies shall report the incident within 24 hours to the local health director. The report must include the name, age, and sex of the person.

(b) Confinement. – When an animal required to be vaccinated under this Part bites a person, the animal shall be immediately confined for 10 days in a place designated by the local health director. The local health director may authorize a dog trained and used by a law enforcement agency to be released from confinement to perform official duties upon submission of proof that the dog has been vaccinated for rabies in compliance with this Part. After reviewing the circumstances of the particular case, the local health director may allow the owner to confine the animal on the owner's property. An owner who fails to confine an animal in accordance with the instructions of the local health director shall be guilty of a Class 2 misdemeanor. If the owner or the person who controls or possesses the animal that has bitten a person refuses to confine the animal as required by this subsection, the local health director may order seizure of the animal and its confinement for 10 days at the expense of the owner. (1935, c. 122, s. 17; 1941, c. 259, s. 11; 1953, c. 876, s. 13; 1957, c. 1357, s. 9; 1977, c. 628; 1983, c. 891, s. 2; 1985, c. 674; 1989, c. 298; 1993, c. 539, s. 950; 1994, Ex. Sess., c. 24, s. 14(c); 2009-327, s. 11.)

§ 130A-197. Management of dogs, cats, and ferrets exposed to rabies.

When the local health director reasonably suspects that an animal required to be vaccinated under this Part has been exposed to the saliva or nervous tissue of a proven rabid animal or animal reasonably suspected of having rabies that is not available for laboratory diagnosis, the animal shall be considered to have been exposed to rabies. The recommendations and guidelines for rabies post-exposure management specified by the National Association of State Public Health Veterinarians in the most current edition of the Compendium of Animal Rabies Prevention and Control shall be the required control measures. (1935, c. 122, s. 14; 1953, c. 876, s. 10; 1983, c. 891, s. 2; 2000-163, s. 4; 2009-327, s. 12; 2017-106, s. 1.)

§ 130A-198. Confinement.

A person who owns or has possession of an animal which is suspected of having rabies shall immediately notify the local health director or county Animal Control Officer and shall securely confine the animal in a place designated by the local health director. The animal shall be confined for a period of 10 days. Other animals may be destroyed at the discretion of the State Public Health Veterinarian. (1935, c. 122, s. 15; c. 344; 1941, c. 259, s. 10; 1953, c. 876, s. 11; 1983, c. 891, s. 2; 2009-327, s. 13.)

§ 130A-199. Rabid animals to be destroyed; heads to be sent to State Laboratory of Public Health.

An animal diagnosed as having rabies by a licensed veterinarian shall be destroyed and its head sent to the State Laboratory of Public Health. The heads of all animals that die during a confinement period required by this Part shall be immediately sent to the State Laboratory of Public Health for rabies diagnosis. (1935, c. 122, s. 16; 1953, c. 876, s. 12; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2009-327, s. 14.)

§ 130A-200. Confinement or leashing of vicious animals.

A local health director may declare an animal to be vicious and a menace to the public health when the animal has attacked a person causing bodily harm without being teased, molested, provoked, beaten, tortured or otherwise harmed. When an animal has been declared to be vicious and a menace to the public health, the local health director shall order the animal to be confined to its owner's property. However, the animal may be permitted to leave its owner's property when accompanied by a responsible adult and restrained on a leash. (1935, c. 122, s. 18; 1953, c. 876, s. 14; 1983, c. 891, s. 2.)

§ 130A-201. Rabies emergency.

A local health director in whose county or district rabies is found in the wild animal population as evidenced by a positive diagnosis of rabies in the past year in any wild animal, except a bat, may petition the State Health Director to declare a rabies emergency in the county or district. In determining whether a rabies emergency exists, the State Health Director shall consult with the Public Health Veterinarian and the State Agriculture Veterinarian and may consult with any other source of veterinary expertise the State Health Director deems advisable. Upon finding that a rabies emergency exists in a county or district, the State Health Director shall petition the Executive Director of the Wildlife Resources Commission to develop a plan pursuant to G.S. 113-291.2(a1)

to reduce the threat of rabies exposure to humans and domestic animals by foxes, raccoons, skunks, or bobcats in the county or district. Upon determination by the State Health Director that the rabies emergency no longer exists for a county or district, the State Health Director shall immediately notify the Executive Director of the Wildlife Resources Commission. (1997-402, s. 1.)

§ 130A-202. Reserved for future codification purposes.

§ 130A-203. Reserved for future codification purposes.

§ 130A-204. Reserved for future codification purposes.

Article 7.

Chronic Disease.

Part 1. Cancer.

§ 130A-205. Administration of program; rules.

(a) The Department shall establish and administer a program for the prevention and detection of cancer and the care and treatment of persons with cancer.

(b) The Commission shall adopt rules necessary to implement the program. (1945, c. 1050, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2.)

§ 130A-206. Financial aid for diagnosis and treatment.

The Department shall provide financial aid for diagnosis and treatment of cancer to indigent citizens of this State having or suspected of having cancer. The Department may make facilities for diagnosis and treatment of cancer available to all citizens. Reimbursement shall only be provided for diagnosis and treatment performed in a medical facility which meets the minimum requirements for cancer control established by the Commission. The Commission shall adopt rules specifying the terms and conditions by which the patients may receive financial aid. (1945, c. 1050, s. 2; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2.)

§ 130A-207. Cancer clinics.

The Department is authorized to provide financial aid to sponsored cancer clinics in medical facilities and local health departments. The Commission shall adopt rules to establish minimum standards for the staffing, equipment and operation of the clinics sponsored by the Department. (1945, c. 1050, s. 3; 1949, c. 1071; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2.)

§ 130A-208. Central cancer registry.

A central cancer registry is established within the Department. The central cancer registry shall compile, tabulate and preserve statistical, clinical and other reports and records relating to the incidence, treatment and cure of cancer received pursuant to this Part. The central cancer registry shall provide assistance and consultation for public health work. (1945, c. 1050, s. 7; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2.)

§ 130A-209. Incidence reporting of cancer; charge for collection if failure to report.

(a) By no later than October 1, 2014, all health care facilities and health care providers that detect, diagnose, or treat cancer or benign brain or central nervous system tumors shall submit by electronic transmission a report to the central cancer registry each diagnosis of cancer or benign brain or central nervous system tumors in any person who is screened, diagnosed, or treated by the facility or provider. The electronic transmission of these reports shall be in a format prescribed by the United States Department of Health and Human Services, Centers for Disease Control and Prevention, National Program of Cancer Registries. The reports shall be made within six months after diagnosis. Diagnostic, demographic and other information as prescribed by the rules of the Commission shall be included in the report.

(b) If a health care facility or health care provider fails to report as required under this section, then the central cancer registry may conduct a site visit to the facility or provider or be provided access to the information from the facility or provider and report it in the appropriate format. The Commission may adopt rules requiring that the facility or provider reimburse the registry for its cost to access and report the information in an amount not to exceed one hundred dollars ($100.00) per case. Thirty days after the expiration of the six-month period for reporting under subsection (a) of this section, the registry shall send notice to each facility and provider that has not submitted a report as of that date that failure to file a report within 30 days shall result in collection of the data by the registry and liability for reimbursement imposed under this section. Failure to receive or send the notice required under this section shall not be construed as a waiver of the reporting requirement. For good cause, the central cancer registry may grant an additional 30 days for reporting.

(c) As used in this section, the term:

(1) "Health care facility" or "facility" means any hospital, clinic, or other facility that is licensed to administer medical treatment or the primary function of which is to provide medical treatment in this State. The term includes health care facility laboratories and independent pathology laboratories;

(2) "Health care provider" or "provider" means any person who is licensed or certified to practice a health profession or occupation under Chapter 90 of the General Statutes and who diagnoses or treats cancer or benign brain or central nervous system tumors. (1949, c. 499; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2; 1999-33, s. 1; 2005-373, s. 1; 2013-378, s. 9.)

§ 130A-210. Repealed by Session Laws 1999-33, s. 2.

§ 130A-211. Immunity of persons who report cancer.

A person who makes a report pursuant to G.S. 130A-209 to the central cancer registry shall be immune from any civil or criminal liability that might otherwise be incurred or imposed. (1967, c. 859; 1969, c. 5; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2; 2013-321, s. 2.)

§ 130A-212. Confidentiality of records.

The clinical records or reports of individual patients shall be confidential and shall not be public records open to inspection. The Commission shall provide by rule for the use of the records and reports for medical research. (1981, c. 345, s. 2; 1983, c. 891, s. 2.)

§ 130A-213. Cancer Committee of the North Carolina Medical Society.

In implementing this Part, the Department shall consult with the Cancer Committee of the North Carolina Medical Society. The Committee shall consist of at least one physician from each congressional district. Any proposed rules or reports affecting the operation of the cancer control program shall be reviewed by the Committee for comment prior to adoption. (1945, c. 1050, s. 9; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2.)

§ 130A-214. Duties of Department.

The Department shall study the entire problem of cancer including its causes, including environmental factors; prevention; detection; diagnosis and treatment. The Department shall provide or assure the availability of cancer educational resources to health professionals, interested private or public organizations and the public. (1967, c. 186, s. 2; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2.)

§ 130A-215. Reports.

The Secretary shall make a report to the Governor and the General Assembly specifying the activities of the cancer control program and its budget. The report shall be made to the Governor annually and to the General Assembly biennially. (1981, c. 345, s. 2; 1983, c. 891, s. 2.)

§ 130A-215.1: Reserved for future codification purposes.

§ 130A-215.2: Reserved for future codification purposes.

§ 130A-215.3: Reserved for future codification purposes.

§ 130A-215.4: Reserved for future codification purposes.

§ 130A-215.5. Communication of mammographic breast density information to patients.

(a) All health care facilities that perform mammography examinations shall include in the summary of the mammography report, required by federal law to be provided to a patient, information that identifies the patient's individual breast density classification based on the Breast Imaging Reporting and Data System established by the American College of Radiology. If the facility determines that a patient has heterogeneously or extremely dense breasts, the summary of the mammography report shall include the following notice:

"Your mammogram indicates that you may have dense breast tissue. Dense breast tissue is relatively common and is found in more than forty percent (40%) of women. The presence of dense tissue may make it more difficult to detect abnormalities in the breast and may be associated with an increased risk of breast cancer. We are providing this information to raise your awareness of this important factor and to encourage you to talk

with your physician about this and other breast cancer risk factors. Together, you can decide which screening options are right for you. A report of your results was sent to your physician."

(b) Patients who receive diagnostic or screening mammograms may be directed to informative material about breast density. This informative material may include the American College of Radiology's most current brochure on the subject of breast density. (2013-321, s. 1.)

§ 130A-216. Cancer patient navigation program.

The Department shall establish a cancer patient navigation program under the Breast and Cervical Cancer Control Program. The purpose of the program shall be to provide education about and assistance with the management of cancer. At a minimum, the program shall do the following:

(1) Initially serve breast and cervical cancer patients statewide with the intent of future expansion to all other cancer types.

(2) Employ a multidisciplinary team approach to assist cancer patients in identifying and gaining access to available health care, financial and legal assistance, transportation, psychological support, and other related issues.

(3) Work with an existing cancer service agency that is not affiliated with a particular health care institution so that program clients may have access to any cancer health care facility in the State. (2009-502, s. 1.)

§ 130A-217. Reserved for future codification purposes.

§ 130A-218. Reserved for future codification purposes.

§ 130A-219. Reserved for future codification purposes.

Part 2. Chronic Renal Disease.

§ 130A-220. Department to establish program.

(a) The Department shall establish and administer a program for the detection and prevention of chronic renal disease and the care and treatment of persons with chronic renal disease. The program may include:

(1) Development of services for the prevention of chronic renal disease;

(2) Development and expansion of services for the care and treatment of persons with chronic renal disease, including techniques which will have a lifesaving effect in the care and treatment of those persons;

(3) Provision of financial assistance on the basis of need for diagnosis and treatment of persons with chronic renal disease;

(4) Equipping dialysis and transplantation centers; and

(5) Development of an education program for physicians, hospitals, local health departments and the public concerning chronic renal disease.

(b) The Commission is authorized to adopt rules necessary to implement the program. (1971, c. 1027, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

Part 3. Glaucoma and Diabetes.

§ 130A-221. Department authorized to establish program.

(a) The Department may establish and administer a program for the detection and prevention of glaucoma and diabetes and the care and treatment of persons with glaucoma and diabetes. The program may include:

(1) Education of patients, health care personnel and the public;

(2) Development and expansion of services to persons with glaucoma and diabetes; and

(3) Provision of supplies, equipment and medication for detection and control of glaucoma and diabetes.

(b) The Commission is authorized to adopt rules necessary to implement the program. (1977, 2nd Sess., c. 1257, s. 1; 1983, c. 891, s. 2; 1997-137, s. 2.)

§ 130A-221.1. Coordination of diabetes programs.

(a) The Division of Medical Assistance and the Diabetes Prevention and Control Branch of the Division of Public Health, within the Department of Health and Human Services; in addition to the State Health Plan Division within the Department of State Treasurer; shall work collaboratively to each develop plans to reduce the incidence of diabetes, to improve diabetes care, and to control the complications associated with diabetes. Each entity's plans shall be tailored to the population the entity serves and must establish measurable goals and objectives.

(b) On or before January 1 of each odd-numbered year, the entities referenced in subsection (a) of this section shall collectively submit a report to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division. The report shall provide the following:

(1) An assessment of the financial impact that each type of diabetes has on each entity and collectively on the State. This assessment shall include: the number of individuals with diabetes served by the entity, the cost of diabetes prevention and control programs implemented by the entity, the financial toll or impact diabetes and related complications places on the program, and the financial toll or impact diabetes and related complications places on each program in comparison to other chronic diseases and conditions.

(2) A description and an assessment of the effectiveness of each entity's programs and activities implemented to prevent and control diabetes. For each program and activity, the assessment shall document the source and amount of funding provided to the entity, including funding provided by the State.

(3) A description of the level of coordination that exists among the entities referenced in subsection (a) of this section, as it relates to activities, programs, and messaging to manage, treat, and prevent all types of diabetes and the complications from diabetes.

(4) The development of and revisions to detailed action plans for preventing and controlling diabetes and related complications. The plans shall identify proposed action steps to reduce the impact of diabetes, pre-diabetes, and related diabetic complications; identify expected outcomes for each action step; and establish benchmarks for preventing and controlling diabetes.

(5) A detailed budget identifying needs, costs, and resources required to implement the plans identified in subdivision (4) of this subsection, including a list of actionable items for consideration by the Committee. (2013-192, s. 1; 2014-100, s. 12E.7.)

§ 130A-221.5. Diabetes education as part of well-child care.

Each physician, physician assistant, or certified nurse practitioner who provides well-child care is encouraged to educate and discuss the warning signs of Type I diabetes and symptoms with each parent for each child under the care of the physician, physician assistant, or certified nurse practitioner at least once at the following age intervals:

(1) Birth.
(2) Twelve months of age.
(3) Twenty-four months of age.
(4) Thirty-six months of age.
(5) Forty-eight months of age.
(6) Sixty months of age. (2015-273, s. 1.)

Part 4. Arthritis.

§ 130A-222. Department to establish program.

(a) The Department shall establish and administer a program for the detection and prevention of arthritis and the care and treatment of persons with arthritis. The purpose of the program shall be:

(1) To improve professional education for physicians and allied health professionals including nurses, physical and occupational therapists and social workers;
(2) To conduct programs of public education and information;
(3) To provide detection and treatment programs and services for the at-risk population of this State;
(4) To utilize the services available at the State medical schools, existing arthritis rehabilitation centers and existing local arthritis clinics and agencies;
(5) To develop an arthritis outreach clinical system;
(6) To develop and train personnel at clinical facilities for diagnostic work-up, laboratory analysis and consultations with primary physicians regarding patient management; and
(7) To develop the epidemiologic studies to determine frequency and distribution of the disease.

(b) The Commission is authorized to adopt rules necessary to implement the program. (1979, c. 996, s. 2; 1983, c. 891, s. 2.)

§ 130A-222.1: Reserved for future codification purposes.

§ 130A-222.2: Reserved for future codification purposes.

§ 130A-222.3: Reserved for future codification purposes.

§ 130A-222.4: Reserved for future codification purposes.

Part 4A. Chronic Care Coordination.

§ 130A-222.5. Department to coordinate chronic care initiatives.

The Department's Divisions of Public Health and Medical Assistance and the Division in the Department of State Treasurer responsible for the State Health Plan for Teachers and State Employees shall collaborate to reduce the incidence of chronic disease and improve chronic care coordination within the State by doing all of the following:

(1) Identifying goals and benchmarks for the reduction of chronic disease.

(2) Developing wellness and prevention plans specifically tailored to each of the Divisions.

(3) Submitting an annual report on or before January 1 of each odd-numbered year to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Health and Human Services, and the Fiscal Research Division that includes at least all of the following:

a. The financial impact and magnitude of the chronic health conditions in this State that are most likely to cause death and disability, including, but not limited to, chronic cardiovascular disease, oncology, stroke, chronic lung disease, and chronic metabolic disease. As used in this subdivision, the term "chronic cardiovascular disease" includes heart disease and hypertension; the term "chronic metabolic disease" includes diabetes and obesity; and the term "chronic lung disease" means asthma and chronic obstructive pulmonary disease.

b. An assessment of the benefits derived from wellness and prevention programs and activities implemented within the State with the goal of coordinating chronic care. This assessment shall include a breakdown of the amount of all State, federal, and other funds appropriated to the Department for wellness and prevention programs and activities for the detection, prevention, and treatment of persons with multiple chronic health conditions, at least one of which is a condition identified in sub-subdivision a. of this subdivision.

c. A description of the level of coordination among the Divisions of Public Health and Medical Assistance and the Division in the Department of State Treasurer responsible for the State Health Plan for Teachers and State Employees with respect to activities, programs, and public education on the prevention, treatment, and management of the chronic health conditions identified in sub-subdivision a. of this subdivision.

d. Detailed action plans for care coordination of multiple chronic health conditions in the same patient, including a range of recommended legislative actions. The action plans shall identify proposed action steps to reduce the financial impact of the chronic health conditions identified in sub-subdivision a. of this subdivision, including (i) adjustment of hospital readmission rates, (ii) development of transitional care plans, (iii) implementation of comprehensive medication management, as

described by the Patient-Centered Primary Care Collaborative, to help patients achieve improved clinical and therapeutic outcomes, and (iv) adoption of standards related to quality that are publicly reported evidence-based measures endorsed through a multistakeholder process such as the National Quality Forum. The action plans shall also identify expected outcomes of these proposed action steps during the succeeding fiscal biennium and establish benchmarks for coordinating care and reducing the incidence of multiple chronic health conditions.

e. A detailed budget identifying all costs associated with implementing the action plans identified in sub-subdivision d. of this subdivision. (2013-207, s. 2.)

Part 5. Adult Health.

§ 130A-223. Department to establish program.

(a) The Department shall establish and administer a program for the prevention of diseases, disabilities and accidents that contribute significantly to mortality and morbidity among adults. The program may also provide for the care and treatment of persons with these diseases or disabilities.

(b) The Commission is authorized to adopt rules necessary to implement the program. (1983, c. 891, s. 2.)

Part 5A. Men's Health.

§ 130A-223.1. Department to establish strategies for improving men's health.

The Department of Health and Human Services, Division of Public Health, Chronic Disease and Injury Prevention Section, shall work to expand the State's attention and focus on the prevention of disease and improvement in the quality of life for men over their entire lifespan. The Department shall develop strategies for achieving these goals, which shall include, but not be limited to, all of the following:

(1) Developing a strategic plan to improve health care services.
(2) Building public health awareness.
(3) Developing initiatives within existing programs.
(4) Pursuing federal and State funding for the screening, early detection, and treatment of prostate cancer and other diseases affecting men's health. (2013-360, s. 12E.7.)

Part 6. Injury Prevention.

§ 130A-224. Department to establish program.

To protect and enhance the public health, welfare, and safety, the Department shall establish and administer a comprehensive statewide injury prevention program. The Department shall designate the Division of Public Health as the lead agency for injury prevention activities. The Division of Public Health shall:

(1) Develop a comprehensive State plan for injury prevention;
(2) Maintain an injury prevention program that includes data collection, surveillance, and education and promotes injury control activities; and

(3) Develop collaborative relationships with other State agencies and private and community organizations to establish programs promoting injury prevention. (2007-187, s. 3.)

§ 130A-225. Reserved for future codification purposes.

§ 130A-226. Reserved for future codification purposes.

Article 8.

Sanitation.

Part 1. General.

§ 130A-227. Department to establish program; definitions.

(a) For the purpose of promoting a safe and healthful environment and developing corrective measures required to minimize environmental health hazards, the Department shall establish a sanitation program. The Department shall employ environmental engineers, sanitarians, soil scientists and other scientific personnel necessary to carry out the sanitation provisions of this Chapter and the rules of the Commission.

(b) The following definitions shall apply throughout this Article:

(1) "Department" means the Department of Health and Human Services.

(2) "Secretary" means the Secretary of Health and Human Services. (1983, c. 891, s. 2; 1997-443, s. 11A.77A; 2011-145, s. 13.3(aaa).)

Part 2. Meat Markets.

§ 130A-228: Repealed.

§ 130A-229: Repealed.

Part 3. Sanitation of Scallops, Shellfish and Crustacea.

§§ 130A-230, 130A-231: Repealed by Session Laws 2011-145, s. 13.3(ppp), effective July 1, 2011. See note for recodification of former G.S. 130A-230.

§ 130A-232: Reserved for future codification purposes.

Part 3A. Monitor Water Quality of Coastal Fishing and Recreation Waters.

§ 130A-233: Repealed by Session Laws 2011-145, s. 13.3(rrr), effective July 1, 2011. See note for recodification of former G.S. 130A-233.1.

§ 130A-233.1: Repealed by Session Laws 2011-145, s. 13.3(rrr), effective July 1, 2011. See note for recodification of former G.S. 130A-233.1.

§ 130A-233.2: Repealed by Session Laws 2011-145, s. 13.3(rrr), effective July 1, 2011. See note for recodification of former G.S. 130A-233.1.

§ 130A-234. Reserved for future codification purposes.

Part 4. Institutions and Schools.

§ 130A-235. Regulation of sanitation in institutions; setback requirements applicable to certain water supply wells.

(a) For protection of the public health, the Commission shall adopt rules to establish sanitation requirements for all institutions and facilities at which individuals are provided room or board and for which a license to operate is required to be obtained or a certificate for payment is obtained from the Department. The rules shall also apply to facilities that provide room and board to individuals but are exempt from licensure under G.S. 131D-10.4(1). No other State agency may adopt rules to establish sanitation requirements for these institutions and facilities. The Department shall issue a license to operate or a certificate for payment to such an institution or facility only upon compliance with all applicable sanitation rules of the Commission, and the Department may suspend or revoke a license or a certificate for payment for violation of these rules. In adopting rules pursuant to this section, the Commission shall define categories of standards to which such institutions and facilities shall be subject and shall establish criteria for the placement of any such institution or facility into one of the categories. This section shall not apply to State institutions and facilities subject to inspection under G.S. 130A-5(10). This section shall not apply to a single-family dwelling that is used for a family foster home or a therapeutic foster home, as those terms are defined in G.S. 131D-10.2.

(a1) Notwithstanding any law, rule, or policy to the contrary, the frequency of food service inspections in nursing homes or nursing home beds licensed under Part 1 of Article 5 of Chapter 131E of the General Statutes or Part 1 of Article 6 of Chapter 131E of the General Statutes that are also certified by the Centers for Medicare and Medicaid Services shall be reduced to a minimum of two inspections per year until October 1, 2012, and thereafter reduced to a minimum of one inspection per year, if the facility achieves a grade "A" sanitation score. If the facility receives a grade "B" or lower on its annual food service inspection, the county may conduct inspections until the food service operation achieves a grade "A" sanitation score. Nothing in this section prohibits the county from conducting an evaluation or inspection in response to a complaint or in the interest of public safety.

(b) Rules that establish a minimum distance from a building foundation for a water supply well shall provide that an institution or facility located in a single-family dwelling served by a water supply well that is located closer to a building foundation than the minimum distance specified in the rules may be licensed or approved if the results of water testing meet or exceed standards established by the Commission and there are no other potential health hazards associated with the well. At the time of application for licensure or approval, water shall be sampled and tested for pesticides, nitrates, and bacteria. Thereafter, water shall be sampled and tested at intervals determined by the Commission but not less than annually. A registered sanitarian or other health official who is qualified

by training and experience shall collect the water samples as required by this subsection and may examine the well location to determine if there are other potential health hazards associated with the well. A well shall comply with all other applicable sanitation requirements established by the Commission.

(c) The Department may suspend or revoke a license or approval for a violation of this section or rules adopted by the Commission. (1945, c. 829, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 543, s. 1; 1989, c. 727, s. 143; 1997-443, s. 11A.79; 1998-136, s. 1; 2001-109, s. 1; 2001-487, s. 84(a); 2011-226, s. 1.)

§ 130A-236. Regulation of sanitation in schools.

For the protection of the public health, the Commission shall adopt rules to establish sanitation requirements for public, private and religious schools. The rules shall address, but not be limited to, the cleanliness of floors, walls, ceilings, storage spaces and other areas; adequacy of lighting, ventilation, water supply, toilet and lavatory facilities; sewage collection, treatment and disposal facilities; and solid waste disposal. The Department shall inspect schools at least annually. The Department shall submit written inspection reports of public schools to the State Board of Education and written inspection reports of private and religious schools to the Department of Administration. (1973, c. 1239, s. 1; 1983, c. 891, s. 2; 1993, c. 522, s. 11.)

§ 130A-237. Corrective action.

A principal or administrative head of a public, private, or religious school shall immediately take action to correct conditions that do not satisfy the sanitation rules. (1973, c. 1239, s. 2; 1983, c. 891, s. 2; 1993, c. 262, s. 6.)

Part 5. Migrant Housing.

§ 130A-238: Repealed.

§ 130A-239: Repealed.

§ 130A-240: Repealed.

§ 130A-241: Repealed.

§ 130A-242: Repealed.

§ 130A-243: Repealed.

§ 130A-244: Repealed.

§ 130A-245: Repealed.

§ 130A-246: Repealed.

Part 6. Regulation of Food and Lodging Facilities.

§ 130A-247. Definitions.

The following definitions shall apply throughout this Part:

(1) "Establishment" means (i) an establishment that prepares or serves drink, (ii) an establishment that prepares or serves food, (iii) an establishment that provides lodging, (iv) a bed and breakfast inn, or (v) an establishment that prepares and sells meat food products as defined in G.S. 106-549.15(14) or poultry products as defined in G.S. 106-549.51(26).

(1a) "Permanent house guest" means a person who receives room or board for periods of a week or longer. The term includes visitors of the permanent house guest.

(2) "Private club" means an organization that (i) maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1) or (ii) meets the definition of a private club set forth in G.S. 18B-1000(5).

(3) "Regular boarder" means a person who receives food for periods of a week or longer.

(4) "Establishment that prepares or serves drink" means a business or other entity that prepares or serves beverages made from raw apples or potentially hazardous beverages made from other raw fruits or vegetables or that otherwise puts together, portions, sets out, or hands out drinks for human consumption.

(5) "Establishment that prepares or serves food" means a business or other entity that cooks, puts together, portions, sets out, or hands out food for human consumption.

(5a) "Bed and breakfast home" means a business in a private home of not more than eight guest rooms that offers bed and breakfast accommodations for a period of less than one week and that meets all of the following criteria:

a. Does not serve food or drink to the general public for pay.

b. Serves the breakfast meal, the lunch meal, the dinner meal, or a combination of all or some of these three meals, only to overnight guests of the home.

c. Includes the price of breakfast in the room rate. The price of additional meals served shall be listed as a separate charge on the overnight guest's bill rate at the conclusion of the overnight guest's stay.

d. Is the permanent residence of the owner or the manager of the business.

(6) "Bed and breakfast inn" means a business of at least nine but not more than 12 guest rooms that offers bed and breakfast accommodations for a period of less than one week, and that meets all of the following requirements:

a. Does not serve food or drink to the general public for pay.

b. Serves the breakfast meal, the lunch meal, the dinner meal, or a combination of all or some of these three meals only to overnight guests of the business.

c. Includes the price of breakfast in the room rate. The price of additional meals served shall be listed as separate charge on the overnight guest's bill at the conclusion of the guest's stay.

d. Is the permanent residence of the owner or the manager of the business.

(7) "Limited food services establishment" means an establishment as described in G.S. 130A-248(a4), with food handling operations that are restricted by rules adopted by the Commission pursuant to G.S. 130A-248(a4) and that prepares or serves food only in conjunction with amateur athletic events. Limited food service establishment also includes lodging facilities that serve only reheated food that has already been pre-cooked.

(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 30 days in one location, and (iii) is affiliated with and endorsed by a transitory fair, carnival, circus, festival, 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. (1983, c. 891, s. 2; 1987, c. 367; 1991, c. 733, s. 1; 1993, c. 262, s. 1; c. 513, s. 12; 1995, c. 123, s. 12; c. 507, s. 26.8(f); 1999-247, ss. 3, 4; 2013-360, s. 12E.1(a); 2013-413, ss. 7, 11(a); 2014-115, s. 17; 2014-120, s. 21(a); 2017-211, s. 4(a), (b); 2018-5, s. 38.10(g); 2018-114, s. 2.)

§ 130A-248. Regulation of food and lodging establishments.

(a) For the protection of the public health, the Commission shall adopt rules governing the sanitation of establishments that prepare or serve drink or food for pay and establishments that prepare and sell meat food products or poultry products. However, any establishment that prepares or serves food or drink to the public, regardless of pay, shall be subject to the provisions of this Article if the establishment that prepares or serves food or drink holds an ABC permit, as defined in G.S. 18B-101, meets any of the definitions in G.S. 18B-1000, and does not meet the definition of a private club as provided in G.S. 130A-247(2).

(a1) For the protection of the public health, the Commission shall adopt rules governing the sanitation of hotels, motels, tourist homes, and other establishments that provide lodging for pay.

(a2) For the protection of the public health, the Commission shall adopt rules governing the sanitation of bed and breakfast homes, as defined in G.S. 130A-247, and rules governing the sanitation of bed and breakfast inns, as defined in G.S. 130A-247. In carrying out this function, the Commission shall adopt requirements that are the least restrictive so as to protect the public health and not unreasonably interfere with the operation of bed and breakfast homes and bed and breakfast inns.

(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

(1) Sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other areas and items;

(2) Requirements for:

a. Lighting and water supply;

b. Wastewater collection, treatment, and disposal facilities; and

c. Lavatory and toilet facilities, food protection, and waste disposal;

(3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact surfaces. A requirement imposed under this subdivision to sanitize multiuse eating and drinking utensils and other food-contact surfaces does not apply to utensils and surfaces provided in the guest room of the lodging unit for guests to prepare food while staying in the guest room.

(3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped food;

(4) The methods of food preparation, transportation, catering, storage, and serving;

(5) The health of employees;

(6) Animal and vermin control; and

(7) The prohibition against the offering of unwrapped food samples to the general public unless the offering and acceptance of the samples are continuously supervised by an agent of the entity preparing or offering the samples or by an agent of the entity on whose premises the samples are made available. As used in this subdivision, "food samples" means unwrapped food prepared and made available for sampling by and without charge to the general public for the purpose of promoting the food made available for sampling. This subdivision does not apply to unwrapped food prepared and offered in buffet, cafeteria, or other style in exchange for payment by the general public or by the person or entity arranging for the preparation and offering of such unwrapped food. This subdivision shall not apply to open air produce markets nor to farmer market facilities operated on land owned or leased by the State of North Carolina or any local government.

The rules shall contain a system for grading establishments, such as Grade A, Grade B, and Grade C. The rules shall be written in a manner that promotes consistency in both the interpretation and application of the grading system.

(a4) For the protection of the public health, the Commission shall adopt rules governing the sanitation of limited food service establishments. In adopting the rules, the Commission shall not limit the number of days that limited food service establishments may operate. Limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code.

(a5) The Department of Health and Human Services may grant a variance from rules adopted pursuant to this section in accordance with the United States Food and Drug

Administration Food Code 2009 if the Department determines that the issuance of the variance will not result in a health hazard or nuisance condition.

(a6) Notwithstanding any provision of this Part or any rules adopted pursuant to G.S. 130A-335(e), a permitted food stand may elect to provide tables and not more than eight seats for customers to use while eating or drinking on the premises. Addition of seats under this subsection shall not require further evaluation of the adequacy of the approved sanitary sewage system.

(b) No establishment shall commence or continue operation without a permit or transitional permit issued by the Department. The permit or transitional permit shall be issued to the owner or operator of the establishment and shall not be transferable. If the establishment is leased, the permit or transitional permit shall be issued to the lessee and shall not be transferable. If the location of an establishment changes, a new permit shall be obtained for the establishment. A permit shall be issued only when the establishment satisfies all of the requirements of the rules. The Commission shall adopt rules establishing the requirements that must be met before a transitional permit may be issued, and the period for which a transitional permit may be issued. The Department may also impose conditions on the issuance of a permit or transitional permit in accordance with rules adopted by the Commission. A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the establishment to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23.

(b1) A permit shall expire one year after an establishment closes unless the permit is the subject of a contested case pursuant to Article 3 of Chapter 150B of the General Statutes.

(c) If ownership of an establishment is transferred or the establishment is leased, the new owner or lessee shall apply for a new permit. The new owner or lessee may also apply for a transitional permit. A transitional permit may be issued upon the transfer of ownership or lease of an establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to the public health. Upon issuance of a new permit or a transitional permit for the same establishment, any previously issued permit for an establishment in that location becomes void. This subsection does not prohibit issuing more than one owner or lessee a permit for the same location if (i) more than one establishment is operated in the same physical location and (ii) each establishment satisfies all of the rules and requirements of subsection (g) of this section. For purposes of this subsection, "transitional permit" shall mean a permit issued upon the transfer of ownership or lease of an existing food establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to the public health.

(c1) The Commission shall adopt rules governing the sanitation of pushcarts and mobile food units. A permitted restaurant or commissary shall serve as a base of operations for a pushcart. A mobile food unit shall meet all of the sanitation requirements of a permitted commissary or shall have a permitted restaurant or commissary that serves as its base of operation. Pushcarts or mobile food units that are based from a permitted commissary or restaurant that is located on the premises of a facility which contains at least

3,000 permanent seats shall be allowed to prepare and serve food on the premises. Raw meat, poultry, and fish shall be prepared in a permitted commissary or restaurant in a pre-portioned or ready-to-cook form. Pushcarts or mobile food units that handle raw ingredients shall be equipped with a handwashing sink. All open food and utensils shall be provided with overhead protection or otherwise equipped with individual covers, such as domes, chafing lids, or cookers with hinged lids. Food equipment and supplies shall be located in enclosed areas and protected from environmental contamination when not in operation.

(c2) Notwithstanding any provision of this Part, a food establishment may use an outdoor grill to prepare food for customers for sample or sale if all of the following criteria are met:

(1) The outdoor grill is located on the premises of the food establishment and is continuously supervised by a food employee when the grill is in use.

(2) The outdoor grill has a cooking surface made of stainless steel or cast iron, meets sanitation requirements for equipment in a food establishment, and is stationed on a concrete or asphalt foundation.

(3) The outdoor grill is not operated within 10 feet of combustible construction.

(4) All open food and utensils are provided with overhead protection or otherwise equipped with individual covers, such as domes, chafing lids, or cookers with hinged lids.

(5) The outdoor grill is located in an enclosed area and protected from environmental contamination when not in operation.

(6) The outdoor grill and concrete or asphalt foundation are cleaned daily on any day that the grill is in operation.

(7) Raw meat, poultry, and fish are prepared in a pre-portioned or ready-to-cook form inside the food establishment and may only be handled indirectly with utensils when using the outdoor grill. Food prepared on the outdoor grill is processed inside the food establishment.

(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging and Adult Services of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, temporary food establishments, limited food services establishments, and public school cafeterias, a fee of one hundred twenty dollars ($120.00) for each permit issued. This fee shall be reassessed annually for permits that do not expire. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than fifty dollars ($50.00) of each fee collected under this subsection may be used to support State health programs and activities.

(d1) The Department shall charge a twenty-five dollar ($25.00) late payment fee to any establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, temporary food establishments, limited food services establishments, and public school cafeterias, that fails to pay the fee required by subsection (d) of this section within 45 days after billing

by the Department. The Department may, in accordance with G.S. 130A-23, suspend the permit of an establishment that fails to pay the required fee within 60 days after billing by the Department. The Department shall charge a reinstatement fee of one hundred fifty dollars ($150.00) to any establishment that requests reinstatement of its permit after the permit has been suspended. The Commission shall adopt rules to implement this subsection.

The clear proceeds of civil penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d2) A local health department shall charge each temporary food establishment and each limited food services establishment a fee of seventy-five dollars ($75.00) for each permit issued. A local health department shall use all fees collected under this subsection for local food, lodging, and institution sanitation programs and activities.

(e) In addition to the fees under subsection (d) of this section, the Department may charge a fee of two hundred fifty dollars ($250.00) for plan review of plans for prototype franchised or chain facilities for food establishments subject to this section. All of the fees collected under this subsection may be used to support the State food, lodging, and institution sanitation programs and activities under this Part.

(e1) Plans for a franchised or chain food establishment that have been reviewed and approved by the Department shall not require further review and approval under this section by any local health department. The local health department may suggest revisions to a reviewed and approved plan to the Department. The local health department shall not impose any of the suggestion revisions on the owner or operator without written approval from the Department.

(f) Any local health department may charge a fee not to exceed two hundred fifty dollars ($250.00) for plan review by that local health department of plans for food establishments subject to this section that are not subject to subsection (e) of this section. All of the fees collected under this subsection may be used for local food, lodging, and institution sanitation programs and activities. No food establishment that pays a fee under subsection (e) of this section is liable for a fee under this subsection.

(g) All hotels, motels, tourist homes, and other establishments that provide lodging for pay shall comply with the requirements of G.S. 143-138(b2)(2). Upon notification of a violation of G.S. 143-138(b2)(2) by the code official responsible for enforcing the NC State Building Code (Fire Prevention) in accordance with G.S. 143-138(b2)(4), the local health department is authorized to suspend a permit issued pursuant to this section in accordance with G.S. 130A-23. (1941, c. 309, s. 1; 1955, c. 1030, s. 1; 1957, c. 1214, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 438, s. 2; 1989, c. 551, ss. 1, 4; 1989 (Reg. Sess., 1990), c. 1064, s. 1; 1991, c. 226, s. 1; c. 656, ss. 1, 2; c. 733, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 7; 1993, c. 262, s. 2; c. 346, s. 1; c. 513, s. 13; 1995, c. 123, ss. 13(a)-(d); c. 507, ss. 26.8(b), (g); 1997-367, s. 1; 1997-443, s. 11A.118(a); 1997-479, s. 1; 2002-126, ss. 29A.15(a), 29A.16; 2003-340, ss. 1.5, 3; 2005-276, s. 6.37(s); 2009-451, ss. 13.2(a)-(c); 2009-484, s. 2(b); 2011-145, s. 31.11A(a); 2011-391, s. 61A; 2011-394, s. 15(b); 2012-142, s. 10.15; 2012-187, s. 16.2; 2013-360, ss. 12E.1(b)-(d), (f); 2013-413, ss. 11(b), 19(b), (c);

2014-120, ss. 22(a), (b), (d); 2015-104, ss. 1, 2; 2015-246, s. 10; 2015-286, s. 3.8; 2017-18, s. 1.)

§ 130A-249. Inspections; report and grade card.

The Secretary may enter any establishment that is subject to the provisions of G.S. 130A-248 for the purpose of making inspections. The Secretary shall inspect each food service establishment at a frequency established by the Commission. In establishing a schedule for inspections, the Commission shall consider the risks to the population served by the establishment and the type of food or drink served by the establishment. The person responsible for the management or control of an establishment shall permit the Secretary to inspect every part of the establishment and shall render all aid and assistance necessary for the inspection. The Secretary shall leave a copy of the inspection form and a card or cards showing the grade of the establishment with the responsible person. The Secretary shall post the grade card in a conspicuous place as determined by the Secretary where it may be readily observed by the public upon entering the establishment or upon picking up food prepared inside but received and paid for outside the establishment through delivery windows or other delivery devices. If a single establishment has one or more outside delivery service stations and an internal delivery system, that establishment shall have a grade card posted where it may be readily visible upon entering the establishment and one posted where it may be readily visible in each delivery window or delivery device upon picking up the food outside the establishment. The grade card or cards shall not be removed by anyone, except by or upon the instruction of the Secretary. (1941, c. 309, s. 2; 1955, c. 1030, s. 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 145; c. 189; 1989, c. 551, s. 2; 1993, c. 262, s. 3; 2005-386, s. 4.1.)

§ 130A-250. Exemptions.

The following shall be exempt from this Part:

(1) Establishments that provide lodging described in G.S. 130A-248(a1) with four or fewer lodging units.

(2) Condominiums.

(3) Establishments that prepare or serve food or provide lodging to regular boarders or permanent houseguests only. However, the rules governing food sanitation adopted under G.S. 130A-248 apply to establishments that are not regulated under G.S. 130A-235 and that prepare or serve food for pay to 13 or more regular boarders or permanent houseguests who are disabled or who are 55 years of age or older. Establishments to which the rules governing food sanitation are made applicable by this subdivision that are in operation as of 1 July 2000 may continue to use equipment and construction in use on that date if no imminent hazard exists. Replacement equipment for these establishments shall comply with the rules governing food sanitation adopted under G.S. 130A-248.

(4) Private homes that occasionally offer lodging accommodations, which may include the providing of food, for two weeks or less to persons attending special

events, provided these homes are not bed and breakfast homes or bed and breakfast inns.

(5) Private clubs.

(6) Curb markets operated by the State Agricultural Extension Service.

(7) Establishments (i) that are incorporated as nonprofit corporations in accordance with Chapter 55A of the General Statutes or (ii) that are exempt from federal income tax under the Internal Revenue Code, as defined in G.S. 105-228.90, or (iii) that are political committees as defined in G.S. 163A-1411(74) and that prepare or serve food or drink for pay no more frequently than once a month for a period not to exceed two consecutive days, including establishments permitted pursuant to this Part when preparing or serving food or drink at a location other than the permitted locations. A nutrition program for the elderly that is administered by the Division of Aging of the Department of Health and Human Services and that prepares and serves food or drink on the premises where the program is located in connection with a fundraising event is exempt from this Part if food and drink are prepared and served no more frequently than one day each month.

(8) Establishments that put together, portion, set out, or hand out only beverages that do not include those made from raw apples or potentially hazardous beverages made from raw fruits or vegetables, using single service containers that are not reused on the premises.

(9) Establishments where meat food products or poultry products are prepared and sold and which are under inspection by the North Carolina Department of Agriculture and Consumer Services or the United States Department of Agriculture.

(10) Markets that sell uncooked cured country ham or uncooked cured salted pork and that engage in minimal preparation such as slicing, weighing, or wrapping the ham or pork, when this minimal preparation is the only activity that would otherwise subject these markets to regulation under this Part.

(11) Establishments that only set out or hand out beverages that are regulated by the North Carolina Department of Agriculture and Consumer Services in accordance with Article 12 of Chapter 106 of the General Statutes.

(12) Establishments that only set out or hand out food that is regulated by the North Carolina Department of Agriculture and Consumer Services in accordance with Article 12 of Chapter 106 of the General Statutes.

(13) Traditional country stores that sell uncooked sandwiches or similar food items and that engage in minimal preparation such as slicing bananas, spreading peanut butter, mixing and spreading pimiento cheese, and assembling these items into sandwiches, when this minimal preparation is the only activity that would otherwise subject these establishments to regulation under this Part. For the purposes of this subsection, traditional country stores means for-profit establishments that sell an assortment of goods, including prepackaged foods and beverages, and have been in continuous operation for at least 75 years.

(14) Bona fide cooking schools, defined for the purpose of this subdivision as cooking schools that (i) primarily provide courses or instruction on food preparation techniques that participants can replicate in their homes, (ii) prepare

or serve food for cooking school participants during instructional time only, and (iii) do not otherwise prepare or serve food to the public.

(15) Temporary family health care structures under G.S. 153A-341.3 or G.S. 160A-383.5. (1955, c. 1030, s. 4; 1957, c. 1214, s. 3; 1983, c. 884, ss. 1, 2; c. 891, s. 2; 1985 (Reg. Sess., 1986), c. 926; 1989, c. 551, s. 3; 1991, c. 733, s. 3; 1993, c. 262, s. 4; c. 513, s. 14; 1995, c. 123, s. 14; 1997-261, s. 86; 1999-13, s. 1; 1999-247, s. 5; 2000-82, s. 1; 2001-440, s. 4; 2010-180, s. 18; 2011-335, s. 1; 2014-94, s. 3; 2017-6, s. 3.)

Part 7. Mass Gatherings.

§ 130A-251. Legislative intent and purpose.

The intent and purpose of this Part is to provide for the protection of the public health, safety and welfare of those persons in attendance at mass gatherings and of those persons who reside near or are located in proximity to the sites of mass gatherings or are directly affected by them. (1971, c. 712, s. 1; 1983, c. 891, s. 2.)

§ 130A-252. Definition of mass gathering; applicability of Part.

(a) For the purposes of this Part, "mass gathering" means a congregation or assembly of more than 5,000 people in an open space or open air for a period of more than 24 hours. A mass gathering shall include all congregations and assemblies organized or held for any purpose, but shall not include assemblies in permanent buildings or permanent structures designed or intended for use by a large number of people. To determine whether a congregation or assembly extends for more than 24 hours, the period shall begin when the people expected to attend are first permitted on the land where the congregation or assembly will be held and shall end when the people in attendance are expected to depart. To determine whether a congregation or assembly shall consist of more than 5,000 people, the number reasonably expected to attend, as determined from the promotion, advertisement and preparation for the congregation or assembly and from the attendance at prior congregations or assemblies of the same type, shall be considered.

(b) The provisions of this Part do not apply to a permanent stadium with an adjacent campground that hosts an annual event that has, within the previous five years, attracted crowds in excess of 70,000 people. The term "stadium" includes speedways and dragways. (1971, c. 712, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1999-3, s. 1; 1999-171, s. 1.)

§ 130A-253. Permit required; information report; revocation of permit.

(a) No person shall organize, sponsor or hold any mass gathering unless a permit has been issued to the person by the Secretary under the provisions of this Part. A permit shall be required for each mass gathering and is not transferable.

(b) A permit may be revoked by the Secretary at any time if the Secretary finds that the mass gathering is being or has been maintained or operated in violation of this Part. A permit may be revoked upon the request of the permittee or upon abandonment of the operation. A permit will otherwise expire upon satisfactory completion of the post-gathering cleanup following the close of the mass gathering.

(c) The Secretary, upon information that a congregation or assembly of people which may constitute a mass gathering is being organized or promoted, may direct the organizer or promoter to submit within five calendar days an information report to the Department. The report shall contain the information required for an application for permit under G.S. 130A-254(b) and other information concerning the promotion, advertisement and preparation for the congregation or assembly and prior congregations or assemblies, as the Secretary deems necessary. The Secretary shall consider all available information including any report received and shall determine if the proposed congregation or assembly is a mass gathering. If the Secretary determines that a proposed congregation or assembly is a mass gathering, the Secretary shall notify the organizer or promoter to submit an application for permit at least 30 days prior to the commencement of the mass gathering. (1971, c. 712, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-254. Application for permit.

(a) Application for a permit for a mass gathering shall be made to the Secretary on a form and in a manner prescribed by the Secretary. The application shall be filed with the Secretary at least 30 days prior to the commencement of the mass gathering. A fee as prescribed by the Secretary, not to exceed one hundred dollars ($100.00), shall accompany the application.

(b) The application shall contain the following information: identification of the applicant; identification of any other person or persons responsible for organizing, sponsoring or holding the mass gathering; the location of the proposed mass gathering; the estimated maximum number of persons reasonably expected to be in attendance at any time; the date or dates and the hours during which the mass gathering is to be conducted; and a statement as to the total time period involved.

(c) The application shall be accompanied by an outline map of the area to be used, to approximate scale, showing the location of all proposed and existing privies or toilets; lavatory and bathing facilities; all water supply sources including lakes, ponds, streams, wells and storage tanks; all areas of assemblage; all camping areas; all food service areas; all garbage and refuse storage and disposal areas; all entrances and exits to public highways; and emergency ingress and egress roads.

(d) The application shall be accompanied by additional plans, reports and information required by the Secretary as necessary to carry out the provisions of this Part.

(e) A charge shall be levied by the Secretary to cover the cost of additional services, including police, fire and medical services, provided by the State or units of local government on account of the mass gathering. The Secretary shall reimburse the State or the units of local government for the additional services upon receipt of payment. (1971, c. 712, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-255. Provisional permit; performance bond; liability insurance.

(a) Within 15 days after the receipt of the application, the Secretary shall review the application and inspect the proposed site for the mass gathering. If it is likely that the

requirements of this Part and the rules of the Commission can be met by the applicant, a provisional permit shall be issued.

(b) The Secretary shall require the permittee within five days after issuance of the provisional permit to file with the Secretary a performance bond or other surety to be executed to the State in the amount of five thousand dollars ($5,000) for up to 10,000 persons and an additional one thousand dollars ($1,000) for each additional 5,000 persons or fraction reasonably estimated to attend the mass gathering. The bond shall be conditioned on full compliance with this Part and the rules of the Commission and shall be forfeitable upon noncompliance and a showing by the Secretary of injury, damage or other loss to the State or local governmental agencies caused by the noncompliance.

(c) The permittee shall in addition file satisfactory evidence of public liability and property damage insurance in an amount determined by the Secretary to be reasonable, not to exceed one million dollars ($1,000,000) in amount, in relation to the risks and hazards involved in the proposed mass gathering. (1971, c. 712, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-256. Issuance of permit; revocation; forfeiture of bond; cancellation.

(a) If, upon inspection by the Secretary five days prior to the starting date of the mass gathering, or earlier upon request of the permittee, the required facilities are found to be in place, satisfactory arrangements are found to have been made for required services, the charge for additional services levied in accordance with G.S. 130A-254(e) has been paid and other applicable provisions of this Part and the rules of the Commission are found to have been met, the Secretary shall issue a permit for the mass gathering. If, upon inspection, the facilities, arrangements or other provisions are not satisfactory, the provisional permit shall be revoked and no permit shall be issued.

(b) Upon revocation of either the provisional permit or the permit, the permittee shall immediately announce cancellation of the mass gathering in as effective a manner as is reasonably possible including, but not limited to, the use or whatever methods were used for advertising or promoting the mass gathering.

(c) If the provisional permit or the permit is revoked prior to or during the mass gathering, the Secretary may order the permittee to install facilities and make arrangements necessary to accommodate persons who may nevertheless attend or be present at the mass gathering despite its cancellation and to restore the site to a safe and sanitary condition. In the event the permittee fails to comply with the order of the Secretary, the Secretary may immediately proceed to install facilities and make other arrangements and provisions for cleanup as may be minimally required in the interest of public health and safety, utilizing any State and local funds and resources as may be available.

(d) If the Secretary installs facilities or makes arrangements or provisions for cleanup pursuant to subsection (c), the Secretary may apply to a court of competent jurisdiction prior to or within 60 days after the action to order forfeiture of the permittee's performance bond or surety for violation of this Part or the rules of the Commission. The court may order that the proceeds shall be applied to the extent necessary to reimburse State and local governmental agencies for expenditures made pursuant to the action taken

by the Secretary upon the permittee's failure to comply with the order. Any excess proceeds shall be returned to the insurer of the bond or to the surety after deducting court costs. (1971, c. 712, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-257. Rules of the Commission.

For the protection of the public health, safety and welfare of those attending mass gatherings and of other persons who may be affected by mass gatherings, the Commission shall adopt rules to carry out the provisions of this Part and to establish requirements for the provision of facilities and services at mass gatherings. The rules shall include, but not be limited to, the establishment of requirements as follows:

(1) General requirements relating to minimum size of activity area including camping and parking space, distance of activity area from dwellings, distance from public water supplies and watersheds and an adequate command post for use by personnel of health, law-enforcement and other governmental agencies;

(2) Adequate ingress and egress roads, parking facilities and entrances and exits to public highways;

(3) Plans for limiting attendance and crowd control, dust control and rapid emergency evacuation;

(4) Medical care, including facilities, services and personnel;

(5) Sanitary water supply, source and distribution; toilet facilities; sewage disposal; solid waste collection and disposal; food dispensing; insect and rodent control; and post-gathering cleanup; and

(6) Noise level at perimeter; lighting and signs. (1971, c. 712, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-258. Local ordinances not abrogated.

Nothing in this Part shall be construed to limit the authority of units of local government to adopt ordinances regulating, but not prohibiting, congregations and assemblies not covered by this Part. (1971, c. 712, s. 1; 1983, c. 891, s. 2.)

§§ 130A-259 through 130A-260. Reserved for future codification purposes.

Part 8. Bedding.

§§ 130A-261 through 130A-273: Recodified as Article 4H of Chapter 106, G.S. 106-65.95 through 106-65.107, by Session Laws 2011-145, s. 13.3(v), effective July 1, 2011.

Part 9. Milk Sanitation.

§§ 130A-274 through 130A-279: Recodified as Article 28C of Chapter 106, G.S. 106-266.30 through 106-266.35, by Session Laws 2011-145, s. 13.3(l), effective July 1, 2011.

Part 10. Public Swimming Pools.

§ 130A-280. Scope.

This Article provides for the regulation of public swimming pools in the State as they may affect the public health and safety. As used in this Article, the term "public swimming pool" means any structure, chamber, or tank containing an artificial body of water used by the public for swimming, diving, wading, recreation, or therapy, together with buildings, appurtenances, and equipment used in connection with the body of water, regardless of whether a fee is charged for its use. The term includes municipal, school, hotel, motel, apartment, boarding house, athletic club, or other membership facility pools and spas. This Article does not apply to a private pool serving a single family dwelling and used only by the residents of the dwelling and their guests. This Article also does not apply to therapeutic pools used in physical therapy programs operated by medical facilities licensed by the Department or operated by a licensed physical therapist, nor to therapeutic chambers drained, cleaned, and refilled after each individual use. (1989, c. 577, s. 1; 1997-443, s. 11A.80.)

§ 130A-281. Operation permit required.

No public swimming pool may be opened for use unless the owner or operator has obtained an operation permit issued by the Department pursuant to rules adopted under G.S. 130A-282. (1989, c. 577, s. 1.)

§ 130A-282. Commission to adopt rules; exception.

(a) Rules Required. For protection of the public health and safety, the Commission shall adopt and the Department shall enforce rules concerning the construction and operation of public swimming pools. The Commission shall classify public swimming pools on the basis of size, usage, type, or any other appropriate factor and shall adopt requirements for each classification. The rules shall include requirements for:

(1) Submission and review of plans prior to construction.
(2) Application, review, expiration, renewal, and revocation or suspension of an operating permit.
(3) Inspection.
(4) Design and construction including materials, depth and other dimensions, and standards for the abatement of suction hazards.
(5) Operation and safety including water source, water quality and testing, fencing, water treatment, chemical storage, toilet and bath facilities, measures to ensure the personal cleanliness of bathers, safety equipment and other safety measures, and sewage and other wastewater disposal.

(b) Exception. Public swimming pools constructed or remodeled prior to May 1, 1993, that do not meet specific design and construction requirements of the rules for public swimming pools adopted by the Commission shall not be required to comply with design and construction requirements other than requirements related to the abatement of suction hazards. Public swimming pools constructed or remodeled prior to May 1, 1993, shall comply with all other rules for public swimming pools adopted by the Commission.

(c) No single drain, single suction outlet public swimming pools less than 18 inches deep shall be allowed to operate. (1989, c. 577, s. 1; 1993, c. 215, s. 1; 1993 (Reg. Sess., 1994), c. 732, s. 1.)

Part 11. Tattooing.

§ 130A-283. Tattooing regulated.

(a) Definition. – As used in this Part, the term "tattooing" means the inserting of permanent markings or coloration, or the producing of scars, upon or under human skin through puncturing by use of a needle or any other method.

(b) Prohibited Practice. – No person shall engage in tattooing without first obtaining a tattooing permit from the Department. Licensed physicians, as well as physician assistants and nurse practitioners working under the supervision of a licensed physician, who perform tattooing within the normal course of their professional practice are exempt from the requirements of this Part.

(c) Application. – To obtain a tattooing permit, a person must apply to the Department. Upon receipt of the application, the Department, acting through the local health department, shall inspect the premises, instruments, utensils, equipment, and procedures of the applicant to determine whether the applicant meets the requirements for a tattooing permit set by the Commission. If the applicant meets these requirements, the Department shall issue a permit to the applicant. A permit is valid for one year and must be renewed annually by applying to the Department for a permit renewal.

(d) Violations. – The Department may deny an application for a tattooing permit if an applicant does not meet the requirements set by the Commission for the permit. The Department may suspend, revoke, or refuse to renew a permit if it finds that tattooing is being performed in violation of this Part. In accordance with G.S. 130A-24(a), Chapter 150B of the General Statutes, the Administrative Procedure Act, governs appeals concerning the enforcement of this Part.

(e) Limitation. – A permit issued pursuant to this Part does not authorize a person to remove a tattoo from the body of a human being. Compliance with this Part is not a bar to prosecution for a violation of G.S. 14-400. (1993 (Reg. Sess., 1994), c. 670, s. 1.)

Part 12. Decontamination Standards for Methamphetamine Sites.

§ 130A-284. Decontamination of property used for the manufacture of methamphetamine.

For the protection of the public health, the Commission shall adopt rules establishing decontamination standards to ensure that certain property is reasonably safe for habitation. An owner, lessee, operator or other person in control of a residence or place of business or any structure appurtenant to a residence or place of business, and who has knowledge that the property has been used for the manufacture of methamphetamine, shall comply with these rules. For purposes of this section, the terms "residence" and "place of business" shall be defined as set forth in G.S. 130A-334. (2004-178, s. 7.)

§ 130A-285: Reserved for future codification purposes.

§ 130A-286: Reserved for future codification purposes.

§ 130A-287: Reserved for future codification purposes.

§ 130A-288: Reserved for future codification purposes.

§ 130A-289: Reserved for future codification purposes.

Article 9.

Solid Waste Management.

Part 1. Definitions.

§ 130A-290. Definitions.

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

(1) "Affiliate" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(1a) "Business entity" has the same meaning as in G.S. 55-1-40(2a).

(1b) "CERCLA/SARA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended.

(1c) "Chemical or portable toilet" means a self-contained mobile toilet facility and holding tank and includes toilet facilities in recreational vehicles.

(1d) "Chlorofluorocarbon refrigerant" means any of the following when used as a liquid heat transfer agent in a mechanical refrigeration system: carbon tetrachloride, chlorofluorocarbons, halons, or methyl chloroform.

(2) "Closure" means the cessation of operation of a solid waste management facility and the act of securing the facility so that it will pose no significant threat to human health or the environment.

(2a) Recodified as subdivision (a)(2d) at the direction of the Revisor of Statutes. See note.

(2b) "Coal combustion residuals" means residuals, including fly ash, bottom ash, boiler slag, mill rejects, and flue gas desulfurization residue produced by a coal-fired generating unit destined for disposal. The term does not include coal combustion products as defined in G.S. 130A-309.201(4).

(2c) "Coal combustion residuals landfill" means a facility or unit for the disposal of combustion products, where the landfill is located at the same facility with the coal-fired generating unit or units producing the combustion products, and where the landfill is located wholly or partly on top of a facility that is, or was, being used for the disposal or storage of such combustion products, including, but not limited to, landfills, wet and dry ash ponds, and structural fill facilities.

(2d) "Coal-fired generating unit" means a coal-fired generating unit, as defined by 40 Code of Federal Regulations § 96.2 (1 July 2001 Edition), that is located in this State and has the capacity to generate 25 or more megawatts of electricity.

(3) "Commercial" when applied to a hazardous waste facility, means a hazardous waste facility that accepts hazardous waste from the general public or from another person for a fee.

(3a) "Commission" means the Environmental Management Commission.

(4) "Construction" or "demolition" when used in connection with "waste" or "debris" means solid waste resulting solely from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but does not include inert debris, land-clearing debris or yard debris.

(4a) "Department" means the Department of Environmental Quality.

(5) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 1.

(6) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(7) "Garbage" means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

(8) "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

(8a) "Hazardous waste constituent" has the same meaning as in 40 Code of Federal Regulations § 260.10 (1 July 2006).

(9) "Hazardous waste facility" means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste. Hazardous waste facility does not include a hazardous waste transfer facility that meets the requirements of 40 Code of Federal Regulations § 263.12 (1 July 2006).

(10) "Hazardous waste generation" means the act or process of producing hazardous waste.

(11) "Hazardous waste disposal facility" means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules adopted under this Article.

(12) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

(13) "Hazardous waste management program" means the program and activities within the Department pursuant to Part 2 of this Article, for hazardous waste management.

(13a) "Hazardous waste transfer facility" means a facility or location where a hazardous waste transporter stores hazardous waste for a period of more than 24 hours but less than 10 days.

(13b) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not hazardous waste.

(14) "Inert debris" means solid waste which consists solely of material that is virtually inert and that is likely to retain its physical and chemical structure under expected conditions of disposal.

(15) "Land-clearing debris" means solid waste which is generated solely from land-clearing activities.

(16) "Landfill" means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.

(16a) "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. The term "leachate" does not include liquid adhering to tires of vehicles leaving a sanitary landfill and transfer stations.

(17) "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(17a) "Medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Article, radioactive waste, household waste as defined in 40 Code of Federal Regulations § 261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of "solid waste" in this section.

(18) "Motor vehicle oil filter" means a filter that removes impurities from the oil used to lubricate an internal combustion engine in a motor vehicle.

(18a) "Municipal solid waste" means any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Municipal solid waste does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste, or solid waste from mining or agricultural operations.

(18b) "Municipal solid waste management facility" means any publicly or privately owned solid waste management facility permitted by the Department that receives municipal solid waste for processing, treatment, or disposal.

(19) "Natural resources" means all materials which have useful physical or chemical properties which exist, unused, in nature.

(20) "Open dump" means any facility or site where solid waste is disposed of that is not a sanitary landfill and that is not a coal combustion residuals surface impoundment or a facility for the disposal of hazardous waste.

(21) "Operator" means any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a solid waste management facility and includes the person in charge of a shift or periods of operation during any part of the day.

(21a) "Parent" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(22) "Person" means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

(22a) "Pre-1983 landfill" means any land area, whether publicly or privately owned, on which municipal solid waste disposal occurred prior to 1 January 1983 but not thereafter, but does not include any landfill used primarily for the disposal of industrial solid waste.

(23) "Processing" means any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage or recycling; safe for disposal; or reduced in volume or concentration.

(24) "Recovered material" means a material that has known recycling potential, can be feasibly recycled, and has been diverted or removed from the solid waste stream for sale, use, or reuse. In order to qualify as a recovered material, a material must meet the requirements of G.S. 130A-309.05(c).

(25) "RCRA" means the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 et seq., as amended.

(26) "Recyclable material" means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

(27) "Recycling" means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products.

(28) "Refuse" means all nonputrescible waste.

(28a) "Refuse-derived fuel" means fuel that consists of municipal solid waste from which recyclable and noncombustible materials are removed so that the remaining material is used for energy production.

(29) "Resource recovery" means the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing the solid waste for recycling.

(30) "Reuse" means a process by which resources are reused or rendered usable.

(31) "Sanitary landfill" means a facility for disposal of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under this Article.

(31a) "Secretary" means the Secretary of Environmental Quality.

(32) "Septage" means solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin which is removed from a wastewater system. The term septage includes the following:

a. Domestic septage, which is either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works receiving only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic

tank, cesspool, or similar treatment works receiving either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

b. Domestic treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works where the designed disposal is subsurface. Domestic treatment plant septage includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from domestic treatment plant septage. Domestic treatment plant septage does not include ash generated during the firing of domestic treatment plant septage in an incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

c. Grease septage, which is material pumped from grease interceptors, separators, traps, or other appurtenances used for the purpose of removing cooking oils, fats, grease, and food debris from the waste flow generated from food handling, preparation, and cleanup.

d. Industrial or commercial septage, which is material pumped from septic tanks or other devices used in the collection, pretreatment, or treatment of any water-carried waste resulting from any process of industry, manufacture, trade, or business where the design disposal of the wastewater is subsurface. Domestic septage mixed with any industrial or commercial septage is considered industrial or commercial septage.

e. Industrial or commercial treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of sewage that contains any waste resulting from any process of industry, manufacture, trade, or business in a treatment works where the designed disposal is subsurface. Industrial or commercial treatment plant septage includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from domestic treatment plant septage. Industrial or commercial treatment plant septage does not include ash generated during the firing of industrial or commercial treatment plant septage in an incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(33) "Septage management firm" means a person engaged in the business of pumping, transporting, storing, treating or disposing septage. The term does not include public or community wastewater systems that treat or dispose septage.

(34) "Sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects.

(35) "Solid waste" means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other

material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. Notwithstanding sub-sub-subdivision b.3. of this subdivision, the term includes coal combustion residuals. The term does not include:

a. Fecal waste from fowls and animals other than humans.

b. Solid or dissolved material in:

1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters.

2. Irrigation return flows.

3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Commission, including coal combustion products. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).

e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-293.1). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

f. Recovered material.

g. Steel slag that is a product of the electric arc furnace steelmaking process; provided, that such steel slag is sold and distributed in the stream of commerce for consumption, use, or further processing into another desired commodity and is managed as an item of commercial value in a controlled manner and not as a discarded material or in a manner constituting disposal.

(36) "Solid waste disposal site" means any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method.

(37) "Solid waste generation" means the act or process of producing solid waste.

(38) "Solid waste management" means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.

(39) "Solid waste management facility" means land, personnel and equipment used in the management of solid waste.

(40) "Special wastes" means solid wastes that can require special handling and management, including white goods, whole tires, used oil, lead-acid batteries, and medical wastes.

(41) "Storage" means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.

(41a) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(41b) "Tire-derived fuel" means a form of fuel derived from scrap tires.

(42) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(43) "Unit of local government" means a county, city, town or incorporated village.

(44) "White goods" includes refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

(44a) "Wooden pallet" means a wooden object consisting of a flat or horizontal deck or platform supported by structural components that is used as a base for assembling, stacking, handling, and transporting goods.

(45) "Yard trash" means solid waste consisting solely of vegetative matter resulting from landscaping maintenance.

(b) Unless a different meaning is required by the context, the following definitions shall apply throughout G.S. 130A-309.15 through G.S. 130A-309.24:

(1) "Public used oil collection center" means:

a. Automotive service facilities or governmentally sponsored collection facilities, which in the course of business accept for disposal small quantities of used oil from households; and

b. Facilities which store used oil in aboveground tanks, which are approved by the Department, and which in the course of business accept for disposal small quantities of used oil from households.

(2) "Reclaiming" means the use of methods, other than those used in rerefining, to purify used oil primarily to remove insoluble contaminants, making the oil suitable for further use; the methods may include settling, heating, dehydration, filtration, or centrifuging.

(3) "Recycling" means to prepare used oil for reuse as a petroleum product by rerefining, reclaiming, reprocessing, or other means or to use used oil in a manner that substitutes for a petroleum product made from new oil.

(4) "Rerefining" means the use of refining processes on used oil to produce high-quality base stocks for lubricants or other petroleum products. Rerefining may include distillation, hydrotreating, or treatments employing acid, caustic,

solvent, clay, or other chemicals, or other physical treatments other than those used in reclaiming.

(5) "Used oil" means any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further use and is economically recyclable.

(6) "Used oil recycling facility" means any facility that recycles more than 10,000 gallons of used oil annually. (1969, c. 899; 1975, c. 311, s. 2; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 1; 1981, c. 704, s. 4; 1983, c. 795, ss. 1, 8.1; c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, s. 2; 1985, c. 738, s. 1; 1987, c. 574, s. 1; 1987 (Reg. Sess., 1988), c. 1020, s. 1; c. 1058, s. 1; 1989, c. 168, s. 11; c. 742, s. 5; c. 784, s. 1; 1991, c. 342, s. 7; c. 621, s. 1; 1991 (Reg. Sess., 1992), c. 1013, s. 7; 1993, c. 173, ss. 1-3; c. 471, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 594, ss. 1-5; 1997-27, s. 1; 1997-330, s. 3; 1997-443, s. 11A.81; 2005-362, s. 1; 2007-107, ss. 1.1(c), 1.8(a), (b); 2007-550, ss. 7(a), 12(a), (b); 2012-143, s. 1(d); 2013-413, s. 59.3; 2014-4, s. 5(c); 2014-115, s. 17; 2014-122, s. 3(d); 2015-1, s. 2(a); 2015-241, ss. 14.30(u), (v).)

Part 2. Solid and Hazardous Waste Management.

§ 130A-291. Division of Waste Management.

(a) For the purpose of promoting and preserving an environment that is conducive to public health and welfare, and preventing the creation of nuisances and the depletion of our natural resources, the Department shall maintain a Division of Waste Management to promote sanitary processing, treatment, disposal, and statewide management of solid waste and the greatest possible recycling and recovery of resources, and the Department shall employ and retain qualified personnel as may be necessary to effect such purposes. It is the purpose and intent of the State to be and remain cognizant not only of its responsibility to authorize and establish a statewide solid waste management program, but also of its responsibility to monitor and supervise, through the Department, the activities and operations of units of local government implementing a permitted solid waste management facility serving a specified geographic area in accordance with a solid waste management plan.

(b) In furtherance of this purpose and intent, it is hereby determined and declared that it is necessary for the health and welfare of the inhabitants of the State that solid waste management facilities permitted hereunder and serving a specified geographic area shall be used by public or private owners or occupants of all lands, buildings, and premises within the geographic area. Actions taken pursuant to this Article shall be deemed to be acts of the sovereign power of the State of North Carolina, and to the extent reasonably necessary to achieve the purposes of this section, a unit of local government may displace competition with public service for solid waste management and disposal. It is further determined and declared that no person, firm, corporation, association or entity within the

geographic area shall engage in any activities which would be competitive with this purpose or with ordinances, rules adopted pursuant to the authority granted herein.

(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) **(Expires June 30, 2019)** 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.

(d) Notwithstanding any limitations set forth in subsection (c) of this section, and except as provided in subsection (e) of this section, a regional solid waste management authority established under Article 22 of Chapter 153A of the General Statutes, and a unit of local government that is a member of an authority, may, by ordinance, require that all solid waste generated within its jurisdiction and placed in the waste stream for disposal be delivered to the permitted solid waste management facility or facilities operated by the regional solid waste management authority.

(e) Notwithstanding authority given to local governments to manage solid waste generated or disposed of within their jurisdiction pursuant to subsection (c) or (d) of this section, or otherwise, units of local government shall not, by ordinance or otherwise, prohibit the disposal of construction and demolition debris in any sanitary landfill permitted for the disposal of construction and demolition debris, which landfill has a valid and operative franchise agreement and is otherwise properly permitted pursuant to

G.S. 130A-294. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. 3; 1977, 2nd Sess., c. 1216; 1983, c. 795, ss. 2, 8.1; c. 891, s. 2; 1987, c. 574, s. 1; 1989, c. 727, s. 144; 1989 (Reg. Sess., 1990), c. 1004, ss. 7, 8; 1995 (Reg. Sess., 1996), c. 743, s. 4; 2017-209, s. 17(a); 2018-114, s. 20(a).)

§ 130A-291.1. Septage management program; permit fees.

(a) The Department shall establish and administer a septage management program in accordance with the provisions of this section.

(b) For the protection of the public health, the Commission shall adopt rules governing the management of septage. The rules shall include, but are not limited to, criteria for the sanitary management of septage, including standards for the transportation, storage, treatment, and disposal of septage; operator registration and training; the issuance, suspension, and revocation of permits; and procedures for the payment of annual fees.

(c) No septage management firm shall commence or continue operation that does not have a permit issued by the Department. The permit shall be issued only when the septage management firm satisfies all of the requirements of the rules adopted by the Commission. A septage management firm that commences operation without first having obtained a permit shall cease to operate until the firm obtains a permit under this section and shall pay an initial annual fee equal to twice the amount of the annual fee that would otherwise be applicable under subsection (e) of this section.

(d) Septage shall be treated and disposed only at a wastewater system that has been approved by the Department under rules adopted by the Commission or at a site that is permitted by the Department under this section. A permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the Commission.

(e) A septage management firm that operates one pumper truck shall pay an annual fee of five hundred fifty dollars ($550.00) to the Department. A septage management firm that operates two or more pumper trucks shall pay an annual fee of eight hundred dollars ($800.00) to the Department.

(e1) An individual who operates a septage treatment or disposal facility but who does not engage in the business of pumping, transporting, or disposing of septage shall pay an annual fee of two hundred dollars ($200.00).

(e2) A properly completed application for a permit and the annual fee under this section are due by 1 January of each year. The Department shall mail a notice of the annual fees to each permitted septage management firm and each individual who operates a septage treatment or disposal facility prior to 1 November of each calendar year. A late fee in the amount equal to fifty percent (50%) of the annual permit fee under this section shall be submitted when a properly completed application and annual permit fee are not submitted by 1 January following the 1 November notice. The clear proceeds of civil penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(e3) The Septage Management Account is established as a nonreverting account within the Department. Fees collected under this section shall be placed in the Septage

Management Account and shall be applied only to the costs of the septage management program.

(e4) Permits for new septage management firm operators and permits for septage management firm operators that have not operated a septage management firm in the 24 months immediately preceding the submittal of an application shall be considered probationary for 12 months. The Department may revoke any probationary permit of a firm or an individual that violates any provision of this section, G.S. 130A-291.2, G.S. 130A-291.3, or any rule adopted under these sections. If the Department revokes a probationary permit issued to a firm or individual, the Department shall not issue another permit to that firm or individual, and the firm or individual may not engage in any septage management activity for a period of 12 months.

(e5) The Department shall provide technical and regulatory assistance to permit applicants and permit holders. Assistance may include, but is not limited to, taking soil samples on proposed and permitted septage land application sites and providing required training to permit applicants and permit holders.

(f) All wastewater systems designed to discharge effluent to the surface waters may accept, treat, and dispose septage from permitted septage management firms, unless acceptance of the septage would constitute a violation of the permit conditions of the wastewater system. The wastewater system may charge a reasonable fee for acceptance, treatment, and disposal of septage based on a fee schedule that takes into account septage composition and quantity and that is consistent with other charges for use of that system.

(g) Production of a crop in accordance with an approved nutrient management plan on land that is permitted as a septage land application site is a bona fide farm purpose under G.S. 153A-340.

(h) The Department shall inspect each septage land application site at least twice a year and shall inspect the records associated with each septage land application site at least annually. The Department shall inspect each pump truck used for septage management at least once every two years.

(h1) The annual permit application shall identify the pumper trucks to be used by the septage management firm. A permitted septage management firm shall notify the Department within 10 days of placing a pumper truck in service that was not previously included in a permit issued to the firm and shall make the pumper truck available for inspection by the Department. A septage management firm is not prohibited from use of a pumper truck that meets the requirements of the rules adopted by the Commission prior to inspection by the Department.

(i) The Department shall approve innovative or alternative septage treatment or storage methods that are demonstrated to protect the public health and the environment.

(j) Septage generated by the operation of a wastewater system permitted under Article 11 of this Chapter may be managed as provided in this section and may be land applied at a septage land application site permitted under this section. (1987 (Reg. Sess., 1988), c. 1058, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 8; 1993, c. 173, s. 4; 2001-505, s. 1.1; 2005-276, s. 6.37(t); 2006-255, s. 5.1(a); 2012-200, s. 15; 2014-122, s. 11(b).)

§ 130A-291.2. Temporary domestic wastewater holding tanks.

When a permanent domestic wastewater collection and treatment system is not available at a construction site or a temporary special event, a temporary wastewater holding tank of adequate capacity to prevent overflow may be used under a mobile or modular office to accommodate domestic wastewater from a commode and sink. The wastewater shall be removed often enough to prevent the temporary domestic wastewater holding tank from overflowing. The owner or lessee of a temporary construction trailer shall contract with a registered septage management firm or registered portable toilet sanitation firm for the removal of domestic waste. The wastewater shall be removed from the temporary domestic wastewater holding tank by a septage management firm holding a current permit to operate a septage firm. (2001-505, s. 1.2.)

§ 130A-291.3. Septage operator training required.

(a) Each septage management firm operator shall attend a training course approved pursuant to subsection (d) of this section of no less than four hours of instruction per year. New septage management firm operators and those that have not operated a septage management firm in the 24 months preceding the submittal of an application shall complete the training before commencing operation.

(b) Each septage land application site operator shall attend a training course approved pursuant to subsection (d) of this section of no less than three hours of instruction per year. New septage land application site operators and those that have not operated a septage land application site in the 24 months preceding the submittal of an application shall complete the training before commencing operation.

(c) Upon the completion of the permit requirements under G.S. 130A-291.1 and the training requirements under this section, the Department shall issue the septage management firm a certificate to operate as a registered portable sanitation firm or a registered septage management firm, or both.

(d) The Department shall establish educational committees to develop and approve a training curriculum to satisfy the training requirements under this section. A training committee shall be established to develop a training program for portable sanitation waste; a training committee shall be established to develop a training program for septic tank waste and grease septage; and a training committee shall be established to develop a training program for land application of septage. Each committee shall consist of four industry members, one public health member, two employees of the Department, and one representative of the North Carolina Cooperative Extension Service. (2001-505, s. 1.2.)

§ 130A-292. Conveyance of land used for commercial hazardous waste disposal facility to the State.

(a) No land may be used for a commercial hazardous waste disposal facility until fee simple title to the land has been conveyed to this State. In consideration for the conveyance, the State shall enter into a lease agreement with the grantor for a term equal to the estimated life of the facility in which the State will be the lessor and the grantor the lessee. The lease agreement shall specify that for an annual rent of fifty dollars ($50.00),

the lessee shall be allowed to use the land for the development and operation of a hazardous waste disposal facility. The lease agreement shall provide that the lessor or any person authorized by the lessor shall at all times have the right to enter without a search warrant or permission of the lessee upon any and all parts of the premises for monitoring, inspection and all other purposes necessary to carry out the provisions of this Article. The lessee shall remain fully liable for all damages, losses, personal injury or property damage which may result or arise out of the lessee's operation of the facility, and for compliance with regulatory requirements concerning insurance, bonding for closure and post-closure costs, monitoring and other financial or health and safety requirements as required by applicable law and rules. The State, as lessor, shall be immune from liability except as otherwise provided by statute. The lease shall be transferable with the written consent of the lessor and the consent will not be unreasonably withheld. In the case of a transfer of the lease, the transferee shall be subject to all terms and conditions that the State deems necessary to ensure compliance with applicable laws and rules. If the lessee or any successor in interest fails in any material respect to comply with any applicable law, rule or permit condition, or with any term or condition of the lease, the State may terminate the lease after giving the lessee written notice specifically describing the failure to comply and upon providing the lessee a reasonable time to comply. If the lessee does not effect compliance within the reasonable time allowed, the State may reenter and take possession of the premises.

(b) Notwithstanding the termination of the lease by either the lessee or the lessor for any reason, the lessee shall remain liable for, and be obligated to perform, all acts necessary or required by law, rule, permit condition or the lease for the permanent closure of the site until the site has either been permanently closed or until a substituted operator has been secured and has assumed the obligations of the lessee.

(c) In the event of changes in laws or rules applicable to the facility which make continued operation by the lessee impossible or economically infeasible, the lessee shall have the right to terminate the lease upon giving the State reasonable notice of not less than six months, in which case the lessor shall have the right to secure a substitute lessee and operator.

(d) In the event of termination of the lease by the lessor as provided in subsection (a) of this section, or by the lessee as provided in subsection (c) of this section, the lessee shall be paid the fair market value of any improvements made to the leased premises less the costs to the lessor resulting from termination of the lease and securing a substitute lessee and operator. However, the lessor shall have no obligation to secure a substitute lessee or operator and may require the lessee to permanently close the facility. (1981, c. 704, s. 5; 1983, c. 891, s. 2; 1989, c. 168, s. 12; 2017-209, s. 17(e).)

§ 130A-293. Local ordinances prohibiting hazardous waste facilities invalid; petition to preempt local ordinance.

(a) It is the intent of the General Assembly to maintain a uniform system for the management of hazardous waste and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of hazardous waste by means of special, local, or private acts or resolutions, ordinances, property

restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, including but not limited to those imposing taxes, fees, or charges or regulating health, environment, or land use, any local ordinance that prohibits or has the effect of prohibiting the establishment or operation of a hazardous waste facility that the Secretary has preempted pursuant to subsections (b) through (f) of this section, shall be invalid to the extent necessary to effectuate the purposes of this Chapter. To this end, all provisions of special, local, or private acts or resolutions are repealed that:

(1) Prohibit the transportation, treatment, storage, or disposal of hazardous waste within any county, city, or other political subdivision.

(2) Prohibit the siting of a hazardous waste facility within any county, city, or other political subdivision.

(3) Place any restriction or condition not placed by this Article upon the transportation, treatment, storage, or disposal of hazardous waste, or upon the siting of a hazardous waste facility within any county, city, or other political subdivision.

(4) In any manner are in conflict or inconsistent with the provisions of this Article.

(a1) No special, local, or private act or resolution enacted or taking effect hereafter may be construed to modify, amend, or repeal any portion of this Article unless it expressly provides for such by specific references to the appropriate section of this Article. Further to this end, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that prohibit or have the effect of prohibiting the establishment or operation of a hazardous waste facility are invalidated to the extent preempted by the Secretary pursuant to this section.

(b) When a hazardous waste facility would be prevented from construction or operation by a county, municipal, or other local ordinance, the operator of the proposed facility may petition the Secretary to review the matter. After receipt of a petition, the Secretary shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the establishment and operation of the facility.

(c) When a petition described in subsection (b) of this section has been filed with the Secretary, the Secretary shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within 60 days after receipt of the petition by the Secretary. The Secretary shall give notice of the public hearing by:

(1) Publication in a newspaper or newspapers having general circulation in the county or counties where the facility is or is to be located or operated, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing; and

(2) First class mail to persons who have requested notice. The Secretary shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Notice by mail shall be complete upon deposit of a copy of the notice in a post-paid wrapper addressed to the person to be notified at the address that appears on the mailing list maintained by the Board, in a post

office or official depository under the exclusive care and custody of the United States Postal Service.

(c1) Any interested person may appear before the Secretary at the hearing to offer testimony. In addition to testimony before the Secretary, any interested person may submit written evidence to the Secretary for the Secretary's consideration. At least 20 days shall be allowed for receipt of written comment following the hearing.

(d) A local zoning or land-use ordinance is presumed to be valid and enforceable to the extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, unless the Secretary makes a finding of fact to the contrary. The Secretary shall determine whether or to what extent to preempt local ordinances so as to allow for the establishment and operation of the facility no later than 60 days after conclusion of the hearing. The Secretary shall preempt a local ordinance only if the Secretary makes all of the following findings:

(1) That there is a local ordinance that would prohibit or have the effect of prohibiting the establishment or operation of a hazardous waste facility.

(2) That the proposed facility is needed in order to establish adequate capability to meet the current or projected hazardous waste management needs of this State or to comply with the terms of any interstate agreement for the management of hazardous waste to which the State is a party and therefore serves the interests of the citizens of the State as a whole.

(3) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance.

(4) That local citizens and elected officials have had adequate opportunity to participate in the siting process.

(5) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility operator has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable local ordinances.

(d1) If the Secretary does not make all of the findings under subsection (d) of this section, the Secretary shall not preempt the challenged local ordinance. The Secretary's decision shall be in writing and shall identify the evidence submitted to the Secretary plus any additional evidence used in arriving at the decision.

(e) The decision of the Secretary shall be final unless a party to the action files a written appeal under Article 4 of Chapter 150B of the General Statutes, as modified by G.S. 7A-29 and this section, within 30 days of the date of the decision. The record on appeal shall consist of all materials and information submitted to or considered by the Secretary, the Secretary's written decision, a complete transcript of the hearing, all written material presented to the Secretary regarding the location of the facility, the specific findings required by subsection (d) of this section, and any minority positions on the specific findings required by subsection (d) of this section. The scope of judicial review

shall be that the court may affirm the decision of the Secretary, or may remand the matter for further proceedings, or may reverse or modify the decision if the substantial rights of the parties may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as submitted; or
(6) Arbitrary or capricious.

(e1) If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become part of the record, the reasons for the reversal or modification.

(f) In computing any period of time prescribed or allowed by this procedure, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply.

(g) Repealed by Session Laws 1989, c. 168, s. 13. (1981, c. 704, s. 5; 1983, s. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 3-5; 1987, c. 827, s. 249; 1987 (Reg. Sess., 1988), c. 993, s. 28; c. 1082, s. 13; 1989, c. 168, s. 13; 1993, c. 501, s. 13; 2001-474, s. 17; 2007-107, s. 1.10(a).)

§ 130A-294. Solid waste management program.

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

(1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste;
(2) Advise, consult, cooperate and contract with other State agencies, units of local government, the federal government, industries and individuals in the formulation and carrying out of a solid waste management program;
(3) Develop and adopt rules to establish standards for qualification as a "recycling, reduction or resource recovering facility" or as "recycling, reduction or resource recovering equipment" for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;
(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. Demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, that is disposed of on the same site as the decommissioned buildings, is exempt from the permit requirement of this

section and rules adopted pursuant to this section and shall be governed by G.S. 130A-301.3. The Department shall not approve an application for a new permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

b. Repealed by Session Laws 2007-550, s. 1(a), effective August 1, 2007.

c. The Department shall deny an application for a permit for a solid waste management facility if the Department finds that:

1. Construction or operation of the proposed facility would be inconsistent with or violate rules adopted by the Commission.
2. Construction or operation of the proposed facility would result in a violation of water quality standards adopted by the Commission pursuant to G.S. 143-214.1 for waters, as defined in G.S. 143-213.
3. Construction or operation of the facility would result in significant damage to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance. These areas include, but are not limited to, national or State parks or forests; wilderness areas; historic sites; recreation areas; segments of the natural and scenic rivers system; wildlife refuges, preserves, and management areas; areas that provide habitat for threatened or endangered species; primary nursery areas and critical fisheries habitat designated by the Marine Fisheries Commission; and Outstanding Resource Waters designated by the Commission.
4. Construction or operation of the proposed facility would substantially limit or threaten access to or use of public trust waters or public lands.
5. The proposed facility would be located in a natural hazard area, including a floodplain, a landslide hazard area, or an area subject to storm surge or excessive seismic activity, such that the facility will present a risk to public health or safety.
6. There is a practical alternative that would accomplish the purposes of the proposed facility with less adverse impact on public resources, considering engineering requirements and economic costs.
7. The cumulative impacts of the proposed facility and other facilities in the area of the proposed facility would violate the

criteria set forth in sub-sub-subdivisions 2. through 5. of this sub-subdivision.

8. Construction or operation of the proposed facility would be inconsistent with the State solid waste management policy and goals as set out in G.S. 130A-309.04 and with the State solid waste management plan developed as provided in G.S. 130A-309.07.

9. The cumulative impact of the proposed facility, when considered in relation to other similar impacts of facilities located or proposed in the community, would have a disproportionate adverse impact on a minority or low-income community protected by Title VI of the federal Civil Rights Act of 1964. This subdivision shall apply only to the extent required by federal law.

d. Management of land clearing debris burned in accordance with 15A NCAC 02D.1903 shall not require a permit pursuant to this section.

(4a) Repealed by Session Laws 2007-550, s. 1(a), effective August 1, 2007.

(5) Repealed by Session Laws 1983, c. 795, s. 3.

(5a) Designate a geographic area within which the collection, transportation, storage and disposal of all solid waste generated within said area shall be accomplished in accordance with a solid waste management plan. Such designation may be made only after the Department has received a request from the unit or units of local government having jurisdiction within said geographic area that such designation be made and after receipt by the Department of a solid waste management plan which shall include:

a. The existing and projected population for such area;

b. The quantities of solid waste generated and estimated to be generated in such area;

c. The availability of sanitary landfill sites and the environmental impact of continued landfill of solid waste on surface and subsurface waters;

d. The method of solid waste disposal to be utilized and the energy or material which shall be recovered from the waste; and

e. Such other data that the Department may reasonably require.

(5b) Subject to the limitations of G.S. 130A-291, authorize units of local government to require by ordinance, that all solid waste generated within the designated geographic area that is placed in the waste stream for disposal be collected, transported, stored and disposed of at a permitted solid waste management facility or facilities serving such area. The provisions of such ordinance shall not be construed to prohibit the source separation of materials from solid waste prior to collection of such solid waste for disposal, or prohibit collectors of solid waste from recycling materials or limit access to such materials as an incident to collection of such solid waste; provided such prohibitions do not authorize the construction and operation of a resource recovery facility unless specifically permitted pursuant to an approved solid waste management plan. If a private solid waste landfill shall be substantially affected by such ordinance then the unit of local government adopting the

ordinance shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the proposed ordinance.

(5c) Except for the authority to designate a geographic area to be serviced by a solid waste management facility, delegate authority and responsibility to units of local government to perform all or a portion of a solid waste management program within the jurisdictional area of the unit of local government; provided that no authority over or control of the operations or properties of one local government shall be delegated to any other local government.

(5d) Require that an annual report of the implementation of the solid waste management plan within the designated geographic area be filed with the Department.

(6) Charge and collect fees from operators of hazardous waste disposal facilities. The fees shall be used to establish a fund sufficient for each individual facility to defray the anticipated costs to the State for monitoring and care of the facility after the termination of the period during which the facility operator is required by applicable State and federal statutes, regulations or rules to remain responsible for post-closure monitoring and care. In establishing the fees, consideration shall be given to the size of the facility, the nature of the hazardous waste and the projected life of the facility.

(7) Establish and collect annual fees from generators and transporters of hazardous waste, and from storage, treatment, and disposal facilities regulated under this Article as provided in G.S. 130A-294.1.

(a1) A permit for a solid waste management facility may be transferred only with the approval of the Department.

(a2) Permits for sanitary landfills and transfer stations shall be issued for the life-of-site of the facility unless revoked. For purposes of this section, "life-of-site" means the period from the initial receipt of solid waste at the facility until the facility reaches its final permitted elevations, which period shall not exceed 60 years. Permits issued pursuant to this subsection shall take into account the duration of any permits previously issued for the facility and the remaining capacity at the facility.

(a3) As used in this section, the following definitions apply:

(1) "New permit" means any of the following:

a. An application for a permit for a solid waste management facility that has not been previously permitted by the Department. The term includes one site suitability review, the initial permit to construct, and one permit to operate.

b. An application that proposes to expand the permitted activity of the waste management facility through an increase of ten percent (10%) or more in (i) the population of the geographic area to be served by the sanitary landfill; (ii) the quantity of solid waste to be disposed of in the sanitary landfill; or (iii) the geographic area to be served by the sanitary landfill.

c. An application that includes a proposed expansion to the boundary of a waste disposal unit within a permitted solid waste management facility.

d. An application that includes a proposed change in the categories of solid waste to be disposed of in the sanitary landfill.

e. An application for a permit to be issued pursuant to G.S. 130A-294(a2), which is issued for a duration of less than a facility's life-of-site based upon permits previously issued to a facility.

(2) "Permit amendment" means any of the following:

a. An application for the five-year renewal of a permit for a permitted solid waste management facility or for a permit review of a permitted solid waste management facility. This sub-subdivision shall not apply to sanitary landfills or transfer stations.

b. Any application that proposes a change in ownership or corporate structure of a permitted solid waste management facility.

(3) "Permit modification" means any of the following:

a. An application for any change to the plans approved in a permit for a solid waste management facility that does not constitute a "permit amendment" or a "new permit."

b. An application for a five-year limited review of a 10-year permit, including review of the operations plan, closure plan, post-closure plan, financial assurance cost estimates, environmental monitoring plans, and any other applicable plans for the facility.

(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, 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.

(b) The Commission shall adopt and the Department shall enforce rules to implement a comprehensive statewide solid waste management program. The rules shall be consistent with applicable State and federal law; and shall be designed to protect the public health, safety, and welfare; preserve the environment; and provide for the greatest possible conservation of cultural and natural resources. Rules for the establishment, location, operation, maintenance, use, discontinuance, recordation, post-closure care of solid waste management facilities also shall be based upon recognized public health practices and procedures, including applicable epidemiological research and studies; hydrogeological research and studies; sanitary engineering research and studies; and current technological development in equipment and methods. The rules shall not apply to the management of solid waste that is generated by an individual or individual family or household unit on the individual's property and is disposed of on the individual's property.

(b1) (1) For purposes of this subsection and subdivision (4) of subsection (a) of this section, a "substantial amendment" means either:

a. An increase of ten percent (10%) or more in:
   1. The population of the geographic area to be served by the sanitary landfill;
   2. The quantity of solid waste to be disposed of in the sanitary landfill; or
   3. The geographic area to be served by the sanitary landfill.

b. A change in the categories of solid waste to be disposed of in the sanitary landfill or any other change to the application for a permit or to the permit for a sanitary landfill that the Commission or the Department determines to be substantial.

(2) A person who intends to apply for a new permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government may adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319. A franchise granted for a sanitary landfill shall (i) be granted for the life-of-site of the landfill, but for a period not to exceed 60 years, and (ii) include all of the following:

a. A statement of the population to be served, including a description of the geographic area.

b. A description of the volume and characteristics of the waste stream.

c. A projection of the useful life of the sanitary landfill.

d. Repealed by Session Laws 2013-409, s. 8, effective August 23, 2013.

e. The procedures to be followed for governmental oversight and regulation of the fees and rates to be charged by facilities subject to the franchise for waste generated in the jurisdiction of the franchising entity.

f. A facility plan for the sanitary landfill that shall include the boundaries of the proposed facility, proposed development of the facility site, the boundaries of all waste disposal units, final elevations and capacity of all waste disposal units, the amount of waste to be received per day in tons, the total waste disposal capacity of the sanitary landfill in tons, a description of environmental controls, and a description of any other waste management activities to be conducted at the facility. In addition, the facility plan shall show the proposed location of soil borrow areas, leachate facilities, and all other facilities and infrastructure, including ingress and egress to the facility.

(2a) A local government may elect to award a preliminary franchise. If a local government elects to award a preliminary franchise, the preliminary franchise shall contain, at a minimum, all of the information described in sub-subdivisions a. through e. of subdivision (2) of this subsection plus a general description of the proposed sanitary landfill, including the approximate number of acres required for the proposed sanitary landfill and its appurtenances and a description of any other solid waste management activities that are to be conducted at the site.

(2b) A local government may elect to include as part of a franchise agreement a surcharge on waste disposed of in its jurisdiction by other local governments located within the State. Funds collected by a local government pursuant to such a surcharge may be used to support any services supported by the local government's general fund.

(3) Prior to the award of a franchise for the construction or operation of a sanitary landfill, the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall conduct a public hearing. The board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall provide at least 30 days' notice to the public of the public hearing. The notice shall include a summary of all the information required to be included in the franchise, and shall specify the procedure to be followed at the public hearing. The applicant for the franchise shall provide a copy of the application for the franchise that includes all of the information required to be included in the franchise, to the public library closest to the proposed sanitary landfill site to be made available for inspection and copying by the public. The requirements of this subdivision shall not apply to franchises extended pursuant to subsection (a3) of this section.

(4) An applicant for a new permit for a sanitary landfill shall request each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the proposed sanitary landfill, or the existing sanitary landfill as it would be operated under the permit, would be consistent with the applicable ordinances. The request to the local government shall be accompanied by a copy of the permit application and shall be delivered to the clerk of the local government personally or by certified mail. In order to serve as a basis for a determination that an application for a new permit for a sanitary landfill is consistent with a zoning, subdivision, or land-use planning ordinance, an ordinance or zoning classification applicable to the real property designated in the permit application shall have been in effect not less than 90 days prior to the date the request for a determination of consistency is delivered to the clerk of the local government. The determination shall be verified or supported by affidavit signed by the chief administrative officer, the chief administrative officer's designee, clerk, or other official designated by the local government to make the determination and, if the local government states that the sanitary landfill as it would be operated under the new permit is inconsistent with a franchise, zoning, subdivision, or land-use planning ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of the determination shall be provided to the applicant when the determination is submitted to the Department. The Department shall not act upon an application for a permit under this section until it has received

a determination from each local government requested to make a determination by the applicant; provided that if a local government fails to submit a determination to the Department as provided by this subsection within 15 days after receipt of the request, the Department shall proceed to consider the permit application without regard to a franchise, local zoning, subdivision, and land-use planning ordinances. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the sanitary landfill as it would be operated under the new permit is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Department shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the sanitary landfill under the permit, comply with all lawfully adopted local ordinances cited in the determination that apply to the sanitary landfill. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

(5) As used in this subdivision, "coal-fired generating unit" and "investor-owned public utility" have the same meaning as in G.S. 143-215.107D(a). Notwithstanding subdivisions (a)(4), (b1)(3), or (b1)(4) of this section, no franchise shall be required for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D.

(b2) The Department shall require an applicant for a permit or a permit holder under this Article to satisfy the Department that the applicant or permit holder, and any parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including any joint venturer with a direct or indirect interest in the applicant, permit holder, or parent:

(1) Is financially qualified to carry out the activity for which the permit is required. An applicant for a permit and permit holders for solid waste management facilities that are not hazardous waste facilities shall establish financial responsibility as required by G.S. 130A-295.2. An applicant for a permit and permit holders for hazardous waste facilities shall establish financial responsibility as required by G.S. 130A-295.04.

(2) Has substantially complied with the requirements applicable to any activity in which the applicant or permit holder, or a parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, or a joint venturer with a direct or indirect interest in the applicant has previously engaged and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment as provided in G.S. 130A-295.3.

(b3) An applicant for a permit or a permit holder under this Article shall satisfy the Department that the applicant has met the requirements of subsection (b2) of this section before the Department is required to otherwise review the application.

(c) The Commission shall adopt and the Department shall enforce rules governing the management of hazardous waste. These rules shall establish a complete and integrated regulatory scheme in the area of hazardous waste management, implement this Part, and shall:

(1) Establish criteria for hazardous waste, identify the characteristics of hazardous waste, and list particular hazardous waste.

(1a) Establish criteria for hazardous constituents, identify the characteristics of hazardous constituents, and list particular hazardous constituents.

(2) Require record keeping and reporting by generators and transporters of hazardous waste and owners and operators of hazardous waste facilities.

(3) Require proper labeling of hazardous waste containers.

(4) Require use of appropriate containers for hazardous waste.

(5) Require maintenance of a manifest system to assure that all hazardous waste is designated for treatment, storage or disposal at a hazardous waste facility to which a permit has been issued.

(6) Require proper transportation of hazardous waste.

(7) Develop treatment storage and disposal standards of performance and techniques to be used by hazardous waste facilities.

(8) Develop standards regarding location, design, ownership and construction of hazardous waste facilities; provided, however, that no hazardous waste disposal facility or polychlorinated biphenyl disposal facility shall be located within 25 miles of any other hazardous waste disposal facility or polychlorinated biphenyl disposal facility.

(9) Require plans to minimize unanticipated damage from treatment, storage or disposal of hazardous waste; and a plan or plans providing for the establishment and/or operation of one or more hazardous waste facilities in the absence of adequate approved hazardous waste facilities established or operated by any person within the State.

(10) Require proper maintenance and operation of hazardous waste facilities, including requirements for ownership by any person or the State, require demonstration of financial responsibility in accordance with this section and G.S. 130A-295.04, provide for training of personnel, and provide for continuity of operation and procedures for establishing and maintaining hazardous waste facilities.

(11) Require owners or operators of hazardous waste facilities to monitor the facilities.

(12) Authorize or require inspection or copying of records required to be kept by owners or operators.

(13) Provide for collection and analysis of hazardous waste samples and samples of hazardous waste containers and labels from generators and transporters and from owners and operators of hazardous waste facilities.

(14) Develop a permit system governing the establishment and operation of hazardous waste facilities.

(15) Develop additional requirements as necessary for the effective management of hazardous waste.

(16) Require the operator of the hazardous waste disposal facility to maintain adequate insurance to cover foreseeable claims arising from the operation of the facility. The Department shall determine what constitutes an adequate amount of insurance.

(17) Require the bottom of a hazardous waste disposal facility to be at least 10 feet above the seasonal high water table and more when necessary to protect the public health and the environment.

(18) Require the operator of a hazardous waste disposal facility to make monthly reports to the board of county commissioners of the county in which the facility is located on the kinds and amounts of hazardous wastes in the facility.

(d) The Commission is authorized to adopt and the Department is authorized to enforce rules where appropriate for public participation in the consideration, development, revision, implementation and enforcement of any permit rule, guideline, information or program under this Article.

(e) Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(f) Within 10 days of receiving an application for a permit or for an amendment to an existing permit for a hazardous waste facility, the Department shall notify the clerk of the board of commissioners of the county or counties in which the facility is proposed to be located or is located and, if the facility is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed, and shall file a copy of the application with the clerk. Prior to the issuance of a permit or an amendment of an existing permit the Secretary or the Secretary's designee shall conduct a public hearing in the county, or in one of the counties in which the hazardous waste facility is proposed to be located or is located. The Secretary or the Secretary's designee shall give notice of the hearing, and the public hearing shall be in accordance with applicable federal regulations adopted pursuant to RCRA and with Chapter 150B of the General Statutes. Where the provisions of the federal regulations and Chapter 150B of the General Statutes are inconsistent, the federal regulations shall apply.

(g) The Commission shall develop and adopt standards for permitting of hazardous waste facilities. Such standards shall be developed with, and provide for, public participation; shall be incorporated into rules; shall be consistent with all applicable federal and State law, including statutes, regulations and rules; shall be developed and revised in light of the best available scientific data; and shall be based on consideration of at least the following factors:

(1) Hydrological and geological factors, including flood plains, depth to water table, groundwater travel time, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope, mines, and climate;

(2) Environmental and public health factors, including air quality, quality of surface and groundwater, and proximity to public water supply watersheds;

(3) Natural and cultural resources, including wetlands, gamelands, endangered species habitats, proximity to parks, forests, wilderness areas, nature preserves, and historic sites;

(4) Local land uses;
(5) Transportation factors, including proximity to waste generators, route safety, and method of transportation;
(6) Aesthetic factors, including the visibility, appearance, and noise level of the facility;
(7) Availability and reliability of public utilities; and
(8) Availability of emergency response personnel and equipment.

(h) Rules adopted by the Commission shall be subject to the following requirements:
(1) Repealed by Session Laws 1989, c. 168, s. 20.
(2) Hazardous waste shall be treated prior to disposal in North Carolina. The Commission shall determine the extent of waste treatment required before hazardous waste can be disposed of in a hazardous waste disposal facility.
(3) Any hazardous waste disposal facility hereafter constructed in this State shall meet, at the minimum, the standards of construction imposed by federal regulations adopted under the RCRA at the time the permit is issued.
(4) No hazardous waste disposal facility or polychlorinated biphenyl disposal facility shall be located within 25 miles of any other hazardous waste disposal facility or polychlorinated biphenyl disposal facility.
(5) Repealed by Session Laws 2001-474, s. 23, effective November 29, 2001.
(6) The following shall not be disposed of in a hazardous waste disposal facility: ignitables as defined in the RCRA, polyhalogenated biphenyls of 50 ppm or greater concentration, and free liquids whether or not containerized.
(7) Facilities for disposal or long-term storage of hazardous waste shall have at a minimum the following: a leachate collection and removal system above an artificial impervious liner of at least 30 mils in thickness, a minimum of five feet of clay or clay-like liner with a maximum permeability of 1.0 x 10 – 7 centimeters per second (cm/sec) below said artificial liner, and a leachate detection system immediately below the clay or clay-like liner.
(8) Hazardous waste shall not be stored at a hazardous waste treatment facility for over 90 days prior to treatment or disposal.
(9) The Commission shall consider any hazardous waste treatment process proposed to it, if the process lessens treatment cost or improves treatment over then current methods or standards required by the Commission.
(10) Prevention, reduction, recycling, and detoxification of hazardous wastes should be encouraged and promoted. Hazardous waste disposal facilities and polychlorinated biphenyl disposal facilities shall be detoxified as soon as technology which is economically feasible is available and sufficient money is available without additional appropriation.

(i) The Department shall include in the status of solid waste management report required to be submitted on or before January 15 of each year pursuant to G.S. 130A-309.06(c) a report on the implementation and cost of the hazardous waste management program. The report shall include an evaluation of how well the State and private parties are managing and cleaning up hazardous waste. The report shall also include recommendations to the Governor, State agencies, and the General Assembly on ways to: improve waste management; reduce the amount of waste generated; maximize resource recovery, reuse, and conservation; and minimize the amount of hazardous waste which

must be disposed of. The report shall include beginning and ending balances in the Hazardous Waste Management Account for the reporting period, total fees collected pursuant to G.S. 130A-294.1, anticipated revenue from all sources, total expenditures by activities and categories for the hazardous waste management program, any recommended adjustments in annual and tonnage fees which may be necessary to assure the continued availability of funds sufficient to pay the State's share of the cost of the hazardous waste management program, and any other information requested by the General Assembly. In recommending adjustments in annual and tonnage fees, the Department may propose fees for hazardous waste generators, and for hazardous waste treatment facilities that treat waste generated on site, which are designed to encourage reductions in the volume or quantity and toxicity of hazardous waste. The report shall also include a description of activities undertaken to implement the resident inspectors program established under G.S. 130A-295.02. In addition, the report shall include an annual update on the mercury switch removal program that shall include, at a minimum, all of the following:

(1) A detailed description and documentation of the capture rate achieved.

(2) Repealed by Session Laws 2012-200, s. 21(b), effective December 31, 2017.

(3) In the event that a capture rate of at least ninety percent (90%) is not achieved, a description of additional or alternative actions that may be implemented to improve the mercury minimization plan and its implementation.

(4) The number of mercury switches collected, the number of end-of-life vehicles containing mercury switches, the number of end-of-life vehicles processed for recycling, and a description of how the mercury switches were managed.

(5) A statement that details the costs required to implement the mercury minimization plan.

(j) Repealed by Session Laws 2007-107, s. 1.1(e), effective October 1, 2007.

(k) Repealed by Session Laws 2017-209, s. 2(a), effective October 4, 2017.

(*l*) Disposal of solid waste in or upon water in a manner that results in solid waste entering waters or lands of the State is unlawful. Nothing herein shall be interpreted to affect disposal of solid waste in a permitted landfill.

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

(n) The Department shall encourage research and development and disseminate information on state-of-the-art means of handling and disposing of hazardous waste. The Department may establish a waste information exchange for the State.

(o) The Department shall promote public education and public involvement in the decision-making process for the siting and permitting of proposed hazardous waste facilities. The Department shall assist localities in which facilities are proposed in collecting and receiving information relating to the suitability of the proposed site. At the request of a local government in which facilities are proposed, the Department shall direct the appropriate agencies of State government to develop such relevant data as that locality shall reasonably request.

(p) The Department shall each year recommend to the Governor a recipient for a "Governor's Award of Excellence" which the Governor shall award for outstanding achievement by an industry or company in the area of waste management.

(q) The Secretary shall, at the request of the Governor and under the Governor's direction, assist with the negotiation of interstate agreements for the management of hazardous waste.

(r) Repealed by Session Laws 2014-3, s. 12.3(b), effective July 1, 2015.

(s) The Department is authorized to enter upon any lands and structures upon lands to make surveys, borings, soundings, and examinations as may be necessary to determine the suitability of a site for a hazardous waste facility or hazardous waste disposal facility. The Department shall give 30 days notice of the intended entry authorized by this section in the manner prescribed for service of process by G.S. 1A-1, Rule 4. Entry under this section shall not be deemed a trespass or taking; provided, however, that the Department shall make reimbursement for any damage to land or structures caused by these activities.

(t) Construction and demolition debris diverted from the waste stream or collected as source separated material is subject to a solid waste permit for transfer, treatment, and processing in a permitted solid waste management facility. The Department may adopt rules to implement this subsection.

(u) Garbage diverted from the waste stream or collected as source separated material is subject to a solid waste permit for transfer, treatment, and processing in a permitted solid waste management facility. The Department may adopt rules to implement this subsection. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. 4; c. 764, s. 1; 1977, c. 123; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 2; c. 694, s. 2; 1981, c. 704, s. 6; 1983, c. 795, ss. 3, 8.1; c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 6, 7; c. 1034, s. 73; 1985, c. 582; c. 738, ss. 2, 3; 1985 (Reg. Sess., 1986), c. 1027, s. 31; 1987, c. 597; c. 761; c. 773, s. 1; c. 827, ss. 1, 250; c. 848; 1987 (Reg. Sess., 1988), c. 1111, s. 6; 1989, c. 168, ss. 15-22; c. 317; c. 727, s. 218(86); c. 742, s. 6; 1991, c. 537, s. 1; 1993, c. 86, s. 1; c. 273, s. 1; c. 365, s. 1; c. 473, ss. 1, 2; c. 501, s. 14; 1993 (Reg. Sess., 1994), c. 580, s. 1; c. 722, ss. 1, 2; 1995, c. 502, s. 1; c. 509, s. 70; 1995 (Reg. Sess., 1996), c. 594, ss. 6, 7; 1997-27, s. 2; 2001-357, s. 2; 2001-474, ss. 22, 23, 24, 25; 2002-148, s. 4; 2003-37, s. 1; 2006-256, ss. 1, 2, 3; 2007-107, ss. 1.1(b), 1.1(d), 1.1(e), 2.1(a); 2007-495, s. 14; 2007-550, s. 1(a); 2012-200, s. 21(a), (b); 2013-55, s. 1; 2013-408, s. 1; 2013-409, s. 8; 2013-413, ss. 28(e), 59(a), 59.4(e); 2014-3, s. 12.3(b); 2014-115, s. 17; 2014-122, s. 11(c); 2015-1, s. 2(c); 2015-241, s. 14.20(a); 2015-286, s. 4.9(a), (d); 2017-10 s. 3.1(a), (d); 2017-10 ss. 3.1(a), (d), 3.2(a), (b), (e), 4.14(f); 2017-209, ss. 2(a), 16, 17(b); 2017-211, s. 16(a), (b), (c), (d); 2018-114, s. 21(a).)

§ 130A-294.1. Fees applicable to generators and transporters of hazardous waste, and to hazardous waste storage, treatment, and disposal facilities.

(a) It is the intent of the General Assembly that the fee system established by this section is solely to provide funding in addition to federal and State appropriations to support the State's hazardous waste management program.

(b) Funds collected pursuant to this section shall be used for personnel and other resources necessary to:

(1) Provide a high level of technical assistance and waste minimization effort for the hazardous waste management program.
(2) Provide timely review of permit applications.
(3) Insure that permit decisions are made on a sound technical basis and that permit decisions incorporate all conditions necessary to accomplish the purposes of this Part.
(4) Improve monitoring and compliance of the hazardous waste management program.
(5) Increase the frequency of inspections.
(6) Provide chemical, biological, toxicological, and analytical support for the hazardous waste management program.
(7) Provide resources for emergency response to imminent hazards associated with the hazardous waste management program.
(8) Implement and provide oversight of necessary response activities involving inactive hazardous substance or waste disposal sites.
(9) Provide compliance and prevention activities within the solid waste program to ensure that hazardous waste is not disposed in solid waste management facilities.

(c) Repealed by Session Laws 2014-100, s. 14.24A, effective July 1, 2014.

(d) The Hazardous Waste Management Account is established as a nonreverting account within the Department. All fees collected under this section shall be credited to the Account and shall be used for the purposes listed in subsection (b).

(e) A person who generates either one kilogram or more of any acute hazardous waste as listed in 40 C.F.R. § 261.30(d) or § 261.33(e) as revised 1 July 1987, or 1000 kilograms or more of hazardous waste, in any calendar month during the year beginning 1 July and ending 30 June shall pay an annual fee of one thousand four hundred dollars ($1,400).

(f) A person who generates 100 kilograms or more of hazardous waste in any calendar month during the year beginning 1 July and ending 30 June but less than 1000 kilograms of hazardous waste in each calendar month during that year shall pay an annual fee of one hundred seventy-five dollars ($175.00).

(g) A person who generates one kilogram or more of acute hazardous waste or 1000 kilograms or more of hazardous waste in any calendar month during the calendar year shall pay, in addition to any fee under subsections (e) and (f) of this section, a tonnage fee of seventy cents ($0.70) per ton or any part thereof of hazardous waste generated during that year up to a maximum of 25,000 tons.

(h) A person who generates less than one kilogram of acute hazardous waste and less than 100 kilograms of hazardous waste in each calendar month during the year beginning 1 July and ending 30 June shall not be liable for payment of a fee under subsections (e) and (f) of this section for that year.

(i) Hazardous waste generated as a result of any type of remedial action or by collection by a local government of hazardous waste from households shall not be subject to a tonnage fee under subsections (g) and (l) of this section.

(j) A person who transports hazardous waste shall pay an annual fee of eight hundred forty dollars ($840.00).

(k) A storage, treatment, or disposal facility shall pay an annual activity fee of one thousand six hundred eighty dollars ($1,680) for each activity.

(l) A commercial hazardous waste storage, treatment, or disposal facility shall pay annually, in addition to the fees applicable to all hazardous waste storage, treatment, or disposal facilities, a single tonnage charge of two dollars and forty-five cents ($2.45) per ton or any part thereof of hazardous waste stored, treated, or disposed of at the facility. A manufacturing facility that receives hazardous waste generated from the use of a product typical of its manufacturing process for the purpose of recycling is exempt from this tonnage charge. A facility must have a permit issued under this Article which includes the recycling activity and specifies the type and amount of waste allowed to be received from off-site for recycling.

(m) An applicant for a permit for a hazardous waste storage, treatment, or disposal facility that proposes to operate as a commercial facility shall pay an application fee for each proposed activity as follows:

(1)	Storage facility	$14,000.
(2)	Treatment facility	$21,000.
(3)	Disposal facility	$35,000.

(n) The Commission may adopt rules setting fees for modifications to permits. Such fees shall not exceed fifty percent (50%) of the application fee.

(o) Annual fees established under this section are due no later than 31 July for the fiscal year beginning 1 July in the same year. Tonnage fees established under this section are due no later than 31 July for the previous calendar year.

(p) Repealed by Session Laws 2012-200, s. 21(c), effective August 1, 2012. (1987, c. 773, ss. 2, 4-8; 1987 (Reg. Sess., 1988), c. 1020, s. 2; 1989, c. 168, s. 23; c. 724, s. 4; 1991, c. 286, s. 1; 1991 (Reg. Sess., 1992), c. 890, s. 10; c. 1039, s. 9; 2003-284, s. 35.2(a), (b); 2007-495, s. 24; 2010-31, s. 13.8(a); 2010-123, s. 5.1; 2011-145, s. 31.15; 2012-200, s. 21(c); 2014-100, s. 14.24A; 2014-115, s. 10.)

§ 130A-295. Additional requirements for hazardous waste facilities.

(a) An applicant for a permit for a hazardous waste facility shall satisfy the Department that:

(1) Any hazardous waste facility constructed or operated by the applicant, or any parent or subsidiary corporation if the applicant is a corporation, has been operated in accordance, with sound waste management practices and in substantial compliance with federal and state laws, regulations and rules; and

(2) The applicant, or any parent or subsidiary corporation if the applicant is a corporation, is financially qualified to operate the proposed hazardous waste facility.

(b) An applicant for a permit for a hazardous waste facility shall satisfy the Department that he has met the requirements of subsection (a) of this section before the Department is required to otherwise review the application. In order to continue to hold a permit under this Chapter, a permittee must remain financially qualified and must provide

any information requested by the Department to demonstrate that he continues to be financially qualified.

(c) No permit for any new commercial hazardous waste treatment, storage, or disposal facility shall be issued or become effective, and no permit for a commercial hazardous waste treatment, storage, or disposal facility shall be modified until the applicant has satisfied the Department that such facility is needed to meet the current or projected hazardous waste management needs of this State or to comply with the terms of any interstate agreement for the management of hazardous waste to which the State is a party. The Commission shall adopt rules to implement this subsection.

(d) At least 120 days prior to submitting an application, an applicant for a permit for a hazardous waste facility shall provide to the county in which the facility is located, to any municipality with planning jurisdiction over the site of the facility, and to all emergency response agencies that have a role under the contingency plan for the facility all of the following information:

(1) Information on the nature and type of operations to occur at the facility.

(2) Identification of the properties of the hazardous waste to be managed at the facility.

(3) A copy of the draft contingency plan for the facility that includes the proposed role for each local government and each emergency response agency that received information under this subsection.

(4) Information on the hazardous waste locations within the facility.

(e) Within 60 days of receiving the information, each local government and emergency response agency that receives information under subsection (d) of this section shall respond to the applicant in writing as to the adequacy of the contingency plan and the availability and adequacy of its resources and equipment to respond to an emergency at the facility that results in a release of hazardous waste or hazardous waste constituents into the environment according to the role set forth for the local government or emergency response agency under the contingency plan.

(f) An applicant for a permit for a hazardous waste facility shall include documentation that each local government and emergency response agency received the information required under subsection (d) of this section, the written responses the applicant received under subsection (e) of this section, and verification by each that its resources and equipment are available and adequate to respond to an emergency at the facility in accordance with its role as set forth in the contingency plan. If the applicant does not receive a timely verification from a local government or emergency response agency notified under subsection (d) of this section, the Department shall verify the adequacy of resources and equipment for emergency response during the course of review of the permit application, taking into account any contracts entered into by the applicant for such emergency response resources.

(g) At each two-year interval after a permit for a hazardous waste facility is issued, the permit holder shall verify that the resources and equipment of each local government and emergency response agency are available and adequate to respond to an emergency at the facility in accordance with its role as set forth in the contingency plan and shall submit

this verification to the Department. (1981, c. 704, s. 7; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, s. 8; 1987, § 461, s. 3; 1989, c. 168, s. 24; 2007-107, s. 1.2(a).)

§ 130A-295.01. Additional requirement for commercial hazardous waste facilities.

(a) As used in this section:

(1) "Commercial hazardous waste facility" means any hazardous waste facility that accepts hazardous waste from the general public or from another person for a fee, but does not include any facility owned or operated by a generator of hazardous waste solely for his own use, and does not include any facility owned by the State or by any agency or subdivision thereof solely for the management of hazardous waste generated by agencies or subdivisions of the State.

(2) "New", when used in connection with "facility", refers to a planned or proposed facility, or a facility that has not been placed in operation, but does not include facilities that have commenced operations as of 22 June 1987, including facilities operated under interim status.

(3) "Modified", when used in connection with "permit", means any change in any permit in force on or after 22 June 1987 that would either expand the scope of permitted operations, or extend the expiration date of the permit, or otherwise constitute a Class 2 or Class 3 modification of the permit as defined in 40 Code of Federal Regulations § 270.41 (1 July 2006).

(4) "7Q10 conditions", when used in connection with "surface water," refers to the minimum average flow for a period of seven consecutive days that has an average occurrence of once in 10 years as referenced in 15 NCAC 2B.0206(a)(3) as adopted 1 February 1976.

(b) No permit for any new commercial hazardous waste facility shall be issued or become effective, and no permit for a commercial hazardous waste facility shall be modified, until the applicant has satisfied the Department that such facility meets, in addition to all other applicable requirements, the following requirements:

(1) The facility shall not discharge directly a hazardous or toxic substance into a surface water that is upstream from a public drinking water supply intake in North Carolina, unless there is a dilution factor of 1000 or greater at the point of discharge into the surface water under 7Q10 conditions.

(2) The facility shall not discharge indirectly through a publicly owned treatment works (POTW) a hazardous or toxic substance into a surface water that is upstream from a public drinking water supply intake in North Carolina, unless there is a dilution factor of 1000 or greater, irrespective of any dilution occurring in a wastewater treatment plant, at the point of discharge into the surface water under 7Q10 conditions.

(c) The Department shall not issue a permit for a commercial hazardous waste facility for a period of more than five years. A permit holder for a commercial hazardous waste facility who intends to apply for renewal of the permit shall submit an application for the renewal of the permit at least one year before the permit expires unless the Department approves a shorter period of time.

(d) The owner or operator of a commercial hazardous waste facility shall maintain a record of information at an off-site location that identifies the generators of the waste and

the quantity, type, location, and hazards of the waste at the facility and shall make this information available in a form and manner to be determined by the Department, accessible to the Department, to the county in which the facility is located, to any municipality with planning jurisdiction over the site of the facility, and to emergency response agencies that have a role under the contingency plan for the facility.

(e) (1) Within 10 days of filing an application for a permit for a commercial hazardous waste facility, the applicant shall notify every person who resides or owns property located within one-fourth mile of any property boundary of the facility that the application has been filed. The notice shall be by mail to residents and by certified mail to property owners, or by any other means approved by the Department, shall be in a form approved by the Department, and shall include all of the following:

a. The location of the facility.

b. A description of the facility.

c. The hazardous and nonhazardous wastes that are to be received and processed at the facility.

d. A description of the emergency response plan for the facility.

(2) The permit holder for a commercial hazardous waste facility shall publish a notice that includes the information set out in subdivision (1) of this subsection annually beginning one year after the permit is issued. The notice shall be published in a form and manner approved by the Department in a newspaper of general circulation in the community where the facility is located.

(3) The permit holder for a commercial hazardous waste facility shall provide the information set out in subdivision (1) of this subsection by mail to the persons described in subdivision (1) of this subsection at the midpoint of the period for which the permit is issued.

(4) Each commercial hazardous waste facility applicant and permit holder shall provide documentation to demonstrate to the Department that the requirements set out in subdivisions (1), (2), and (3) of this subsection have been met.

(f) No later than 31 January of each year, the owner or operator of a commercial hazardous waste facility shall report to the Department any increase or decrease in the number of sensitive land uses and any increase or decrease in estimated population density based on information provided by the local government that has planning jurisdiction over the site on which the facility is located that occurred during the previous calendar year in the area located within one-fourth mile of any property boundary of the facility. Changes shall be recorded in the operating record of the facility. As used in this subsection, "sensitive land use" includes residential housing, places of assembly, places of worship, schools, day care providers, and hospitals. Sensitive land use does not include retail businesses.

(g) The owner or operator of a commercial hazardous waste facility shall provide a security and surveillance system at the facility 24 hours a day, seven days a week in order to continuously monitor site conditions and to control entry. The security and surveillance system shall be capable of promptly detecting unauthorized access to the facility; monitoring conditions; identifying operator errors; and detecting any discharge that could directly or indirectly cause a fire, explosion, or release of hazardous waste or hazardous

waste constituents into the environment or threaten human health. The requirements of this subsection may be satisfied either by employing trained facility personnel or by providing an electronic security and surveillance system which may include television, motion detectors, heat-sensing equipment, combustible gas monitors, or any combination of these, as approved by the Department.

(h) The operator of a commercial hazardous waste facility shall install an on-site wind monitor approved by the Department. The wind monitor required shall be located so that the real-time wind direction can be determined from a remote location in the event of a release of hazardous waste or hazardous waste constituents into the environment. (1987, c. 437, s. 1; 2007-107, ss. 1.3(a), 1.4(a), 1.5(a), 1.6(a), 1.7(a), 1.9(a), 2.1(b); 2007-495, s. 15(a)-(e).)

§ 130A-295.02. Resident inspectors required at commercial hazardous waste facilities; recovery of costs for same.

(a) The Division shall employ full-time resident inspectors for each commercial hazardous waste facility located within the State. Such inspectors shall be employed and assigned so that at least one inspector is on duty at all times during which any component of the facility is in operation, is undergoing any maintenance or repair, or is undergoing any test or calibration. Resident inspectors shall be assigned to commercial hazardous waste management facilities so as to protect the public health and the environment, to monitor all aspects of the operation of such facilities, and to assure compliance with all laws and rules administered by the Division and by any other division of the Department. Such inspectors may also enforce laws or rules administered by any other agency of the State pursuant to an appropriate memorandum of agreement entered into by the Secretary and the chief administrative officer of such agency. The Division may assign additional resident inspectors to a facility depending upon the quantity and toxicity of waste managed at a facility, diversity of types of waste managed at the facility, complexity of management technologies utilized at the facility, the range of components which are included at the facility, operating history of the facility, and other factors relative to the need for on-site inspection and enforcement capabilities. The Division, in consultation with other divisions of the Department, shall define the duties of each resident inspector and shall determine whether additional resident inspectors are needed at a particular facility to meet the purposes of this section.

(b) The Division shall establish requirements pertaining to education, experience, and training for resident inspectors so as to assure that such inspectors are fully qualified to serve the purposes of this section. The Division shall provide its resident inspectors with such training, equipment, facilities, and supplies as may be necessary to fulfill the purposes of this section.

(c) As a condition of its permit, the owner or operator of each commercial hazardous waste facility located within the State shall provide and maintain such appropriate and secure offices and laboratory facilities as the Department may require for the use of the resident inspectors required by this section.

(d) Resident inspectors assigned to a commercial hazardous waste facility shall have unrestricted access to all operational areas of such facility at all times. For the protection of resident inspectors and the public, the provisions of G.S. 143-215.107(f) shall not apply to commercial hazardous waste facilities to which a resident inspector is assigned.

(e) No commercial hazardous waste facility shall be operated, undergo any maintenance or repair, or undergo any testing or calibration unless an inspector employed by the Division is present at the facility.

(f) The requirements of this section are intended to enhance the ability of the Department to protect the public health and the environment by providing the Department with the authority and resources necessary to maintain a rigorous inspection and enforcement program at commercial hazardous waste management facilities. The requirements of this section are intended to be supplementary to other requirements imposed on hazardous waste facilities. This section shall not be construed to relieve either the owner or the operator of any such facility or the Department from any other requirement of law or to require any unnecessary duplication of reporting or monitoring requirements.

(g) For the purpose of enforcing the laws and rules enacted or adopted for the protection of the public health and the environment, resident inspectors employed pursuant to this section may be commissioned as special peace officers as provided in G.S. 113-28.1. The provisions of Article 1A of Chapter 113 of the General Statutes shall apply to resident inspectors commissioned as special peace officers pursuant to this subsection.

(h) The Department shall determine the full cost of the employment and assignment of resident inspectors at each commercial hazardous waste facility located within the State. Such costs shall include, but are not limited to, costs incurred for salaries, benefits, travel, training, equipment, supplies, telecommunication and data transmission, offices and other facilities other than those provided by the owner or operator, and administrative expenses. The Department shall establish and revise as necessary a schedule of fees to be assessed on the users of each such facility to recover the actual cost of the resident inspector program at that facility. The operator of each such facility shall serve as the collection agent for such fees, shall account to the Department on a monthly basis for all fees collected, and shall deposit with the Department all funds collected pursuant to this section within 15 days following the last day of the month in which such fees are collected. Fees collected under this section shall be credited to the General Fund as nontax revenue.

(i) The Division shall establish and revise as necessary a program for assigning resident inspectors to commercial hazardous waste facilities so that scheduled rotation or equivalent oversight procedures ensure that each resident inspector will maintain objectivity.

(j) For purposes of this subsection, special purpose commercial hazardous waste facilities include: a facility that manages limited quantities of hazardous waste; a facility that limits its hazardous waste management activities to reclamation or recycling, including energy or materials recovery or a facility that stores hazardous waste primarily for use at such facilities; or a facility that is determined to be low risk under rules adopted by the Commission pursuant to this subsection. The Commission shall adopt rules to determine whether a commercial hazardous waste facility is a special purpose commercial hazardous

waste facility and to establish classifications of special purpose commercial hazardous waste facilities. The rules to determine whether a commercial hazardous waste facility is a special purpose commercial hazardous waste facility and to establish classifications of special purpose commercial hazardous waste facilities shall be based on factors including, but not limited to, the size of the facility, the type of treatment or storage being performed, the nature and volume of waste being treated or stored, the uniformity, similarity, or lack of diversity of the waste streams, the predictability of the nature of the waste streams and their treatability, whether the facility utilizes automated monitoring or safety devices that adequately perform functions that would otherwise be performed by a resident inspector, the fact that reclamation or recycling is being performed at the facility, and the compliance history of the facility and its operator. Based on the foregoing factors and any increase or decrease in the number of sensitive land uses over time or in estimated population density over time reported pursuant to G.S. 130A-295.01(f), rules adopted pursuant to this subsection shall establish times and frequencies for the presence of a resident inspector on less than a full-time basis at special purpose commercial hazardous waste facilities and specify a minimum number of additional inspections at special purpose hazardous waste facilities.

Special purpose commercial hazardous waste facilities that utilize hazardous waste as a fuel source shall be inspected a minimum of 40 hours per week, unless compliance data for these facilities can be electronically monitored and recorded off-site by the Department. The Department, considering the benefits provided by electronic monitoring, shall determine the number of hours of on-site inspection required at these facilities. The Department shall maintain records of all inspections at special purpose commercial hazardous waste facilities. Such records shall contain sufficient detail and shall be arranged in a readily understandable format so as to facilitate determination at any time as to whether the special purpose commercial hazardous waste facility is in compliance with the requirements of this subsection and of rules adopted pursuant to this subsection. Notwithstanding any other provision of this section, special purpose commercial hazardous waste facilities shall be subject to inspection at all times during which the facility is in operation, undergoing any maintenance or repair, or undergoing any test or calibration.

(k) For purposes of this section, a facility that utilizes hazardous waste as a fuel or that has used hazardous waste as a fuel within the preceding calendar year, and that is an affiliate of and adjacent or contiguous to a commercial hazardous waste facility, shall be subject to inspection as a special purpose commercial hazardous waste facility under subsection (j) of this section as if the facility that utilizes hazardous waste as a fuel were a part of the commercial hazardous waste facility.

(l) As used in this section, the words "affiliate", "parent", and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition).

(m) Repealed by Session Laws 2012-200, s. 21(d), effective August 1, 2012. (1989 (Reg. Sess., 1990), c. 1082, s. 1; 1991, c. 20, s. 2; c. 403, s. 4; c. 450, s. 2; 1993, c. 511, s. 1; c. 513, s. 2(b); c. 553, s. 41; 1995, c. 327, s. 1; 2006-79, s. 16; 2007-107, s. 1.5(b); 2009-570, s. 16; 2012-200, s. 21(d).)

§ 130A-295.03. Additional requirement for hazardous waste disposal facilities; hazardous waste to be placed in containers.

(a) For purposes of this section, the term "container" means any portable device into which waste is placed for storage, transportation, treatment, disposal, or other handling, and includes the first enclosure which encompasses the waste.

(b) All hazardous waste shall be placed in containers for disposal, except as the Commission shall provide for by rule. The Commission shall adopt standards for the design and construction of containers for disposal. Standards for containers may vary for different types of waste. The standards for disposal containers may supplement or duplicate any of the performance or engineering standards for hazardous waste disposal facilities required under State or federal law; however, the performance or engineering standards for hazardous waste disposal facilities are separate and cumulative, and the performance or engineering standards for hazardous waste disposal facilities and containers may not substitute for or replace one another. (1991, c. 450, s. 1; c. 761, s. 22.)

§ 130A-295.04. Financial responsibility requirements for applicants for a permit and permit holders for hazardous waste facilities.

(a) In addition to any other financial responsibility requirements for solid waste management facilities under this Part, the applicant for a permit or a permit holder for a hazardous waste facility shall establish financial assurance that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by the Department in response to an incident at a facility, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(b) To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder for a hazardous waste facility may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used.

(c) The applicant for a permit or a permit holder for a hazardous waste facility, and any parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including any joint venturer with a direct or indirect interest in the applicant, permit holder, or parent, shall be a guarantor of payment for closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences arising from the operation of the hazardous waste facility.

(d), (e) Repealed by Session Laws 2011-394, s. 23(a), effective July 1, 2011.

(f) Assets used to meet the financial assurance requirements of this section shall be in a form that will allow the Department to readily access funds for the purposes set out in

this section. Assets used to meet financial assurance requirements of this section shall not be accessible to the permit holder except as approved by the Department. Compliance with the financial assurance requirements set forth in Subpart H of Part 264 of 40 Code of Federal Regulations (July 1, 2010 edition) shall be sufficient to meet the requirements of this subsection.

(g) The Department may provide a copy of any filing that an applicant for a permit or a permit holder for a hazardous waste facility submits to the Department to meet the financial responsibility requirements under this section to the State Treasurer. The State Treasurer shall review the filing and provide the Department with a written opinion as to the adequacy of the filing to meet the purposes of this section, including any recommended changes.

(h) In order to continue to hold a permit for a hazardous waste facility, a permit holder must maintain financial responsibility as required by this Part and must provide any information requested by the Department to establish that the permit holder continues to maintain financial responsibility.

(i) An applicant for a permit or a permit holder for a hazardous waste facility shall satisfy the Department that the applicant or permit holder has met the financial responsibility requirements of this Part before the Department is required to otherwise review the application.

(j) Repealed by Session Laws 2011-394, s. 23(a), effective July 1, 2011. (2007-107, s. 1.1(a); 2011-394, s. 23(a).)

§ 130A-295.05. Hazardous waste transfer facilities.

(a) The owner or operator of a hazardous waste transfer facility in North Carolina shall register the facility with the Department and shall obtain a hazardous waste transfer facility identification number for the facility. In order to obtain a hazardous waste transfer facility identification number for the facility, the owner or operator of the facility shall provide all of the following information to the Department at the time of registration:

(1) The location of the hazardous waste transfer facility.

(2) The name of the owner of the property on which the hazardous waste transfer facility is located.

(b) Except during transportation emergencies as determined by the Department, the temporary storage, consolidation, or commingling of hazardous waste may occur only at a hazardous waste transfer facility that has been issued a facility identification number by the Department.

(c) A hazardous waste transporter and the owner or operator of a hazardous waste transfer facility shall conduct all operations at any hazardous waste transfer facility in compliance with the requirements of 40 Code of Federal Regulations Part 263 (1 July 2006), 49 U.S.C. § 5101, et seq., and any laws, regulations, or rules enacted or adopted pursuant to these federal laws. Except as preempted under 49 U.S.C. § 5125, a hazardous waste transporter and the owner or operator of a hazardous waste transfer facility shall also conduct all operations at any hazardous waste transfer facility in compliance with all applicable State laws or rules.

(d) A hazardous waste transporter shall notify the Department, on a form prescribed by the Department, of every hazardous waste transfer facility in North Carolina that the transporter uses. A hazardous waste transporter shall retain all records that are required to be maintained for at least three years.

(e) The owner or operator of a hazardous waste transfer facility shall notify the Department, on a form prescribed by the Department, of every hazardous waste transporter that makes use of the facility. The owner or operator of a hazardous waste transfer facility shall retain all records that are required to be maintained for at least three years. (2007-107, s. 1.8(c).)

§ 130A-295.1. (See Editor's note) Limitations on permits for sanitary landfills.

§ 130A-295.2. Financial responsibility requirements for applicants and permit holders for solid waste management facilities.

(a) As used in this section:

(1) "Financial assurance" refers to the ability of an applicant or permit holder to pay the costs of assessment and remediation in the event of a release of pollutants from a facility, closure of the facility in accordance with all applicable requirements, and post-closure monitoring and maintenance of the facility.

(2) "Financial qualification" refers to the ability of an applicant or permit holder to pay the costs of proper design, construction, operation, and maintenance of the facility.

(3) "Financial responsibility" encompasses both financial assurance and financial qualification.

(b) The Commission may adopt rules governing financial responsibility requirements for applicants for permits and for permit holders to ensure the availability of sufficient funds for the proper design, construction, operation, maintenance, closure, and post-closure monitoring and maintenance of solid waste management facilities and for any corrective action the Department may require during the active life of a facility or during the closure and post-closure periods.

(c) The Department may provide a copy of any filing that an applicant for a permit or a permit holder submits to the Department to meet the financial responsibility requirements under this section to the State Treasurer. The State Treasurer shall review the filing and provide the Department with a written opinion as to the adequacy of the filing to meet the purposes of this section, including any recommended changes.

(d) The Department may, in its sole discretion, require an applicant for a permit to construct a facility to demonstrate its financial qualification for the design, construction, operation, and maintenance of a facility. The Department may require an applicant for a permit for a solid waste management facility to provide cost estimates for site investigation; land acquisition, including financing terms and land ownership; design; construction of each five-year phase, if applicable; operation; maintenance; closure; and post-closure monitoring and maintenance of the facility to the Department. The Department may allow an applicant to demonstrate its financial qualifications for only the first five-year phase of

the facility. If the Department allows an applicant for a permit to demonstrate its financial qualification for only the first five-year phase of the facility, the Department shall require the applicant or permit holder to demonstrate its financial qualification for each successive five-year phase of the facility when applying for a permit to construct each successive phase of the facility.

(e) If the Department requires an applicant for a permit or a permit holder for a solid waste management facility to demonstrate its financial qualification, the applicant or permit holder shall provide an audited, certified financial statement. An applicant who is required to demonstrate its financial qualification may do so through a combination of cash deposits, insurance, and binding loan commitments from a financial institution licensed to do business in the State and rated AAA by Standard & Poor's, Moody's Investor Service, or Fitch, Inc. If assets of a parent, subsidiary, or other affiliate of the applicant or a permit holder, or a joint venturer with a direct or indirect interest in the applicant or permit holder, are proposed to be used to demonstrate financial qualification, then the party whose assets are to be used must be designated as a joint permittee with the applicant on the permit for the facility.

(f) The applicant and permit holder for a solid waste management facility shall establish financial assurance by a method or combination of methods that will ensure that sufficient funds for closure, post-closure maintenance and monitoring, and any corrective action that the Department may require will be available during the active life of the facility, at closure, and for any post-closure period of time that the Department may require even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State. Rules adopted by the Commission shall allow a business entity that is an applicant for a permit or a permit holder to establish financial assurance through insurance, irrevocable letters of credit, trusts, surety bonds, corporate financial tests, or any other financial device as allowed pursuant to 40 Code of Federal Regulations § 258.74 (July 1, 2010 Edition), or any combination of the foregoing shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used. Assets used to meet the financial assurance requirements of this section shall be in a form that will allow the Department to readily access funds for the purposes set out in this section. Assets used to meet financial assurance requirements of this section shall not be accessible to the permit holder except as approved by the Department. Where a corporate financial test is used that is substantially similar to that allowed under 40 Code of Federal Regulations § 258.74 (July 1, 2010 Edition), the assets shall be presumed both to be readily accessible by the Department and not otherwise accessible to the permit holder.

(g) In order to continue to hold a permit under this Article, a permit holder must maintain financial responsibility and must provide any information requested by the Department to establish that the permit holder continues to maintain financial responsibility. A permit holder shall notify the Department of any significant change in the: (i) identity of any person or structure of the business entity that holds the permit for the facility; (ii) identity of any person or structure of the business entity that owns or operates the facility; or (iii) assets of the permit holder, owner, or operator of the facility.

The permit holder shall notify the Department within 30 days of a significant change. A change shall be considered significant if it has the potential to affect the financial responsibility of the permit holder, owner, or operator, or if it would result in a change in the identity of the permit holder, owner, or operator for purposes of either financial responsibility or environmental compliance review. Based on its review of the changes, the Department may require the permit holder to reestablish financial responsibility and may modify or revoke a permit, or require issuance of a new permit.

(h) To meet the financial assurance requirements of this section, the owner or operator of a sanitary landfill, other than a sanitary landfill for the disposal of construction and demolition debris waste, shall establish financial assurance sufficient to cover a minimum of two million dollars ($2,000,000) in costs for potential assessment and corrective action at the facility. The Department may require financial assurance in a higher amount and may increase the amount of financial assurance required of a permit holder at any time based upon the types of waste disposed in the landfill, the projected amount of waste to be disposed in the landfill, the location of the landfill, potential receptors of releases from the landfill, and inflation. The financial assurance requirements of this subsection are in addition to the other financial responsibility requirements set out in this section.

(h1) To meet the financial assurance requirements of this section, the owner or operator of a sanitary landfill for the disposal of construction and demolition debris waste shall establish financial assurance sufficient to cover a minimum of one million dollars ($1,000,000) in costs for potential assessment and corrective action at the facility. The financial assurance requirements of this subsection are in addition to the other financial responsibility requirements set out in this section.

(i) The Commission may adopt rules under which a unit of local government and a solid waste management authority created pursuant to Article 22 of Chapter 153A of the General Statutes may meet the financial responsibility requirements of this section by either a local government financial test or a capital reserve fund requirement.

(j) In addition to the other methods by which financial assurance may be established as set forth in subsection (f) of this section, the Department may allow the owner or operator of a sanitary landfill permitted on or before August 1, 2009, to meet the financial assurance requirement set forth in subsection (h) of this section by establishing a trust fund which conforms to the following minimum requirements:

(1) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a State or federal agency.

(2) A copy of the trust agreement shall be placed in the facility's operating record.

(3) Payments into the trust fund shall be made annually by the owner or operator over a period not to exceed five years. This period is referred to as the pay-in period.

(4) Payments into the fund shall be made in equal annual installments in amounts calculated by dividing the current cost estimate for potential assessment and corrective action at the facility, which, for a sanitary landfill, other than a sanitary landfill for the disposal of construction and demolition debris waste,

shall not be less than two million dollars ($2,000,000) in accordance with subsection (h) of this section, by the number of years in the pay-in period.

(5) The trust fund may be terminated by the owner or operator only if the owner or operator establishes financial assurance by another method or combination of methods allowed under subsection (f) of this section.

(6) The trust agreement shall be accompanied by a formal certification of acknowledgement. (2007-550, s. 5(a); 2011-262, s. 1; 2014-120, s. 27.)

§ 130A-295.3. Environmental compliance review requirements for applicants and permit holders.

(a) For purposes of this section, "applicant" means an applicant for a permit and a permit holder and includes the owner or operator of the facility, and, if the owner or operator is a business entity, applicant also includes: (i) the parent, subsidiary, or other affiliate of the applicant; (ii) a partner, officer, director, member, or manager of the business entity, parent, subsidiary, or other affiliate of the applicant; and (iii) any person with a direct or indirect interest in the applicant, other than a minority shareholder of a publicly traded corporation who has no involvement in management or control of the corporation or any of its parents, subsidiaries, or affiliates.

(b) The Department shall conduct an environmental compliance review of each applicant for a new permit and permit amendment under this Article. The environmental compliance review shall evaluate the environmental compliance history of the applicant for a period of five years prior to the date of the application and may cover a longer period at the discretion of the Department. The environmental compliance review of an applicant may include consideration of the environmental compliance history of the parents, subsidiaries, or other affiliates of an applicant or parent that is a business entity, including any business entity or joint venturer with a direct or indirect interest in the applicant, and other facilities owned or operated by any of them. The Department shall determine the scope of the review of the environmental compliance history of the applicant, parents, subsidiaries, or other affiliates of the applicant or parent, including any business entity or joint venturer with a direct or indirect interest in the applicant, and of other facilities owned or operated by any of them. An applicant for a permit shall provide environmental compliance history information for each facility, business entity, joint venture, or other undertaking in which any of the persons listed in this subsection is or has been an owner, operator, officer, director, manager, member, or partner, or in which any of the persons listed in this subsection has had a direct or indirect interest as requested by the Department.

(c) The Department shall determine the extent to which the applicant, or a parent, subsidiary, or other affiliate of the applicant or parent, or a joint venturer with a direct or indirect interest in the applicant, has substantially complied with the requirements applicable to any activity in which any of these entities previously engaged, and has substantially complied with federal and State laws, regulations, and rules for the protection of the environment. The Department may deny an application for a permit if the applicant has a history of significant or repeated violations of statutes, rules, orders, or permit terms or conditions for the protection of the environment or for the conservation of natural

resources as evidenced by civil penalty assessments, administrative or judicial compliance orders, or criminal penalties.

(d) A permit holder shall notify the Department of any significant change in its environmental compliance history or other information required by G.S. 130-295.2(g). The Department may reevaluate the environmental compliance history of a permit holder and may modify or revoke a permit or require issuance of a new permit. (2007-550, s. 6(a); 2015-241, s. 14.20(d); 2015-286, s. 4.9(c); 2017-10, s. 3.1(c).)

§ 130A-295.4. Combustion products landfills.

(a) The definitions set out in G.S. 130A-290(a) apply to this section.

(b) The Department may permit a combustion products landfill to be constructed partially or entirely within areas that have been formerly used for the storage or disposal of combustion products at the same facility as the coal-fired generating unit that generates the combustion products, provided the landfill is constructed with a bottom liner system consisting of three components in accordance with this section. Of the required three components, the upper two components shall consist of two separate flexible membrane liners, with a leak detection system between the two liners. The third component shall consist of a minimum of two feet of soil underneath the bottom of those liners, with the soil having a maximum permeability of 1×10^{-7} centimeters per second. The flexible membrane liners shall have a minimum thickness of thirty one-thousandths of an inch (0.030"), except that liners consisting of high-density polyethylene shall be at least sixty one-thousandths of an inch (0.060") thick. The lower flexible membrane liner shall be installed in direct and uniform contact with the compacted soil layer. The Department may approve an alternative to the soil component of the composite liner system if the Department finds, based on modeling, that the alternative liner system will provide an equivalent or greater degree of impermeability.

(c) An applicant for a permit for a combustion products landfill shall develop and provide to the Department a response plan, which shall describe the circumstances under which corrective measures are to be taken at the landfill in the event of the detection of leaks in the leak detection system between the upper two liner components at amounts exceeding an amount specified in the response plan (as expressed in average gallons per day per acre of landfill, defined as an Action Leakage Rate). The response plan shall also describe the remedial actions that the landfill is required to undertake in response to detection of leakage in amounts in excess of the Action Leakage Rate. The Department shall review the response plan as a part of the permit application for the landfill. Compliance with performance of the landfill to prevent releases of waste to the environment may be determined based on leakage rate rather than monitoring well data. (2007-550, s. 7(b).)

§ 130A-295.5. Traffic study required for certain solid waste management facilities.

(a) An applicant for a permit for a sanitary landfill or for a transfer station shall conduct a traffic study of the impacts of the proposed facility. The Department shall include as a condition of a permit for a sanitary landfill or for a transfer station a requirement that

the permit holder mitigate adverse impacts identified by the traffic study. The study shall include all of the following at a minimum:

(1) Identification of routes from the nearest limited access highway used to access the proposed facility.

(2) Daily and hourly traffic volumes that will result along each approach route between the nearest limited access highway and the proposed facility.

(3) A map identifying land uses located along the identified approach routes, including, but not limited to, residential, commercial, industrial development, and agricultural operations. The map shall identify residences, schools, hospitals, nursing homes, and other significant buildings that front the approach routes.

(4) Identification of locations on approach routes where road conditions are inadequate to handle the increased traffic associated with the proposed facility and a description of the mitigation measures proposed by the applicant to address the conditions.

(5) A description of the potential adverse impacts of increased traffic associated with the proposed facility and the mitigation measures proposed by the applicant to address these impacts.

(6) An analysis of the impact of any increase in freight traffic on railroads and waterways.

(b) An applicant for a permit for a sanitary landfill or for a transfer station may satisfy the requirements of subsection (a) of this section by obtaining a certification from the Division Engineer of the Department of Transportation that the proposed facility will not have a substantial impact on highway traffic. (2007-550, s. 8(a).)

§ 130A-295.6. Additional requirements for sanitary landfills.

(a) The applicant for a proposed sanitary landfill shall contract with a qualified third party, approved by the Department, to conduct a study of the environmental impacts of any proposed sanitary landfill, in conjunction with its application for a new permit as defined in sub-subdivisions a. through d. of subdivision (1a) of subsection (b) of G.S. 130A-295.8. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. If an environmental impact statement is required, the Department shall publish notice of the draft environmental impact statement and shall hold a public hearing in the county where the landfill will be located no sooner than 30 days following the public notice. The Department shall consider the study of environmental impacts and any mitigation measures proposed by the applicant in deciding whether to issue or deny a permit. An applicant for a permit for a sanitary landfill shall pay all costs incurred by the Department to comply with the public notice and public hearing requirements of this subsection.

(b) The Department shall require a buffer between any perennial stream or wetland and the nearest waste disposal unit of a sanitary landfill of at least 200 feet. The Department may approve a buffer of less than 200 feet, but in no case less than 100 feet, if it finds all of the following:

(1) The proposed sanitary landfill or expansion of the sanitary landfill will serve a critical need in the community.

(2) There is no feasible alternative location that would allow siting or expansion of the sanitary landfill with 200-foot buffers.

(c) A waste disposal unit of a sanitary landfill shall not be constructed within:

(1) A 100-year floodplain or land removed from a 100-year floodplain designation pursuant to 44 Code of Federal Regulations Part 72 (1 October 2006 Edition) as a result of man-made alterations within the floodplain such as the placement of fill, except as authorized by variance granted under G.S. 143-215.54A(b). This subdivision does not apply to land removed from a 100-year floodplain designation (i) as a result of floodplain map corrections or updates not resulting from man-made alterations of the affected areas within the floodplain, or (ii) pursuant to 44 Code of Federal Regulations Part 70 (1 October 2006 Edition) by a letter of map amendment.

(2) A wetland, unless the applicant or permit holder can show all of the following, as to the waste disposal unit:

a. Where applicable under section 404 of the federal Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed waste disposal unit is available which does not involve wetlands is clearly rebutted;

b. Construction of the waste disposal unit will not do any of the following:

1. Cause or contribute to violations of any applicable State water quality standard.

2. Violate any applicable toxic effluent standard or prohibition under section 307 of the federal Clean Water Act.

3. Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the federal Endangered Species Act of 1973.

4. Violate any requirement under the federal Marine Protection, Research, and Sanctuaries Act of 1972.

c. Construction of the waste disposal unit will not cause or contribute to significant degradation of wetlands.

d. To the extent required under section 404 of the federal Clean Water Act or applicable State wetlands laws, any unavoidable wetlands impacts will be mitigated.

(d) The Department shall not issue a permit to construct any disposal unit of a sanitary landfill if, at the earlier of (i) the acquisition by the applicant or permit holder of the land or of an option to purchase the land on which the waste disposal unit will be located, (ii) the application by the applicant or permit holder for a franchise agreement, or (iii) at the time of the application for a permit, any portion of the proposed waste disposal unit would be located within:

(1) Five miles of the outermost boundary of a National Wildlife Refuge.

(2) One mile of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission pursuant to G.S. 113-306, prior to July 1, 2013, except as provided in subdivision (2a) of this subsection.

(2a) Five hundred feet of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission pursuant to G.S. 113-306, prior to July 1, 2013, when all of the following conditions apply:

a. The waste disposal unit will only be permitted to accept construction and demolition debris waste.

b. The disposal unit is located within the primary corporate limits of a municipality located in a county with a population of less than 15,000.

c. All portions of the gameland within one mile of the disposal unit are separated from the disposal unit by a primary highway designated by the Federal Highway Administration as a U.S. Highway.

(3) Two miles of the outermost boundary of a component of the State Parks System.

(e) A sanitary landfill for the disposal of construction and demolition debris waste shall be constructed with a liner system that consists of a flexible membrane liner over two feet of soil with a maximum permeability of 1 x 10 – 5 centimeters per second. The flexible membrane liner shall have a minimum thickness of thirty one-thousandths of an inch (0.030"), except that a liner that consists of high-density polyethylene shall be at least sixty one-thousandths of an inch (0.060") thick. The flexible membrane liner shall be installed in direct and uniform contact with the soil layer. The Department may approve an alternative to the soil component of the liner system if the Department finds, based on modeling, that the alternative liner system will provide an equivalent or greater degree of impermeability.

(f) A sanitary landfill, other than a sanitary landfill for the disposal of construction and demolition debris waste, shall be constructed so that the post-settlement bottom elevation of the liner system, or the post-settlement bottom elevation of the waste if no liner system is required, is a minimum of four feet above both the seasonal high groundwater table and the bedrock datum plane contours. A sanitary landfill for the disposal of construction and demolition debris waste shall be constructed so that the post-settlement bottom elevation of the flexible membrane liner component of the liner system is a minimum of four feet above both the seasonal high groundwater table and the bedrock datum plane contours.

(g) A permit holder for a sanitary landfill shall develop and implement a waste screening plan. The plan shall identify measures adequate to ensure compliance with State laws and rules and any applicable local ordinances that prohibit the disposal of certain items in landfills. The plan shall address all sources of waste generation. The plan is subject to approval by the Department.

(h) The following requirements apply to any sanitary landfill for which a liner is required:

(1) A geomembrane base liner system shall be tested for leaks and damage by methods approved by the Department that ensure that the entire liner is evaluated.

(2) A leachate collection system shall be designed to return the head of the liner to 30 centimeters or less within 72 hours. The design shall be based on the precipitation that would fall on an empty cell of the sanitary landfill as a result of a 25-year-24-hour storm event. The leachate collection system shall maintain

a head of less than 30 centimeters at all times during leachate recirculation. The Department may require the operator to monitor the head of the liner to demonstrate that the head is being maintained in accordance with this subdivision and any applicable rules.

(3) All leachate collection lines shall be designed and constructed to permanently allow cleaning and remote camera inspection. Remote camera inspections of the leachate collection lines shall occur upon completion of the construction and at least once every five years. Cleaning of leachate collection lines found necessary for proper functioning and to address buildup of leachate over the liner shall occur.

(4) Any pipes used to transmit leachate shall provide dual containment outside of the disposal unit. The bottom liner of a sanitary landfill shall be constructed without pipe penetrations.

(h1) With respect to requirements for daily cover at sanitary landfills, o nce the Department has approved use of an alternative method of daily cover for use at any sanitary landfill, that alternative method of daily cover shall be approved for use at all sanitary landfills located within the State.

(h2) Studies and research and development pertaining to alternative disposal techniques and waste-to-energy matters shall be conducted by certain sanitary landfills as follows:

(1) The owner or operator of any sanitary landfill permitted to receive more than 240,000 tons of waste per year shall research the development of alternative disposal technologies. In addition, the owner or operator shall allow access to nonproprietary information and provide site resources for individual research and development projects related to alternative disposal techniques for the purpose of studies that may be conducted by local community or State colleges and universities or other third-party developers or consultants. The owner or operator shall report on research and development activities conducted pursuant to this subdivision, and any results of these activities, to the Department annually on or before July 1.

(2) The owner or operator of any sanitary landfill permitted to receive more than 240,000 tons of waste per year shall perform a feasibility study of landfill gas-to-energy, or other waste-to-energy technology, to determine opportunities for production of renewable energy from landfills in order to promote economic development and job creation in the State. The owner or operator shall initiate the study when sufficient waste is in place at the landfill to produce gas, as determined by the United States Environmental Protection Agency's Landfill Gas Emissions Model (LandGEM), and may consult and coordinate with other entities to facilitate conduct of the study, including local and State government agencies, economic development organizations, consultants, and third-party developers. The study shall specifically examine opportunities for returning a portion of the benefits derived from energy produced from the landfill to the jurisdiction within which the landfill is located in the form of direct supply of energy to the local government and its citizens, or through revenue sharing with the local government from sale of the energy, with revenues owing to the local government credited to a fund specifically designated for economic

development within the jurisdiction. The owner or operator shall report on its activities associated with the study, and any results of the study, to the Department annually on or before July 1.

(i) The Department shall not issue a permit for a sanitary landfill that authorizes:

(1) A capacity of more than 55 million cubic yards of waste.

(2) A disposal area of more than 350 acres.

(3) A maximum height, including the cap and cover vegetation, of more than 250 feet above the mean natural elevation of the disposal area.

(j) This section does not apply to landfills for the disposal of land clearing and inert debris or to Type I or Type II compost facilities. (2007-543, s. 1(a)-(c); 2007-550, s. 9(a), (c); 2013-25, s. 1; 2013-410, s. 47.6; 2013-413, s. 59.1.)

§ 130A-295.7: Reserved for future codification purposes.

§ 130A-295.8. Fees applicable to permits for solid waste management facilities.

(a) The Solid Waste Management Account is established as a nonreverting account within the Department. All fees collected under this section shall be credited to the Account and shall be used to support the solid waste management program established pursuant to G.S. 130A-294.

(b) through (d) Repealed by Session Laws 2015-241, s. 14.20(c), effective October 1, 2015.

(d1) A permitted solid waste management facility shall pay an annual permit fee on or before August 1 of each year according to the following schedule:

(1) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste – $6,125.

(2) Municipal Solid Waste Landfill accepting 100,000 tons/year or more but less than 250,000 tons/year of solid waste – $7,000.

(3) Municipal Solid Waste Landfill accepting 250,000 tons/year or more of solid waste – $8,750.

(4) Post-Closure Municipal Solid Waste Landfill – $1,000.

(5) Construction and Demolition Landfill accepting less than 25,000 tons/year of solid waste – $4,813.

(6) Construction and Demolition Landfill accepting 25,000 tons/year or more of solid waste – $5,500.

(7) Post-Closure Construction and Demolition Landfill – $500.

(8) Industrial Landfill accepting less than 100,000 tons/year of solid waste – $5,500.

(9) Industrial Landfill accepting 100,000 tons/year or more of solid waste – $6,875.

(10) Post-Closure Industrial Landfill – $500.

(11) Transfer Station accepting less than 25,000 tons/year of solid waste – $1,500.

(12) Transfer Station accepting 25,000 tons/year or more of solid waste – $1,875.

(13) Treatment and Processing Facility – $500.

(14) Tire Monofill – $1,000.

(15) Incinerator – $500.

(16) Large Compost Facility – $500.

(17) Land Clearing and Inert Debris Landfill – $500.

(d2) Upon submission of an application for a new permit, an applicant shall pay an application fee in the amount of ten percent (10%) of the annual permit fee imposed for that type of solid waste management facility as identified in subdivisions (1) through (17) of subsection (d1) of this section.

(e) The Department shall determine whether an application for a permit for a solid waste management facility that is subject to a fee under this section is complete within 90 days after the Department receives the application for the permit. A determination of completeness means that the application includes all required components but does not mean that the required components provide all of the information that is required for the Department to make a decision on the application. If the Department determines that an application is not complete, the Department shall notify the applicant of the components needed to complete the application. An applicant may submit additional information to the Department to cure the deficiencies in the application. The Department shall make a final determination as to whether the application is complete within the later of: (i) 90 days after the Department receives the application for the permit less the number of days that the applicant uses to provide the additional information; or (ii) 30 days after the Department receives the additional information from the applicant. The Department shall issue a draft permit decision on an application for a permit within one year after the Department determines that the application is complete. The Department shall hold a public hearing and accept written comment on the draft permit decision for a period of not less than 30 or more than 60 days after the Department issues a draft permit decision. The Department shall issue a final permit decision on an application for a permit within 90 days after the comment period on the draft permit decision closes. The Department and the applicant may mutually agree to extend any time period under this subsection. If the Department fails to act within any time period set out in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided in Chapter 150B of the General Statutes. (2007-550, s. 13(a); 2013-408, s. 2; 2015-241, s. 14.20(c); 2015-286, ss. 4.9(b), (d); 2017-10, ss. 3.1(b), (d), 3.2(a), (b), (e).)

§ 130A-295.9. Solid waste disposal tax; use of proceeds.

It is the intent that the proceeds of the solid waste disposal tax imposed by Article 5G of Chapter 105 of the General Statutes credited to the Inactive Hazardous Sites Cleanup Fund pursuant to G.S. 105-187.63(1) shall be used by the Department of Environmental Quality to fund the assessment and remediation of pre-1983 landfills, except up to nineteen percent (19%) of the funds credited under this subdivision may be used to fund administrative expenses related to hazardous and solid waste management. (2007-550, s. 14(b); 2009-451, s. 13.3E; 2010-31, s. 13.9(a); 2014-100, s. 14.24(a); 2015-241, s. 14.30(u).)

§ 130A-296: Repealed by Session Laws 1993, c. 501, s. 15.

§ 130A-297. Receipt and distribution of funds.

The Department may accept loans and grants from the federal government and other sources for carrying out the purposes of this Article, and shall adopt reasonable policies governing the administration and distribution of funds to units of local government, other State agencies, and private agencies, institutions or individuals for studies, investigations, demonstrations, surveys, planning, training, and construction or establishment of solid waste management facilities. (1969, c. 899; 1973, c. 476, s. 128; 1977, 2nd Sess., c. 1216; 1983, c. 1891, s. 2.)

§ 130A-298. Hazardous waste fund.

A nonreverting hazardous waste fund is established within the Department which shall be available to defray the cost to the State for monitoring and care of hazardous waste disposal facilities after the termination of the period during which the facility operator is required by applicable State and federal statutes, rules or regulations to remain responsible for post-closure monitoring and care. The establishment of this fund shall in no way be construed to relieve or reduce the liability of facility operators or any persons for damages caused by the facility. The fund shall be maintained by fees collected pursuant to the provisions of G.S. 130A-294(a)(6). (1981, c. 704, s. 7; 1983, c. 891, s. 2; 1989, c. 168, s. 25.)

§ 130A-299. Single agency designation.

The Department is designated as the single State agency for purposes of RCRA or any State or federal legislation enacted to promote the proper management of solid waste. (1969, c. 899; 1973, c. 476, s. 128; 1977, 2nd Sess., c. 1216; 1983, c. 891, s. 2; 1989, c. 168, s. 26.)

§ 130A-300. Effect on laws applicable to water pollution control.

This Article shall not be construed as amending, repealing or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control of water pollution as now administered by the Commission nor shall the provisions of this Article be construed as being applicable to or in any way affecting the authority of the Commission to control the discharges of wastes to the waters of the State as provided in Articles 21 and 21A, Chapter 143 of the General Statutes. (1977, 2nd Sess., c. 1216; 1983, c. 891, s. 2; 2014-122, s. 11(d).)

§ 130A-301. Recordation of permits for disposal of waste on land and Notice of Open Dump.

(a) Whenever the Department approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility shall be granted both an original permit and a copy certified by the Secretary. The permit shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance.

(b) The owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land shall file the certified copy of the permit in the office of the register of deeds in the county or counties in which the land is located.

(c) Repealed by Session Laws 2012-18, s. 1.17, effective July 1, 2012.

(d) The permit shall not be effective unless the certified copy is filed as required under subsection (b) of this section.

(e) When a sanitary landfill or a facility for the disposal of hazardous waste on land is sold, leased, conveyed or transferred, the deed or other instrument of transfer shall contain in the description section in no smaller type than that used in the body of the deed or instrument a statement that the property has been used as a sanitary landfill or a disposal site for hazardous waste and a reference by book and page to the recordation of the permit.

(f) When the Department determines that an open dump exists, the Department shall notify the owner or operator of the open dump of applicable requirements to take remedial action at the site of the open dump to protect public health and the environment. If the owner or operator fails to take remedial action, the Department may record a Notice of Open Dump in the office of the register of deeds in the county or counties where the open dump is located. Not less than 30 days before recording the Notice of Open Dump, the Department shall notify the owner or operator of its intention to file a Notice of Open Dump. The Department may notify the owner or operator of its intention to file a Notice of Open Dump at the time it notifies the owner or operator of applicable requirements to take remedial action. An owner or operator may challenge a decision of the Department to file a Notice of Open Dump by filing a contested case under Article 3 of Chapter 150B of the General Statutes. If an owner or operator challenges a decision of the Department to file a Notice of Open Dump, the Department shall not file the Notice of Open Dump until the contested case is resolved, but may file a notice of pending litigation under Article 11 of Chapter 1 of the General Statutes. This power is additional and supplemental to any other power granted to the Department. This subsection does not repeal or supersede any statute or rule requiring or authorizing record notice by the owner.

(1) The Department shall file the Notice of Open Dump in the office of the register of deeds in substantially the following form:

"**NOTICE OF OPEN DUMP**

The Division of Waste Management of the North Carolina Department of Environmental Quality has determined that an open dump exists on the property described below. The Department provides the following information regarding this open dump as a public service. This Notice is filed pursuant to G.S. 130A-301(f).

Name(s) of the record owner(s): _____

Description of the real property: _____

Description of the particular area where the open dump is located: ____

Any person who has questions regarding this Notice should contact the Division of Waste Management of the North Carolina Department of Environmental Quality. The contact person for this Notice is: _____ who may be reached by telephone at _____ or by mail at _____.

Requests for inspection and copying of public records regarding this open dump

may be directed to _____ who may be reached by telephone at _____ or by mail at _____.

_____

Secretary of Environmental Quality by _____

Date: _____."

(2) The description of the particular area where the open dump is located shall be based on the best information available to the Department but need not be a survey plat that meets the requirements of G.S. 47-30 unless a survey plat that meets those requirements and that is approved by the Department is furnished by the owner or operator.

(3) Repealed by Session Laws 2012-18, s. 1.17, effective July 1, 2012.

(4) When the owner removes all solid waste from the open dump site to the satisfaction of the Department, the Department shall file a Cancellation of the Notice of Open Dump. The Cancellation shall be in a form similar to the original Notice of Open Dump and shall state that all the solid waste that constituted the open dump has been removed to the satisfaction of the Department. (1973, c. 444; c. 476, s. 128; 1977, 2nd Sess., c. 1216; 1981, c. 480, s. 3; 1983, c. 891, s. 2; 1997-330, s. 2; 1997-443, s. 11A.119(b); 2012-18, s. 1.17; 2015-241, s. 14.30(u), (v).)

§ 130A-301.1. Land clearing and inert debris landfills with a disposal area of 1/2 acre or less; recordation.

(a) No landfill for the on-site disposal of land clearing and inert debris shall, at the time the landfill is sited, be sited 50 feet or less from a boundary of an adjacent property.

(b) The owner of a landfill for the on-site disposal of land clearing and inert debris shall file a certified copy of a survey of the property on which the landfill is located in the register of deeds' office in the county in which the property is located, which survey shall accurately show the location of the landfill and the record owner of the land on which the landfill is situated.

(c) Prior to the lease or conveyance of any lot or tract of land which directly abuts or is contiguous to the disposal area used for land clearing and inert debris, the owner of the lot or tract shall prepare a document disclosing that a portion of the property has been used as a disposal area for land clearing and inert debris or has been used to meet applicable minimum buffer requirements. The disclosure shall include a legal description of the property that would be sufficient in an instrument of conveyance and shall be filed in the register of deeds office prior to any lease or conveyance.

(d) No public, commercial, or residential building shall be located or constructed on the property, or any portion of the property on which the landfill for the on-site disposal of land clearing and inert debris is located, 50 feet or less from the landfill. Construction of such buildings, with the exception of site preparation and foundation work, shall not commence until after closure of the on-site land clearing and inert debris landfill.

(e) Source reduction methods including, but not limited to, chipping and mulching of land clearing and inert debris shall be utilized to the maximum degree technically and economically feasible.

(f) The Department of Transportation is exempt from subsections (b) and (c) of this section for the on-site disposal of land clearing and inert debris on highway rights-of-way. (1993 (Reg. Sess., 1994), c. 580, s. 2.)

§ 130A-301.2: Expired September 30, 2003, pursuant to Session Laws 1995, c. 502, s. 4, as amended by Session Laws 2001-357.

§ 130A-301.3. Disposal of demolition debris generated from the decommissioning of manufacturing buildings, including electric generating stations, on-site.

(a) A person may dispose of demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, on the same site as the decommissioned buildings if the demolition debris meets all of the following requirements:

(1) It is composed only of inert debris such as brick or other masonry materials, dirt, sand, gravel, rock, and concrete if the material, when characterized using the toxicity characteristic leaching procedure developed by the United States Environmental Protection Agency, is not a hazardous waste. The debris may contain small amounts of wood, paint, sealants, and metal associated with the inert debris.

(2) It does not extend beyond the footprint of the decommissioned buildings and shall be at least 50 feet from the property boundary or enclosed by the walls of the building that are left in place below grade. Walls left in place below grade are not subject to the requirements of subdivision (4) of this subsection.

(3) It is placed at least 500 feet from the nearest drinking water well.

(4) It is placed to assure at least two feet of clean soil between any coated inert debris and the seasonal high groundwater table. Uncoated inert debris may be used as fill anywhere within the footprint of the decommissioned building or as beneficial fill on the site.

(5) It complies with all other applicable federal, State, and local laws, regulations, rules, and ordinances.

(b) After the decommissioning is completed or terminated, the owner or operator shall compact the demolition debris and cover it with at least two feet of compacted earth finer than a sandy texture soil. The cover of the demolition debris shall be graded so as to minimize water infiltration, promote proper drainage, and control erosion. Erosion of the cover shall be controlled by establishing suitable vegetative cover. All site stabilization should be completed within 90 days of the completed demolition.

(c) Within 30 days of completing the final site stabilization or at least 30 days before the land, or any interest in the land, on which the demolition debris is located is transferred, whichever is earlier, the owner or owners of record of the land on which the demolition debris is located shall file each of the following with the register of deeds of the county in which the demolition debris is located:

(1) A survey plat of the property that meets the requirements of G.S. 47-30. The plat shall accurately show the location of the demolition debris in a manner that will allow the demolition debris disposal site to be accurately delineated and shall reference this section.

(2) A notice that disposal of demolition debris has been located on the land. The notice shall include a description of the land that would be sufficient as a description in an instrument of conveyance. The notice shall list the owners of record of the land at the time the notice is filed and shall reference the book and page number where the deed or other instrument by which the owners of record acquired title is located. The notice shall reference the book and page number where the survey plat required by subdivision (1) of this subsection is recorded. The notice shall reference this section, shall describe with particularity the type and size of the building or other structure that was demolished, and shall state the dates on which the demolition began and ended. The notice shall be executed by the owner or owners of record as provided in Chapter 47 of the General Statutes. The register of deeds shall record the notice and index it in the grantor index under the names of all owners of record of the land.

(d) A certified copy of both the plat and notice required by subsection (c) of this section shall also be filed with the Department. The plat and the notice shall indicate on the face of the document the book and page number where recorded.

(e) When the land, or any portion of the land, on which the demolition debris is located is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain a statement that the property has been used for the disposal of demolition debris. The statement shall include a reference to this section and to the book and page number where the notice required by subdivision (2) of subsection (c) of this section is recorded. (2013-55, s. 2.)

§ 130A-302. Sludge deposits at sanitary landfills.

Sludges generated by the treatment of wastewater discharges which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Control Act, as amended (P.L. 92-500), or permits generated under G.S. 143-215.1 by the Commission shall not be deposited in or on a sanitary landfill permitted under this Article unless in a compliance with the rules concerning solid waste adopted under this Article. (1977, 2nd Sess., c. 1216; 1983, c. 891, s. 2; 2014-122, s. 11(e).)

§ 130A-303. Imminent hazard.

(a) The judgment of the Secretary that an imminent hazard exists concerning solid waste shall be supported by findings of fact made by the Secretary.

(b) In order to eliminate an imminent hazard, the Secretary may, without notice or hearing, issue an order requiring that immediate action be taken to protect the public health or the environment. This order may be directed to a generator or transporter of solid waste or to the owner or operator of a solid waste management facility. Where the imminent hazard is caused by an inactive hazardous substance or waste disposal site, the Secretary shall follow the procedures set forth in G.S. 130A-310.5. (1977, 2nd Sess., c. 1216; 1981, c. 704, s. 7; 1983, c. 891, s. 2; 1987, c. 574, s. 3; 2009-570, s. 27.)

§ 130A-304. Confidential information protected.

(a) The following information received or prepared by the Department in the course of carrying out its duties and responsibilities under this Article is confidential information and shall not be subject to disclosure under G.S. 132-6:

(1) Information which the Secretary determines is entitled to confidential treatment pursuant to G.S. 132-1.2. If the Secretary determines that information received by the Department is not entitled to confidential treatment, the Secretary shall inform the person who provided the information of that determination at the time such determination is made. The Secretary may refuse to accept or may return any information that is claimed to be confidential that the Secretary determines is not entitled to confidential treatment.

(2) Information that is confidential under any provision of federal or state law.

(3) Information compiled in anticipation of enforcement or criminal proceedings, but only to the extent disclosure could reasonably be expected to interfere with the institution of such proceedings.

(b) Confidential information may be disclosed to officers, employees, or authorized representatives of federal or state agencies if such disclosure is necessary to carry out a proper function of the Department or the requesting agency or when relevant in any proceeding under this Article.

(c) Except as provided in subsection (b) of this section or as otherwise provided by law, any officer or employee of the State who knowingly discloses information designated as confidential under this section shall be guilty of a Class 1 misdemeanor and shall be removed from office or discharged from employment. (1977, 2nd Sess., c. 1216; 1983, c. 891, s. 2; 1985, c. 738, s. 5; 1987, c. 282, s. 20; 1991, c. 745, s. 2; 1993, c. 539, s. 951; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 130A-305. Construction.

This Article shall be interpreted as enabling the State to obtain federal financial assistance in carrying out its solid waste management program and to obtain the authority needed to assume primary enforcement responsibility for that portion of the solid waste management program concerning the management of hazardous waste. (1983, c. 891, s. 2.)

§ 130A-306. Emergency Response Fund.

There is established under the control and direction of the Department, an Emergency Response Fund which shall be a nonreverting fund consisting of any money appropriated for such purpose by the General Assembly or available to it from grants, fees, charges, and other money paid to or recovered by or on behalf of the Department pursuant to this Article, except fees and penalties specifically designated by this Article for some other use or purpose. The Emergency Response Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be used to defray expenses incurred by the Department in developing and implementing an emergency hazardous waste remedial plan and to reimburse any federal, State or local agency and any agent or contractor for expenses incurred in developing and implementing such a plan that has been approved by the Department. These funds shall be used upon a determination that sufficient funds or

corrective action cannot be obtained from other sources without incurring a delay that would significantly increase the threat to life or risk of damage to the environment. This Fund may not exceed five hundred thousand dollars ($500,000); money in excess of five hundred thousand dollars ($500,000) shall be deposited in the Inactive Hazardous Sites Cleanup Fund. The Secretary is authorized to take the necessary action to recover all costs incurred by the State for site investigation and the development and implementation of an emergency hazardous waste remedial plan, including attorney's fees and other expenses of bringing the cost recovery action from the responsible party or parties. The provisions of G.S. 130A-310.7 shall apply to actions to recover costs under this section except that: (i) reimbursement shall be to the Emergency Response Fund and (ii) the State need not show that it has complied with the provisions of Part 3 of this Article. (1983 (Reg. Sess., 1984), c. 1034, s. 74; 1989, c. 286, s. 1; 1998-215, s. 54(b).)

§ 130A-307. Reserved for future codification purposes.

§ 130A-308. Continuing releases at permitted facilities; notification of completed corrective action.

(a) Standards adopted under G.S. 130A-294(c) and a permit issued under G.S. 130A-294(c) shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under G.S. 130A-294(c), regardless of the time at which waste was placed in such unit. Permits issued under G.S. 130A-294(c) which implement Section 3005 of RCRA (42 U.S.C. § 6925) shall contain schedules of compliance for corrective action if corrective action cannot be completed prior to issuance of the permit and establishment of financial assurance for completing corrective action. Notwithstanding any other provision of this section, this section shall apply only to units, facilities, and permits that are covered by Section 3004(u) of RCRA (42 U.S.C. § 6924(u)). Notwithstanding the foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by this section.

(b) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a corrective action for a release of a hazardous waste or constituents from a solid waste management unit that is a treatment, storage, or disposal facility permitted under G.S 130A-294(c) has been completed to unrestricted use standards. A request for a determination that a corrective action at a facility has been completed to unrestricted use standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the corrective action at a facility has been completed to unrestricted use standards, the Department shall issue a written notification that no further corrective action will be required at the facility. The notification shall state that no further corrective action will be required at the facility unless the Department later determines, based on new information or information not previously provided to the Department, that the corrective action at the facility has not been completed to unrestricted use standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the

Department may withdraw the notification and require responsible parties to take corrective action at a facility to bring the facility into compliance with unrestricted use standards. (1985, c. 738, s. 4; 1989, c. 168, s. 27; 1997-357, s. 4; 2001-384, s. 11; 2007-107, s. 1.1(f).)

§ 130A-309. Corrective actions beyond facility boundary.

Standards adopted under G.S. 130A-294(c) shall require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the Department that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such standards shall take effect upon adoption and shall apply to:

(1) All facilities operating under permits issued under G.S. 130A-294(c); and

(2) All disposal facilities, surface impoundments, and waste pile units (including any new units, replacements of existing units or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Pending adoption of such rules, the Department shall issue corrective action orders for facilities referred to in (1) and (2), on a case-by-case basis, consistent with the purposes of this section. Notwithstanding any other provision of this section, this section shall apply only to units, facilities, and permits that are covered by Section 3004(v) of RCRA (42 U.S.C. § 6924(v)). Notwithstanding the foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by this section. (1985, c. 738, s. 4; 1989, c. 168, s. 28.)

Part 2A. Nonhazardous Solid Waste Management.

§ 130A-309.01. Title.

This Part may be cited as the Solid Waste Management Act of 1989. (1989, c. 784, s. 2.)

§ 130A-309.02. Applicability.

This Part shall apply to solid waste other than hazardous waste and sludges. (1989, c. 784, s. 2.)

§ 130A-309.03. Findings, purposes.

(a) The General Assembly finds that:

(1) Inefficient and improper methods of managing solid waste create hazards to public health, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse effect on land values, and create public nuisances.

(2) Problems of solid waste management have become a matter statewide in scope and necessitate State action to assist local governments in improving methods and processes to promote more efficient methods of solid waste collection and disposal.

(3) The continuing technological progress and improvements in methods of manufacture, packaging, and marketing of consumer products have resulted in

an ever-mounting increase of the mass of material discarded by the purchasers of the products, thereby necessitating a statewide approach to assisting local governments around the State with their solid waste management programs.

(4) The economic growth and population growth of our State have required increased industrial production together with related commercial and agricultural operations to meet our needs, which have resulted in a rising tide of unwanted and discarded materials.

(5) The failure or inability to economically recover material and energy resources from solid waste results in the unnecessary waste and depletion of our natural resources; such that, maximum resource recovery from solid waste and maximum recycling and reuse of the resources must be considered goals of the State.

(6) Certain solid waste, due to its quantity; concentration; or physical, chemical, biological, or infectious characteristics; is exceptionally hazardous to human health, safety, and to the environment; such that exceptional attention to the transportation, disposal, storage, and treatment of the waste is necessary to protect human health, safety, and welfare; and to protect the environment.

(7) This Part should be integrated with other State laws and rules and applicable federal law.

(b) It is the purpose of this Part to:

(1) Regulate in the most economically feasible, cost-effective, and environmentally safe manner the storage, collection, transport, separation, processing, recycling, and disposal of solid waste in order to protect the public health, safety, and welfare; enhance the environment for the people of this State; and recover resources which have the potential for further usefulness.

(2) Establish and maintain a cooperative State program of planning, technical assistance, and financial assistance for solid waste management.

(3) Require counties and municipalities to adequately plan and provide efficient, environmentally acceptable solid waste management programs; and require counties to plan for proper hazardous waste management.

(4) Require review of the design, and issue permits for the construction, operation, and closure of solid waste management facilities.

(5) Promote the application of resource recovery systems that preserve and enhance the quality of air, water, and land resources.

(6) Ensure that exceptionally hazardous solid waste is transported, disposed of, stored, and treated in a manner adequate to protect human health, safety, and welfare; and the environment.

(7) Promote the reduction, recycling, reuse, or treatment of solid waste, specifically including hazardous waste, in lieu of disposal of the waste.

(8) Promote methods and technology for the treatment, disposal, and transportation of hazardous waste which are practical, cost-effective, and economically feasible.

(9) Encourage counties and municipalities to utilize all means reasonably available to promote efficient and proper methods of managing solid waste and to promote the economical recovery of material and energy resources from solid

waste, including contracting with persons to provide or operate resource recovery services or facilities on behalf of the county or municipality.

(10) Promote the education of the general public and the training of solid waste professionals to reduce the production of solid waste, to ensure proper disposal of solid waste, and to encourage recycling.

(11) Encourage the development of waste reduction and recycling as a means of managing solid waste, conserving resources, and supplying energy through planning, grants, technical assistance, and other incentives.

(12) Encourage the development of the State's recycling industry by promoting the successful development of markets for recycled items and by promoting the acceleration and advancement of the technology used in manufacturing processes that use recycled items.

(13) Give the State a leadership role in recycling efforts by granting a preference in State purchasing to products with recycled content.

(14) Require counties to develop and implement recycling programs so that valuable materials may be returned to productive use, energy and natural resources conserved, and the useful life of solid waste management facilities extended.

(15) Ensure that medical waste is transported, stored, treated, and disposed of in a manner sufficient to protect human health, safety, and welfare; and the environment.

(16) Require counties, municipalities, and State agencies to determine the full cost of providing storage, collection, transport, separation, processing, recycling, and disposal of solid waste in an environmentally safe manner; and encourage counties, municipalities, and State agencies to contract with private persons for any or all the services in order to assure that the services are provided in the most cost-effective manner. (1989, c. 784, s. 2.)

§ 130A-309.04. State solid waste management policy and goals.

(a) It is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills and to assist units of local government with solid waste management. In furtherance of this State policy, there is established a hierarchy of methods of managing solid waste, in descending order of preference:

(1) Waste reduction at the source;

(2) Recycling and reuse;

(3) Composting;

(4) Incineration with energy recovery;

(5) Incineration without energy recovery;

(6) Disposal in landfills.

(b) It is the policy of the State to encourage research into innovative solid waste management methods and products and to encourage regional solid waste management projects.

(c) It is the goal of this State to reduce the municipal solid waste stream, primarily through source reduction, reuse, recycling, and composting, by forty percent (40%) on a per capita basis by 30 June 2001.

(1), (2) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 8.

(c1) To measure progress toward the municipal solid waste reduction goal in a given year, comparison shall be made between the amount by weight of the municipal solid waste that, during the baseline year and the given year, is received at municipal solid waste management facilities and is:

(1) Disposed of in a landfill;
(2) Incinerated;
(3) Converted to tire-derived fuel; or
(4) Converted to refuse-derived fuel.

(c2) Comparison shall be between baseline and given years beginning on 1 July and ending on 30 June of the following year. The baseline year shall be the year beginning 1 July 1991 and ending 30 June 1992. However, a unit of local government may use an earlier baseline year if it demonstrates to the satisfaction of the Department that it has sufficient data to support the use of the earlier baseline year.

(c3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 8.

(d) In furtherance of the State's solid waste management policy, each State agency shall develop a solid waste management plan that is consistent with the solid waste management policy of the State.

(d1) It is the policy of the State to obtain, to the extent practicable, economic benefits from the recovery from solid waste and reuse of material and energy resources. In furtherance of this policy, it is the goal of the State to foster partnerships between the public and private sectors that strengthen the supply of, and demand for, recyclable and reusable materials and that foster opportunities for economic development from the recovery and reuse of materials.

(e), (f) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 8. (1989, c. 784, s. 2; 1991, c. 621, s. 2; 1991 (Reg. Sess., 1992), c. 1013, s. 6; 1995 (Reg. Sess., 1996), c. 594, s. 8.)

§ 130A-309.05. Regulated wastes; certain exclusions.

(a) Notwithstanding other provisions of this Article, the following waste shall be regulated pursuant to this Part:

(1) Medical waste; and
(2) Ash generated by a solid waste management facility from the burning of solid waste.

(b) Ash generated by a solid waste management facility from the burning of solid waste shall be disposed of in a properly designed solid waste disposal area that complies with standards developed by the Department for the disposal of the ash. The Department shall work with solid waste management facilities that burn solid waste to identify and develop methods for recycling and reusing incinerator ash or treated ash.

(c) Recovered material is not subject to regulation as solid waste under this Article. In order for a material that would otherwise be regulated as solid waste to qualify as a recovered material, the Department may require any person who owns or has control over the material to demonstrate that the material meets the requirements of this subsection. In order to protect public health and the environment, the Commission may adopt rules to

implement this subsection. Materials that are accumulated speculatively, as that term is defined under 40 Code of Federal Regulations § 261 (July 1, 2014 Edition), shall not qualify as a recovered material, and shall be subject to regulation as solid waste. In order to qualify as a recovered material, the material shall be managed as a valuable commodity in a manner consistent with the desired use or end use, and all of the following conditions shall be met:

(1) Seventy-five percent (75%), by weight or volume, of the recovered material stored at a facility at the beginning of a calendar year commencing January 1, shall be removed from the facility through sale, use, or reuse by December 31 of the same year.

(2) The recovered material or the products or by-products of operations that process recovered material shall not be discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water so that the products or by-products or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters including groundwaters, or otherwise enter the environment or pose a threat to public health and safety. Facilities that process recovered material shall be operated in a manner to ensure compliance with this subdivision.

(3) The recovered material shall not be a hazardous waste or have been recovered from a hazardous waste.

(4) The recovered material shall not contain significant concentrations of foreign constituents that render it unserviceable or inadequate for sale, or its intended use or reuse. (1989, c. 784, s. 2; 1995 (Reg. Sess., 1996), c. 594, s. 9; 2015-1, s. 2(b).)

§ 130A-309.06. Additional powers and duties of the Department.

(a) In addition to other powers and duties set forth in this Part, the Department shall:

(1) Develop a comprehensive solid waste management plan consistent with this Part. The plan shall be developed in consultation with units of local government and shall be updated at least every three years. In developing the State solid waste management plan, the Department shall hold public hearings around the State and shall give notice of these public hearings to all units of local government and regional planning agencies.

(2) Provide guidance for the orderly collection, transportation, storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the State.

(3) Encourage coordinated local activity for solid waste management within a common geographical area.

(4) Provide planning, technical, and financial assistance to units of local government and State agencies for reduction, recycling, reuse, and processing of solid waste and for safe and environmentally sound solid waste management and disposal.

(5) Cooperate with appropriate federal agencies, local governments, and private organizations in carrying out the provisions of this Part.

(6) Promote and assist the development of solid waste reduction, recycling, and resource recovery programs that preserve and enhance the quality of the air, water, and other natural resources of the State.

(7) Maintain a directory of recycling and resource recovery systems in the State and provide assistance with matching recovered materials with markets.

(8) Manage a program of grants for programs for recycling and special waste management, and for programs that provide for the safe and proper management of solid waste.

(9) Provide for the education of the general public and the training of solid waste management professionals to reduce the production of solid waste, to ensure proper processing and disposal of solid waste, and to encourage recycling and solid waste reduction.

(10) Develop descriptive literature to inform units of local government of their solid waste management responsibilities and opportunities.

(11) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 10.

(12) Provide and maintain recycling bins for the collection and recycling of newspaper, aluminum cans, glass containers, and recyclable plastic beverage containers at the North Carolina Zoological Park.

(13) Identify, based on reports required under G.S. 130A-309.14 and any other relevant information, those materials in the municipal solid waste stream that are marketable in the State or any portion thereof and that should be recovered from the waste stream prior to treatment or disposal.

(14) Identify and analyze, with assistance from the Department of Commerce pursuant to G.S. 130A-309.14, components of the State's recycling industry and present and potential markets for recyclable materials in this State, other states, and foreign countries.

(b) Repealed by Session Laws 2007-550, s. 6(b), effective August 1, 2007, and applicable to any application for a permit for a solid waste management facility that is pending on that date.

(c) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on or before January 15 of each year on the status of solid waste management efforts in the State. The report shall include:

(1) A comprehensive analysis, to be updated in each report, of solid waste generation and disposal in the State projected for the 20-year period beginning on July 1, 1991.

(2) The total amounts of solid waste recycled and disposed of and the methods of solid waste recycling and disposal used during the calendar year prior to the year in which the report is published.

(3) An evaluation of the development and implementation of local solid waste management programs and county and municipal recycling programs.

(4) An evaluation of the success of each county or group of counties in meeting the municipal solid waste reduction goal established in G.S. 130A-309.04.

(5) Recommendations concerning existing and potential programs for solid waste reduction and recycling that would be appropriate for units of local government and State agencies to implement to meet the requirements of this Part.

(6) An evaluation of the recycling industry, the markets for recycled materials, the recycling of polystyrene, and the success of State, local, and private industry efforts to enhance the markets for these materials.

(7) Recommendations to the Governor and the Environmental Review Commission to improve the management and recycling of solid waste in the State, including any proposed legislation to implement the recommendations.

(8) A description of the condition of the Solid Waste Management Trust Fund and the use of all funds allocated from the Solid Waste Management Trust Fund, as required by G.S. 130A-309.12(c).

(9) A description of the review and revision of bid procedures and the purchase and use of reusable, refillable, repairable, more durable, and less toxic supplies and products by both the Department of Administration and the Department of Transportation, as required by G.S. 130A-309.14(a1)(3).

(10) A description of the implementation of the North Carolina Scrap Tire Disposal Act that includes the amount of revenue used for grants and to clean up nuisance tire collection under the provisions of G.S 130A-309.64.

(11) A description of the management of white goods in the State, as required by G.S. 130A-309.85.

(12) A summary of the report by the Department of Transportation on the amounts and types of recycled materials that were specified or used in contracts that were entered into by the Department of Transportation during the previous fiscal year, as required by G.S. 136-28.8(g).

(13) Repealed by Session Laws 2010-142, s. 1, effective July 22, 2010.

(14) (Expiring October 1, 2023) A description of the activities related to the management of abandoned manufactured homes in the State in accordance with G.S. 130A-117, the beginning and ending balances in the Solid Waste Management Trust Fund for the reporting period and the amount of funds used, itemized by county, for grants made under Part 2F of Article 9 of Chapter 130A of the General Statutes.

(15) A report on the recycling of discarded computer equipment and televisions in the State pursuant to G.S. 130A-309.140(a).

(16) An evaluation of the Brownfields Property Reuse Act pursuant to G.S. 130A-310.40.

(17) A report on the Inactive Hazardous Waste Response Act of 1987 pursuant to G.S. 130A-310.10(a).

(18) A report on the Dry-Cleaning Solvent Cleanup Act of 1997 pursuant to G.S. 143-215.104U(a) until such time as the Act expires pursuant to Part 6 of Article 21A of Chapter 143 of the General Statutes.

(19) A report on the implementation and cost of the hazardous waste management program pursuant to G.S. 130A-294(i).

(d) Repealed by Session Laws 2001-452, s. 3.1, effective October 28, 2001. (1989, c. 784, s. 2; 1991, c. 336, s. 4; c. 621, ss. 3, 4; 1993, c. 250, s. 3; 1995 (Reg. Sess., 1996), c. 594, s. 10; 2001-452, s. 3.1; 2007-550, s. 6(b); 2008-136, s. 2; 2010-142, s. 1; 2013-360, s. 14.16(d); 2017-10, s. 4.14(a).)

§ 130A-309.07. State solid waste management plan.

The State solid waste management plan shall include, at a minimum:

(1) Procedures to encourage cooperative efforts in solid waste management by counties and municipalities and groups of counties and municipalities where appropriate, including the establishment of joint agencies pursuant to G.S. 160A-462.

(2) Provisions for the continuation of existing effective regional resource recovery, recycling, and solid waste management facilities and programs.

(3) Planning guidance and technical assistance to counties and municipalities to aid in meeting the municipal solid waste reduction goals established in G.S. 130A-309.04.

(4) Planning guidance and technical assistance to counties and municipalities to assist the development and implementation of solid waste reduction programs.

(5) Technical assistance to counties and municipalities in determining the full cost for solid waste management as required in G.S. 130A-309.08.

(6) Planning guidance and technical assistance to counties and municipalities to assist the development and implementation of programs for alternative disposal, processing, or recycling of the solid wastes prohibited from disposal in landfills pursuant to G.S. 130A-309.10 and for special wastes.

(7) A public education program, to be developed in cooperation with the Department of Public Instruction, units of local government, other State agencies, and business and industry organizations, to inform the public of the need for and the benefits of recycling solid waste and reducing the amounts of solid and hazardous waste generated and disposed of in the State. The public education program shall be implemented through public workshops and through the use of brochures, reports, public service announcements, and other materials.

(8) Provisions to encourage partnerships between the public and private sectors that strengthen the supply of, and demand for, recyclable materials and that foster opportunities for economic development from the recovery and reuse of materials. (1989, c. 784, s. 2; 1991, c. 621, s. 5; 1995 (Reg. Sess., 1996), c. 594, s. 11.)

§ 130A-309.08. Determination of cost for solid waste management; local solid waste management fees.

(a) Each county and each municipality shall annually determine the full cost for solid waste management within the service area of the county or municipality for the preceding year. The Commission shall establish by rule the method for units of local government to use in calculating full cost.

(b) Each municipality shall establish a system to inform, no less than once a year, residential and nonresidential users of solid waste management services within the municipality's service area of the user's share, on an average or individual basis, of the full cost for solid waste management as determined pursuant to subsection (a) of this section. Counties shall provide the information required of municipalities only to residential and nonresidential users of solid waste management services within the county's service area that are not served by a municipality. Municipalities shall include costs charged to them

or to persons contracting with them for disposal of solid waste in the full cost information provided to residential and nonresidential users of solid waste management services. Counties and municipalities are encouraged to operate their solid waste management systems through use of an enterprise fund.

(c) For purposes of this section, "service area" means the area in which the county or municipality provides, directly or by contract, solid waste management services. The provisions of this section shall not be construed to require a person operating under a franchise contract or other agreement to collect or dispose of solid waste within the service area of a county or municipality to make the calculations or to establish a system to provide the information required under this section, unless such person agrees to do so as part of such franchise contract or other agreement.

(d) A county may charge fees for the collection, processing, or disposal of solid waste as provided in Article 15 of Chapter 153A of the General Statutes. A city may charge fees for the collection, processing, or disposal of solid waste as provided in Article 16 of Chapter 160A of the General Statutes.

(e), (f) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 12. (1989, c. 784, s. 2; 1991, c. 621, s. 6; 1995 (Reg. Sess., 1996), c. 594, s. 12.)

§ 130A-309.09: Recodified as §§ 130A-309.09A to 130A-309.09C by Session Laws 1991, c. 621, ss. 7 to 10.

§ 130A-309.09A. Local government solid waste responsibilities.

(a) The governing board of each unit of local government shall assess local solid waste collection services and disposal capacity and shall determine the adequacy of collection services and disposal capacity to meet local needs and to protect human health and the environment. Each unit of local government shall implement programs and take other actions that it determines are necessary to address deficiencies in service or capacity required to meet local needs and to protect human health and the environment. A unit of local government may adopt ordinances governing the disposal, in facilities that it operates, of solid waste generated outside of the area designated to be served by the facility. Such ordinances shall not be construed to apply to privately operated disposal facilities located within the boundaries of the unit of local government.

(b) Units of local government shall make a good-faith effort to achieve the State's forty percent (40%) municipal solid waste reduction goal and to comply with the State's comprehensive solid waste management plan.

(c) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 12.

(d) In order to assess the progress in meeting the goal set out in G.S. 130A-309.04, each unit of local government shall report to the Department on the solid waste management programs and waste reduction activities within the unit of local government by 1 September of each year. At a minimum, the report shall include:

(1) A description of public education programs on recycling.

(2) The amount of solid waste received at municipal solid waste management facilities, by type of solid waste.

(3) The amount and type of materials from the solid waste stream that were recycled.
(4) The percentage of the population participating in various types of recycling activities instituted.
(5) The annual reduction in municipal solid waste, measured as provided in G.S. 130A-309.04.
(6) Repealed by Session Laws 2013-409, s. 1, effective August 23, 2013.
(7) A statement of the costs of solid waste management programs implemented by the unit of local government and the methods of financing those costs.
(8) Information regarding permanent recycling programs for discarded computer equipment and televisions for which funds are received pursuant to G.S. 130A-309.137, and information on operative interlocal agreements executed in conjunction with funds received, if any.
(9) A description of the disaster debris management program.
(10) A description of scrap tire disposal procedures.
(11) A description of white goods management procedures.
(12) Information regarding the prevention of illegal disposal and management of litter.

(e) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 13.

(f) Each operator of a municipal solid waste management facility shall weigh all solid waste when it is received.

(g) A unit of local government that is a collector of municipal solid waste shall not knowingly collect for disposal, and the owner or operator of a municipal solid waste management facility that is owned or operated by a unit of local government shall not knowingly dispose of, any type or form of municipal solid waste that is generated within the boundaries of a unit of local government that by ordinance:

(1) Prohibits generators or collectors of municipal solid waste from disposing of that type or form of municipal solid waste.
(2) Requires generators or collectors of municipal solid waste to recycle that type or form of municipal solid waste.

(h) The storage, retention, and use of nonhazardous recyclable materials, including asphalt pavement, rap, or roofing shingles, shall be encouraged by units of local government. A unit of local government shall not impede the storage, retention, or use of nonhazardous recyclable materials in properly zoned storage facilities through the regulation of the height or setback of recyclable material stockpiles, except when such facilities are located on lots within 200 yards of residential districts. (1989, c. 784, s. 2; 1989 (Reg. Sess., 1990), c. 1009, s. 4; 1991, c. 621, s. 7; 1995 (Reg. Sess., 1996), c. 594, s. 13; 2007-550, s. 16.2; 2008-136, s. 3; 2008-198, s. 11.4; 2008-208, ss. 2, 7; 2009-484, s. 16(a), (b); 2009-550, s. 10(a), (b); 2010-67, ss. 1(a)-(d), 3(a), (b); 2013-409, s. 1; 2013-413, s. 50.)

§ 130A-309.09B. Local government waste reduction programs.

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

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

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

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

(b) To the maximum extent practicable, units of local government should participate in the preparation and implementation of joint waste reduction and solid waste management programs, whether through joint agencies established pursuant to G.S. 153A-421, G.S. 160A-462, or any other means provided by law. Nothing in a county's solid waste management or waste reduction program shall affect the authority of a municipality to franchise or otherwise provide for the collection of solid waste generated within the boundaries of the municipality.

(c) through (e) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 14.

(f) A county or counties and its or their municipalities may jointly determine, through a joint agency established pursuant to G.S. 153A-421 or G.S. 160A-462, which local governmental agency shall administer a solid waste management or waste reduction program.

(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 14. (1989, c. 784, s. 2; 1989 (Reg. Sess., 1990), c. 1009, s. 4; 1991, c. 537, s. 2; c. 621, s. 8; 1993, c. 86, s. 1; 1995 (Reg. Sess., 1996), c. 594, s. 14; 2013-409, s. 2.)

§ 130A-309.09C. Additional powers of local governments; construction of this Part; effect of noncompliance.

(a) To effect the purposes of this Part, counties and municipalities are authorized, in addition to other powers granted pursuant to this Part:

(1) To contract with persons to provide resource recovery services or operate resource recovery facilities on behalf of the county or municipality.

(2) To indemnify persons providing resource recovery services or operating resource recovery facilities for liabilities or claims arising out of the provision or operation of such services or facilities that are not the result of the sole negligence of the persons providing the services or operating the facilities.

(3) To contract with persons to provide solid waste disposal services or operate solid waste disposal facilities on behalf of the county or municipality.

(b) A county or municipality may enter into a written agreement with other persons, including persons transporting solid waste, to undertake to fulfill some or all of the county's or municipality's responsibilities under this Part.

(c) Nothing in this Part shall be construed to prevent the governing board of any county or municipality from providing by ordinance or regulation for solid waste

management standards which are stricter or more extensive than those imposed by the State solid waste management program and rules and orders issued to implement the State program.

(d) Nothing in this Part or in any rule adopted by any agency shall be construed to require any county or municipality to participate in any regional solid waste management until the governing board of the county or municipality has determined that participation in such a program is economically feasible for that county or municipality. Nothing in this Part or in any special or local act or in any rule adopted by any agency shall be construed to limit the authority of a municipality to regulate the disposal of solid waste located within its boundaries or generated within its boundaries so long as a facility for any such disposal has been approved by the Department, unless the municipality is included within a solid waste management program created under a joint agency or special or local act. If bonds had been issued to finance a solid waste management program in reliance on State law granting to a unit of local government, a region, or a special district the responsibility for the solid waste management program, nothing herein shall permit any governmental agency to withdraw from the program if the agency's participation is necessary for the financial feasibility of the project, so long as the bonds are outstanding.

(e) Nothing in this Part or in any rule adopted by any State agency pursuant to this Part shall require any person to subscribe to any private solid waste collection service.

(f) In the event a region, special district, or other entity by special act or joint agency, has been established to manage solid waste, any duty or responsibility or penalty imposed under this Part on a unit of local government shall apply to such region, special district, or other entity to the extent of the grant of the duty or responsibility or imposition of such penalty. To the same extent, such region, special district, or other entity shall be eligible for grants or other benefits provided pursuant to this Part.

(g) In addition to any other penalties provided by law, a unit of local government that does not comply with the requirements of G.S. 130A-309.09A(b), G.S. 130A-309.09A(d), and G.S. 130A-309.09B(a) shall not be eligible for grants from the Solid Waste Management Trust Fund or the White Goods Management Account and shall not receive the proceeds of the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes or the proceeds of the white goods disposal tax imposed by Article 5C of Chapter 105 of the General Statutes to which the unit of local government would otherwise be entitled. The Secretary shall notify the Secretary of Revenue to withhold payment of these funds to any unit of local government that fails to comply with the requirements of G.S. 130A-309.09A(b), G.S. 130A-309.09A(d), and G.S. 130A-309.09B(a). Proceeds of the scrap tire disposal tax that are withheld pursuant to this subsection shall be credited to the General Fund and may be used as provided in G.S. 130A-309.64. Proceeds of the white goods disposal tax that are withheld pursuant to this subsection shall be credited to the General Fund and may be used as provided in G.S. 130A-309.83. (1989, c. 784, s. 2; 1989 (Reg. Sess., 1990), c. 1009, s. 4; 1991, c. 621, s. 9; 1995 (Reg. Sess., 1996), c. 594, s. 15; 2013-360, ss. 14.16(e), 14.17(d); 2013-409, s. 3.)

§ 130A-309.09D. Responsibilities of generators of municipal solid waste owners and operators of privately owned solid waste management facilities and collectors of municipal solid waste.

(a) A generator of municipal solid waste shall not knowingly dispose of, a collector of municipal solid waste shall not knowingly collect for disposal, and the owner or operator of a privately owned or operated municipal solid waste management facility shall not knowingly dispose of, any type or form of municipal solid waste that is generated within the boundaries of a unit of local government that by ordinance:

(1) Prohibits generators or collectors of municipal solid waste from disposing of that type or form of municipal solid waste.

(2) Requires generators or collectors of municipal solid waste to recycle that type or form of municipal solid waste.

(b) On or before 1 August, the owner or operator of a privately owned solid waste management facility shall report to the Department, for the previous year beginning 1 July and ending 30 June, the amount by weight of the solid waste that was received at the facility and disposed of in a landfill, incinerated, or converted to fuel. To the maximum extent practicable, the reports shall indicate by weight the county of origin of all solid waste. The owner or operator shall transmit a copy of the report to the county in which the facility is located and to each county from which solid waste originated.

(c) A generator of industrial solid waste that owns and operates an industrial solid waste facility for the management of industrial solid waste generated by that generator shall develop a 10-year waste management plan. The plan shall be updated at least every three years. In order to assure compliance with this subsection, each generator to which this subsection applies shall provide the Department with a copy of its current plan upon request by the Department. Each generator to which this subsection applies shall file a report on its implementation of the plan required by this subsection with the Department by 1 August of each year. A generator to which this subsection applies may provide the Department with a copy of a current plan prepared pursuant to an ordinance adopted by a unit of local government or prepared for any other purpose if the plan meets the requirements of this subsection. The plan shall have the following components:

(1) A waste reduction goal established by the generator.

(2) Options for the management and reduction of wastes evaluated by the generator.

(3) A waste management strategy, including plans for waste reduction and waste disposal, for the 10-year period covered by the plan. (1991, c. 621, s. 11; 1995 (Reg. Sess., 1996), c. 594, s. 16.)

§ 130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited.

(a) No beverage shall be sold or offered for sale within the State in a beverage container designed and constructed so that the container is opened by detaching a metal ring or tab.

(b) No person shall distribute, sell, or offer for sale in this State, any product packaged in a container or packing material manufactured with fully halogenated chlorofluorocarbons (CFC). Producers of containers or packing material manufactured with chlorofluorocarbons (CFC) are urged to introduce alternative packaging materials that are environmentally compatible.

(c) (1) No plastic bag shall be provided at any retail outlet to any retail customer to use for the purpose of carrying items purchased by that customer unless the bag is composed of material that is recyclable.

(2) It is the goal of the State that at least twenty-five percent (25%) of the plastic bags provided at retail outlets in the State to retail customers for carrying items purchased by the customer be recycled.

(d) (1) No person shall distribute, sell, or offer for sale in this State any polystyrene foam product that is to be used in conjunction with food for human consumption unless the product is composed of material that is recyclable.

(2) Repealed by Session Laws 1995, c. 321, s. 1.

(e) No person shall distribute, sell, or offer for sale in this State any rigid plastic container, including a plastic beverage container, unless the container has a molded label indicating the plastic resin used to produce the container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangulated arrows. The three arrows shall form an equilateral triangle with the common point of each line forming each angle of the triangle at the midpoint of each arrow and rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The label shall appear on or near the bottom of the container and be clearly visible. A container having a capacity of less than eight fluid ounces or more than five gallons is exempt from the requirements of this subsection. The numbers and letters shall be as follows:

(1) For polyethylene terephthalate, the letters "PETE" and the number 1.

(2) For high density polyethylene, the letters "HDPE" and the number 2.

(3) For vinyl, the letter "V" and the number 3.

(4) For low density polyethylene, the letters "LDPE" and the number 4.

(5) For polypropylene, the letters "PP" and the number 5.

(6) For polystyrene, the letters "PS" and the number 6.

(7) For any other, the letters "OTHER" and the number 7.

(e1) **(See Editor's note for applicability)** No person shall distribute, sell, or offer for sale in this State any rigid plastic container, including a plastic beverage container labeled "degradable," "biodegradable," "compostable," or other words suggesting the container will biodegrade unless (i) the container complies with the requirements of subsection (e) of this section and (ii) the container includes a label with the statement "Not Recyclable, Do Not Recycle" in print of the same color, contrast, font, and size as the language suggesting the container will biodegrade.

(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1.

(2) Used oil.
(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
(4) White goods.
(5) Antifreeze (ethylene glycol).
(6) Aluminum cans.
(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition on disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
(8) Lead-acid batteries, as provided in G.S. 130A-309.70.
(9) Repealed by Session Laws 2011-394, s. 4, effective July 1, 2011.
(10) Motor vehicle oil filters.
(11) Recyclable rigid plastic containers that are required to be labeled as provided in subsection (e) of this section, that have a neck smaller than the body of the container, and that accept a screw top, snap cap, or other closure. The prohibition on disposal of recyclable rigid plastic containers in landfills does not apply to rigid plastic containers that are intended for use in the sale or distribution of motor oil or pesticides.
(12) Wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris.
(13) Oyster shells.
(14) Discarded computer equipment, as defined in G.S. 130A-309.131.
(15) Discarded televisions, as defined in G.S. 130A-309.131.

(f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:
(1) Antifreeze (ethylene glycol) used solely in motor vehicles.
(2) Aluminum cans.
(3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
(4) White goods.
(5) Lead-acid batteries, as provided in G.S. 130A-309.70.
(6) Repealed by Session Laws 2011-394, s. 4, effective July 1, 2011.
(7) Discarded computer equipment, as defined in G.S. 130A-309.131.
(8) Discarded televisions, as defined in G.S. 130A-309.131.

(f2) Subsections (f1) and (f3) of this section shall not apply to solid waste incinerated in an incinerator solely owned and operated by the generator of the solid waste. Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be recycled or reclaimed to make it usable as antifreeze in a motor vehicle.

(f3) Holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits shall not knowingly dispose of beverage containers that are required to be recycled under G.S. 18B-1006.1 in landfills or by incineration in an incinerator for which a permit is required under this Article.

(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.

(h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill shall not be construed as a violation of subsection (f) or (f3) of this section.

(i) The accidental or occasional disposal of small amounts of prohibited solid waste by incineration shall not be construed as a violation of subsection (f1) or (f3) of this section if the Department has approved a plan for the incinerator as provided in subsection (j) of this section or if the incinerator is exempt from subsection (j) of this section.

(j) The Department may issue a permit pursuant to this Article for an incinerator that is subject to subsection (f1) of this section only if the applicant for the permit has a plan approved by the Department pursuant to this subsection. The applicant shall file the plan at the time of the application for the permit. The Department shall approve a plan only if it complies with the requirements of this subsection. The plan shall provide for the implementation of a program to prevent the incineration of the solid waste listed in subsections (f1) and (f3) of this section. The program shall include the random visual inspection prior to incineration of at least ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the retention of the records of the random visual inspections and the training of personnel to recognize the solid waste listed in subsections (f1) and (f3) of this section. If a random visual inspection discovers solid waste that may not be incinerated pursuant to subsections (f1) and (f3) of this section, the program shall provide that the operator of the incinerator shall dispose of the solid waste in accordance with applicable federal and State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes only of medical waste.

(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), (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.

(l) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding subdivision (13) of subsection (f) of this section, the oyster shells may be disposed of in the landfill.

(m) No person shall knowingly dispose of fluorescent lights and thermostats that contain mercury in a sanitary landfill for the disposal of construction and demolition debris waste that is unlined or in any other landfill that is unlined. (1989, c. 784, s. 2; 1991, c. 23, s. 1; c. 375, s. 1; 1991 (Reg. Sess., 1992), c. 932, ss. 1, 2; 1993, c. 290, s. 1; 1995, c. 321, s. 1; c. 504, s. 9; 1995 (Reg. Sess., 1996), c. 594, s. 17; 2001-440, ss. 3.1, 3.2; 2005-348, s. 3; 2005-362, ss. 2, 3; 2006-226, s. 24(a); 2006-264, ss. 98.5(a), (c); 2007-550, ss. 16.3, 16.4; 2008-198, s. 11.4; 2008-208, ss. 3, 4, 7; 2009-499, s. 1; 2009-484, s. 16(a), (b); 2009-550, s. 10(a), (b); 2010-67, ss. 1(a)-(d), 4(a), (b); 2010-142, s. 10; 2010-180, s. 14(b); 2011-394, s. 4; 2012-194, s. 28; 2012-201, s. 3; 2013-74, s. 1.)

§ 130A-309.11. Compost standards and applications.

(a) In order to protect the State's land and water resources, compost produced, utilized, or disposed of by the composting process at solid waste management facilities in the State must meet criteria established by the Department.

(b) The Commission shall adopt rules to establish standards for the production of compost. Rules shall be adopted not later than 24 months after the initiation of rule making. Such rules shall include:

(1) Requirements necessary to produce hygienically safe compost products for varying applications.

(2) A classification scheme for compost based on:

a. The types of waste composted, including at least one type containing only yard trash;

b. The maturity of the compost, including at least three degrees of decomposition for fresh, semi-mature, and mature; and

c. The levels of organic and inorganic constituents in the compost.

(c) The compost classification scheme shall address:

(1) Methods for measurement of the compost maturity.

(2) Particle sizes.

(3) Moisture content.

(4) Average levels of organic and inorganic constituents, including heavy metals, for such classes of compost as the Department establishes, and the analytical methods to determine those levels.

(d) The Commission shall adopt rules to prescribe the allowable uses and application rates of compost. Rules shall be adopted not later than 24 months after the initiation of rule making. Such rules shall be based on the following criteria:

(1) The total quantity of organic and inorganic constituents, including heavy metals, allowed to be applied through the addition of compost to the soil per acre per year.

(2) The allowable uses of compost based on maturity and type of compost.

(e) If compost is produced which does not meet the criteria prescribed by the Department for agricultural and other use, the compost must be reprocessed or disposed of in a manner approved by the Department, unless a different application is specifically permitted by the Department. (1989, c. 784, s. 2; 1995 (Reg. Sess., 1996), c. 594, s. 18.)

§ 130A-309.12: Repealed by Session Laws 2013-360, s. 14.18(b), effective July 1, 2013.

§ 130A-309.13. Solid Waste Management Outreach Program.

(a) The Department shall develop an outreach program to promote waste reduction and recycling. From funds available to the Department for this program, the Department may engage in any of the following outreach activities:

(1) Provide public education regarding waste reduction and recycling.

(2) Provide technical assistance regarding waste reduction and recycling to units of local government.

(3) Conduct research on the solid waste stream in North Carolina.

(4) Develop secondary materials markets by providing technical and financial support, including providing technical and financial support to private recycling businesses, including use of processed scrap tire materials.

(5) Provide funding for the activities of the Division of Environmental Assistance and Outreach.

(b) It is the intent of the General Assembly to allow the Department to satisfy grant obligations that extend beyond the end of the fiscal year.

(c) The Department shall include in the report required by G.S. 130A-309.06(c) a description of the outreach program under this section. This report shall specify the type of outreach activity under each of subdivisions (1) through (5) under subsection (a) of this section and the amount of program funds the Department expended for each activity during the previous year. (2013-360, s. 14.18(c).)

§ 130A-309.14. Duties of State agencies.

(a) Each State agency, including the General Assembly, the General Court of Justice, and The University of North Carolina shall:

(1) Establish a program in cooperation with the Department and the Department of Administration for the collection of all recyclable materials generated in State offices throughout the State. The program shall provide that recycling containers are readily accessible on each floor where State employees are located in a building occupied by a State agency. Recycling containers required pursuant to this subdivision shall be clearly labeled to identify the types of recyclable materials to be deposited in each container and, to the extent practicable, recycling containers for glass, plastic, and aluminum shall be located near trash receptacles. The program shall provide for the collection of all of the following recyclable materials.

a. Aluminum.

b. Newspaper.

c. Sorted office paper.

d. Recyclable glass.

e. Plastic bottles.

As used in this subdivision, the term "sorted office paper" means paper used in offices that is of a high quality for purposes of recycling and includes copier paper, computer paper, letterhead, ledger, white envelopes, and bond paper.

(2) Provide procedures for collecting and storing recyclable materials, containers for storing materials, and contractual or other arrangements with buyers of the recyclable materials.

(3) The Department of Administration and the Department of Transportation shall each provide by 1 October of each year to the Department of Environmental Quality a detailed description of the respective Agency's review and revision of bid procedures and purchase and use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The information provided by the Department of Administration and the Department of Transportation to the Department of Environmental Quality shall also be included in the report required by G.S. 130A-309.06(c).

(4) Establish and implement, in cooperation with the Department and the Department of Administration, a solid waste reduction program for materials used in the course of agency operations. The program shall be designed and implemented to achieve maximum feasible reduction of solid waste generated as a result of agency operations.

(5) Prepare any written report in compliance with the model report under subsection (j) of this section. The State agency shall, in lieu of distributing the report in mass:

a. Notify persons to whom each agency is required to report, and any other persons it deems appropriate, that a report has been published, its subject and title, and the locations, including State libraries, at which the report is available;

b. Deliver any report to only those State libraries that each agency determines is likely to receive requests for a particular report; and

c. Distribute a report to only those who request the report.

A State library that has received a report shall distribute a report only upon request. Any State agency required by law to report to an entity shall be in compliance with that law by notifying that entity under sub-subdivision a. of this subdivision.

(a1) The Department of Administration shall review and revise its bid procedures and specifications set forth in Article 3 of Chapter 143 of the General Statutes and the Department of Transportation shall review and revise its bid procedures and specifications set forth in Article 2 of Chapter 136 of the General Statutes to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products.

(1) The Department of Administration shall require the procurement of such supplies and products to the extent that the purchase or use is practicable and cost-effective. The Department of Administration shall require the purchase or use of remanufactured toner cartridges for laser printers to the extent practicable.

(2) The Department of Transportation shall require the purchase or use of such supplies and products in the construction and maintenance of highways and bridges to the extent that the purchase or use is practicable and cost-effective.

(3) The Department of Administration and the Department of Transportation shall each provide by 1 October of each year to the Department of Environmental Quality a detailed description of the respective Agency's review and revision of bid procedures and purchase and use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The information provided by the Department of Administration and the Department of Transportation to the Department of Environmental Quality shall also be included in the report required by G.S. 130A-309.06(c).

(b) The Department of Commerce shall assist and encourage the recycling industry in the State. Assistance and encouragement of the recycling industry shall include:

(1) Assisting the Department in the identification and analysis, by the Department pursuant to G.S. 130A-309.06, of components of the State's recycling industry and present and potential markets for recyclable materials in this State, other states, and foreign countries;

(2) Providing information on the availability and benefits of using recycled materials to businesses and industries in the State; and

(3) Distributing any material prepared in implementing this section to the public, businesses, industries, units of local government, or other organizations upon request.

(c) Repealed by Session Laws 1993, c. 250, s. 2.

(d) The Department of Commerce shall investigate the potential markets for composted materials and shall submit its findings to the Department for the waste registry informational program administered by the Department in order to stimulate absorption of available composted materials into such markets.

(e) On or before 1 March 1991, the Department of Commerce shall report to the General Assembly its findings relative to:

(1) Potential markets for composted materials, including private and public sector markets;

(2) The types of materials which may legally and effectively be used in a successful composting operation; and

(3) The manner in which the composted materials should be marketed for optimum use.

(f) (1) All State agencies, including the Department of Transportation and the Department of Administration, and units of local government are required to procure compost products when they can be substituted for, and cost no more than, regular soil amendment products, provided the compost products meet all applicable engineering and environmental quality standards, specifications, and rules. This product preference shall apply to, but not be limited to, highway construction and maintenance projects, highway planting and beautification projects, recultivation and erosion control programs, and other projects.

(2) The Department of Transportation shall, consistent with economic feasibility and applicable engineering and environmental quality standards, use scrap tires, demolition debris, and untreated, stabilized, or encapsulated ash from boilers and incinerators in highway construction and maintenance projects.

(g) The Department of Public Instruction, with the assistance of the Department and The University of North Carolina, shall develop, distribute, and encourage the use of guidelines for the collection of recyclable materials and for solid waste reduction in the State system of education. At a minimum, the guidelines shall address solid waste generated in administrative offices, classrooms, dormitories, and cafeterias. The guidelines shall be developed by 1 January 1991.

(h) In order to orient students and their families to the recycling of waste and to encourage the participation of schools, communities, and families in recycling programs, the school board of each school district in the State shall make available an awareness program in the recycling of waste materials. The program shall be provided at both the elementary and secondary levels of education.

(i) The Department of Public Instruction is directed to develop, from funds appropriated for environmental education, curriculum materials and resource guides for a recycling awareness program for instruction at the elementary, middle, and high school levels.

(j) The Department of Administration shall develop a model report for reports published by any State agency, the General Assembly, the General Court of Justice, or The University of North Carolina. This model report shall satisfy the following:

(1) The paper in the report shall, to the extent economically practicable, be made from recycled paper and shall be capable of being recycled.

(2) The other constituent elements of the report shall, to the extent economically practicable, be made from recycled products and shall be capable of being recycled or reused.

(3) The report shall be printed on both sides of the paper if no additional time, staff, equipment, or expense would be required to fulfill this requirement.

(4) State publications that are of historical and enduring value and importance to the citizens of North Carolina shall be printed on alkaline (acid-free) paper according to G.S. 125-11.13.

(k) The Department of Transportation shall provide and maintain recycling containers at each rest area located in this State on a highway in the Interstate Highway System or in the State highway system for the collection of each of the following recyclable materials for which recycling is feasible:

(1) Aluminum.

(2) Newspaper.

(3) Recyclable glass.

(4) Plastic bottles.

For each rest area that has recycling containers, the Department of Transportation shall install signs, or modify existing signs, that are proximately located to the rest area to notify motorists that the rest area has recycling containers.

(l) Any State agency or agency of a political subdivision of the State that is using State funds, or any person contracting with any agency with respect to work performed under contract, shall procure products of recycled steel if all of the following conditions are satisfied:

(1) The product must be acquired competitively within a reasonable time frame.

(2) The product must meet appropriate performance standards.

(3) The product must be acquired at a reasonable price.

(m) The Alcoholic Beverage Control Commission, with the assistance of the Department, shall develop a model recycling program for holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits under G.S. 18B-1001 that are required to recycle beverage containers under G.S. 18B-1006.1. The model program shall provide for the separation, storage, and collection for recycling of all beverage containers that are required to be recycled under G.S. 18B-1006.1 and shall provide alternatives that reflect variations in local circumstances across the State. The Alcoholic Beverage Control Commission may adopt rules to comply with this section. (1989, c. 784, s. 2; 1991, c. 522, s. 1; 1991 (Reg. Sess., 1992), c. 959, s. 32; 1993, c. 197, s. 1; c. 250, ss. 1, 2; c. 448, ss. 1, 2; c. 553, s. 74; 2001-144, s. 1; 2001-452, s. 3.3; 2001-512, ss. 13, 14; 2003-284, s. 6.10(a); 2003-340, s. 1.6; 2005-348, s. 2; 2015-241, s. 14.30(u).)

§ 130A-309.14A. Reports by certain State-assisted entities.

Any community college, as defined in G.S. 115D-2(2), and any nonprofit corporation that receives State funds are encouraged to prepare any written reports in compliance with G.S. 130A-309.14(j). (1993, c. 448, s. 3.)

§ 130A-309.15. Prohibited acts regarding used oil.

(a) No person may knowingly:

(1) Collect, transport, store, recycle, use, or dispose of used oil in any manner which endangers the public health or welfare.

(2) Discharge used oil into sewers, drainage systems, septic tanks, surface waters, groundwaters, watercourses, or marine waters.

(3) Dispose of used oil in landfills in the State unless such disposal has been approved by the Department.

(4) Mix used oil with solid waste that is to be disposed of in landfills.

(5) Mix used oil with hazardous substances that make it unsuitable for recycling or beneficial use.

(b) A person who violates subsection (a) of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided by G.S. 130A-25(a) and G.S. 14-3.

(c) A person who disposes of used oil in a landfill where such used oil has been mixed with other solid waste which may be lawfully disposed of in such landfill, and who is without knowledge that such solid waste has been mixed with used oil, is not guilty of a violation under this section.

(d) Used oil shall not be used for road oiling, dust control, weed abatement, or other similar purposes that have the potential to release used oil into the environment. (1989, c. 784, s. 2.)

§ 130A-309.16. Public education program regarding used oil collection and recycling.

The Department shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil and shall:

(1) Encourage persons who annually sell at retail, in containers for use off the premises, more than 500 gallons of oil to provide the purchasers with information on the locations of collection facilities and information on proper disposal practices.

(2) Establish, maintain, and publicize a used oil information center that disperses materials or information explaining local, State, and federal laws and rules governing used oil and informing the public of places and methods for proper disposal of used oil.

(3) Encourage the voluntary establishment of used oil collection and recycling programs and provide technical assistance to persons who organize such programs.

(4) Encourage the procurement of recycled automotive, industrial, and fuel oils and oils blended with recycled oils for all State and local government uses. Recycled oils procured under this section shall meet equipment manufacturer's specifications. (1989, c. 784, s. 2.)

§ 130A-309.17: Repealed by Session Laws 2017-209, s. 2(b), effective October 4, 2017.

§ 130A-309.18. Regulation of used oil as hazardous waste.

Nothing in this Part shall prohibit the Department from regulating used oil as a hazardous waste in a manner consistent with applicable federal law and this Article. (1989, c. 784, s. 2.)

§ 130A-309.19. Coordination with other State agencies.

The Department of Transportation shall study the feasibility of using recycled oil products in road construction activities and shall report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives annually, beginning 1 January 1991, on the results of its study. (1989, c. 784, s. 2.)

§ 130A-309.20. Public used oil collection centers.

(a) The Department shall encourage the voluntary establishment of public used oil collection centers and recycling programs and provide technical assistance to persons who organize such programs.

(b) All State agencies and businesses that change motor oil for the public are encouraged to serve as public used oil collection centers.

(c) A public used oil collection center must:

(1) Notify the Department annually that it is accepting used oil from the public; and

(2) Annually report quantities of used oil collected from the public.

(d) No person may recover from the owner or operator of a used oil collection center any costs of response actions resulting from a release of either used oil or a hazardous substance against the owner or operator of a used oil collection center if such used oil is:

(1) Not mixed with any hazardous substance by the owner or operator of the used oil collection center;

(2) Not knowingly accepted with any hazardous substances contained therein;

(3) Transported from the used oil collection center by a certified transporter pursuant to G.S. 130A-309.23; and

(4) Stored in a used oil collection center that is in compliance with this section.

(e) Subsection (d) of this section applies only to that portion of the public used oil collection center used for the collection of used oil and does not apply if the owner or operator is grossly negligent in the operation of the public used oil collection center. Nothing in this section shall affect or modify in any way the obligations or liability of any person under any other provisions of State or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances. For purposes of this section, the owner or operator of a used oil collection center may presume that a quantity of no more than five gallons of used oil accepted from any member of the public is not mixed with a hazardous substance, provided that the owner or operator acts in good faith. (1989, c. 784, s. 2)

§ 130A-309.21. Incentives program.

(a) The Department is authorized to establish an incentives program for individuals who change their own oil to encourage them to return their used oil to a used oil collection center.

(b) The incentives used by the Department may involve the use of discount or prize coupons, prize drawings, promotional giveaways, or other activities the Department determines will promote collection, reuse, or proper disposal of used oil.

(c) The Department may contract with a promotion company to administer the incentives program. (1989, c. 784, s. 2.)

§ 130A-309.22. Grants to local governments.

(a) The Department shall develop a grants program for units of local government to encourage the collection, reuse, and proper disposal of used oil. No grant may be made for any project unless the project is approved by the Department.

(b) The Department shall consider for grant assistance any unit of local government project that uses one or more of the following programs or any activity that the Department feels will reduce the improper disposal and reuse of used oil:

(1) Curbside pickup of used oil containers by a unit of local government or its designee.

(2) Retrofitting of solid waste equipment to promote curbside pickup or disposal of used oil at used oil collection centers designated by the unit of local government.

(3) Establishment of publicly operated used oil collection centers at landfills or other public places.

(4) Providing containers and other materials and supplies that the public can utilize in an environmentally sound manner to store used oil for pickup or return to a used oil collection center.

(5) Providing incentives for the establishment of privately operated public used oil collection centers.

(c) Eligible projects shall be funded according to provisions established by the Department; however, no grant may exceed twenty-five thousand dollars ($25,000).

(d) The Department shall initiate rule making on or before 1 January 1991, necessary to carry out the purposes of this section. (1989, c. 784, s. 2.)

§ 130A-309.23. Certification of used oil transporters.

(a) Any person who transports over public highways after 1 January 1992, more than 500 gallons of used oil in any week must be a certified transporter or must be employed by a person who is a certified transporter.

(b) The Department of Transportation shall develop a certification program for transporters of used oil, and shall issue, deny, or revoke certifications authorizing the holder to transport used oil. Certification requirements shall help assure that a used oil transporter is familiar with appropriate rules and used oil management procedures.

(c) The Department of Transportation shall adopt rules governing certification, which shall include requirements for the following:

(1) Registration and annual reporting pursuant to G.S. 130A-309.17.

(2) Evidence of familiarity with applicable State laws and rules governing used oil transportation.

(3) Proof of liability insurance or other means of financial responsibility for any liability which may be incurred in the transport of used oil.

(4) Marking, by the certified transporter of used oil, of all vehicles which transport used oil or all containers of used oil when it is not feasible to mark the vehicle. The mark must clearly identify the certified used oil transporter and clearly indicate that the vehicle is used to transport used oil. The marking must be visible to others travelling on the highway. (1989, c. 784, s. 2; 1991, c. 488.)

§ 130A-309.24. Permits for used oil recycling facilities.

(a) Each person who intends to operate, modify, or close a used oil recycling facility shall obtain an operation or closure permit from the Department prior to operating, modifying, or closing the facility.

(b) By 1 January 1992, the Department shall develop a permitting system for used oil recycling facilities after reviewing and considering the applicability of the permit system for hazardous waste treatment, storage, or disposal facilities.

(c) Permits shall not be required under this section for the burning of used oil as a fuel, provided:

(1) A valid air permit issued by the Department is in effect for the facility; and

(2) The facility burns used oil in accordance with applicable United States Environmental Protection Agency regulations, local government regulations, and the requirements and conditions of its air permit.

(d) No permit is required under this section for the use of used oil for the beneficiation or flotation of phosphate rock. (1989, c. 784, s. 2.)

§ 130A-309.25. Training of operators of solid waste management facilities.

(a) The Department shall establish qualifications for, and encourage the development of training programs for, operators of incinerators, operators of landfills, coordinators of local recycling programs, and other solid waste management facilities.

(b) The Department shall work with accredited community colleges, vocational technical centers, State universities, and private institutions in developing educational materials, courses of study, and other such information to be made available for persons seeking to be trained as operators of solid waste management facilities.

(c) A person may not perform the duties of an operator of a solid waste management facility after 1 January 1998, unless he has completed an operator training course approved by the Department. An owner of a solid waste management facility may not employ any person to perform the duties of an operator unless the person has completed an approved solid waste management facility operator training course.

(d) The Commission may adopt rules and minimum standards to effectuate the provisions of this section and to ensure the safe, healthy, and lawful operation of solid waste management facilities. The Commission may establish, by rule, various classifications for operators to address the need for differing levels of training required to

operate various types of solid waste management facilities due to different operating requirements at the facilities.

(e) In developing training programs for incinerator operators under this section, the Department shall establish and consult with ad hoc advisory groups to help coordinate the requirements under this section with other training programs for incinerator operators.

(f) This section does not apply to any operator of a solid waste management facility who has five years continuous experience as an operator of a solid waste management facility immediately preceding January 1, 1998, provided that the operator attends a course and completes the continuing education requirements approved by the Department. (1989, c. 784, s. 2; 1993, c. 29, s. 1; 1995 (Reg. Sess., 1996), c. 594, s. 19; 1997-443, s. 15.49(a).)

§ 130A-309.26. Regulation of medical waste.

(a) As used in this section:

(1) "Sharps" means needles, syringes, and scalpel blades.

(2) "Treatment" means any process, including steam sterilization, chemical treatment, incineration, and other methods approved by the Commission which changes the character or composition of medical waste so as to render it noninfectious.

(b) It is the intent of the General Assembly to protect the public health by establishing standards for the safe packaging, storage, treatment, and disposal of medical waste. The Commission shall adopt and the Department shall enforce rules for the packaging, storage, treatment, and disposal of:

(1) Medical waste at facilities where medical waste is generated;

(2) Medical waste from the point at which the waste is transported from the facility where it was generated;

(3) On-site and off-site treatment of medical waste; and

(4) The off-site transport, storage, treatment or disposal of medical waste.

(c) No later than 1 August 1990, the Commission shall adopt rules necessary to protect the health, safety, and welfare of the public and to carry out the purpose of this section. Such rules shall address, but need not be limited to, the packaging of medical waste, including specific requirements for the safe packaging of sharps and the segregation, storage, treatment, and disposal of medical wastes at the facilities in which such waste is generated. (1989, c. 784, s. 2; 1995 (Reg. Sess., 1996), c. 594, s. 20.)

§ 130A-309.27. Joint and several liability.

(a) As used in this section:

(1) "Owner or operator" means, in addition to the usual meanings of the term, any owner of record of any interest in land on which a landfill is or has been sited, any person or business entity that owns a majority interest in any other business entity which is the owner or operator of a landfill, and any person designated as a joint permittee pursuant to G.S. 130A-295.2(e).

(2) "Proceeds" means all funds collected and received by the Department, including interest and penalties on delinquent fees.

(b) Every owner or operator of a landfill is jointly and severally liable for the improper operation and closure of the landfill, as provided by law.

(c) through (f) Repealed by Session Laws 2007-550, s. 5(b), effective August 1, 2007. (1989, c. 784, s. 2; 2007-550, s. 5(b).)

§ 130A-309.28. University research.

Research, training, and service activities related to solid and hazardous waste management conducted by The University of North Carolina shall be coordinated by the Board of Governors of The University of North Carolina through the Office of the President. Proposals for research contracts and grants; public service assignments; and responses to requests for information and technical assistance by the State and units of local government, business, and industry shall be addressed by a formal process involving an advisory board of university personnel appointed by the President and chaired and directed by an individual appointed by the President. The Board of Governors of The University of North Carolina shall consult with the Department in developing the research programs and provide the Department with a copy of the proposed research program for review and comment before the research is undertaken. Research contracts shall be awarded to independent nonprofit colleges and universities within the State which are accredited by the Southern Association of Colleges and Schools on the same basis as those research contracts awarded to The University of North Carolina. Research activities shall include the following areas:

(1) Methods and processes for recycling solid and hazardous waste;
(2) Methods of treatment for detoxifying hazardous waste; and
(3) Technologies for disposing of solid and hazardous waste. (1989, c. 784, s. 2.)

§ 130A-309.29. Adoption of rules.

The Commission may adopt rules to implement the provisions of this Part pursuant to Article 2A of Chapter 150B of the General Statutes. (1991, c. 621, s. 12; 2000-189, s. 12.)

§§ 130A-309.30 through 130A-309.50. Reserved for future codification purposes.

Part 2B. Scrap Tire Disposal Act.

§ 130A-309.51. Title.

This Part may be cited as the "North Carolina Scrap Tire Disposal Act." (1989, c. 784, s. 3.)

§ 130A-309.52. Findings; purpose.

(a) The General Assembly finds that:

(1) Scrap tire disposal poses a unique and troublesome solid waste management problem.
(2) Scrap tires are a usable resource that may be recycled for energy value.
(3) Uncontrolled disposal of scrap tires may create a public health and safety problem because tire piles act as breeding sites for mosquitoes and other

disease-transmitting vectors, pose substantial fire hazards, and present a difficult disposal problem for landfills.

(4) A significant number of scrap tires are illegally dumped in North Carolina.

(5) It is in the State's best interest to encourage efforts to recycle or recover resources from scrap tires.

(6) It is desirable to allow units of local government to control tire disposal for themselves and to encourage multicounty, regional approaches to scrap tire disposal and collection.

(7) It is desirable to encourage reduction in the volume of scrap tires being disposed of at public sanitary landfills.

(b) The purpose of this Part is to provide statewide guidelines and structure for the environmentally safe disposal of scrap tires to be administered through units of local government. (1989, c. 784, s. 3.)

§ 130A-309.53. Definitions.

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

(1) "Collection site" means a site used for the storage of scrap tires.

(2) "Disposal fee" is any amount charged by a tire collector, tire processor, or unit of local government in exchange for accepting scrap tires.

(3) "In-county scrap tire" means any scrap tire brought for disposal from inside the county in which the collection or processing site is located.

(4) "Out-of-county scrap tire" means any scrap tire brought for disposal from outside the county in which the collection or processing site is located.

(5) "Processing site" means a site actively used to produce or manufacture usable materials, including fuel, from scrap tires. Commercial enterprises processing scrap tires shall not be considered solid waste management facilities insofar as the provisions of G.S. 130A-294(a)(4) and G.S. 130A-294(b) are concerned.

(6) "Scrap tire" means a tire that is no longer suitable for its original, intended purpose because of wear, damage, or defect.

(7) "Tire" means a continuous solid or pneumatic rubber covering that encircles the wheel of a vehicle. Bicycle tires and other tires for vehicles propelled by human power are not subject to the provisions of this Part.

(8) "Tire collector" means a person who owns or operates a site used for the storage, collection, or deposit of more than 50 scrap tires.

(9) "Tire hauler" means a person engaged in the picking up or transporting of scrap tires for the purpose of storage, processing, or disposal.

(10) "Tire processor" means a person who engages in the processing of scrap tires or one who owns or operates a tire processing site.

(11) "Tire retailer" means a person who engages in the retail sale of a tire in any quantity for any use or purpose by the purchaser other than for resale. (1989, c. 784, s. 3; 1991, c. 221, s. 2; 1995 (Reg. Sess., 1996), c. 594, s. 21.)

§ 130A-309.54. Use of scrap tire tax proceeds.

Article 5B of Chapter 105 imposes a tax on new tires to provide funds for the disposal of scrap tires, for the cleanup of inactive hazardous waste sites under Part 3 of this Article,

and for all the purposes for which the Bernard Allen Memorial Emergency Drinking Water Fund may be used under G.S. 87-98. A county may use proceeds of the tax distributed to it under that Article only for the disposal of scrap tires pursuant to the provisions of this Part or for the abatement of a nuisance pursuant to G.S. 130A-309.60. (1989, c. 784, s. 3; 1991, c. 221, s. 3; 1993, c. 364, s. 1(a); 2009-451, s. 13.3B(b).)

§§ 130A-309.55 through 130A-309.56: Repealed by Session Laws 1991, c. 221, s. 4.

§ 130A-309.57. Scrap tire disposal program.

(a) The owner or operator of any scrap tire collection site shall, within six months after October 1, 1989, provide the Department with information concerning the site's location, size, and the approximate number of scrap tires that are accumulated at the site and shall initiate steps to comply with subsection (b) of this section.

(b) On or after July 1, 1990:

(1) A person may not maintain a scrap tire collection site or a scrap tire disposal site unless the site is permitted.

(2) It is unlawful for any person to dispose of scrap tires in the State unless the scrap tires are disposed of at a scrap tire collection site or at a tire disposal site, or disposed of for processing at a scrap tire processing facility.

(c) The Commission shall adopt rules to carry out the provisions of this section. Such rules shall:

(1) Provide for the administration of scrap tire collector and collection center permits and scrap tire disposal site permits, which may not exceed two hundred fifty dollars ($250.00) annually.

(2) Set standards for scrap tire processing facilities and associated scrap tire sites, scrap tire collection centers, and scrap tire collectors.

(3) Authorize the final disposal of scrap tires at a permitted solid waste disposal facility provided the tires have been cut into sufficiently small parts to assure their proper disposal.

(4) Repealed by Session Laws 2013-413, s. 18. For effective date, see Editor's note.

(d) A permit is not required for:

(1) A tire retreading business where fewer than 1,000 scrap tires are kept on the business premises;

(2) A business that, in the ordinary course of business, removes tires from motor vehicles if fewer than 1,000 of these tires are kept on the business premises; or

(3) A retail tire-selling business which is serving as a scrap tire collection center if fewer than 1,000 scrap tires are kept on the business premises.

(e) The Department shall encourage the voluntary establishment of scrap tire collection centers at retail tire-selling businesses, scrap tire processing facilities, and solid waste disposal facilities, to be open to the public for the deposit of used and scrap tires. The Department may establish an incentives program for individuals to encourage them to return their used or scrap tires to a scrap tire collection center.

(f) Permitted scrap tire collectors may not contract with a scrap tire processing facility, unless the processing facility documents that it has access to a facility permitted to receive the scrap tires. (1989, c. 784, s. 3; 2012-200, s. 14(a); 2013-413, s. 18.)

§ 130A-309.58. Disposal of scrap tires.

(a) Each county is responsible for providing for the disposal of scrap tires located within its boundaries in accordance with the provisions of this Part and any rules issued pursuant to this Part. The following are permissible methods of scrap tire disposal:

(1) Incinerating;
(2) Retreading;
(3) Constructing crash barriers;
(4) Controlling soil erosion when whole tires are not used;
(5) Chopping or shredding;
(6) Grinding into crumbs for use in road asphalt, tire derived fuel, and as raw material for other products;
(7) Slicing vertically, resulting in each scrap tire being divided into at least two pieces;
(8) Sludge composting;
(9) Using for agriculture-related purposes;
(10) Chipping for use as an oyster cultch as approved by rules adopted by the Marine Fisheries Commission;
(11) Cutting, stamping, or dyeing tires;
(12) Pyrolizing and other physico-chemical processing;
(13) Hauling to out-of-State collection or processing sites; and
(14) Monofilling split, ground, chopped, sliced, or shredded scrap tires.

(b) The Commission may adopt rules approving other permissible methods of scrap tire disposal. Landfilling of whole scrap tires is prohibited. The prohibition against landfilling whole tires applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.

(c) Units of local government may enter into joint ventures or other cooperative efforts with other units of local government for the purpose of disposing of scrap tires. Units of local government may enter into leases or other contractual arrangements with units of local government or private entities in order to dispose of scrap tires.

(d) Each county is responsible for developing a description of scrap tire disposal procedures. These procedures shall be included in the annual report required under G.S. 130A-309.09A. Further, any revisions to the initial description of the scrap tire disposal procedures shall be forwarded to the Department.

(e) A county shall provide, directly or by contract with another unit of local government or private entity, at least one site for scrap tire disposal for that county. The unit of local government or contracting party may not charge a disposal fee for the disposal of scrap tires except as provided in this subsection. A unit of local government or contracting party may charge a disposal fee that does not exceed the cost of disposing of the scrap tires only if:

(1) The scrap tires are new tires that are being disposed of by their manufacturer because they do not meet the manufacturer's standards for salable tires; or
(2) The scrap tires are delivered to a local government scrap tire disposal site without an accompanying certificate required by G.S. 130A-309.58(f) that indicates that the tires originated in a county within North Carolina.

(f) Every tire retailer or other person disposing of scrap tires shall complete and sign a certification form prescribed by the Department and distributed to each county, certifying that the tires were collected in the normal course of business for disposal, the county in which the tires were collected, and the number of tires to be disposed of. This form also shall be completed and signed by the tire hauler, certifying that the load contains the same tires that were received from the tire retailer or other person disposing of scrap tires. The tire hauler shall present this certification form to the tire processor or tire collector at the time of delivery of the scrap tires for disposal, collection, or processing. Copies of these certification forms shall be retained for a minimum of three years after the date of delivery of the scrap tires.

(g) The provisions of subsection (f) of this section do not apply to tires that are brought for disposal in quantities of five or less by someone other than a tire collector, tire processor, or tire hauler. (1989, c. 784, s. 3; 1991, c. 221, s. 5; 1993, c. 548, s. 4; 1995 (Reg. Sess., 1996), c. 594, s. 22; 1997-209, s. 1; 2013-409, s. 4.)

§ 130A-309.59. Registration of tire haulers.

(a) Before engaging in the hauling of scrap tires in this State, any tire hauler must register with the Department whereupon the Department shall issue to the tire hauler a scrap tire hauling identification number. A tire retailer licensed under G.S. 105-164.29 and solely engaged in the hauling of scrap tires received by it in connection with the retail sale of replacement tires is not required to register under this section.

(b) Each tire hauler shall furnish its hauling identification number on all certification forms required under G.S. 130A-309.58(f). Any tire retailer engaged in the hauling of scrap tires and not required by subsection (a) of this section to be registered shall supply its merchant identification number on all certification forms required by G.S. 130A-309.58(f). (1989, c. 784, s. 3.)

§ 130A-309.60. Nuisance tire collection sites.

(a) On or after July 1, 1990, if the Department determines that a tire collection site is a nuisance, it shall notify the person responsible for the nuisance and request that the tires be processed or removed within 90 days. If the person fails to take the requested action within 90 days, the Department shall order the person to abate the nuisance within 90 days. If the person responsible for the nuisance is not the owner of the property on which the tire collection site is located, the Department may order the property owner to permit abatement of the nuisance. If the person responsible for the nuisance fails to comply with the order, the Department shall take any action necessary to abate the nuisance, including entering the property where the tire collection site is located and confiscating the scrap tires, or arranging to have the scrap tires processed or removed.

(b) When the Department abates the nuisance pursuant to subsection (a) of this section, the person responsible for the nuisance shall be liable for the actual costs incurred by the Department for its nuisance abatement activities and its administrative and legal expenses related to the abatement. The Department may ask the Attorney General to initiate a civil action to recover these costs from the person responsible for the nuisance.

Nonpayment of the actual costs incurred by the Department shall result in the imposition of a lien on the owner's real property on which the tire collection site is located.

(c) This section does not apply to any of the following:

(1) A retail business premises where tires are sold if no more than 500 scrap tires are kept on the premises at one time;

(2) The premises of a tire retreading business if no more than 3,000 scrap tires are kept on the premises at one time;

(3) A premises where tires are removed from motor vehicles in the ordinary course of business if no more than 500 scrap tires are kept on the premises at one time;

(4) A solid waste disposal facility where no more than 60,000 scrap tires are stored above ground at one time if all tires received for storage are processed, buried, or removed from the facility within one year after receipt;

(5) A site where no more than 250 scrap tires are stored for agricultural uses; and

(6) A construction site where scrap tires are stored for use or used in road surfacing and construction of embankments.

(d) The descending order of priority for the Department's abatement activities under subsection (a) of this section is as follows:

(1) Tire collection sites determined by the Department to contain more than 1,000,000 tires;

(2) Tire collection sites which constitute a fire hazard or threat to public health;

(3) Tire collection sites in densely populated areas; and

(4) Any other tire collection sites that are determined to be a nuisance.

(e) This section does not change the existing authority of the Department to enforce any existing laws or of any person to abate a nuisance.

(f) As used in this section, "nuisance" means an unreasonable danger to public health, safety, or welfare or to the environment. (1989, c. 784, s. 3.)

§ 130A-309.61. Effect on local ordinances.

This Part preempts any local ordinance regarding the disposal of scrap tires to the extent the local ordinance is inconsistent with this Part or the rules adopted pursuant to this Part. (1989, c. 784, s. 3; 1993, c. 548, s. 5; 1997-209, s. 1.)

§ 130A-309.62. Fines and penalties.

Any person who knowingly hauls or disposes of a tire in violation of this Part or the rules adopted pursuant to this Part shall be assessed a civil penalty of fifty dollars ($50.00) per violation. Each tire hauled or disposed of in violation of this Part or rules adopted pursuant to this Part constitutes a separate violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1989, c. 784, s. 3; 1998-215, s. 55.)

§ 130A-309.63: Repealed by Session Laws 2013-360, s. 14.16(b), effective July 1, 2013.

§ 130A-309.64. Scrap Tire Disposal Program; other Department activities related to scrap tires.

(a) The Department may make grants to units of local government to assist them in disposing of scrap tires. To administer the grants, the Department shall establish procedures for applying for a grant and the criteria for selecting among grant applicants. The criteria shall include the financial ability of a unit of local government to provide for scrap tire disposal, the severity of a unit of local government's scrap tire disposal problem, the effort made by a unit of local government to ensure that only tires generated in the normal course of business in this State are provided free disposal, and the effort made by a unit of local government to provide for scrap tire disposal within the resources available to it.

(b) A unit of local government is not eligible for a grant under subsection (a) of this section unless its costs for disposing of scrap tires for the six-month period preceding the date the unit of local government files an application for a grant exceeded the amount the unit of local government received during that period from the proceeds of the scrap tire tax under G.S. 105-187.19. A grant to a unit of local government for scrap tire disposal may not exceed the unit of local government's unreimbursed cost for the six-month period.

(c) The Department may support a position to provide local governments with assistance in developing and implementing scrap tire management programs designed to complete the cleanup of nuisance tire collection sites and prevent scrap tires generated from outside of the State from being presented for free disposal in the State.

(d) The Department may clean up scrap tire collection sites that the Department has determined are a nuisance. The Department may use funds to clean up a nuisance tire collection site only if no other funds are available for that purpose.

(e) The Department shall include in the report to be delivered to the Environmental Review Commission on or before January 15 of each year pursuant to G.S. 130A-309.06(c) a description of the implementation of the North Carolina Scrap Tire Disposal Act under this Part for the fiscal year ending the preceding June 30. The description of the implementation of the North Carolina Scrap Tire Disposal Act shall include a list of the recipients of grants under subsection (a) of this section and the amount of each grant for the previous 12-month period. The report also shall include the amount of funds used to clean up nuisance sites under subsection (d) of this section.

(f) It is the intent of the General Assembly to allow the Department to satisfy grant obligations that extend beyond the end of the fiscal year.

(g) The Department may adopt any rules necessary to implement this section. (2013-360, s. 14.16(c).)

§ 130A-309.65: Reserved for future codification purposes.

§ 130A-309.66: Reserved for future codification purposes.

§ 130A-309.67: Reserved for future codification purposes.

§ 130A-309.68: Reserved for future codification purposes.

§ 130A-309.69: Reserved for future codification purposes.

Part 2C. Lead-Acid Batteries.

§ 130A-309.70. Landfilling and incineration of lead-acid batteries prohibited; delivery for recycling.

(a) No person shall knowingly place or dispose of a used lead-acid battery in a landfill, incinerator, or in any waste-to-energy facility. Any person may deliver a lead-acid battery to a battery retailer or wholesaler, or to a secondary lead smelter, or to a collection or recycling facility authorized under this Chapter or by the United States Environmental Protection Agency.

(b) No battery retailer shall knowingly place or dispose of a used lead-acid battery in a landfill, incinerator, or waste-to-energy facility. Any battery retailer may deliver a used lead-acid battery to the agent of a battery wholesaler or a secondary lead smelter, to a battery manufacturer for delivery to a secondary lead smelter, or to a collection or recycling facility authorized under this Chapter or by the United States Environmental Protection Agency.

(c) Any person who knowingly places or disposes of a lead-acid battery in violation of this section shall be assessed a civil penalty of not more than fifty dollars ($50.00) per violation. Each battery improperly disposed of shall constitute a separate violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1991, c. 375, s. 2; 1998-215, s. 56.)

§ 130A-309.71. Retailers required to accept lead-acid batteries for recycling; posting of notice required.

(a) A person who sells or offers for sale lead-acid batteries at retail in this State shall accept from customers, at the point of transfer or sale, used lead-acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers.

(b) A person who sells or offers for sale lead-acid batteries at retail in this State shall post written notice which must be at least 8 1/2 inches by 11 inches in size and must contain the universal recycling symbol and the following language:

(1) "It is illegal to improperly dispose of a motor vehicle battery or other lead-acid battery."

(2) "Recycle your used batteries."

(3) "State law requires us to accept used motor vehicle batteries or other lead-acid batteries for recycling in exchange for new batteries purchased."

(c) Any person who fails to post the notice required by subsection (b) of this section after receiving a written warning from the Department to do so shall be assessed a civil penalty of not more than fifty dollars ($50.00) per day for each day the person fails to post the required notice.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1991, c. 375, s. 2; 1998-215, s. 57.)

§ 130A-309.72. Wholesalers required to accept lead-acid batteries.

(a) No person selling new lead-acid batteries at wholesale shall refuse to accept from customers at the point of transfer, used lead-acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers. A person accepting batteries in transfer from a battery retailer shall be allowed a period not to exceed 90 days to remove batteries from the retail point of collection.

(b) Any person who violates this section shall be assessed a civil penalty of fifty dollars ($50.00) per violation. Each battery refused by a wholesaler or not removed from the retail point of collection within 90 days shall constitute a separate violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1991, c. 375, s. 2; 1998-215, s. 58.)

§ 130A-309.73. Inspections of battery retailers authorized; construction of this Part.

(a) The Department may inspect any place, building, or premise subject to the provisions of G.S. 130A-309.71. The Department may issue warnings to persons who fail to comply with the provisions of this Part.

(b) The provisions of this Part shall not be construed to prohibit any person who does not sell lead-acid batteries from collecting and recycling such batteries. (1991, c. 375, s. 2.)

§ 130A-309.74. Reserved for future codification purposes.

§ 130A-309.75. Reserved for future codification purposes.

§ 130A-309.76. Reserved for future codification purposes.

§ 130A-309.77. Reserved for future codification purposes.

§ 130A-309.78. Reserved for future codification purposes.

§ 130A-309.79. Reserved for future codification purposes.

Part 2D. Management of Discarded White Goods.

§ 130A-309.80. Findings and purpose.

The General Assembly finds that white goods are difficult to dispose of, that white goods that contain chlorofluorocarbon refrigerants pose a danger to the environment, and that it is in the best interest of the State to require that chlorofluorocarbon refrigerants be

removed from discarded white goods. This Part therefore provides for the management of discarded white goods. (1993, c. 471, s. 4.)

§ 130A-309.81. Management of discarded white goods; disposal fee prohibited.

(a) Duty. – Each county is responsible for providing at least one site for the collection of discarded white goods. It must also provide for the disposal of discarded white goods and for the removal of chlorofluorocarbon refrigerants from white goods. A county may contract with another unit of local government or a private entity in accordance with Article 15 of Chapter 153A of the General Statutes to provide for the management of discarded white goods or for the removal of chlorofluorocarbon refrigerants from white goods.

(b) Restrictions. – A unit of local government or a contracting party may not charge a disposal fee for the disposal of white goods. A white good may not be disposed of in a landfill, an incinerator, or a waste-to-energy facility.

(c) Plan. – Each county shall establish written procedures for the management of white goods. These procedures shall be included in the annual report required under G.S. 130A-309.09A. (1993, c. 471, ss. 4, 6; 1993 (Reg. Sess., 1994), c. 745, ss. 36, 37; 2001-265, s. 6; 2013-409, s. 5.)

§ 130A-309.82. Use of disposal tax proceeds by counties.

Article 5C of Chapter 105 of the General Statutes imposes a tax on new white goods to provide funds for the management of discarded white goods. A county must use the proceeds of the tax distributed to it under that Article for the management of discarded white goods. The purposes for which a county may use the tax proceeds include, but are not limited to, the following:

(1) Capital improvements for infrastructure to manage discarded white goods, such as concrete pads for loading, equipment essential for moving white goods, storage sheds for equipment essential to white goods disposal management, and freon extraction equipment.

(2) Operating costs associated with managing discarded white goods, such as labor, transportation, and freon extraction.

(3) The cleanup of illegal white goods disposal sites, the cleanup of illegal disposal sites consisting of more than fifty percent (50%) discarded white goods, and, as to those illegal disposal sites consisting of fifty percent (50%) or less discarded white goods, the cleanup of the discarded white goods portion of the illegal disposal sites.

Except as provided in subdivision (3) of this section, a county may not use the tax proceeds for a capital improvement or operating expense that does not directly relate to the management of discarded white goods. Except as provided in subdivision (3) of this section, if a capital improvement or operating expense is partially related to the management of discarded white goods, a county may use the tax proceeds to finance a percentage of the costs equal to the percentage of the use of the improvement or expense directly related to the management of discarded white goods. (1993, c. 471, s. 4; 1998-24, ss. 4, 7; 2000-109, s. 9(a); 2001-265, s. 5.)

§ 130A-309.83: Repealed by Session Laws 2013-360, s. 14.17(e), effective June 30, 2017.

§ 130A-309.84. Civil penalties for improper disposal.

The Department may assess a civil penalty of not more than one hundred dollars ($100.00) against a person who, knowing it is unlawful, places or otherwise disposes of a discarded white good in a landfill, an incinerator, or a waste-to-energy facility. The Department may assess this penalty for the day the unlawful disposal occurs and each following day until the white good is disposed of properly.

The Department may assess a penalty of up to one hundred dollars ($100.00) against a person who, knowing it is required, fails to remove chlorofluorocarbon refrigerants from a discarded white good. The Department may assess this penalty for the day the failure occurs and each following day until the chlorofluorocarbon refrigerants are removed.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1993, c. 471, s. 4; 1998-215, s. 59.)

§ 130A-309.85. Reporting on the management of white goods.

The Department shall include in the report to be delivered to the Environmental Review Commission on or before 15 January of each year pursuant to G.S. 130A-309.06(c) a description of the management of white goods in the State for the fiscal year ending the preceding 30 June. The description of the management of white goods shall include the following information:

(1) The amount of taxes collected and distributed under G.S. 105-187.24 during the period covered by the report.

(2) The cost to each county of managing white goods during the period covered by the report.

(3) Repealed by Session Laws 2013-360, s. 14.17(f), effective June 20, 2017.

(4) Any other information the Department considers helpful in understanding the problem of managing white goods.

(5) A summary of the information concerning the counties' white goods management programs contained in the counties' Annual Financial Information Report. (1993, c. 471, s. 4; 1995 (Reg. Sess., 1996), c. 594, s. 25; 1998-24, ss. 5, 7; 2000-109, s. 9(a); 2001-265, s. 5; 2001-452, s. 3.5; 2013-360, s. 14.17(f).)

§ 130A-309.86. Effect on local ordinances.

This Part preempts any local ordinance regarding the management of white goods that is inconsistent with this Part or the rules adopted pursuant to this Part. It does not preempt any local ordinance regarding the management of white goods that is consistent with this Part or rules adopted pursuant to this Part. (1993, c. 471, s. 4.)

§ 130A-309.87. Eligibility for disposal tax proceeds.

(a) Receipt of Funds. – A county may not receive a quarterly distribution of the white goods disposal tax proceeds under G.S. 105-187.24 unless the undesignated balance in the county's white goods account at the end of its fiscal year is less than the threshold amount. Based upon the information in a county's Annual Financial Information Report, the Department must notify the Department of Revenue by March 1 of each year which counties may not receive a distribution of the white goods disposal tax for the current calendar year. The Department of Revenue will credit the undistributed tax proceeds to the General Fund.

If the undesignated balance in a county's white goods account subsequently falls below the threshold amount, the county may submit a statement to the Department, certified by the county finance officer, that the undesignated balance in its white goods account is less than the threshold amount. Upon receipt of the statement, the Department will notify the Department of Revenue to distribute to the county its quarterly distribution of the white goods disposal tax proceeds. The Department must notify the Department of Revenue of the county's change of status at least 30 days prior to the next quarterly distribution.

For the purposes of this subsection, the term "threshold amount" means twenty-five percent (25%) of the amount of white goods disposal tax proceeds a county received, or would have received if it had been eligible to receive them under G.S. 130A-309.87, during the preceding fiscal year.

(b) Annual Financial Information Report. – On or before November 1 of each year, a county must submit a copy of its Annual Financial Information Report, prepared in accordance with G.S. 159-33.1, to the Department. The Secretary of the Local Government Commission must require the following information in that report:

(1) The tonnage of white goods scrap metal collected.
(2) The amount of revenue credited to its white goods account. This revenue should include all receipts derived from the white goods disposal tax, and the sale of white goods scrap metals and freon.
(3) The expenditures from its white goods account. The expenditures should include operating expenses and capital improvement costs associated with its white goods management program.
(4) The designated and undesignated balance of its white goods account.
(5) A comparison of the undesignated balance of its white goods account at the end of the fiscal year and the amount of white goods disposal tax proceeds it received, or would have received if it had been eligible to receive it under G.S. 130A-309.87, during the fiscal year. (1998-24, s. 6; 2013-360, s. 14.17(c), (g).)

§ 130A-309.88: Reserved for future codification purposes.

§ 130A-309.89: Reserved for future codification purposes.

§ 130A-309.90: Repealed by Session Laws 2010-67, s. 1, effective July 1, 2010.

§ 130A-309.91: Repealed by Session Laws 2010-67, s. 1, effective July 1, 2010.

§ 130A-309.92: Repealed by Session Laws 2010-67, s. 1, effective July 1, 2010.

§ 130A-309.93: Repealed by Session Laws 2010-67, s. 1, effective July 1, 2010.

§ 130A-309.93A: Repealed by Session Laws 2010-67, s. 1, effective July 1, 2010.

§ 130A-309B.93: Repealed by Session Laws 2010-67, s. 1, effective July 1, 2010

§ 130A-309.94: Repealed by Session Laws 2010-67, s. 1, effective July 1, 2010.

§ 130A-309.95: Repealed by Session Laws 2010-67, s. 1, effective July 1, 2010.

§ 130A-309.96: Repealed by Session Laws 2010-67, s. 1, effective July 1, 2010.

§ 130A-309.97: Repealed by Session Laws 2010-67, s. 1, effective July 1, 2010.

§ 130A-309.98: Repealed by Session Laws 2010-67, s. 1, effective July 1, 2010.

§ 130A-309.99: Repealed by Session Laws 2010-67, s. 1, effective July 1, 2010.

Part 2F. Management of Abandoned Manufactured Homes.

§ 130A-309.111. (Expires October 1, 2023) Purpose.

The purpose of this Part is to provide units of local government with the authority, funding, and guidance needed to provide for the efficient and proper identification, deconstruction, recycling, and disposal of abandoned manufactured homes in this State. (2008-136, s. 1.)

§ 130A-309.112. (Expires October 1, 2023) Definitions.

The following definitions apply to this Part:

(1) "Abandoned manufactured home" means a manufactured home or mobile classroom that is both:
   a. Vacant or in need of extensive repair.
   b. An unreasonable danger to public health, safety, welfare, or the environment.

(2) "Intact" when used in connection with "abandoned manufactured home" means an abandoned manufactured home from which the wheels and axles, white goods, and recyclable materials have not been removed.

(3) "Manufactured home" is defined in G.S. 105-164.3.

(4) "Responsible party" means any person or entity that possesses an ownership interest in an abandoned manufactured home. (2008-136, s. 1.)

§ 130A-309.113. (Expires October 1, 2023) Management of abandoned manufactured homes.

(a) Plan. – Each county shall consider whether to implement a program for the management of abandoned manufactured homes. If at any time the county decides to implement a program, the county shall develop a written plan for the management of abandoned manufactured homes. This plan shall be included in the annual report required under G.S. 130A-309.09A. At a minimum, the plan shall include:

(1) A method by which the county proposes to identify abandoned manufactured homes in the county, including, without limitation, a process by which manufactured home owners or other responsible parties may request designation of their home as an abandoned manufactured home.

(2) A plan for the deconstruction of these abandoned manufactured homes.

(3) A plan for the removal of the deconstructed components, including mercury switches from thermostats, for reuse or recycling, as appropriate.

(4) A plan for the proper disposal of abandoned manufactured homes that are not deconstructed under subdivision (2) of this subsection.

(b) Authority to Contract. – A county may contract with another unit of local government or a private entity in accordance with Article 15 of Chapter 153A of the General Statutes to provide for the management of abandoned manufactured homes within the county and the implementation of its plan under subsection (a) of this section.

(c) Fee Authority. – A unit of local government or a party that contracted with the county under subsection (b) of this section may charge a disposal fee for the disposal of any abandoned manufactured home at a landfill pursuant to this Part.

(d) An intact abandoned manufactured home shall not be disposed of in a landfill. (2008-136, s. 1; 2013-409, s. 6.)

§ 130A-309.114. (Expires October 1, 2023) Process for the disposal of abandoned manufactured homes.

(a) If a county adopts and implements a plan for the management of abandoned manufactured homes pursuant to this Part, the county shall notify the responsible party and the owner of the property on whose land the abandoned manufactured home is located for each identified abandoned manufactured home in the county that the abandoned manufactured home must be properly disposed of by the responsible party within 90 days. The notice shall be in writing and shall be served on the person as provided by Rule 4(j) of the Rules of Civil Procedure, G.S. 1A-1. The notice shall disclose the basis for the action and advise that a hearing will be held before a designated public officer at a place within the county in which the manufactured home is located not less than 10 days nor more than 30 days after the serving of the notice; that the responsible party shall be given the right to file an answer to the order and to appear in person, or otherwise, and give testimony at the place and time fixed in the notice; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(b) If, after notice and hearing, the public officer determines that the manufactured home under consideration is abandoned, the officer shall state in writing the officer's findings of fact in support of that determination, and the county shall order the responsible party to dispose of the abandoned manufactured home within 90 days of the expiration of this period. If the responsible party fails to comply with this order, the county shall take

any action it deems reasonably necessary to dispose of the abandoned manufactured home, including entering the property where the abandoned manufactured home is located and arranging to have the abandoned manufactured home deconstructed and disposed of in a manner consistent with the plan developed under G.S. 130A-309.113(a). If the responsible party is not the owner of the property on which the abandoned manufactured home is located, the county may order the property owner to permit entry onto the owner's property by an appropriate party to permit the removal and proper disposal of the abandoned manufactured home.

(c) When a county removes, deconstructs, and disposes of an abandoned manufactured home pursuant to this section, whether directly or through a party that contracted with the county, the responsible party shall be liable for the actual costs incurred by the county, directly or indirectly, for its abatement activities and its administrative and legal expenses incurred, less the amount of grants for reimbursement received by the county under G.S. 130A-309.115 for the disposal activities for that manufactured home. The county may initiate a civil action to recover these unpaid costs from the responsible party. Nonpayment of any portion of the actual costs incurred by the county shall result in the imposition of a lien on any real property in the county owned by the responsible party.

(d) This section does not apply to any of the following:

(1) A retail business premises where manufactured homes are sold.

(2) A solid waste disposal facility where no more than 10 manufactured homes are stored at one time if all of the manufactured homes received for storage are deconstructed or removed from the facility within one year after receipt.

(e) This section does not change the existing authority of a county or a municipality to enforce any existing laws or of any person to abate a nuisance. (2008-136, s. 1.)

§ 130A-309.115. (Expires October 1, 2023) Grants to local governments.

(a) The Department shall use funds from the Solid Waste Trust Fund established by G.S. 130A-309.12 to:

(1) Provide grants to counties to reimburse their expenses for activities under this Part.

(2) Provide technical assistance and support to counties to achieve the purposes of this Part.

(3) Implement this Part, including costs associated with staffing, training, submitting reports, and fulfilling program goals.

(b) Each county that requests a reimbursement grant from the Department shall also submit to the Department a proposed budget specifying in detail the expenses it expects to incur in a specified time period in connection with the activities under this Part. The Department shall review each submitted budget and make modifications, if necessary, in light of the availability of funds, the county's capacity to effectively and efficiently manage the abatement of abandoned manufactured homes, and any other factors that the Department reasonably determines are relevant. When the Department and a county agree on the amount of the county's budget under this subsection, the Department and the county shall execute an agreement that reflects this amount and that specifies the time period covered by the agreement, and the Department shall reserve funds for the county in the

amount necessary to reimburse allowable costs. The amount of a reimbursement grant shall be calculated in accordance with subsections (c) and (d) of this section. A county shall not receive a reimbursement grant unless it has filed all the annual reports it is required to submit under G.S. 130A-309.117.

(c) Reimbursement grants shall be made in accordance with the terms of the grant agreement developed pursuant to subsection (b) of this section, but in any event, all reimbursements shall be calculated on a per-unit basis and based on the actual cost of such activities, not to exceed one thousand dollars ($1,000) for each unit. For a county designated as a development tier one or two area pursuant to G.S. 143B-437.08 where the costs associated with the disposition of an abandoned manufactured home in a manner consistent with this Part exceed one thousand dollars ($1,000) per unit, a county may request a supplemental grant in an amount equal to fifty percent (50%) of the amount in excess of one thousand dollars ($1,000). The Department shall consider the efficiency and effectiveness of the county program in making the supplemental grant, and the county participation must be a cash match.

(d) A county shall use reimbursement grant funds only for operating expenses that are directly related to the management of abandoned manufactured homes. If an operating expense is partially related to the management of abandoned manufactured homes, a county may use the reimbursement grant funds to finance the percentage of the cost that equals the percentage of the expense that is directly related to the management of abandoned manufactured homes. (2008-136, s. 1.)

§ 130A-309.116. (Expires October 1, 2023) Authority to adopt ordinances.

A county, or a unit of local government that is delegated authority to do so by the county, may adopt ordinances it deems necessary in order to implement this Part. (2008-136, s. 1.)

§ 130A-309.117. (Expires October 1, 2023) Reporting on the management of abandoned manufactured homes.

(a) On or before 1 August of each year, any county that receives a reimbursement grant under G.S. 130A-309.115 shall submit a report to the Department that includes all of the following information:

(1) The number of units and approximate tonnage of abandoned manufactured homes removed, deconstructed, recycled, and disposed of during the previous fiscal year.

(2) A detailed statement of the county's abandoned manufactured homes account receipts and disbursements during the previous fiscal year that sets out the source of all receipts and the purpose of all disbursements.

(3) The obligated and unobligated balances in the county's abandoned manufactured homes account at the end of the fiscal year.

(4) An assessment of the county's progress in removing, deconstructing, recycling, and disposing of abandoned manufactured homes consistent with this Part.

(b) The Department shall include in its annual report to the Environmental Review Commission under G.S. 130A-309.06(c) a description of the management of abandoned

manufactured homes in the State for the fiscal year ending the preceding 30 June. The description of the management of abandoned manufactured homes shall include all of the following information:

(1) The cost to each county of managing its abandoned manufactured home program during the reporting period.
(2) The beginning and ending balances of the Solid Waste Management Trust Fund for the reporting period and a list of grants made from the Fund for the period, itemized by county.
(3) A summary of the information contained in the reports submitted by counties pursuant to subsection (a) of this section.
(4) Any other information the Department considers helpful in understanding the problem of managing abandoned manufactured homes in the State. (2008-136, s. 1.)

§ 130A-309.118. (Expires October 1, 2023) Effect on local ordinances.

This Part shall not be construed to limit the authority of counties under Article 18 of Chapter 153A of the General Statutes or the authority of cities under Article 19 of Chapter 160A of the General Statutes. (2008-136, s. 1.)

§ 130A-309.119: Reserved for future codification purposes.

Part 2G. Plastic Bag Management.

§§ 130A-309.120 through 130A-309.125: Repealed by Session Laws 2017-209, s. 19(a), effective September 1, 2017.

Part 2H. Discarded Computer Equipment and Television Management.

§ 130A-309.130. Findings.

The General Assembly makes the following findings:

(1) The computer equipment and television waste stream is growing rapidly in volume and complexity and can introduce toxic materials into solid waste landfills.
(2) It is in the best interest of the citizens of this State to have convenient, simple, and free access to recycling services for discarded computer equipment and televisions.
(3) Collection programs operated by manufacturers and local government and nonprofit agencies are an efficient way to divert discarded computer equipment and televisions from disposal and to provide recycling services to all citizens of this State.
(4) The development of local and nonprofit collection programs is hindered by the high costs of recycling and transporting discarded computer equipment and televisions.
(5) No comprehensive system currently exists, provided either by electronics manufacturers, retailers, or others, to adequately serve all citizens of the State

and to divert large quantities of discarded computer equipment and televisions from disposal.

(6) Manufacturer responsibility is an effective way to ensure that manufacturers of computer equipment and televisions take part in a solution to the electronic waste problem.

(7) The recycling of certain discarded computer equipment and televisions recovers valuable materials for reuse and will create jobs and expand the tax base of the State.

(8) While some computers and computer monitors can be refurbished and reused and other consumer electronics products contain valuable materials, some older and bulkier consumer electronic products, including some televisions, may not contain any valuable products but should nevertheless be recycled to prevent the release of toxic substances to the environment.

(9) For the products covered by this Part, differences in product life expectancy, market economics, residual value, and product portability necessitate different approaches to recycling.

(10) In order to ensure that end-of-life computer equipment and televisions are responsibly recycled, to promote conservation, and to protect public health and the environment, a comprehensive and convenient system for recycling and reuse of certain electronic equipment should be established on the basis of shared responsibility among manufacturers, retailers, consumers, and the State. (2010-67, s. 2(a).)

§ 130A-309.131. Definitions.

As used in this Part, the following definitions apply:

(1) Business entity. – Defined in G.S. 55-1-40(2a).

(1a) Computer. – An electronic, magnetic, optical, electrochemical, or other high-speed data processing device that has all of the following features:

a. Performs logical, arithmetic, and storage functions for general purpose needs that are met through interaction with a number of software programs contained in the computer.

b. Is not designed to exclusively perform a specific type of limited or specialized application.

c. Achieves human interface through a keyboard, display unit, and mouse or other pointing device.

d. Is designed for a single user.

(2) Computer equipment. – Any computer, monitor or video display unit for a computer system, and the peripheral equipment except keyboards and mice, and a printing device such as a printer, a scanner, a combination print-scanner-fax machine, or other device designed to produce hard paper copies from a computer. Computer equipment does not include an automated typewriter, professional workstation, server, ICI device, ICI system, mobile telephone, portable handheld calculator, portable digital assistant (PDA), MP3 player, or other similar device; an automobile; a television; a household appliance; a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat

panel display, or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or other medical devices as that term is defined under the federal Food, Drug, and Cosmetic Act.

(3) Computer equipment manufacturer. – A person that manufactures or has manufactured computer equipment sold under its own brand or label; sells or has sold under its own brand or label computer equipment produced by other suppliers; imports or has imported into the United States computer equipment that was manufactured outside of the United States; or owns or has owned a brand that it licenses or has licensed to another person for use on computer equipment. Computer equipment manufacturer includes a business entity that acquires another business entity that manufactures or has manufactured computer equipment. Computer equipment manufacturer does not include any existing person that does not and has not manufactured computer equipment of the type that would be used by consumers.

(4) Consumer. – Any of the following:

a. An occupant of a single detached dwelling unit or a single unit contained within a multiple dwelling unit who used a covered device primarily for personal or home business use.

b. A nonprofit organization with fewer than 10 employees that used a covered device in its operations.

(5) Covered device. – Computer equipment and televisions used by consumers primarily for personal or home business use. The term does not include a device that is any of the following:

a. Part of a motor vehicle or any component of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

b. Physically a part of or integrated within a larger piece of equipment designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting.

c. Equipment used for diagnostic, monitoring, or other medical products as that term is defined under the federal Food, Drug, and Cosmetic Act.

d. Equipment used for security, sensing, monitoring, antiterrorism purposes, or emergency services purposes.

e. Contained within a household appliance, including, but not limited to, a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, air purifier, or exercise equipment.

(6) Recodified to subdivision (1a).

(7) Discarded computer equipment. – Computer equipment that is solid waste generated by a consumer.

(8) Discarded computer equipment or television collector. – A municipal or county government, nonprofit agency, recycler, or retailer that knowingly accepts for recycling discarded computer equipment or a television from a consumer.

(9) Discarded television. – A television that is solid waste generated by a consumer.

(9a) Electronic device. – Machinery that is powered by a battery or an electrical cord.

(10) Market share. – A television manufacturer's obligation to recycle discarded televisions. A television manufacturer's market share is the television manufacturer's prior year's sales of televisions as calculated by the Department pursuant to G.S. 130A-309.138(4) divided by all manufacturers' prior year's sales for all televisions as calculated by the Department pursuant to G.S. 130A-309.138(4). Market share may be expressed as a percentage, a fraction, or a decimal fraction.

(11) Repealed by Session Laws 2015-1, s. 2(d), effective March 16, 2015.

(12) Recover. – The process of reusing or recycling covered devices.

(13) Recycle. – The processing, including disassembling, dismantling, and shredding, of covered devices or their components to recover a usable product. Recycle does not include any process that results in the incineration of a covered device.

(14) Recycler. – A person that recycles covered devices.

(15) Retailer. – A person that sells computer equipment or televisions in the State to a consumer. Retailer includes a computer equipment manufacturer or a television manufacturer that sells directly to a consumer through any means, including transactions conducted through sales outlets, catalogs, the Internet, or any similar electronic means, but does not include a person that sells computer equipment or televisions to a distributor or retailer through a wholesale transaction.

(16) Television. – Any electronic device that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying of television or video programming via broadcast, cable, or satellite, including, without limitation, any direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube (CRT), plasma, liquid crystal display (LCD), digital light processing (DLP), liquid crystal on silicon (LCOS), silicon crystal reflective display (SXRD), light emitting diode (LED), or similar technology marketed and intended for use by a consumer primarily for personal purposes. The term does not include computer equipment.

(17) Television manufacturer. – A person that: (i) manufactures for sale in this State a television under a brand that it licenses or owns; (ii) manufactures for sale in this State a television without affixing a brand; (iii) resells into this State a television under a brand it owns or licenses produced by other suppliers, including retail establishments that sell a television under a brand that the retailer owns or licenses; (iv) imports into the United States or exports from the United States a television for sale in this State; (v) sells at retail a television acquired from an importer that is the manufacturer as described in sub-subdivision (iv) of this subdivision, and the retailer elects to register in lieu of the importer as the manufacturer of those products; (vi) manufactures a television for or supplies a television to any person within a distribution network that includes wholesalers or retailers in this State and that benefits from the sale in this State of the television through the distribution network; or (vii) assumes the responsibilities and obligations of a television manufacturer under this Part. In the event the television manufacturer is one that manufactures, sells,

or resells under a brand it licenses, the licensor or brand owner of the brand shall not be considered to be a television manufacturer under (i) or (iii) of this subdivision. (2010-67, s. 2(a); 2010-180, s. 20; 2015-1, s. 2(d).)

§ 130A-309.132. Responsibility for recycling discarded computer equipment and televisions.

In addition to the specific requirements of this Part, discarded computer equipment and television collectors and computer equipment manufacturers and television manufacturers share responsibility for the recycling of discarded computer equipment and televisions and the education of citizens of the State as to recycling opportunities for discarded computer equipment and televisions. (2010-67, s. 2(a).)

§ 130A-309.133. Data security.

Computer equipment manufacturers, television manufacturers, discarded computer equipment and television collectors, recyclers, and retailers shall not be liable in any way for data or other information left on a covered device that is collected or recovered pursuant to the provisions of this Part. (2010-67, s. 2(a).)

§ 130A-309.134. Requirements for computer equipment manufacturers.

(a) Registration Required. – Each computer equipment manufacturer, before selling or offering for sale computer equipment in North Carolina, shall register with the Department.

(b) Manufacturer Label Required. – A computer equipment manufacturer shall not sell or offer to sell computer equipment in this State unless a visible, permanent label clearly identifying the manufacturer of that equipment is affixed to the equipment.

(c) Computer Equipment Recycling Plan Required. – Each computer equipment manufacturer shall develop, submit to the Department, and implement one of the following plans to provide a free and reasonably convenient recycling program to take responsibility for computer equipment discarded by consumers:

(1) Level I recycling plan. – A computer equipment manufacturer shall submit a recycling plan for reuse or recycling of computer equipment discarded by consumers in the State produced by the manufacturer. The manufacturer shall submit a proposed plan to the Department within 90 days of registration as required by subsection (a) of this section. The plan shall:

a. Provide that the manufacturer will take responsibility for computer equipment discarded by consumers that it manufactured.

b. Describe any direct take-back program to be implemented by the manufacturer. Collection methods that are deemed to meet the requirements of this subdivision include one or more of the following:

1. A process offered by the computer equipment manufacturer or the manufacturer's designee for consumers to return discarded computer equipment by mail.

2. A physical collection site operated and maintained by the computer equipment manufacturer or the manufacturer's

designee to receive discarded computer equipment from consumers, which is available to consumers during normal business hours.

3. A collection event hosted by the computer equipment manufacturer or the manufacturer's designee at which a consumer may return computer equipment.

c. Include a detailed description as to how the manufacturer will implement the plan.

d. Provide for environmentally sound management practices to transport and recycle discarded computer equipment.

e. Include a consumer recycling education program on the laws governing the recycling and reuse of discarded computer equipment under this Part and on the methods available to consumers to comply with those requirements. The manufacturer shall operate a toll-free telephone number to answer questions from consumers about computer recycling options.

(2) Level II recycling plan. – A computer equipment manufacturer shall submit a recycling plan for reuse or recycling of computer equipment discarded by consumers in the State produced by the manufacturer and by other manufacturers. The manufacturer shall submit a proposed plan to the Department within 90 days of registration as required by subsection (a) of this section. The plan may offer additional options to collect other types of electronic equipment that do not constitute discarded computer equipment, as that term is defined under G.S. 130A-309.131, and may allow for assessment of a nominal fee for collection of these other types of electronic equipment that are not discarded computer equipment. The plan shall include all of the elements set forth in subdivision (1) of subsection (c) of this section. In addition the plan shall:

a. Provide that the manufacturer will take responsibility for computer equipment discarded by consumers that was manufactured by other manufacturers, as well as computer equipment that it manufactured.

b. Provide that the manufacturer shall: (i) maintain physical collection sites to receive discarded computer equipment from consumers in the 10 most populated municipalities in the State. The physical collection sites shall be available to consumers during normal business hours, at a minimum; and (ii) host at least two collection events annually within the State.

(3) Level III recycling plan. – A computer equipment manufacturer shall submit a recycling plan for reuse or recycling of computer equipment discarded by consumers in the State produced by the manufacturer and by other manufacturers. The manufacturer shall submit a proposed plan to the Department within 90 days of registration as required by subsection (a) of this section. The plan may offer additional options to collect other types of electronic equipment that do not constitute discarded computer equipment, as that term is defined under G.S. 130A-309.131, and may allow for assessment of a nominal fee for collection of these other types of electronic equipment that

are not discarded computer equipment. The plan shall include all of the elements set forth in subdivision (1) of subsection (c) of this section. In addition the plan shall:

a. Provide that the manufacturer will take responsibility for computer equipment discarded by consumers that was manufactured by other manufacturers, as well as computer equipment that it manufactured.

b. Provide that the manufacturer shall: (i) maintain physical collection sites to receive discarded computer equipment from consumers in 50 of the State's counties, of which 10 of those counties shall be the most populated counties in the State. The physical collection sites shall be available to consumers during normal business hours, at a minimum; and (ii) host at least two collection events annually within the State.

(d) Fee Required. – Within 90 days of registration as required in subsection (a) of this section, a computer equipment manufacturer shall pay an initial registration fee to the Department. A computer equipment manufacturer that has registered shall pay an annual renewal registration fee to the Department, which shall be paid each year no later than July 1. The proceeds of these fees shall be credited to the Electronics Management Fund established pursuant to G.S. 130A-309.137. A computer equipment manufacturer that sells 1,000 items of computer equipment or fewer per year is exempt from the requirement to pay the registration fee and the annual renewal fee imposed by this subsection. The amount of the fee a computer equipment manufacturer shall pay shall be determined on the basis of the plan the manufacturer develops, submits, and implements pursuant to subsection (c) of this section, as follows:

(1) A computer equipment manufacturer who develops, submits, and implements a Level I recycling plan pursuant to subdivision (1) of subsection (c) of this section shall pay an initial registration fee of fifteen thousand dollars ($15,000) and an annual renewal fee of fifteen thousand dollars ($15,000) to the Department.

(2) A computer equipment manufacturer who develops, submits, and implements a Level II recycling plan pursuant to subdivision (2) of subsection (c) of this section shall pay an initial registration fee of ten thousand dollars ($10,000) and an annual renewal fee of seven thousand five hundred dollars ($7,500) to the Department.

(3) A computer equipment manufacturer who develops, submits, and implements a Level III recycling plan pursuant to subdivision (3) of subsection (c) of this section shall pay an initial registration fee of ten thousand dollars ($10,000) and an annual renewal fee of two thousand five hundred dollars ($2,500) to the Department.

(e) Computer Equipment Recycling Plan Revision. – A computer equipment manufacturer may prepare a revised plan and submit it to the Department at any time as the manufacturer considers appropriate in response to changed circumstances or needs. The Department may require a manufacturer to revise or update a plan if the Department finds that the plan is inadequate or out of date.

(f) Payment of Costs for Plan Implementation. – Each computer equipment manufacturer is responsible for all costs associated with the development and

implementation of its plan. A computer equipment manufacturer shall not collect a fee from a consumer or a local government for the management of discarded computer equipment at the time the equipment is delivered for recycling.

(g) Joint Computer Equipment Recycling Plans. – A computer equipment manufacturer may fulfill the requirements of subsection (c) of this section by participation in a joint recycling plan with other manufacturers. A joint plan shall meet the requirements of subsection (c) of this section.

(h) Annual Report. – Each computer equipment manufacturer shall submit a report to the Department by October 1 of each year stating the total weight of all computer equipment collected for recycling or reuse in the previous fiscal year. The report shall also include a summary of actions taken to comply with the requirements of subsection (c) of this section. (2010-67, s. 2(a).)

§ 130A-309.135. Requirements for television manufacturers.

(a) Registration and Fee Required. – Each television manufacturer, before selling or offering for sale televisions in the State, shall register with the Department and, at the time of registration, shall pay an initial registration fee of two thousand five hundred dollars ($2,500) to the Department. An initial registration shall be valid from the day of registration through the last day of the fiscal year in which the registration fee was paid. A television manufacturer that has registered shall pay an annual renewal registration fee of two thousand five hundred dollars ($2,500) to the Department. The annual renewal registration fee shall be paid to the Department each fiscal year no later than June 30 of the previous fiscal year. The proceeds of these fees shall be credited to the Electronics Management Fund. A television manufacturer that sells 1,000 televisions or fewer per year is exempt from the requirement to pay the registration fee and the annual renewal fee imposed by this subsection.

(b) Manufacturer Label Required. – A television manufacturer shall not sell or offer to sell any television in this State unless a visible, permanent label clearly identifying the manufacturer of that device is affixed to the equipment.

(c) Recycling of Market Share Required. – The obligation to recycle televisions shall be allocated to each television manufacturer based on the television manufacturer's market share. A television manufacturer must annually recycle or arrange for the recycling of its market share of televisions pursuant to this section.

(d) Due Diligence and Compliance Assessments. – A television manufacturer shall conduct and document due diligence assessments of the recyclers the manufacturer contracts with, including an assessment of compliance with environmentally sound recovery standards adopted by the Department.

(e) Contact Information Required. – A television manufacturer shall provide the Department with contact information for the manufacturer's designated agent or employee whom the Department may contact for information related to the manufacturer's compliance with the requirements of this section.

(f) Joint Television Recycling Plans. – A television manufacturer may fulfill the requirements of this section either individually or in participation with other television manufacturers.

(g) Annual Report. – A television manufacturer shall report to the Department by October 1 of each year the total weight of televisions the manufacturer collected and recycled in the State during the previous fiscal year. (2010-67, s. 2(a).)

§ 130A-309.136. Requirements applicable to retailers.

(a) A manufacturer must not sell or offer for sale or deliver to retailers for subsequent sale new computer equipment or televisions unless: (i) the covered device is labeled with the manufacturer's brand, which label is permanently affixed and readily visible; and (ii) the manufacturer has filed a registration with the Department and is otherwise in compliance with the requirements of this Part, as indicated on the list developed and maintained by the Department pursuant to G.S. 130A-309.138(1).

(b) A retailer that sells or offers for sale new computer equipment or televisions must: (i) determine that all new covered devices that the retailer is offering for sale are labeled with the manufacturer's brand, which label is permanently affixed and readily visible; and (ii) review the Department's Web site to confirm that the manufacturer of a new covered device is on the list developed and maintained by the Department pursuant to G.S. 130A-309.138(1).

(c) A retailer is not responsible for an unlawful sale under this section if the manufacturer's registration expired or was revoked and the retailer took possession of the covered device prior to the expiration or revocation of the manufacturer's registration and the unlawful sale occurred within six months after the expiration or revocation. (2010-67, s. 2(a).)

§ 130A-309.137. Electronics Management Fund.

(a) Creation. – The Electronics Management Fund is created as a special fund within the Department. The Fund consists of revenue credited to the Fund from the proceeds of the fee imposed on computer equipment manufacturers under G.S. 130A-309.134 and television manufacturers under G.S. 130A-309.135.

(b) Use and Distribution. – Moneys in the Fund shall be used by the Department to implement the provisions of this Part concerning discarded computer equipment and televisions. The Department may use all of the proceeds of the fee imposed on television manufacturers pursuant to G.S. 130A-309.135 and may use up to ten percent (10%) of the proceeds of the fee imposed on computer equipment manufacturers under G.S. 130A-309.134 for administration of the requirements of this Part. Funds remaining shall be distributed annually by the Department to eligible local governments pursuant to this section. The Department shall distribute such funds on or before February 15 of each year. Funds shall be distributed on a pro rata basis.

(c) Eligibility. – Except as provided in subsection (d) of this section, no more than one unit of local government per county, including the county itself, may receive funding pursuant to this section for a program to manage discarded computer equipment,

televisions, and other electronic devices. A unit of local government shall submit a plan to include:

(1) Information on existing programs within the jurisdiction to recycle or reuse discarded computer equipment, televisions, and other electronic devices, or information on a plan to begin such a program on a date certain. This information shall include a description of the implemented or planned practices for collection of the equipment and a description of the types of equipment to be collected and how the equipment will be marketed for recycling.

(2) Information on a public awareness and education program concerning the recycling and reuse of discarded computer equipment, televisions, and other electronic devices.

(3) Information on methods to track and report total tonnage of computer equipment, televisions, and other electronic devices collected and recycled in the jurisdiction.

(4) Information on interactions with other units of local government to provide or receive services concerning disposal of discarded computer equipment, televisions, and other electronic devices.

(5) Information on how the unit of local government will account for the expenditure of funds received pursuant to this section.

(6) Proof of contract or agreement with a recycler that is certified as adhering to Responsible Recycling ("R2") practices or that is certified as an e-Steward recycler adhering to the e-Stewards Standard for Responsible Recycling and Reuse of Electronic Equipment® to process the discarded computer equipment, televisions, and other electronic devices that the unit of local government collects.

(c1) Submittal of Information for Distribution of Funding. – Documentation meeting the requirements of subdivision (6) of subsection (c) of this section, and other information required by subsection (c) of this section, including new plans or revisions to plans as necessary, must be submitted annually on or before December 31 in order to be eligible for funding during the next distribution by the Department.

(d) Local Government Designation. – If more than one unit of local government in a county, including the county itself, requests funding pursuant to this section, the units of local government in question may enter into interlocal agreements for provision of services concerning disposal of discarded computer equipment and televisions, and distribution of funds received pursuant to this section among the parties to the agreement. If the units of local government do not enter into an interlocal agreement regarding funding under this section, the Department shall distribute funds to the eligible local governments based on the percentage of the county's population to be served under each eligible local government's program.

(e) Report. – Information regarding permanent recycling programs for discarded computer equipment and televisions for which funds are received pursuant to this section, and information on operative interlocal agreements executed in conjunction with funds received, if any, shall be included in the annual report required under G.S. 130A-309.09A. (2010-67, s. 2(a); 2013-409, s. 7.)

§ 130A-309.138. Responsibilities of the Department.

In addition to its other responsibilities under this Part, the Department shall:

(1) Develop and maintain a current list of manufacturers that are in compliance with the requirements of G.S. 130A-309.134 and G.S. 130A-309.135, post the list to the Department's Web site, and provide the current list to the Department of Information Technology each time that the list is updated.

(2) Develop and implement a public education program on the laws governing the recycling and reuse of discarded computer equipment and televisions under this Part and on the methods available to consumers to comply with those requirements. The Department shall make this information available on the Internet and shall provide technical assistance to manufacturers to meet the requirements of G.S. 130A-309.134(c)(1)e. The Department shall also provide technical assistance to units of local government on the establishment and operation of discarded computer equipment and television collection centers and in the development and implementation of local public education programs.

(3) Maintain the confidentiality of any information that is required to be submitted by a manufacturer under this Part that is designated as a trade secret, as defined in G.S. 66-152(3) and that is designated as confidential or as a trade secret under G.S. 132-1.2.

(4) The Department shall use national televisions sales data available from commercially available analytical sources to calculate the generation of discarded televisions and to determine each television manufacturer's recovery responsibilities for televisions based on the manufacturer's market share. The Department shall extrapolate data for the State from national data on the basis of the State's share of the national population. (2010-67, s. 2(a); 2015-241, s. 7A.4(l).)

§ 130A-309.139. Enforcement.

This Part may be enforced as provided by Part 2 of Article 1 of this Chapter. (2010-67, s. 2(a).)

§ 130A-309.140. Annual report by Department of recycling under this Part; periodic report by Environmental Review Commission of electronic recycling programs in other states.

(a) The Department shall include in the status of solid waste management report required to be submitted on or before January 15 of each year pursuant to G.S. 130A-309.06(c) a report on the recycling of discarded computer equipment and televisions in the State under this Part. The report must include an evaluation of the recycling rates in the State for discarded computer equipment and televisions, a discussion of compliance and enforcement related to the requirements of this Part, and any recommendations for any changes to the system of collection and recycling of discarded computer equipment, televisions, or other electronic devices.

(b) The Environmental Review Commission, with the assistance of the Department of Environmental Quality, shall monitor and review electronic recycling programs in other

states on an ongoing basis and shall report its findings and recommendations to the General Assembly periodically. (2010-67, ss. 2(a), 7; 2015-241, s. 14.30(u); 2017-10, s. 4.14(b).)

§ 130A-309.141. Local government authority not preempted.

Nothing in this Part shall be construed as limiting the authority of any local government to manage computer equipment and televisions that are solid waste. (2010-67, s. 2(a).)

§ 130A-309.142. Registration of facilities recovering or recycling electronics required.

Facilities that recover or recycle covered devices or other electronic devices diverted from the waste stream for transfer, treatment, or processing shall register annually with the Department on or before August 1 of each year upon such form as the Department may prescribe. (2015-1, s. 2(e).)

§ 130A-309.143: Reserved for future codification purposes.

§ 130A-309.144: Reserved for future codification purposes.

§ 130A-309.145: Reserved for future codification purposes.

§ 130A-309.146: Reserved for future codification purposes.

§ 130A-309.147: Reserved for future codification purposes.

§ 130A-309.148: Reserved for future codification purposes.

§ 130A-309.149: Reserved for future codification purposes.

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§ 130A-309.197: Reserved for future codification purposes.

§ 130A-309.198: Reserved for future codification purposes.

§ 130A-309.199: Reserved for future codification purposes.

Part 2I. Coal Ash Management.

Subpart 1. Short Title, Definitions, and General Provisions.

§ 130A-309.200. Title.

This Part may be cited as the "Coal Ash Management Act of 2014." (2014-122, s. 3(a).)

§ 130A-309.201. Definitions.

Unless a different meaning is required by the context, the definitions of G.S. 130A-290 and the following definitions apply throughout this Part:

(1) "Beneficial and beneficial use" means projects promoting public health and environmental protection, offering equivalent success relative to other alternatives, and preserving natural resources.

(2) "Boiler slag" means the molten bottom ash collected at the base of slag tap and cyclone type furnaces that is quenched with water. It is made up of hard, black, angular particles that have a smooth, glassy appearance.

(3) "Bottom ash" means the agglomerated, angular ash particles formed in pulverized coal furnaces that are too large to be carried in the flue gases and collect on the furnace walls or fall through open grates to an ash hopper at the bottom of the furnace.

(4) "Coal combustion products" it means fly ash, bottom ash, boiler slag, or flue gas desulfurization materials that are beneficially used, including use for structural fill.

(5) "Coal combustion residuals" has the same meaning as defined in G.S. 130A-290.

(6) "Coal combustion residuals surface impoundment" means a topographic depression, excavation, or diked area that is (i) primarily formed from earthen materials; (ii) without a base liner approved for use by Article 9 of Chapter 130A of the General Statutes or rules adopted thereunder for a combustion products landfill or coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill; and (iii) designed to hold accumulated coal combustion residuals in the form of liquid wastes, wastes containing free liquids, or sludges, and that is not backfilled or otherwise covered during periods of deposition. "Coal combustion residuals surface impoundment" shall only include impoundments owned by a public utility, as defined in G.S. 62-3. "Coal combustion residuals surface impoundment" includes all of the following:

a. An impoundment that is dry due to the deposited liquid having evaporated, volatilized, or leached.

b. An impoundment that is wet with exposed liquid.

c. Lagoons, ponds, aeration pits, settling ponds, tailings ponds, and sludge pits, when these structures are designed to hold accumulated coal combustion residuals.

d. A coal combustion residuals surface impoundment that has been covered with soil or other material after the final deposition of coal combustion residuals at the impoundment.

(7) Repealed by Session Laws 2016-95, s. 1, effective July 14, 2016.

(8) "Flue gas desulfurization material" means the material produced through a process used to reduce sulfur dioxide emissions from the exhaust gas system of a coal-fired boiler. The physical nature of these materials varies from a wet sludge to a dry powdered material, depending on the process, and their composition comprises either sulfites, sulfates, or a mixture thereof.

(9) "Fly ash" means the very fine, powdery material, composed mostly of silica with nearly all particles spherical in shape, which is a product of burning finely ground coal in a boiler to produce electricity and is removed from the plant exhaust gases by air emission control devices.

(10) "Minerals" means soil, clay, coal, phosphate, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.

(11) "Open pit mine" means an excavation made at the surface of the ground for the purpose of extracting minerals, inorganic and organic, from their natural deposits, which excavation is open to the surface.

(12) "Owner" or "owner of a coal combustion residuals surface impoundment" means a public utility, as defined in G.S. 62-3, that owns a coal combustion residuals surface impoundment.

(13) "Receptor" means any human, plant, animal, or structure which is, or has the potential to be, affected by the release or migration of contaminants. Any well constructed for the purpose of monitoring groundwater and contaminant concentrations shall not be considered a receptor.

(14) "Structural fill" means an engineered fill with a projected beneficial end use constructed using coal combustion products that are properly placed and compacted. For purposes of this Part, the term includes fill used to reclaim open pit mines and for embankments, greenscapes, foundations, construction foundations, and for bases or sub-bases under a structure or a footprint of a paved road, parking lot, sidewalk, walkway, or similar structure.

(15) "Use or reuse of coal combustion products" means the procedure whereby coal combustion products are directly used as either of the following:

a. As an ingredient in an industrial process to make a product, unless distinct components of the coal combustion products are recovered as separate end products.

b. In a function or application as an effective substitute for a commercial product or natural resource. (2014-122, s. 3(a); 2015-1, s. 3.1(a); 2016-95, s. 1.)

§ 130A-309.202: Repealed by Session Laws 2016-95, s. 1, effective July 14, 2016.

§ 130A-309.203. Expedited permit review.

(a) The Department shall act as expeditiously as practicable, but no later than the deadlines established under subsection (b) of this section, except in compliance with subsection (c) of this section, to issue all permits necessary to conduct activities required by this Part.

(b) Notwithstanding G.S. 130A-295.8(e), the Department shall determine whether an application for any permit necessary to conduct activities required by this Part is complete within 30 days after the Department receives the application for the permit. A determination of completeness means that the application includes all required components but does not mean that the required components provide all of the information that is required for the Department to make a decision on the application. If the Department

determines that an application is not complete, the Department shall notify the applicant of the components needed to complete the application. An applicant may submit additional information to the Department to cure the deficiencies in the application. The Department shall make a final determination as to whether the application is complete within the later of (i) 30 days after the Department receives the application for the permit less the number of days that the applicant uses to provide the additional information or (ii) 10 days after the Department receives the additional information from the applicant. The Department shall issue a draft permit decision on an application for a permit within 90 days after the Department determines that the application is complete. The Department shall hold a public hearing and accept written comment on the draft permit decision for a period of not less than 30 or more than 60 days after the Department issues a draft permit decision. The Department shall issue a final permit decision on an application for a permit within 60 days after the comment period on the draft permit decision closes. If the Department fails to act within any time period set out in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided in Chapter 150B of the General Statutes.

(c) If the Department finds that compliance with the deadlines established under subsection (b) of this section would result in insufficient review of a permit application that would pose a risk to public health, safety, and welfare; the environment; or natural resources, the applicable deadline shall be waived for the application as necessary to allow for adequate review. If a deadline is waived pursuant to this subsection, the Secretary shall issue a written declaration, including findings of fact, documenting the need for the waiver.

(d) Notwithstanding any other provision of this section or any other provision of law, the Department shall either issue or deny a permit required for dewatering of a retired impoundment within 90 days of receipt of a completed application, in such a form and including such information as the Department may prescribe, for the dewatering activities. The Department shall accept written comment on a draft permit decision for a period of not less than 30 days or more than 60 days prior to issuance or denial of such a permit. If the Department fails to act within any time period set out in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided in Chapter 150B of the General Statutes. (2014-122, s. 3(a).)

§ 130A-309.204. Reports.

(a) The Department shall submit quarterly written reports to the Environmental Review Commission on its operations, activities, programs, and progress with respect to its obligations under this Part concerning all coal combustion residuals surface impoundments. At a minimum, the report shall include information concerning the status of assessment, corrective action, prioritization, and closure for each coal combustion residuals surface impoundment and information on costs connected therewith. The report shall include an executive summary of each annual Groundwater Protection and Restoration Report submitted to the Department by the operator of any coal combustion residuals surface impoundments pursuant to G.S. 130A-309.211(d) and a summary of all groundwater sampling, protection, and restoration activities related to the impoundment

for the preceding year. The report shall also include an executive summary of each annual Surface Water Protection and Restoration Report submitted to the Department by the operator of any coal combustion residuals surface impoundments pursuant to G.S. 130A-309.212(e) and a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State. The Department shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission. The Department shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

(b) On or before October 1 of each year, the Department shall report to each member of the General Assembly who has a coal combustion residuals surface impoundment in the member's district. This report shall include the location of each impoundment in the member's district, the amount of coal combustion residuals known or believed to be located in the impoundment, the last action taken at the impoundment, and the date of that last action.

(c) On or before October 1 of each year, a public utility generating coal combustion residuals and coal combustion products shall submit an annual summary to the Department. The annual summary shall be for the period of July 1 through June 30 and shall include all of the following:

(1) The volume of coal combustion residuals and products produced.
(2) The volume of coal combustion residuals disposed.
(3) The volume of coal combustion products used in structural fill projects.
(4) The volume of coal combustion products beneficially used, other than for structural fill. (2014-122, s. 3(a); 2016-95, s. 1.)

§ 130A-309.205. Local ordinances regulating management of coal combustion residuals and coal combustion products invalid; petition to preempt local ordinance.

(a) It is the intent of the General Assembly to maintain a uniform system for the management of coal combustion residuals and coal combustion products, including matters of disposal and beneficial use, and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of coal combustion residuals and coal combustion products by means of ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, including those imposing taxes, fees, or charges or regulating health, environment, or land use, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that regulate or have the effect of regulating the management of coal combustion residuals and coal combustion products, including regulation of carbon burn-out plants, within the jurisdiction of a local government are

invalidated and unenforceable, to the extent necessary to effectuate the purposes of this Part, that do the following:

(1) Place any restriction or condition not placed by this Part upon management of coal combustion residuals or coal combustion products within any county, city, or other political subdivision.

(2) Conflict or are in any manner inconsistent with the provisions of this Part.

(a1) As used in this section, "Commission" means the Environmental Management Commission.

(b) If a local zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, and coal combustion residuals and coal combustion products would be regulated under the ordinance of general applicability, the operator of the proposed activities may petition the Environmental Management Commission to review the matter. After receipt of a petition, the Commission shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the management of coal combustion residuals and coal combustion products.

(c) When a petition described in subsection (b) of this section has been filed with the Environmental Management Commission, the Commission shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within 60 days after receipt of the petition by the Commission. The Commission shall give notice of the public hearing by both of the following means:

(1) Publication in a newspaper or newspapers having general circulation in the county or counties where the activities are to be conducted, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing.

(2) First-class mail to persons who have requested notice. The Commission shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Notice by mail shall be complete upon deposit of a copy of the notice in a postage-paid wrapper addressed to the person to be notified at the address that appears on the mailing list maintained by the Commission in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(d) Any interested person may appear before the Environmental Management Commission at the hearing to offer testimony. In addition to testimony before the Commission, any interested person may submit written evidence to the Commission for the Commission's consideration. At least 20 days shall be allowed for receipt of written comment following the hearing.

(e) A local zoning or land-use ordinance is presumed to be valid and enforceable to the extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, unless the Environmental Management Commission makes a finding of fact to the contrary. The Commission shall determine whether or to what extent to preempt local ordinances so as to allow the project involving

management of coal combustion residuals and coal combustion products no later than 60 days after conclusion of the hearing. The Commission shall preempt a local ordinance only if the Commission makes all of the following findings:

(1) That there is a local ordinance that would regulate the management of coal combustion residuals and coal combustion products.

(2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance.

(3) That local citizens and elected officials have had adequate opportunity to participate in the permitting process.

(4) That the project involving management of coal combustion residuals and coal combustion products will not pose an unreasonable health or environmental risk to the surrounding locality and that the operator has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable local ordinances.

(f) If the Environmental Management Commission does not make all of the findings under subsection (e) of this section, the Commission shall not preempt the challenged local ordinance. The Commission's decision shall be in writing and shall identify the evidence submitted to the Commission plus any additional evidence used in arriving at the decision.

(g) The decision of the Environmental Management Commission shall be final, unless a party to the action files a written appeal under Article 3 of Chapter 150B of the General Statutes, as modified by this section, within 30 days of the date of the decision. The record on appeal shall consist of all materials and information submitted to or considered by the Commission, the Commission's written decision, a complete transcript of the hearing, the specific findings required by subsection (e) of this section, and any minority positions on the specific findings required by subsection (e) of this section. The scope of judicial review shall be as set forth in G.S. 150B-51, except as this subsection provides regarding the record on appeal.

(h) If the court reverses or modifies the decision of the Environmental Management Commission, the judge shall set out in writing, which writing shall become part of the record, the reasons for the reversal or modification.

(i) In computing any period of time prescribed or allowed by the procedure in this section, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply. (2014-122, s. 3(a); 2015-1, s. 3.1(b); 2015-264, s. 56.2(b).)

§ 130A-309.206. Federal preemption; severability.

The provisions of this Part shall be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, the validity of the remainder of this Part shall not be affected thereby. (2014-122, s. 3(a).)

§ 130A-309.207. General rule making for Part.

The Environmental Management Commission shall adopt rules as necessary to implement the provisions of the Part. Such rules shall be exempt from the requirements of G.S. 150B-19.3. (2014-122, s. 3(a).)

§ 130A-309.208: Reserved for future codification purposes.

§ 130A-309.209: Reserved for future codification purposes.

Subpart 2. Management of Coal Ash Residuals; Closure of Coal Ash Impoundments.

§ 130A-309.210. Generation, disposal, and use of coal combustion residuals.

(a) On or after October 1, 2014, the construction of new and expansion of existing coal combustion residuals surface impoundments is prohibited.

(b) On or after October 1, 2014, the disposal of coal combustion residuals into a coal combustion residuals surface impoundment at an electric generating facility where the coal-fired generating units are no longer producing coal combustion residuals is prohibited.

(c) On or after December 31, 2018, the discharge of stormwater into a coal combustion surface impoundment at an electric generating facility where the coal-fired generating units are no longer producing coal combustion residuals is prohibited.

(d) On or after December 31, 2019, the discharge of stormwater into a coal combustion surface impoundment at an electric generating facility where the coal-fired generating units are actively producing coal combustion residuals is prohibited.

(e) On or before December 31, 2018, all electric generating facilities owned by a public utility shall convert to the disposal of "dry" fly ash or the facility shall be retired. For purposes of this subsection, the term "dry" means coal combustion residuals that are not in the form of liquid wastes, wastes containing free liquids, or sludges.

(f) On or before December 31, 2019, all electric generating facilities owned by a public utility shall convert to the disposal of "dry" bottom ash or the facility shall be retired. For purposes of this subsection, the term "dry" means coal combustion residuals that are not in the form of liquid wastes, wastes containing free liquids, or sludges. (2014-122, s. 3(a).)

§ 130A-309.211. Groundwater assessment and corrective action; drinking water supply well survey and provision of alternate water supply; reporting.

(a) Groundwater Assessment of Coal Combustion Residuals Surface Impoundments. – The owner of a coal combustion residuals surface impoundment shall conduct groundwater monitoring and assessment as provided in this subsection. The requirements for groundwater monitoring and assessment set out in this subsection are in addition to any other groundwater monitoring and assessment requirements applicable to the owners of coal combustion residuals surface impoundments:

(1) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Groundwater Assessment Plan for the impoundment to the Department for its review and approval. The Groundwater Assessment Plan shall, at a minimum, provide for all of the following:

a. A description of all receptors and significant exposure pathways.
b. An assessment of the horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards.
c. A description of all significant factors affecting movement and transport of contaminants.
d. A description of the geological and hydrogeological features influencing the chemical and physical character of the contaminants.
e. A schedule for continued groundwater monitoring.
f. Any other information related to groundwater assessment required by the Department.

(2) The Department shall approve the Groundwater Assessment Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 10 days from approval of the Groundwater Assessment Plan, the owner shall begin implementation of the Plan.

(4) No later than 180 days from approval of the Groundwater Assessment Plan, the owner shall submit a Groundwater Assessment Report to the Department. The Report shall describe all exceedances of groundwater quality standards associated with the impoundment.

(b) Corrective Action for the Restoration of Groundwater Quality. – The owner of a coal combustion residuals surface impoundment shall implement corrective action for the restoration of groundwater quality as provided in this subsection. The requirements for corrective action for the restoration of groundwater quality set out in this subsection are in addition to any other corrective action for the restoration of groundwater quality requirements applicable to the owners of coal combustion residuals surface impoundments:

(1) No later than 90 days from submission of the Groundwater Assessment Report required by subsection (a) of this section, or a time frame otherwise approved by the Department not to exceed 180 days from submission of the Groundwater Assessment Report, the owner of the coal combustion residuals surface impoundment shall submit a proposed Groundwater Corrective Action Plan to the Department for its review and approval. The Groundwater Corrective Action Plan shall provide for the restoration of groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. The Groundwater Corrective Action Plan shall include, at a minimum, all of the following:
a. A description of all exceedances of the groundwater quality standards, including any exceedances that the owner asserts are the result of natural background conditions.
b. A description of the methods for restoring groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code and a detailed explanation of the reasons for selecting these methods.
c. Specific plans, including engineering details, for restoring groundwater quality.

d. A schedule for implementation of the Plan.

e. A monitoring plan for evaluating the effectiveness of the proposed corrective action and detecting movement of any contaminant plumes.

f. Any other information related to groundwater assessment required by the Department.

(2) The Department shall approve the Groundwater Corrective Action Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 30 days from the approval of the Groundwater Corrective Action Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(c) Drinking Water Supply Well Survey and Provision of Alternate Water Supply. – No later than October 1, 2014, the owner of a coal combustion residuals surface impoundment shall conduct a Drinking Water Supply Well Survey that identifies all drinking water supply wells within one-half mile down-gradient from the established compliance boundary of the impoundment and submit the Survey to the Department. The Survey shall include well locations, the nature of water uses, available well construction details, and information regarding ownership of the wells. No later than December 1, 2014, the Department shall determine, based on the Survey, which drinking water supply wells the owner is required to sample and how frequently and for what period sampling is required. The Department shall require sampling for drinking water supply wells where data regarding groundwater quality and flow and depth in the area of any surveyed well provide a reasonable basis to predict that the quality of water from the surveyed well may be adversely impacted by constituents associated with the presence of the impoundment. No later than January 1, 2015, the owner shall initiate sampling and water quality analysis of the drinking water supply wells. A property owner may elect to have an independent third party selected from a laboratory certified by the Department's Wastewater/Groundwater Laboratory Certification program sample wells located on their property in lieu of sampling conducted by the owner of the coal combustion residuals surface impoundment. The owner of the coal combustion residuals surface impoundment shall pay for the reasonable costs of such sampling. Nothing in this subsection shall be construed to preclude or impair the right of any property owner to refuse such sampling of wells on their property. If the sampling and water quality analysis indicates that water from a drinking water supply well exceeds groundwater quality standards for constituents associated with the presence of the impoundment, the owner shall replace the contaminated drinking water supply well with an alternate supply of potable drinking water and an alternate supply of water that is safe for other household uses. The alternate supply of potable drinking water shall be supplied within 24 hours of the Department's determination that there is an exceedance of groundwater quality standards attributable to constituents associated with the presence of the impoundment. The alternate supply of water that is safe for other household uses shall be supplied within 30 days of the Department's determination that there is an exceedance of groundwater quality standards attributable to constituents associated with the presence of the impoundment. The requirement to replace a

contaminated drinking water supply well with an alternate supply of potable drinking water and an alternate supply of water that is safe for other household uses set out in this subsection is in addition to any other requirements to replace a contaminated drinking water supply well with an alternate supply of potable drinking water or an alternate supply of water that is safe for other household uses applicable to the owners of coal combustion residuals surface impoundments.

(c1) **(See editor's note for applicability)** Provision of Permanent Water Supply. – As soon as practicable, but no later than October 15, 2018, the owner of a coal combustion residuals surface impoundment shall establish permanent replacement water supplies for (i) each household that has a drinking water supply well located within a one-half mile radius from the established compliance boundary of a coal combustion residuals impoundment, and is not separated from the impoundment by the mainstem of a river, as that term is defined under G.S. 143-215.22G, or other body of water that would prevent the migration of contaminants through groundwater from the impoundment to a well and (ii) each household that has a drinking water supply well that is located in an area in which contamination resulting from constituents associated with the presence of a coal combustion residuals impoundment is expected to migrate, as demonstrated by groundwater modeling and hydrogeologic, geologic, and geotechnical investigations of the site, conducted in accordance with the requirements of G.S. 130A-309.214(a)(4), and the results of other modeling or investigations that may have been submitted pursuant to G.S. 130A-309.213(b)(4). Preference shall be given to permanent replacement water supplies by connection to public water supplies; provided that (i) a household may elect to receive a filtration system in lieu of a connection to public water supplies and (ii) if the Department determines that connection to a public water supply to a particular household would be cost-prohibitive, the Department shall authorize provision of a permanent replacement water supply to that household through installation of a filtration system. For households for which filtration systems are installed, the impoundment owner shall be responsible for periodic required maintenance of the filtration system. No later than December 15, 2016, an impoundment owner shall submit information on permanent replacement water supplies proposed to be provided to each household to the Department, including, at a minimum, the type of permanent water supply proposed; the location of the household and its proximity to the nearest connection point to a public water supply; projected cost of the permanent water supply option proposed for the household; and any proposal to connect to a public water supply. The Department shall evaluate information submitted by the impoundment owner and render a final decision to approve or disapprove the plan, including written findings of fact, no later than January 15, 2017. If disapproved, an impoundment owner shall resubmit a plan for the Department's approval within 30 days. No later than April 15, 2017, an impoundment owner shall notify all residents identified in the approved plan of their eligibility for establishment of a permanent water supply. Until such time as an impoundment owner has established a permanent water supply for each household required by this subsection, the impoundment owner shall supply the household with an alternate supply of potable drinking water and an alternate supply of water that is safe for other household uses. Nothing in this section shall be construed to (i) require an

eligible household to connect to a public water supply or receive a filtration system or (ii) obviate the need for other federal, State, and local permits and approvals. All State entities and local governments shall expedite any permits and approvals required for such projects. The Department may grant an impoundment owner an extension of time, not to exceed one year, to establish permanent water supplies as required by this section, if the Department determines that it is infeasible for the impoundment owner to establish a permanent water supply for a household by October 15, 2018, based on limitations arising from local government resources, including limitations on water supply capacity and staffing limitations for permitting and construction activities.

(d) Reporting. – In addition to any other reporting required by the Department, the owner of a coal combustion residuals surface impoundment shall submit an annual Groundwater Protection and Restoration Report to the Department no later than January 31 of each year. The Report shall include a summary of all groundwater monitoring, protection, and restoration activities related to the impoundment for the preceding year, including the status of the Groundwater Assessment Plan, the Groundwater Assessment Report, the Groundwater Corrective Action Plan, the Drinking Water Supply Well Survey, and the replacement of any contaminated drinking water supply wells. (2014-122, s. 3(a); 2016-95, s. 1.)

§ 130A-309.212. Identification and assessment of discharges; correction of unpermitted discharges.

(a) Identification of Discharges from Coal Combustion Residuals Surface Impoundments. –

(1) The owner of a coal combustion residuals surface impoundment shall identify all discharges from the impoundment as provided in this subsection. The requirements for identifying all discharges from an impoundment set out in this subsection are in addition to any other requirements for identifying discharges applicable to the owners of coal combustion residuals surface impoundments.

(2) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a topographic map that identifies the location of all (i) outfalls from engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment and (ii) seeps and weeps discharging from the impoundment that are not captured by engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment to the Department. The topographic map shall comply with all of the following:

a. Be at a scale as required by the Department.

b. Specify the latitude and longitude of each toe drain outfall, seep, and weep.

c. Specify whether the discharge from each toe drain outfall, seep, and weep is continuous or intermittent.

d. Provide an average flow measurement of the discharge from each toe drain outfall, seep, and weep including a description of the method used to measure average flow.

e. Specify whether the discharge from each toe drain outfall, seep, and weep identified reaches the surface waters of the State. If the discharge from a toe drain outfall, seep, or weep reaches the surface waters of the State, the map shall specify the latitude and longitude of where the discharge reaches the surface waters of the State.

f. Include any other information related to the topographic map required by the Department.

(b) Assessment of Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal combustion residuals surface impoundment shall conduct an assessment of discharges from the coal combustion residuals surface impoundment to the surface waters of the State as provided in this subsection. The requirements for assessment of discharges from the coal combustion residuals surface impoundment to the surface waters of the State set out in this subsection are in addition to any other requirements for the assessment of discharges from coal combustion residuals surface impoundments to surface waters of the State applicable to the owners of coal combustion residuals surface impoundments:

(1) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Discharge Assessment Plan to the Department. The Discharge Assessment Plan shall include information sufficient to allow the Department to determine whether any discharge, including a discharge from a toe drain outfall, seep, or weep, has reached the surface waters of the State and has caused a violation of surface water quality standards. The Discharge Assessment Plan shall include, at a minimum, all of the following:

a. Upstream and downstream sampling locations within all channels that could potentially carry a discharge.

b. A description of the surface water quality analyses that will be performed.

c. A sampling schedule, including the frequency and duration of sampling activities.

d. Reporting requirements.

e. Any other information related to the assessment of discharges required by the Department.

(2) The Department shall approve the Discharge Assessment Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 30 days from the approval of the Discharge Assessment Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal combustion residuals surface impoundment shall implement corrective action to prevent unpermitted discharges from the coal combustion residuals surface impoundment to the surface waters of the State as provided in this subsection. The requirements for corrective

action to prevent unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State set out in this subsection are in addition to any other requirements for corrective action to prevent unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State applicable to the owners of coal combustion residuals surface impoundments:

(1) If the Department determines, based on information provided pursuant to subsection (a) or (b) of this section, that an unpermitted discharge from a coal combustion residuals surface impoundment, including an unpermitted discharge from a toe drain outfall, seep, or weep, has reached the surface waters of the State, the Department shall notify the owner of the impoundment of its determination.

(2) No later than 30 days from a notification pursuant to subdivision (1) of this subsection, the owner of the coal combustion residuals surface impoundment shall submit a proposed Unpermitted Discharge Corrective Action Plan to the Department for its review and approval. The proposed Unpermitted Discharge Corrective Action Plan shall include, at a minimum, all of the following:

a. One of the following methods of proposed corrective action:

1. Elimination of the unpermitted discharge.

2. Application for a National Pollutant Discharge Elimination System (NPDES) permit amendment pursuant to G.S. 143-215.1 and Subchapter H of Chapter 2 of Title 15A of the North Carolina Administrative Code to bring the unpermitted discharge under permit regulations.

b. A detailed explanation of the reasons for selecting the method of corrective action.

c. Specific plans, including engineering details, to prevent the unpermitted discharge.

d. A schedule for implementation of the Plan.

e. A monitoring plan for evaluating the effectiveness of the proposed corrective action.

f. Any other information related to the correction of unpermitted discharges required by the Department.

(3) The Department shall approve the Unpermitted Discharge Corrective Action Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(4) No later than 30 days from the approval of the Unpermitted Discharge Corrective Action Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(d) Identification of New Discharges. – No later than October 1, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Plan for the Identification of New Discharges to the Department for its review and approval as provided in this subsection:

(1) The proposed Plan for the Identification of New Discharges shall include, at a minimum, all of the following:

a. A procedure for routine inspection of the coal combustion residuals surface impoundment to identify indicators of potential new discharges, including toe drain outfalls, seeps, and weeps.

b. A procedure for determining whether a new discharge is actually present.

c. A procedure for notifying the Department when a new discharge is confirmed.

d. Any other information related to the identification of new discharges required by the Department.

(2) The Department shall approve the Plan for the Identification of New Discharges if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 30 days from the approval of the Plan for the Identification of New Discharges, the owner shall begin implementation of the Plan in accordance with the Plan.

(e) Reporting. – In addition to any other reporting required by the Department, the owner of a coal combustion residuals surface impoundment shall submit an annual Surface Water Protection and Restoration Report to the Department no later than January 31 of each year. The Report shall include a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State. (2014-122, s. 3(a); 2016-95, s. 1.)

§ 130A-309.213. Prioritization of coal combustion residuals surface impoundments.

(a) As soon as practicable, but no later than December 31, 2015, the Department shall develop proposed classifications for all coal combustion residuals surface impoundments, including active and retired sites, for the purpose of closure and remediation based on these sites' risks to public health, safety, and welfare; the environment; and natural resources and shall determine a schedule for closure and required remediation that is based on the degree of risk to public health, safety, and welfare; the environment; and natural resources posed by the impoundments and that gives priority to the closure and required remediation of impoundments that pose the greatest risk. In assessing the risk, the Department shall evaluate information received pursuant to G.S. 130A-309.211 and G.S. 130A-309.212 and any other information deemed relevant.

(b) The Department shall issue a proposed classification for each coal combustion residuals surface impoundment based upon the assessment conducted pursuant to subsection (a) of this section as high-risk, intermediate-risk, or low-risk. Within 30 days after a proposed classification has been issued, the Department shall issue a written declaration, including findings of fact, documenting the proposed classification. The Department shall provide for public participation on the proposed risk classification as follows:

(1) The Department shall make copies of the written declaration issued pursuant to this subsection available for inspection as follows:
   a. A copy of the declaration shall be provided to the local health director.
   b. A copy of the declaration shall be provided to the public library located in closest proximity to the site in the county or counties in which the site is located.
   c. The Department shall post a copy of the declaration on the Department's Web site.
   d. The Department shall place copies of the declaration in other locations so as to assure the reasonable availability thereof to the public.

(2) The Department shall give notice of the written declaration issued pursuant to this subsection as follows:
   a. A notice and summary of the declaration shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.
   b. Notice of the written declaration shall be given by first-class mail to persons who have requested such notice. Such notice shall include a summary of the written declaration and state the locations where a copy of the written declaration is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.
   c. Notice of the written declaration shall be given by electronic mail to persons who have requested such notice. Such notice shall include a summary of the written declaration and state the locations where a copy of the written declaration is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

(3) No later than 60 days after issuance of the written declaration, the Department shall conduct a public meeting in the county or counties in which the site is located to explain the written declaration to the public. The Department shall give notice of the hearing at least 15 days prior to the date thereof by all of the following methods:
   a. Publication as provided in subdivision (1) of this subsection, with first publication to occur not less than 30 days prior to the scheduled date of the hearing.
   b. First-class mail to persons who have requested notice as provided in subdivision (2) of this subsection.
   c. Electronic mail to persons who have requested notice as provided in subdivision (2) of this subsection.

(4) At least 30 days from the latest date on which notice is provided pursuant to subdivision (2) of this subsection shall be allowed for the receipt of written comment on the written declaration prior to issuance of a final risk classification. At least 20 days will be allowed for receipt of written comment following a hearing conducted pursuant to subdivision (3) of this subsection prior to issuance of a preliminary risk classification.

(c) Repealed by Session Laws 2016-95, s. 1, effective July 14, 2016.

(d) No later than 30 days after expiration of the deadline set forth in G.S. 130A-309.211(c1), or any applicable extension granted by the Secretary pursuant G.S. 130A-309.211(c1), the Department shall issue a final classification for each impoundment as follows:

(1) The Department shall classify an impoundment as low-risk if the impoundment owner satisfies both of the following criteria:

a. Has established permanent water supplies as required for the impoundment pursuant to G.S. 130A-309.211(c1).

b. Has rectified any deficiencies identified by, and otherwise complied with the requirements of, any dam safety order issued by the Environmental Management Commission for the impoundment pursuant to G.S. 143-215.32. No later than July 1, 2018, the Department shall conduct the annual inspection of each dam associated with a coal combustion residuals surface impoundment required for that year, to detect any deficiencies and to ascertain, at a minimum, whether the dam is sufficiently strong, maintained in good repair and operating condition, does not pose a danger to life or property, and satisfies minimum streamflow requirements. The Department shall issue written findings of fact for each inspection and present such findings to the Environmental Management Commission. If the Department detects any deficiencies, the Commission shall issue an order directing the owner of the dam to take action as may be deemed necessary by the Commission within a time limited by the order, but not later than 90 days after issuance of the order.

(2) All other impoundments shall be classified as intermediate-risk.

(e) Parties aggrieved by a final decision of the Department issued pursuant to subsection (d) of this section may appeal the decision as provided under Article 3 of Chapter 150B of the General Statutes. (2014-122, s. 3(a); 2016-95, s. 1.)

§ 130A-309.214. Closure of coal combustion residuals surface impoundments.

(a) An owner of a coal combustion residuals surface impoundment shall submit a proposed Coal Combustion Residuals Surface Impoundment Closure Plan for the Department's approval. If corrective action to restore groundwater has not been completed pursuant to the requirements of G.S. 130A-309.211(b), the proposed closure plan shall include provisions for completion of activities to restore groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. In addition, the following requirements, at a minimum, shall apply to such plans:

(1) High-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2019. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, 2016. At a minimum, (i) impoundments located in whole above the seasonal high groundwater table shall be dewatered; (ii) impoundments located in whole or in part beneath the seasonal high groundwater table shall be dewatered to the

maximum extent practicable; and (iii) the owner of an impoundment shall either:

a. Convert the coal combustion residuals impoundment to an industrial landfill by removing all coal combustion residuals and contaminated soil from the impoundment temporarily, safely storing the residuals on-site, and complying with the requirements for such landfills established by this Article and rules adopted thereunder. At a minimum, the landfills shall have a design with a leachate collection system, a closure cap system, and a composite liner system consisting of two components: the upper component shall consist of a minimum 30-ml flexible membrane (FML), and the lower components shall consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second. FML components consisting of high density polyethylene (HDPE) shall be at least 60 ml thick. The landfill shall otherwise comply with the construction requirements established by Section .1624 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, and the siting and design requirements for disposal sites established by Section .0503 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, except with respect to those requirements that pertain to buffers. In lieu of the buffer requirement established by Section .0503(f)(2)(iii) of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, the owner of the impoundment shall establish and maintain a 300-foot buffer between surface waters and disposal areas. After the temporarily displaced coal combustion residuals have been returned for disposal in the industrial landfill constructed pursuant to the requirements of this sub-subdivision, the owner of the landfill shall comply with the closure and post-closure requirements established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. A landfill constructed pursuant to this sub-subdivision shall otherwise be subject to all applicable requirements of this Chapter and rules adopted thereunder. Prior to closure, the Department may allow the disposal of coal combustion residuals, in addition to those originally contained in the impoundment, to the landfill constructed pursuant to this sub-subdivision, if the Department determines that the site is suitable for additional capacity and that disposal of additional coal combustion residuals will not pose an unacceptable risk to public health, safety, welfare; the environment; and natural resources.

b. Remove all coal combustion residuals from the impoundment, return the former impoundment to a nonerosive and stable condition and (i) transfer the coal combustion residuals for disposal in a coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill or (ii) use the coal combustion products in a structural fill or other beneficial use as allowed by law. The use of coal combustion products (i) as structural fill shall be conducted in accordance with the

requirements of Subpart 3 of this Part and (ii) for other beneficial uses shall be conducted in accordance with the requirements of Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code (Requirements for Beneficial Use of Coal Combustion By-Products) and Section .1205 of Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal Combustion Products Management).

(2) Intermediate-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2024. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, 2019. At a minimum, such impoundments shall be dewatered, and the owner of an impoundment shall close the impoundment in any manner allowed pursuant to subdivision (1) of this subsection, or, if applicable, as provided in G.S. 130A-309.216.

(3) Low-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2029. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, 2019. At a minimum, (i) impoundments located in whole above the seasonal high groundwater table shall be dewatered; (ii) impoundments located in whole or in part beneath the seasonal high groundwater table shall be dewatered to the maximum extent practicable; and (iii) at the election of the Department, the owner of an impoundment shall either:

a. Close in any manner allowed pursuant to subdivision (1) of this subsection;

b. Comply with the closure and post-closure requirements established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, except that such impoundments shall not be required to install and maintain a leachate collection system. Specifically, the owner of an impoundment shall install and maintain a cap system that is designed to minimize infiltration and erosion in conformance with the requirements of Section .1624 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, and, at a minimum, shall be designed and constructed to (i) have a permeability no greater than 1×10^{-5} centimeters per second; (ii) minimize infiltration by the use of a low-permeability barrier that contains a minimum 18 inches of earthen material; and (iii) minimize erosion of the cap system and protect the low-permeability barrier from root penetration by use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth. In addition, the owner of an impoundment shall (i) install and maintain a groundwater monitoring system; (ii) establish financial assurance that will ensure that sufficient funds are available for closure pursuant to this subdivision, post-closure maintenance and monitoring, any corrective action that the Department may require, and satisfy any potential liability for sudden and nonsudden accidental occurrences arising from the impoundment and subsequent costs incurred by the

Department in response to an incident, even if the owner becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State; and (iii) conduct post-closure care for a period of 30 years, which period may be increased by the Department upon a determination that a longer period is necessary to protect public health, safety, welfare; the environment; and natural resources, or decreased upon a determination that a shorter period is sufficient to protect public health, safety, welfare; the environment; and natural resources. The Department may require implementation of any other measure it deems necessary to protect public health, safety, and welfare; the environment; and natural resources, including imposition of institutional controls that are sufficient to protect public health, safety, and welfare; the environment; and natural resources. The Department may not approve closure for an impoundment pursuant to sub-subdivision b. of subdivision (3) of this subsection unless the Department finds that the proposed closure plan includes design measures to prevent, upon the plan's full implementation, post-closure exceedances of groundwater quality standards beyond the compliance boundary that are attributable to constituents associated with the presence of the impoundment; or

c. Comply with the closure requirements established by the United States Environmental Protection Agency as provided in 40 CFR Parts 257 and 261, "Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities."

(4) Closure Plans for all impoundments shall include all of the following:

a. Facility and coal combustion residuals surface impoundment description. – A description of the operation of the site that shall include, at a minimum, all of the following:

1. Site history and history of site operations, including details on the manner in which coal combustion residuals have been stored and disposed of historically.
2. Estimated volume of material contained in the impoundment.
3. Analysis of the structural integrity of dikes or dams associated with impoundment.
4. All sources of discharge into the impoundment, including volume and characteristics of each discharge.
5. Whether the impoundment is lined, and, if so, the composition thereof.
6. A summary of all information available concerning the impoundment as a result of inspections and monitoring conducted pursuant to this Part and otherwise available.

b. Site maps, which, at a minimum, illustrate all of the following:

1. All structures associated with the operation of any coal combustion residuals surface impoundment located on the site. For purposes of this sub-subdivision, the term "site" means the land or waters within the property boundary of the applicable electric generating station.

2. All current and former coal combustion residuals disposal and storage areas on the site, including details concerning coal combustion residuals produced historically by the electric generating station and disposed of through transfer to structural fills.
3. The property boundary for the applicable site, including established compliance boundaries within the site.
4. All potential receptors within 2,640 feet from established compliance boundaries.
5. Topographic contour intervals of the site shall be selected to enable an accurate representation of site features and terrain and in most cases should be less than 20-foot intervals.
6. Locations of all sanitary landfills permitted pursuant to this Article on the site that are actively receiving waste or are closed, as well as the established compliance boundaries and components of associated groundwater and surface water monitoring systems.
7. All existing and proposed groundwater monitoring wells associated with any coal combustion residuals surface impoundment on the site.
8. All existing and proposed surface water sample collection locations associated with any coal combustion residuals surface impoundment on the site.

c. The results of a hydrogeologic, geologic, and geotechnical investigation of the site, including, at a minimum, all of the following:
1. A description of the hydrogeology and geology of the site.
2. A description of the stratigraphy of the geologic units underlying each coal combustion residuals surface impoundment located on the site.
3. The saturated hydraulic conductivity for (i) the coal combustion residuals within any coal combustion residuals surface impoundment located on the site and (ii) the saturated hydraulic conductivity of any existing liner installed at an impoundment, if any.
4. The geotechnical properties for (i) the coal combustion residuals within any coal combustion residuals surface impoundment located on the site, (ii) the geotechnical properties of any existing liner installed at an impoundment, if any, and (iii) the uppermost identified stratigraphic unit underlying the impoundment, including the soil classification based upon the Unified Soil Classification System, in-place moisture content, particle size distribution, Atterberg limits, specific gravity, effective friction angle, maximum dry density, optimum moisture content, and permeability.

5. A chemical analysis of the coal combustion residuals surface impoundment, including water, coal combustion residuals, and coal combustion residuals-affected soil.
6. Identification of all substances with concentrations determined to be in excess of the groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code, including all laboratory results for these analyses.
7. Summary tables of historical records of groundwater sampling results.
8. A map that illustrates the potentiometric contours and flow directions for all identified aquifers underlying impoundments (shallow, intermediate, and deep) and the horizontal extent of areas where groundwater quality standards established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code for a substance are exceeded.
9. Cross-sections that illustrate the following: the vertical and horizontal extent of the coal combustion residuals within an impoundment; stratigraphy of the geologic units underlying an impoundment; and the vertical extent of areas where groundwater quality standards established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code for a substance are exceeded.

d. The results of groundwater modeling of the site that shall include, at a minimum, all of the following:
1. An account of the design of the proposed Closure Plan that is based on the site hydrogeologic conceptual model developed and includes (i) predictions on post-closure groundwater elevations and groundwater flow directions and velocities, including the effects on and from the potential receptors and (ii) predictions at the compliance boundary for substances with concentrations determined to be in excess of the groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code.
2. Predictions that include the effects on the groundwater chemistry and should describe migration, concentration, mobilization, and fate for substances with concentrations determined to be in excess of the groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code pre- and post-closure, including the effects on and from potential receptors.
3. A description of the groundwater trend analysis methods used to demonstrate compliance with groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title

15A of the North Carolina Administrative Code and requirements for corrective action of groundwater contamination established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code.

e. A description of any plans for beneficial use of the coal combustion residuals in compliance with the requirements of Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code (Requirements for Beneficial Use of Coal Combustion By-Products) and Section .1205 of Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal Combustion Products Management).

f. All engineering drawings, schematics, and specifications for the proposed Closure Plan. If required by Chapter 89C of the General Statutes, engineering design documents should be prepared, signed, and sealed by a professional engineer.

g. A description of the construction quality assurance and quality control program to be implemented in conjunction with the Closure Plan, including the responsibilities and authorities for monitoring and testing activities, sampling strategies, and reporting requirements.

h. A description of the provisions for disposal of wastewater and management of stormwater and the plan for obtaining all required permits.

i. A description of the provisions for the final disposition of the coal combustion residuals. If the coal combustion residuals are to be removed, the owner must identify (i) the location and permit number for the coal combustion residuals landfills, industrial landfills, or municipal solid waste landfills in which the coal combustion residuals will be disposed and (ii) in the case where the coal combustion residuals are planned for beneficial use, the location and manner in which the residuals will be temporarily stored. If the coal combustion residuals are to be left in the impoundment, the owner must (i) in the case of closure pursuant to sub-subdivision (a)(1)a. of this section, provide a description of how the ash will be stabilized prior to completion of closure in accordance with closure and post-closure requirements established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code and (ii) in the case of closure pursuant to sub-subdivision (a)(1)b. of this section, provide a description of how the ash will be stabilized pre- and post-closure. If the coal combustion residuals are to be left in the impoundment, the owner must provide an estimate of the volume of coal combustion residuals remaining.

j. A list of all permits that will need to be acquired or modified to complete closure activities.

k. A description of the plan for post-closure monitoring and care for an impoundment for a minimum of 30 years. The length of the post-closure care period may be (i) proposed to be decreased or the frequency and

parameter list modified if the owner demonstrates that the reduced period or modifications are sufficient to protect public health, safety, and welfare; the environment; and natural resources and (ii) increased by the Department at the end of the post-closure monitoring and care period if there are statistically significant increasing groundwater quality trends or if contaminant concentrations have not decreased to a level protective of public health, safety, and welfare; the environment; and natural resources. If the owner determines that the post-closure care monitoring and care period is no longer needed and the Department agrees, the owner shall provide a certification, signed and sealed by a professional engineer, verifying that post-closure monitoring and care has been completed in accordance with the post-closure plan. If required by Chapter 89C of the General Statutes, the proposed plan for post-closure monitoring and care should be signed and sealed by a professional engineer. The plan shall include, at a minimum, all of the following:

1. A demonstration of the long-term control of all leachate, affected groundwater, and stormwater.
2. A description of a groundwater monitoring program that includes (i) post-closure groundwater monitoring, including parameters to be sampled and sampling schedules; (ii) any additional monitoring well installations, including a map with the proposed locations and well construction details; and (iii) the actions proposed to mitigate statistically significant increasing groundwater quality trends.

l. An estimate of the milestone dates for all activities related to closure and post-closure.

m. Projected costs of assessment, corrective action, closure, and post-closure care for each coal combustion residuals surface impoundment.

n. A description of the anticipated future use of the site and the necessity for the implementation of institutional controls following closure, including property use restrictions, and requirements for recordation of notices documenting the presence of contamination, if applicable, or historical site use.

(b) The Department shall review a proposed Coal Combustion Residuals Surface Impoundment Closure Plan for consistency with the minimum requirements set forth in subsection (a) of this section and whether the proposed Closure Plan is protective of public health, safety, and welfare; the environment; and natural resources and otherwise complies with the requirements of this Part. Prior to issuing a decision on a proposed Closure Plan, the Department shall provide for public participation on the proposed Closure Plan as follows:

(1) The Department shall make copies of the proposed Closure Plan available for inspection as follows:

a. A copy of the proposed Closure Plan shall be provided to the local health director.

b. A copy of the proposed Closure Plan shall be provided to the public library located in closest proximity to the site in the county or counties in which the site is located.

c. The Department shall post a copy of the proposed Closure Plan on the Department's Web site.

d. The Department shall place copies of the declaration in other locations so as to assure the reasonable availability thereof to the public.

(2) Before approving a proposed Closure Plan, the Department shall give notice as follows:

a. A notice and summary of the proposed Closure Plan shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.

b. Notice that a proposed Closure Plan has been developed shall be given by first-class mail to persons who have requested such notice. Such notice shall include a summary of the proposed Closure Plan and state the locations where a copy of the proposed Closure Plan is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

c. Notice that a proposed Closure Plan has been developed shall be given by electronic mail to persons who have requested such notice. Such notice shall include a summary of the proposed Closure Plan and state the locations where a copy of the proposed Closure Plan is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

(3) No later than 60 days after receipt of a proposed Closure Plan, the Department shall conduct a public meeting in the county or counties in which the site is located to explain the proposed Closure Plan and alternatives to the public. The Department shall give notice of the hearing at least 30 days prior to the date thereof by all of the following methods:

a. Publication as provided in subdivision (1) of this subsection, with first publication to occur not less than 30 days prior to the scheduled date of the hearing.

b. First-class mail to persons who have requested notice as provided in subdivision (2) of this subsection.

c. Electronic mail to persons who have requested notice as provided in subdivision (2) of this subsection.

(4) At least 30 days from the latest date on which notice is provided pursuant to subdivision (2) of this subsection shall be allowed for the receipt of written comment on the proposed Closure Plan prior to its approval. At least 20 days will be allowed for receipt of written comment following a hearing conducted pursuant to subdivision (3) of this subsection prior to the approval of the proposed Closure Plan.

(c) The Department shall disapprove a proposed Coal Combustion Residuals Surface Impoundment Closure Plan unless the Department finds that the Closure Plan is protective of public health, safety, and welfare; the environment; and natural resources and otherwise complies with the requirements of this Part. The Department shall provide

specific findings to support its decision to approve or disapprove a proposed Closure Plan. If the Department disapproves a proposed Closure Plan, the person who submitted the Closure Plan may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or disapprove a proposed Closure Plan within 120 days after a complete Closure Plan has been submitted, the person who submitted the proposed Closure Plan may treat the Closure Plan as having been disapproved at the end of that time period. The Department may require a person who proposes a Closure Plan to supply any additional information necessary for the Department to approve or disapprove the Closure Plan.

(d) Repealed by Session Laws 2016-95, s. 1, effective July 14, 2016.

(e) As soon as practicable, but no later than 60 days after a Coal Combustion Residuals Surface Impoundment Closure Plan has been approved by the Department, the owner of the coal combustion residuals impoundment shall begin implementation of the approved plan. Modifications to an approved Closure Plan may only be allowed in conformance with the requirements of this Part, upon written request of an owner of an impoundment, with the written approval of the Department, and after public notice of the change in accordance with the requirements of subdivision (2) of subsection (b) of this section. Provided, however, minor technical modifications may be made in accordance with standard Department procedures for such minor modifications and may be made without written approval of the Department or public notice of the change.

(f) Nothing in this section shall be construed to obviate the need for sampling, remediation, and monitoring activities at the site as required by G.S. 130A-309.211 and G.S. 130A-309.310 [G.S. 130A-309.212]. (2014-122, s. 3(a); 2016-95, s. 1.)

§ 130A-309.215. Variance authority.

(a) In recognition of the complexity and magnitude of the issues surrounding the management of coal combustion residuals and coal combustion residuals surface impoundments, the General Assembly authorizes the Secretary to grant a variance to extend any deadline under this act, on the Secretary's own motion, or that of an impoundment owner, on the basis that compliance with the deadline cannot be achieved by application of best available technology found to be economically reasonable at the time and would produce serious hardship without equal or greater benefits to the public.

(a1) For variances requested by an impoundment owner, the owner shall, no earlier than one year prior to the applicable deadline, submit an application in a form acceptable to the Department which shall include, at a minimum, all of the following information: identification of the site, applicable requirements, and applicable deadlines for which a variance is sought, and the site-specific circumstances that support the need for the variance. The owner of the impoundment shall also provide detailed information that demonstrates (i) the owner has substantially complied with all other requirements and deadlines established by this Part; (ii) the owner has made good faith efforts to comply with the applicable deadline for closure of the impoundment; and (iii) that compliance with the deadline cannot be achieved by application of best available technology found to be economically reasonable at the time and would produce serious hardship without equal or

greater benefits to the public. As soon as practicable, but no later than 60 days from receipt of an application, the Secretary shall evaluate the information submitted in conjunction with the application, and any other information the Secretary deems relevant, to determine whether the information supports issuance of a variance.

(a2) The Department shall provide for public participation on a proposed variance in the manner provided by G.S. 130A-309.214(b) and shall take the public input received through the process into account in its decision concerning issuance of a variance. The Department shall only approve a variance if it determines that compliance with the deadline cannot be achieved by application of best available technology found to be economically reasonable at the time and would produce serious hardship without equal or greater benefits to the public. The Department shall issue its determination in writing, including findings in support of its determination. If the Department fails to act on a variance request within 60 days of receipt, the variance shall be deemed denied.

(a3) Parties aggrieved by a final decision of the Commission pursuant to this subsection may appeal the decision as provided under Article 3 of Chapter 150B of the General Statutes.

(b) Repealed by Session Laws 2016-95, s. 1, effective July 14, 2016.

(c) Repealed by Session Laws 2016-95, s. 1, effective July 14, 2016. (2014-122, s. 3(a); 2016-95, s. 1.)

§ 130A-309.216. Ash beneficiation projects.

(a) On or before January 1, 2017, an impoundment owner shall (i) identify, at a minimum, impoundments at two sites located within the State with ash stored in the impoundments on that date that is suitable for processing for cementitious purposes and (ii) enter into a binding agreement for the installation and operation of an ash beneficiation project at each site capable of annually processing 300,000 tons of ash to specifications appropriate for cementitious products, with all ash processed to be removed from the impoundment(s) located at the sites. As soon as legally practicable thereafter, the impoundment owner shall apply for all permits necessary for the ash beneficiation projects from the Department. The Department shall expedite any State permits and approvals required for such projects. No later than 24 months after issuance of all necessary permits, operation of both ash beneficiation projects shall be commenced. An impoundment owner shall use commercially reasonable efforts to produce 300,000 tons of ash to specifications appropriate for cementitious products from each project.

(b) On or before July 1, 2017, an impoundment owner shall (i) identify an impoundment at an additional site located within the State with ash stored in the impoundment on that date that is suitable for processing for cementitious purposes and (ii) enter into a binding agreement for the installation and operation of an ash beneficiation project capable of annually processing 300,000 tons of ash to specifications appropriate for cementitious products, with all ash processed to be removed from the impoundment(s) located at the site. As soon as legally practicable thereafter, the impoundment owner shall apply for all permits necessary for the ash beneficiation project from the Department. The Department shall expedite any State permits and approvals required for such projects. No

later than 24 months after issuance of all necessary permits, operation of the ash beneficiation project shall be commenced. An impoundment owner shall use commercially reasonable efforts to produce 300,000 tons of ash to specifications appropriate for cementitious products from the project.

(c) Notwithstanding any deadline for closure provided by G.S. 130A-309.214, any impoundment classified as intermediate- or low-risk that is located at a site at which an ash beneficiation project is installed, operating, and processing at least 300,000 tons of ash annually from the impoundment, shall be closed no later than December 31, 2029. (2016-95, s. 1.)

§ 130A-309.217: Reserved for future codification purposes.

Subpart 3. Use of Coal Combustion Products in Structural Fill.

§ 130A-309.218. Applicability.

The provisions of this Subpart shall apply to the siting, design, construction, operation, and closure of projects that utilize coal combustion products for structural fill. (2014-122, s. 3(a).)

§ 130A-309.219. Permit requirements for projects using coal combustion products for structural fill.

(a) Permit Requirements. –

(1) Projects using coal combustion products as structural fill involving the placement of less than 8,000 tons of coal combustion products per acre or less than 80,000 tons of coal combustion products in total per project, which proceed in compliance with the requirements of this section and rules adopted thereunder, are deemed permitted. Any person proposing such a project shall submit an application for a permit to the Department upon such form as the Department may prescribe, including, at a minimum, the information set forth in subdivision (1) of subsection (b) of this section.

(2) No person shall commence or operate a project using coal combustion residuals as structural fill involving the placement of 8,000 or more tons of coal combustion products per acre or 80,000 or more tons of coal combustion products in total per project without first receiving an individual permit from the Department. Any person proposing such a project shall submit an application for a permit to the Department upon such form as the Department may prescribe, including, at a minimum, the information set forth in subdivisions (1) and (2) of subsection (b) of this section.

(b) Information to Be Provided to the Department. – At least 60 days before initiation of a proposed project using coal combustion products as structural fill, the person proposing the project shall submit all of the following information to the Department on a form as prescribed by the Department:

(1) For projects involving placement of less than 8,000 tons of coal combustion products per acre or less than 80,000 tons of coal combustion products in total per project, the person shall provide, at a minimum, the following information:

a. The description of the nature, purpose, and location of the project.

b. The estimated start and completion dates for the project.

c. An estimate of the volume of coal combustion products to be used in the project.

d. A Toxicity Characteristic Leaching Procedure analysis from a representative sample of each different coal combustion product's source to be used in the project for, at a minimum, all of the following constituents: arsenic, barium, cadmium, lead, chromium, mercury, selenium, and silver.

e. A signed and dated statement by the owner of the land on which the structural fill is to be placed, acknowledging and consenting to the use of coal combustion products as structural fill on the property and agreeing to record the fill in accordance with the requirements of G.S. 130A-390.219 [130A-309.223].

f. The name, address, and contact information for the generator of the coal combustion products.

g. Physical location of the project at which the coal combustion products were generated.

(2) For projects involving placement of 8,000 or more tons of coal combustion products per acre or 80,000 or more tons of coal combustion products in total per project, the person shall provide all information required pursuant to subdivision (1) of this subsection and shall provide construction plans for the project, including a stability analysis as the Department may require. If required by the Department, a stability analysis shall be prepared, signed, and sealed by a professional engineer in accordance with sound engineering practices. A construction plan shall, at a minimum, include a groundwater monitoring system and an encapsulation liner system in compliance with the requirements of G.S. 130A-309.220. (2014-122, s. 3(a).)

§ 130A-309.220. Design, construction, and siting requirements for projects using coal combustion products for structural fill.

(a) Design, Construction, and Operation of Structural Fill Sites. –

(1) A structural fill site must be designed, constructed, operated, closed, and maintained in such a manner as to minimize the potential for harmful release of constituents of coal combustion residuals to the environment or create a nuisance to the public.

(2) Coal combustion products shall be collected and transported in a manner that will prevent nuisances and hazards to public health and safety. Coal combustion products shall be moisture conditioned, as necessary, and transported in covered trucks to prevent dusting.

(3) Coal combustion products shall be placed uniformly and shall be compacted to standards, including in situ density, compaction effort, and relative density, specified by a registered professional engineer for a specific end-use purpose.

(4) Equipment shall be provided that is capable of placing and compacting the coal combustion products and handling the earthwork required during the periods that coal combustion products are received at the fill project.

(5) The coal combustion product structural fill project shall be effectively maintained and operated as a nondischarge system to prevent discharge to surface water resulting from the project.

(6) The coal combustion product structural fill project shall be effectively maintained and operated to ensure no violations of groundwater standards adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to the project.

(7) Surface waters resulting from precipitation shall be diverted away from the active coal combustion product placement area during filling and construction activity.

(8) Site development shall comply with the North Carolina Sedimentation Pollution Control Act of 1973, as amended.

(9) The structural fill project shall be operated with sufficient dust control measures to minimize airborne emissions and to prevent dust from creating a nuisance or safety hazard and shall not violate applicable air quality regulations.

(10) Coal combustion products utilized on an exterior slope of a structural fill shall not be placed with a slope greater than 3.0 horizontal to 1.0 vertical.

(11) Compliance with this subsection shall not insulate any of the owners or operators of a structural fill project from claims for damages to surface waters, groundwater, or air resulting from the operation of the structural fill project. If the project fails to comply with the requirements of this section, the constructor, generator, owner, or operator shall notify the Department and shall take any immediate corrective action as may be required by the Department.

(b) Liners, Leachate Collection System, Cap, and Groundwater Monitoring System Required for Large Structural Fills. – For projects involving placement of 8,000 or more tons of coal combustion products per acre or 80,000 or more tons of coal combustion products in total per project shall have an encapsulation liner system. The encapsulation liner system shall be constructed on and around the structural fill and shall be designed to efficiently contain, collect, and remove leachate generated by the coal combustion products, as well as separate the coal combustion products from any exposure to surrounding environs. At a minimum, the components of the liner system shall consist of the following:

(1) A base liner, which shall consist of one of the following designs:

a. A composite liner utilizing a compacted clay liner. This composite liner is one liner that consists of two components: a geomembrane liner installed above and in direct and uniform contact with a compacted clay liner with a minimum thickness of 24 inches (0.61 m) and a permeability of no more than 1.0 x 10-=ss 7 =ks centimeters per second.

b. A composite liner utilizing a geosynthetic clay liner. This composite liner is one liner that consists of three components: a geomembrane liner installed above and in uniform contact with a geosynthetic clay liner overlying a compacted clay liner with a minimum thickness of 18 inches (0.46 m) and a permeability of no more than 1.0 x 10-=ss 5 =ks centimeters per second.

(2) A leachate collection system, which is constructed directly above the base liner and shall be designed to effectively collect and remove leachate from the project.

(3) A cap system that is designed to minimize infiltration and erosion as follows:

a. The cap system shall be designed and constructed to (i) have a permeability less than or equal to the permeability of any base liner system or the in situ subsoils underlying the structural fill, or the permeability specified for the final cover in the effective permit, or a permeability no greater than 1 x 10-=ss 5 =ks centimeters per second, whichever is less; (ii) minimize infiltration through the closed structural fill by the use of a low-permeability barrier that contains a minimum 18 inches of earthen material; and (iii) minimize erosion of the cap system and protect the low-permeability barrier from root penetration by use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

b. The Department may approve an alternative cap system if the owner or operator can adequately demonstrate (i) the alternative cap system will achieve an equivalent or greater reduction in infiltration as the low-permeability barrier specified in sub-subdivision a. of this subdivision and (ii) the erosion layer will provide equivalent or improved protection as the erosion layer specified in sub-subdivision a. of this subdivision.

(4) A groundwater monitoring system, that shall be approved by the Department and, at a minimum, consists of all of the following:

a. A sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that represent the quality of groundwater passing the relevant point of compliance as approved by the Department. A down-gradient monitoring system shall be installed at the relevant point of compliance so as to ensure detection of groundwater contamination in the uppermost aquifer.

b. A proposed monitoring plan, which shall be certified by a licensed geologist or professional engineer to be effective in providing early detection of any release of hazardous constituents from any point in a structural fill or leachate surface impoundment to the uppermost aquifer, so as to be protective of public health, safety, and welfare; the environment; and natural resources.

c. A groundwater monitoring program, which shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and down-gradient wells. Monitoring shall be conducted through construction and the post-closure care period. The sampling procedures and frequency shall be protective of public health, safety, and welfare; the environment; and natural resources.

d. A detection monitoring program for all Appendix I constituents. For purposes of this subdivision, the term "Appendix I" means Appendix I to 40 C.F.R. Part 258, "Appendix I Constituents for Detection Monitoring," including subsequent amendments and editions.

e. An assessment monitoring program and corrective action plan if one or more of the constituents listed in Appendix I is detected in exceedance of a groundwater protection standard.

(c) Siting for Structural Fill Facilities. – Coal combustion products used as a structural fill shall not be placed:

(1) Within 50 feet of any property boundary.

(2) Within 300 horizontal feet of a private dwelling or well.

(3) Within 50 horizontal feet of the top of the bank of a perennial stream or other surface water body.

(4) Within four feet of the seasonal high groundwater table.

(5) Within a 100-year floodplain except as authorized under G.S. 143-215.54A(b). A site located in a floodplain shall not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.

(6) Within 50 horizontal feet of a wetland, unless, after consideration of the chemical and physical impact on the wetland, the United States Army Corps of Engineers issues a permit or waiver for the fill. (2014-122, s. 3(a); 2015-1, s. 3.1(c).)

§ 130A-309.221. Financial assurance requirements for large projects using coal combustion products for structural fill.

(a) For projects involving placement of 8,000 or more tons of coal combustion products per acre or 80,000 or more tons of coal combustion products in total per project, the applicant for a permit or a permit holder to construct or operate a structural fill shall establish financial assurance that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by the Department in response to an incident at a structural fill project, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(b) To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used.

(c) The applicant for a permit or a permit holder and any parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including any joint venturer with a direct

or indirect interest in the applicant, permit holder, or parent shall be a guarantor of payment for closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences arising from the operation of the hazardous waste facility.

(d) Assets used to meet the financial assurance requirements of this section shall be in a form that will allow the Department to readily access funds for the purposes set out in this section. Assets used to meet financial assurance requirements of this section shall not be accessible to the permit holder except as approved by the Department.

(e) The Department may provide a copy of any filing that an applicant for a permit or a permit holder submits to the Department to meet the financial responsibility requirements under this section to the State Treasurer. The State Treasurer shall review the filing and provide the Department with a written opinion as to the adequacy of the filing to meet the purposes of this section, including any recommended changes.

(f) In order to continue to hold a permit for a structural fill, a permit holder must maintain financial responsibility as required by this Part and must provide any information requested by the Department to establish that the permit holder continues to maintain financial responsibility.

(g) An applicant for a permit or a permit holder shall satisfy the Department that the applicant or permit holder has met the financial responsibility requirements of this Part before the Department is required to otherwise review the application. (2014-122, s. 3(a).)

§ 130A-309.222. Closure of projects using coal combustion products for structural fill.

(a) Closure of Structural Fill Projects. –

(1) No later than 30 working days or 60 calendar days, whichever is less, after coal combustion product placement has ceased, the final cover shall be applied over the coal combustion product placement area.

(2) The final surface of the structural fill shall be graded and provided with drainage systems that do all of the following:

a. Minimize erosion of cover materials.

b. Promote drainage of area precipitation, minimize infiltration, and prevent ponding of surface water on the structural fill.

(3) Other erosion control measures, such as temporary mulching, seeding, or silt barriers shall be installed to ensure no visible coal combustion product migration to adjacent properties until the beneficial end use of the project is realized.

(4) The constructor or operator shall submit a certification to the Department signed and sealed by a registered professional engineer or signed by the Secretary of the Department of Transportation or the Secretary's designee certifying that all requirements of this Subpart have been met. The report shall be submitted within 30 days of application of the final cover.

(b) Additional Closure and Post-Closure Requirements for Large Structural Fill Projects. – For projects involving placement of 8,000 or more tons of coal combustion products per acre or 80,000 or more tons of coal combustion products in total per project,

a constructor or operator shall conduct post-closure care. Post-closure care shall be conducted for 30 years, which period may be increased by the Department upon a determination that a longer period is necessary to protect public health, safety, and welfare; the environment; and natural resources, or decreased upon a determination that a shorter period is sufficient to protect public health, safety, and welfare; the environment; and natural resources. Additional closure and post-closure requirements include, at a minimum, all of the following:

(1) Submit a written closure plan that includes all of the following:
   a. A description of the cap liner system and the methods and procedures used to install the cap that conforms to the requirement in G.S. 130A-309.220(b).
   b. An estimate of the largest area of the structural fill project ever requiring the cap liner system at any time during the overall construction period that is consistent with the drawings prepared for the structural fill.
   c. An estimate of the maximum inventory of coal combustion products ever on-site over the construction duration of the structural fill.
   d. A schedule for completing all activities necessary to satisfy the closure criteria set forth in this section.

(2) Submit a written post-closure plan that includes all of the following:
   a. A description of the monitoring and maintenance activities required for the project and the frequency at which these activities must be performed.
   b. The name, address, and telephone number of the person or office responsible for the project during the post-closure period.
   c. A description of the planned uses of the property during the post-closure period. Post-closure use of the property must not disturb the integrity of the cap system, base liner system, or any other components of the containment system or the function of the monitoring systems, unless necessary to comply with the requirements of this subsection. The Department may approve disturbance if the constructor or operator demonstrates that disturbance of the cap system, base liner system, or other component of the containment system will not increase the potential threat to public health, safety, and welfare; the environment; and natural resources.
   d. The cost estimate for post-closure activities required under this section.

(3) Maintain the integrity and effectiveness of any cap system, including repairing the system as necessary to correct the defects of settlement, subsidence, erosion, or other events and preventing run-on and runoff from eroding or otherwise damaging the cap system.

(4) Maintain and operate the leachate collection system. The Department may allow the constructor or operator to stop managing leachate upon a satisfactory demonstration that leachate from the project no longer poses a threat to human health and the environment.

(5) Monitor and maintain the groundwater monitoring system in accordance with G.S. 130A-309.220 and monitor the surface water in accordance with 15A NCAC 13B .0602.

(c) Completion of Post-Closure Care. – Following completion of the post-closure care period, the constructor or operator shall submit a certification, signed by a registered professional engineer, to the Department, verifying that post-closure care has been completed in accordance with the post-closure plan, and include the certification in the operating record. (2014-122, s. 3(a).)

§ 130A-309.223. Recordation of projects using coal combustion products for structural fill.

(a) The owner of land where coal combustion products have been used in volumes of more than 1,000 cubic yards shall file a statement of the volume and locations of the coal combustion residuals with the Register of Deeds in the county or counties where the property is located. The statement shall identify the parcel of land according to the complete legal description on the recorded deed, either by metes and bounds or by reference to a recorded plat map. The statement shall be signed and acknowledged by the landowners in the form prescribed by G.S. 47-38 through G.S. 47-43.

(b) Recordation shall be required within 90 days after completion of a structural fill project using coal combustion residuals.

(c) The Register of Deeds, in accordance with G.S. 161-14, shall record the notarized statement and index it in the Grantor Index under the name of the owner of the land. The original notarized statement with the Register's seal and the date, book, and page number of recording shall be returned to the Department after recording.

(d) When property with more than 1,000 cubic yards of coal combustion products is sold, leased, conveyed, or transferred in any manner, the deed or other instrument of transfer shall contain in the description section in no smaller type than used in the body of the deed or instrument a statement that coal combustion products have been used as structural fill material on the property. (2014-122, s. 3(a).)

§ 130A-309.224. Department of Transportation projects.

The Department and the Department of Transportation may agree on specific design, construction, siting, operation, and closure criteria that may apply to the Department of Transportation structural fill projects. (2014-122, s. 3(a).)

§ 130A-309.225. Inventory and inspection of certain structural fill projects.

No later than July 1, 2015, the Department shall prepare an inventory of all structural fill projects with a volume of 10,000 cubic yards or more. The Department shall update the structural fill project inventory at least annually. The Department shall inspect each structural fill project with a volume of 10,000 cubic yards or more at least annually to determine if the project or facility has been constructed and operated in compliance with Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code (Requirements for Beneficial Use of Coal Combustion By-Products) and Section .1200 of Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal Combustion Products Management), as applicable. (2014-122, s. 3(a).)

§ 130A-309.226. Amendments required to rules.

Requirements under existing rules governing the use of coal combustion products for structural fill that do not conflict with the provisions of this Subpart shall continue to apply to such projects. The Environmental Management Commission shall amend existing rules governing the use of coal combustion products for structural fill as necessary to implement the provisions of this Subpart. Such rules shall be exempt from the requirements of G.S. 150B-19.3. (2014-122, s. 3(a).)

§130A-309.227: Reserved for future codification purposes.

§130A-309.228: Reserved for future codification purposes.

§130A-309.229: Reserved for future codification purposes.

Subpart 4. Enforcement.

§ 130A-309.230. General enforcement.

Except as otherwise provided in this Subpart, the provisions of this Part shall be enforced as provided in Article 1 of this Chapter. (2014-122, s. 3(a).)

§ 130A-309.231. Penalties for making false statements.

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Part or a rule implementing this Part shall be guilty of a Class 2 misdemeanor, which may include a fine not to exceed ten thousand dollars ($10,000). (2014-122, s. 3(a).)

Part 3. Inactive Hazardous Sites.

§ 130A-310. Definitions.

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

(1) "CERCLA/SARA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.

(2) "Hazardous substance" means hazardous substance as defined in CERCLA/SARA.

(3) "Inactive hazardous substance or waste disposal site" or "site" means any facility, as defined in CERCLA/SARA. These sites do not include hazardous waste facilities permitted or in interim status under this Article.

(4) "Operator" means the person responsible for the overall operation of an inactive hazardous substance or waste disposal site.

(5) "Owner" means any person who owns an inactive hazardous substance or waste disposal site, or any part thereof.

(6) "Release" means release as defined in the CERCLA/SARA.

(7) "Remedy" or "Remedial Action" means remedy or remedial action as defined in CERCLA/SARA.

(8) "Remove" or "Removal" means remove or removal as defined in CERCLA/SARA.

(9) "Responsible party" means any person who is liable pursuant to G.S. 130A-310.7. (1987, c. 574, s. 2; 1989, c. 286, s. 2; 1999-83, s. 1.)

§ 130A-310.1. Identification, inventory, and monitoring of inactive hazardous substance or waste disposal sites; duty of owners, operators, and responsible parties to provide information and access; remedies.

(a) The Department shall develop and implement a program for locating, cataloguing, and monitoring all inactive hazardous substance or waste disposal sites in North Carolina. The Secretary shall compile and maintain an inventory of all inactive hazardous substance or waste disposal sites based on information submitted by owners, operators, and responsible parties, and on data obtained directly by the Secretary. The Secretary shall maintain records of any evidence of contamination to the air, surface water, groundwater, surface or subsurface soils, or waste streams for inventoried sites. The records shall include all available information on the extent of any actual damage or potential danger to public health or to the environment resulting from the contamination.

(b) The Commission shall develop and make available a format and checklist for submission of data relevant to inactive hazardous substance or waste disposal sites. Within 90 days of the date on which an owner, operator, or responsible party knows or should know of the existence of an inactive hazardous substance or waste disposal site, the owner, operator, or responsible party shall submit to the Secretary all site data that is known or readily available to the owner, operator, or responsible party. The owner, operator, or responsible party shall certify under oath that, to the best of his knowledge and belief, the data is complete and accurate.

(c) Whenever the Secretary determines that there is a release, or substantial threat of a release, into the environment of a hazardous substance from an inactive hazardous substance or waste disposal site, the Secretary may, in addition to any other powers he may have, order any responsible party to conduct any monitoring, testing, analysis, and reporting that the Secretary deems reasonable and necessary to ascertain the nature and extent of any hazard posed by the site. Written notice of any order issued pursuant to this section shall be given to all persons subject to the order as set out in G.S. 130A-310.3(c). The Secretary, prior to the entry of any order, shall solicit the cooperation of the responsible party.

(d) If a person fails to submit data as required in subsection (b) of this section or violates the requirements or schedules in an order issued pursuant to subsection (c) of this section, the Secretary may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(e) Whenever a person ordered to take any action pursuant to this section is unable or fails to do so, or if the Secretary, after making a reasonable attempt, is unable to locate

any responsible party, the Secretary may take the action. The cost of any action by the Secretary pursuant to this section may be paid from the Inactive Hazardous Sites Cleanup Fund, subject to a later action for reimbursement pursuant to G.S. 130A-310.7. The provisions of subdivisions (a)(1) to (a)(3) of G.S.130A-310.6 shall apply to any action taken by the Secretary pursuant to this section.

(f) Upon reasonable notice, the Secretary may require any person to furnish to the Secretary any information, document, or record in that person's possession or under that person's control that relates to:

(1) The identification, nature, and quantity of material that has been or is generated, treated, stored, or disposed of at an inactive hazardous substance or waste disposal site or that is transported to an inactive hazardous substance or waste disposal site.

(2) The nature and extent of a release or threatened release of a hazardous substance or hazardous waste at or from an inactive hazardous substance or waste disposal site.

(3) Information relating to the ability of a person to pay for or to perform a cleanup.

(g) A person who is required to furnish any information, document, or record under subsection (f) of this section shall either allow the Secretary to inspect and copy all information, documents, and records or shall copy and furnish to the Secretary all information, documents, and records at the expense of the person.

(h) To collect information to administer this Part, the Secretary may subpoena the attendance and testimony of witnesses and the production of documents, records, reports, answers to questions, and any other information that the Secretary deems necessary. Witnesses shall be paid the same fees and mileage that are paid to witnesses in proceedings in the General Court of Justice. In the event that a person fails to comply with a subpoena issued under this subsection, the Secretary may seek enforcement of the subpoena in the superior court in any county where the inactive hazardous substance or waste disposal site is located, in the county where the person resides, or in the county where the person has his or her principal place of business.

(i) A person who owns or has control over an inactive hazardous substance or waste disposal site shall grant the Secretary access to the site at reasonable times. If a person fails to grant the Secretary access to the site, the Secretary may obtain an administrative search and inspection warrant as provided by G.S. 15-27.2. (1987, c. 574, s. 2; 1989, c. 286, s. 3; 1997-53, s. 1.)

§ 130A-310.2. Inactive Hazardous Waste Sites Priority List.

(a) No later than six months after July 1, 1987, the Commission shall develop a system for the prioritization of inactive hazardous substance or waste disposal sites based on the extent to which such sites endanger the public health and the environment. The Secretary shall apply the prioritization system to the inventory of sites to create and maintain an Inactive Hazardous Waste Site Priority List, which shall rank all inactive hazardous substance or waste disposal sites in decreasing order of danger. This list shall identify the location of each site and the type and amount of hazardous substances or waste known or believed to be located on the site. The first such list shall be published within

two years after July 1, 1987, with subsequent lists to be published at intervals of not more than two years thereafter. The Secretary shall notify owners, operators, and responsible parties of sites listed on the Inactive Hazardous Waste Sites Priority List of their ranking on the list. The Inactive Hazardous Sites Priority List shall be used by the Department in determining budget requests and in allocating any State appropriation which may be made for remedial action, but shall not be used so as to impede any other action by the Department, or any remedial or other action for which funds are available.

(b) Repealed by Session Laws 2012-200, s. 21(e), effective August 1, 2012. (1987, c. 574, s. 2; 2008-107, s. 12.1A(a); 2012-200, s. 21(e).)

§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste disposal sites.

(a) The Secretary may issue a written declaration, based upon findings of fact, that an inactive hazardous substance or waste disposal site endangers the public health or the environment. After issuing such a declaration, and at any time during which the declaration is in effect, the Secretary shall be responsible for:

(1) Monitoring the inactive hazardous substance or waste disposal site;

(2) Developing a plan for public notice and for community and local government participation in any inactive hazardous substance or waste disposal site remedial action program to be undertaken;

(3) Approving an inactive hazardous substance or waste disposal site remedial action program for the site;

(4) Coordinating the inactive hazardous substance or waste disposal site remedial action program for the site; and

(5) Ensuring that the hazardous substance or waste disposal site remedial action program is completed.

(b) Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that the Commission, the Commissioner of Agriculture, or the Pesticide Board has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

(c) Whenever the Secretary has issued such a declaration, and at any time during which the declaration is in effect, the Secretary may, in addition to any other powers he may have, order any responsible party:

(1) To develop an inactive hazardous substance or waste disposal site remedial action program for the site subject to approval by the Department, and

(2) To implement the program within reasonable time limits specified in the order.

Written notice of such an order shall be provided to all persons subject to the order personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the date appearing in the return of the receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall be given as provided in G.S. 1A-1, Rule 4(j).

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable

cleanup standard as would be applied under CERCLA/SARA, and may seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall assure concurrent compliance with applicable standards set by the Commission.

(e) For any removal or remedial action conducted entirely on-site under this Part, to the extent that a permit would not be required under 42 U.S.C. § 9621(e) for a removal or remedial action conducted entirely on-site under CERCLA/SARA, the Secretary may grant a waiver from any State law or rule that requires that an environmental permit be obtained from the Department. The Secretary shall not waive any requirement that a permit be obtained unless either the removal or remedial action is being conducted pursuant to G.S. 130A-310.3(c), 130A-310.5, or 130A-310.6, or the owner, operator, or other responsible party has entered into an agreement with the Secretary to implement a voluntary remedial action plan under G.S. 130A-310.9(b). The Secretary shall invite public participation in the development of the remedial action plan in the manner set out in G.S. 130A-310.4 prior to granting a permit waiver, except for a removal or remedial action conducted pursuant to G.S. 130A-310.5.

(f) In order to reduce or eliminate the danger to public health or the environment posed by an inactive hazardous substance or waste disposal site, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site if the restrictions meet the requirements of this subsection. The restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been approved by the Secretary, and implemented as a part of the remedial action program for the site. The Secretary may approve restrictions included in a remedial action plan in accordance with standards determined as provided in subsection (d) of this section or pursuant to rules adopted under Chapter 150B of the General Statutes. Restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner, operator, or other party responsible for the inactive hazardous substance or waste disposal site. Any land-use restriction may also be enforced by the Department through the remedies provided in Part 2 of Article 1 of this Chapter or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the site. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this Part shall abide by the land-use restriction. (1987, c. 574, s. 2; 1989, c. 727, s. 145; 1991, c. 281, ss. 1, 2; 1997-394, s. 1; 2002-154, s. 2; 2014-122, s. 11(f).)

§ 130A-310.4. Public participation in the development of the remedial action plan.

(a) Within 10 days after the Secretary issues a declaration pursuant to G.S. 130A-310.3, he shall notify in writing the local board of health and the local health director having jurisdiction in the county or counties in which an inactive hazardous substance or waste disposal site is located that the site may endanger the public health or environment and that a remedial action plan is being developed. The Secretary shall involve the local health director in the development of the remedial action plan.

(b) Before approving any remedial action plan, the Secretary shall make copies of the proposed plan available for inspection as follows:

(1) A copy of the plan shall be provided to the local health director.

(2) Repealed by Session Laws 2010-180, s. 3, effective August 2, 2010.

(3) A copy of the plan shall be provided to the public library located in closest proximity to the site in the county or counties in which the site is located.

(4) The Secretary may place copies of the plan in other locations so as to assure the availability thereof to the public.

In addition, copies of the plan shall be available for inspection and copying at cost by the public during regular business hours in the offices of the agency within the Department with responsibility for the administration of the remedial action program.

(c) Before approving any remedial action plan, the Secretary shall give notice of the proposed plan as follows:

(1) A notice and summary of the proposed plan shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.

(2) Notice that a proposed remedial action plan has been developed shall be given by first class mail to persons who have requested such notice. Such notice shall state the locations where a copy of the remedial action plan is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

(d) The Secretary may conduct a public meeting to explain the proposed plan and alternatives to the public.

(e) At least 45 days from the latest date on which notice is provided pursuant to subsection (c)(1) of this section shall be allowed for the receipt of written comment on the proposed remedial action plan prior to its approval. If a public hearing is held pursuant to subsection (f) of this section, at least 20 days will be allowed for receipt of written comment following the hearing prior to the approval of the remedial action plan.

(f) If the Secretary determines that significant public interest exists, he shall conduct a public hearing on the proposed plan and alternatives. The Department shall give notice of the hearing at least 30 days prior to the date thereof by:

(1) Publication as provided in subdivision (c)(1) of this section, with first publication to occur not less than 30 days prior to the scheduled date of the hearing; and

(2) First class mail to persons who have requested notice as provided in subdivision (c)(2) of this section.

(g) The Commission shall adopt rules prescribing the form and content of the notices required by this section. The proposed remedial action plan shall include a

summary of all alternatives considered in the development of the plan. A record shall be maintained of all comment received by the Department regarding the remedial action plan. (1987, c. 574, s. 2; 1997-28, s. 2; 2010-180, s. 3; 2014-122, s. 11(g).)

§ 130A-310.5. Authority of the Secretary with respect to sites which pose an imminent hazard.

(a) An imminent hazard exists whenever the Secretary determines, that there exists a condition caused by an inactive hazardous substance or waste disposal site, including a release or a substantial threat of a release into the environment of a hazardous substance from the site, which is causing serious harm to the public health or environment, or which is likely to cause such harm before a remedial action plan can be developed. Whenever the Secretary determines that an imminent hazard exists he may, in addition to any other powers he may have, without notice or hearing, order any known responsible party to take immediately any action necessary to eliminate or correct the condition, or the Secretary, in his discretion, may take such action without issuing an order. Written notice of any order issued pursuant to this section shall be provided to all persons subject to the order as set out in G.S. 130A-310.3(c). Unless the time required to do so would increase the harm to the public health or the environment, the Secretary shall solicit the cooperation of responsible parties prior to the entry of any such order. The provisions of subdivisions (1) to (3) of G.S. 130A-310.6(a) shall apply to any action taken by the Secretary pursuant to this section, and any such action shall be considered part of a remedial action program, the cost of which may be recovered from any responsible party.

(b) If a person violates the requirements or schedules in an order issued pursuant to this section, the Secretary may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(c) The cost of any action by the Secretary pursuant to this section may be paid from the Inactive Hazardous Sites Cleanup Fund, or the Emergency Response Fund established pursuant to G.S. 130A-306, subject to a later action for reimbursement pursuant to G.S. 130A-310.7. (1987, c. 574, s. 2; 1989, c. 286, s. 4; 1989 (Reg. Sess., 1990), c. 1004, s. 9, c. 1024, s. 30(a); 1991, c. 342, s. 8.)

§ 130A-310.6. State action upon default of responsible parties or when no responsible party can be located.

(a) Whenever a person ordered to develop and implement an inactive hazardous substance or waste disposal site remedial action program is unable or fails to do so within the time specified in the order, the Secretary may develop and implement or cause to be developed and implemented such a program. The cost of developing and implementing a remedial action program pursuant to this section may be paid from the Inactive Hazardous Sites Cleanup Fund, subject to a later action for reimbursement pursuant to G.S. 130A-310.7.

(1) The Department is authorized and empowered to use any staff, equipment or materials under its control or provided by other cooperating federal, State or

local agencies and to contract with any agent or contractor it deems appropriate to develop and implement the remedial action program. State agencies shall provide to the maximum extent feasible such staff, equipment, and materials as may be available for developing and implementing a remedial action program.

(2) Upon completion of any inactive hazardous substance or waste disposal remedial action program, any State or local agency that has provided personnel, equipment, or material shall deliver to the Department a record of expenses incurred by the agency. The amount of the incurred expenses shall be disbursed by the Secretary to each such agency. The Secretary shall keep a record of all expenses incurred for the services of State personnel and for the use of the State's equipment and material.

(3) As soon as feasible or after completion of any inactive hazardous substance or waste disposal site remedial action program, the Secretary shall prepare a statement of all expenses and costs of the program expended by the State and issue an order demanding payment from responsible parties. Written notice of such an order shall be provided to all persons subject to the order personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the date appearing on the return of the receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given as provided in G.S. 1A-1, Rule 4(j).

(b) If the Secretary, after declaring that an inactive hazardous substance or waste disposal site may endanger the public health or the environment, is unable, after making a reasonable attempt, to locate any responsible party, the Department may develop and implement a remedial action program for the site as provided in subsection (a)(1) and (2) of this section. If responsible parties are subsequently located, the Secretary may issue an order demanding payment from such persons in the manner set forth in subdivision (a)(3) of this section for the necessary expenses incurred by the Department for developing and implementing the remedial action program. If the persons subject to such an order refuse to pay the sum expended, or fail to pay such sum within the time specified in the order, the Secretary shall bring an action in the manner set forth in G.S. 130A-310.7.

(c) The Secretary shall use funds allocated to the Department under G.S. 130A-295.9 to assess pre-1983 landfills, to determine the priority for remediation of pre-1983 landfills, and to develop and implement a remedial action plan for each pre-1983 landfill that requires remediation. Environmental and human health risks posed by a pre-1983 landfill may be mitigated using a risk-based approach for assessment and remediation. The Secretary shall develop a program to permit owners of property containing a pre-1983 landfill to suspend the further application of requirements of the program authorized by this subsection for as long as the owner continues to own the property if the owner complies with all of the following requirements:

(1) The property owner signs an assumption of liability agreement agreeing to accept all liability for potential on-site and off-site impacts caused by the pre-1983 landfill.

(2) The property owner provides financial assurance for any future impacts. The Department shall set the financial assurance requirement in a reasonable manner based on the information on current site conditions and historical

disposal records or other information provided by the property owner. The requirement for financial assurance of this subdivision shall not apply where (i) the pre-1983 landfill served as the municipal landfill for a unit of local government and (ii) the unit of local government provided no financial compensation for the waste disposal to the owner of the landfill site.

(d) The Secretary shall not seek cost recovery from a unit of local government for assessment and remedial action performed under subsection (c) of this section at a pre-1983 landfill. The Secretary shall not seek cost recovery for assessment and remedial action performed under subsection (c) of this section at a pre-1983 landfill from any other potentially responsible party if the Secretary develops and implements a remedial action plan for that pre-1983 landfill. If any potentially responsible party fails to cooperate with assessment of a site and implementation of control and mitigation measures at any site which the potentially responsible party owns or over which the potentially responsible party exercises control through a lease or other property interest, the Secretary may seek cost recovery for assessment and remedial action. Cooperation with assessment of a site and implementation of control and mitigation measures includes, but is not limited to, granting access to the site, allowing installation of monitoring wells, allowing installation and maintenance of improvements to the landfill cap, allowing installation of security measures, agreeing to record and implement land-use restrictions, and providing access to any records regarding the pre-1983 landfill. Nothing in this section shall alter any right, duty, obligation, or liability between a unit of local government and a third party. Nothing in this section shall alter any right, duty, obligation, or liability between any other potentially responsible party and a unit of local government, a third party, or, except as provided in this subsection, to the State.

(e) The Secretary shall develop and implement remedial action plans for pre-1983 landfills in the order of their priority determined as provided in subsection (c) of this section. The Secretary shall not develop or implement a remedial action plan for a pre-1983 landfill unless the Secretary determines that sufficient funds will be available from the Inactive Hazardous Sites Cleanup Fund to pay the costs of development and implementation of a remedial action plan for that pre-1983 landfill.

(f) A unit of local government that voluntarily undertakes assessment or remediation of a pre-1983 landfill may request that the Department reimburse the costs of assessment of the pre-1983 landfill and implementation of measures necessary to remediate the site to eliminate an imminent hazard. The Department shall provide reimbursement under this subsection if the Department finds all of the following:

(1) The unit of local government undertakes assessment and remediation under a plan approved by the Department.

(2) The unit of local government provides a certified accounting of costs incurred for assessment and remediation.

(3) Each contract for assessment and remediation complies with the requirements of Articles 3D and 8 of Chapter 143 of the General Statutes.

(4) Remedial action is limited to measures necessary to abate the imminent hazard.

(g) The Department may undertake any additional action necessary to remediate a pre-1983 landfill based on the priority ranking of the site under subsection (c) of this section. (1987, c. 574, s. 2; 1989, c. 286, s. 5; 2007-550, s. 14(c); 2017-57, s. 13.4(a).)

§ 130A-310.7. Action for reimbursement; liability of responsible parties; notification of completed remedial action.

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in this subsection, any person who:

(1) Discharges or deposits; or
(2) Contracts or arranges for any discharge or deposit; or
(3) Accepts for discharge or deposit; or
(4) Transports or arranges for transport for the purpose of discharge or deposit

any hazardous substance, the result of which discharge or deposit is the existence of an inactive hazardous substance or waste disposal site, shall be considered a responsible party. Neither an innocent landowner who is a bona fide purchaser of the inactive hazardous substance or waste disposal site without knowledge or without a reasonable basis for knowing that hazardous substance or waste disposal had occurred nor a person whose interest or ownership in the inactive hazardous substance or waste disposal site is based on or derived from a security interest in the property shall be considered a responsible party. A responsible party shall be directly liable to the State for any or all of the reasonably necessary expenses of developing and implementing a remedial action program for such site. The Secretary shall bring an action for reimbursement of the Inactive Hazardous Sites Cleanup Fund in the name of the State in the superior court of the county in which the site is located to recover such sum and the cost of bringing the action. The State must show that a danger to the public health or the environment existed and that the State complied with the provisions of this Part.

(b) There shall be no liability under this section for a person who can establish by a preponderance of the evidence that the danger to the public health or the environment caused by the site was caused solely by:

(1) An act of God; or
(2) An act of war; or
(3) An intentional act or omission of a third party (but this defense shall not be available if the act or omission is that of an employee or agent of the defendant, or if the act or omission occurs in connection with a contractual relationship with the defendant); or
(4) Any combination of the above causes.

(b1) Notwithstanding subsection (a) of this section, there shall be no liability under this section for a person who arranges for recycling of recyclable materials with respect to such materials if that person has complied with all standards, requirements, and criteria set forth in the Superfund Recycling Equity Act of 1999, 42 U.S.C. § 9627, as amended.

(c) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a site that is subject to this Part has been remediated to unrestricted use standards as provided in Part 5 of Article 9 of Chapter 130A of the General Statutes. A request for a determination that a site has been remediated to unrestricted use standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the site has been

remediated to unrestricted use standards, the Department shall issue a written notification that no further remediation will be required at the site. The notification shall state that no further remediation will be required at the site unless the Department later determines, based on new information or information not previously provided to the Department, that the site has not been remediated to unrestricted use standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the site to unrestricted use standards. (1987, c. 574, s. 2; 1989, c. 286, s. 6; 1989 (Reg. Sess., 1990), c. 1004, s. 10; c. 1024, s. 30(b); 1997-357, s. 5; 2001-384, s. 11; 2017-163, s. 1.)

§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.

(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to the owner to do so, shall submit to the Department a survey plat of areas designated by the Department that has been prepared and certified by a professional land surveyor, and entitled "NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE". Where an inactive hazardous substance or waste disposal site is located on more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded. The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

(1) The location and dimensions of the disposal areas and areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location, and quantity of hazardous substances known by the owner of the site to exist on the site.

(3) Any restrictions approved by the Department on the current or future use of the site.

(b) After the Department approves and certifies the Notice, the owner of the site shall file the certified copy of the Notice in the register of deeds' office in the county or counties in which the land is located within 15 days of the date on which the owner receives approval of the Notice from the Department.

(c) Repealed by Session Laws 2012-18, s. 1.18, effective July 1, 2012.

(d) In the event that the owner of the site fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file such Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of a site who is not a responsible party submits and files the Notice required by this section, he may recover the reasonable costs thereof from any responsible party.

(e) When an inactive hazardous substance or waste disposal site is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument,

a statement that the property has been used as a hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site filed pursuant to this section may, at the request of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded.

(g) Recordation under this section is not required for any inactive hazardous substance or waste disposal site that is undergoing voluntary remedial action pursuant to this Part unless the Secretary determines that either:

(1) A concentration of a hazardous substance or hazardous waste that poses a danger to public health or the environment will remain following implementation of the voluntary remedial action program.

(2) The voluntary remedial action program is not being implemented in a manner satisfactory to the Secretary and in compliance with the agreement between the Secretary and the owner, operator, or other responsible party.

(h) The Secretary may waive recordation under this section with respect to any residential real property that is contaminated solely because a hazardous substance or hazardous waste migrated to the property from other property by means of groundwater flow if disclosure of the contamination is required under Chapter 47E of the General Statutes. An owner of residential real property whose recordation requirement is waived by the Secretary under this subsection and who fails to disclose contamination as required by Chapter 47E of the General Statutes is subject to both the penalties and remedies under this Chapter applicable to a person who fails to comply with the recordation requirements of this section as though those requirements had not been waived and to the remedies available under Chapter 47E of the General Statutes.

(i) If a site subject to the requirements of this section is remediated pursuant to the requirements of Part 8 of Article 9 of Chapter 130A of the General Statutes, a Notice of Residual Contamination may be prepared and filed in accordance with G.S. 130A-310.71(a)(9), in lieu of a Notice prepared and filed pursuant to this section. (1987, c. 574, s. 2; 1989, c. 727, s. 219(34); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1997-394, s. 2; 1997-443, ss. 11A.119(a), (b); 1997-528, s. 1; 2012-18, s. 1.18; 2015-286, s. 4.7(c).)

§ 130A-310.9. Voluntary remedial actions; limitation of liability; agreements; implementation and oversight by private engineering and consulting firms.

(a) No one owner, operator, or other responsible party who voluntarily participates in the implementation of a remedial action program under G.S. 130A-310.3 or G.S. 130A-310.5 may be required to pay in excess of five million dollars ($5,000,000) for the cost of implementing a remedial action program at a single inactive hazardous substance or waste disposal site. The owner, operator, or other responsible party who voluntarily

participates in the implementation of a remedial action program under G.S. 130A-310.3 or G.S. 130A-310.5 shall be required to pay in addition to the cost of implementing the remedial action program a fee of one thousand dollars ($1,000) to be used for the Department's cost of monitoring and enforcing the remedial action program. The limitation of liability contained in this subsection applies to the cost of implementing the program and to the fee under this subsection. The limitation of liability contained in this subsection does not apply to the cost of developing the remedial action plan.

(b) The Secretary may enter into an agreement with an owner, operator, or other responsible party that provides for implementation of a voluntary remedial action program in accordance with a remedial action plan approved by the Department. Investigations, evaluations, and voluntary remedial actions are subject to the provisions of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.3(f), 130A-310.5, 130A-310.8, and any other requirement imposed by the Department. A voluntary remedial action and all documents that relate to the voluntary remedial action shall be fully subject to inspection and audit by the Department. At least 30 days prior to entering into any agreement providing for the implementation of a voluntary remedial action program, the Secretary shall mail notice of the proposed agreement as provided in G.S. 130A-310.4(c)(2). Sites undergoing voluntary remedial actions shall be so identified as a separate category in the inventory of sites maintained pursuant to G.S. 130A-310.1 but shall not be included on the Inactive Hazardous Waste Sites Priority List required by G.S. 130A-310.2.

(c) The Department may approve a private environmental consulting and engineering firm to implement and oversee a voluntary remedial action by an owner, operator, or other responsible party. An owner, operator, or other responsible party who enters into an agreement with the Secretary to implement a voluntary remedial action may hire a private environmental consulting or engineering firm approved by the Department to implement and oversee the voluntary remedial action. A voluntary remedial action that is implemented and overseen by a private environmental consulting or engineering firm shall be implemented in accordance with all federal and State laws, regulations, and rules that apply to remedial actions generally and is subject to rules adopted pursuant to G.S. 130A-310.12(b). The Department may revoke its approval of the oversight of a voluntary remedial action by a private environmental consulting or engineering firm and assume direct oversight of the voluntary remedial action whenever it appears to the Department that the voluntary remedial action is not being properly implemented or is not being adequately overseen. The Department may require the owner, operator, other responsible party, or private environmental consulting or engineering firm to take any action necessary to bring the voluntary remedial action into compliance with applicable requirements. (1987, c. 574, s. 2; 1989, c. 286, s. 7; 1993 (Reg. Sess., 1994), c. 598, s. 1; 1995, c. 327, s. 2; 1997-394, s. 3; 2007-107, s. 1.1(g); 2009-451, s. 13.3C(a).)

§ 130A-310.10. Annual reports.

(a) The Secretary shall include in the status of solid waste management report required to be submitted on or before January 15 of each year pursuant to

G.S. 130A-309.06(c) a report on inactive hazardous sites that includes at least the following:

(1) The Inactive Hazardous Waste Sites Priority List.

(2) A list of remedial action plans requiring State funding through the Inactive Hazardous Sites Cleanup Fund.

(3) A comprehensive budget to implement these remedial action plans and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the cost of said plans.

(4) A prioritized list of sites that are eligible for remedial action under CERCLA/SARA together with recommended remedial action plans and a comprehensive budget to implement such plans. The budget for implementing a remedial action plan under CERCLA/SARA shall include a statement as to any appropriation that may be necessary to pay the State's share of such plan.

(5) A list of sites and remedial action plans undergoing voluntary cleanup with Departmental approval.

(6) A list of sites and remedial action plans that may require State funding, a comprehensive budget if implementation of these possible remedial action plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the possible costs of said plans.

(7) A list of sites that pose an imminent hazard.

(8) A comprehensive budget to develop and implement remedial action plans for sites that pose imminent hazards and that may require State funding, and the adequacy of the Inactive Hazardous Sites Cleanup Fund.

(8a) Repealed by Session Laws 2015-286, s. 4.7(f), effective October 22, 2015.

(9) Any other information requested by the General Assembly or the Environmental Review Commission.

(a1) On or before October 1 of each year, the Department shall report to each member of the General Assembly who has an inactive hazardous substance or waste disposal site in the member's district. This report shall include the location of each inactive hazardous substance or waste disposal site in the member's district, the type and amount of hazardous substances or waste known or believed to be located on each of these sites, the last action taken at each of these sites, and the date of that last action.

(b) Repealed by Session Laws 2001-452, s. 2.3, effective October 28, 2001. (1987, c. 574, s. 2; 1989, c. 286, s. 8; 1997-28, s. 1; 2001-452, s. 2.3; 2010-31, s. 13.9(b); 2011-186, s. 4; 2012-200, s. 22; 2015-286, s. 4.7(f); 2017-10, s. 4.14(d).)

§ 130A-310.11. Inactive Hazardous Sites Cleanup Fund created.

(a) There is established under the control and direction of the Department the Inactive Hazardous Sites Cleanup Fund. This fund shall be a revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, taxes, and other monies paid to it or recovered by or on behalf of the Department. The Inactive Hazardous Sites Cleanup Fund shall be treated as a nonreverting special trust fund pursuant to G.S. 147-69.2 and G.S. 147-69.3, except that interest and other income received on the Fund balance shall be treated as set forth in G.S. 147-69.1(d).

(b) Funds credited to the Inactive Hazardous Sites Cleanup Fund pursuant to G.S. 130A-295.9 shall be used only as provided in G.S. 130A-295.9(1) and G.S. 130A-310.6(c). (1987, c. 574, s. 2; 1989, c. 286, s. 9; 2007-550, s. 14(d); 2009-484, s. 11; 2010-142, s. 12; 2014-100, s. 14.21(i).)

§ 130A-310.12. Administrative procedure; adoption of rules.

(a) The provisions of Chapter 150B of the General Statutes apply to this Part. The Commission shall adopt rules for the implementation of this Part.

(b) The Commission shall adopt rules governing the selection and use of private environmental consulting and engineering firms to implement and oversee voluntary remedial actions by owners, operators, or other responsible parties under G.S. 130A-310.9(c). Rules adopted under this subsection shall specify:

(1) Standards applicable to private environmental consulting and engineering firms.

(2) Criteria and procedures for approval of firms by the Department.

(3) Requirements and procedures under which the Department monitors and audits a voluntary remedial action to ensure that the voluntary remedial action complies with applicable federal and State law, regulations, and under which the owner, operator, or other responsible party reimburses the Department for the cost of monitoring and auditing the voluntary remedial action.

(4) Any financial assurances that may be required of an owner, operator, or other responsible party.

(5) Requirements for the preparation, maintenance, and public availability of work plans and records, reports of data collection including sampling, sample analysis, and other site testing, and other records and reports that are consistent with the requirements applicable to remedial actions generally. (1987, c. 574, ss. 2, 5; 1993 (Reg. Sess., 1994), c. 598, s. 2; 1995, c. 327, s. 3.)

§ 130A-310.13. Short title.

This Part shall be known and may be cited as the Inactive Hazardous Sites Response Act of 1987. (1991, c. 281, s. 3)

§ 130A-310.14. Reserved for future codification purposes.

§ 130A-310.15. Reserved for future codification purposes.

§ 130A-310.16. Reserved for future codification purposes.

§ 130A-310.17. Reserved for future codification purposes.

§ 130A-310.18. Reserved for future codification purposes.

§ 130A-310.19. Reserved for future codification purposes.

Part 4. Superfund Program.

§ 130A-310.20. Definitions.

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

(1) "CERCLA/SARA" or "Superfund" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 **et seq.**, as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended. (1989, c. 286, s. 10.)

§ 130A-310.21. Administration of the Superfund program.

The Department shall maintain an appropriate administrative subunit within the solid waste management unit authorized by G.S. 130A-291 to carry out those activities in which the State is authorized to engage under CERCLA/SARA. (1989, c. 286, s. 10.)

§ 130A-310.22. Contracts authorized.

(a) The Department is authorized to enter into contracts and cooperative agreements with the United States and to engage in any activity otherwise authorized by law to identify, investigate, evaluate, and clean up any site or facility covered by CERCLA/SARA including but not limited to performing preliminary assessments, site investigations, remedial investigations, and feasibility studies; preparation of records of decision; conducting emergency response, remedial, and removal actions; and engaging in enforcement activities in accordance with the provisions of CERCLA/SARA.

(b) The Department may make all assurances required by federal law or regulation including but not limited to assuring that the State will assume responsibility for the operation and maintenance of any remedial action for the anticipated duration of the remedial action; assuring that the State will provide its share of the cost of any remedial action at a site or facility which was privately owned or operated; assuring that the State will provide its share of the cost of any removal, remedial planning, and remedial action at a site or facility owned or operated by the State or a political subdivision of the State; assuring the availability of off-site treatment, storage, or disposal capacity needed to effectuate a remedial action; assuring that the State will take title to, acquire an interest in, or accept transfer of any interest in real property needed to effectuate a remedial action; assuring that the State has adequate capacity to meet the assurances required by CERCLA/SARA (42 U.S.C. § 9604(c)(9)); assuring access to the facility and any adjacent property including the securing of any right-of-way or easement needed to effectuate a remedial action; and assuring that the State will satisfy all federal, State, and local requirements for permits and approvals necessary to effectuate a remedial action.

(c) Each contract entered into by the Department under this section shall stipulate that all obligations of the State are subject to the availability of funds. Neither this section nor any contract entered into under authority of this section shall be construed to obligate the General Assembly to make any appropriation to implement this Part or any contract entered into under this section. The Department shall implement this Part and any contract entered into under this section from funds otherwise available or appropriated to the

Department for such purpose. (1989, c. 286, s. 10; 1989 (Reg. Sess., 1990), c. 1004, s. 11, c. 1024, s. 30(c).)

§ 130A-310.23. Filing notices of CERCLA/SARA (Superfund) liens.

Notices of liens and certificates of notices affecting liens for obligations payable to the United States under CERCLA/SARA (Superfund) (42 U.S.C. § 9607(l)) shall be filed in accordance with Article 11A of Chapter 44 of the General Statutes. (1989 (Reg. Sess., 1990), c. 1047, s. 1.1; 1991 (Reg. Sess., 1992), c. 890, s. 11.)

§ 130A-310.24. Reserved for future codification purposes.

§ 130A-310.25. Reserved for future codification purposes.

§ 130A-310.26. Reserved for future codification purposes.

§ 130A-310.27. Reserved for future codification purposes.

§ 130A-310.28. Reserved for future codification purposes.

§ 130A-310.29. Reserved for future codification purposes.

Part 5. Brownfields Property Reuse Act.

§ 130A-310.30. Short title.

This Part may be cited as The Brownfields Property Reuse Act of 1997. (1997-357, s. 2.)

§ 130A-310.31. Definitions.

(a) Unless a different meaning is required by the context or unless a different meaning is set out in subsection (b) of this section, the definitions in G.S. 130A-2 and G.S. 130A-310 apply throughout this Part.

(b) Unless a different meaning is required by the context:

(1) "Affiliate" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(2) "Brownfields agreement" means an agreement between the Department and a prospective developer that meets the requirements of G.S. 130A-310.32.

(3) "Brownfields property" or "brownfields site" means abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual environmental contamination or the possibility of environmental contamination and that is or may be subject to remediation under any State remedial program or that is or may be subject to remediation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq.) except for a site listed on the National Priorities List pursuant to 42 U.S.C. § 9605.

(4) "Contaminant" means a regulated substance released into the environment.

(5) "Unrestricted use standards" when used in connection with "cleanup", "remediated", or "remediation" means contaminant concentrations for each environmental medium that are considered acceptable for all uses and that comply with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the Commission or the Department instead of the site-specific contaminant levels established pursuant to this Part.

(6) "Environmental contamination" means contaminants at the property requiring remediation and that are to be remediated under the brownfields agreement including, at a minimum, hazardous waste, as defined in G.S. 130A-290; a hazardous substance, as defined in G.S. 130A-310; a hazardous substance, as defined in G.S. 143-215.77; or oil, as defined in G.S. 143-215.77.

(7) "Local government" means a town, city, or county.

(8) "Parent" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(9) "Potentially responsible party" means a person who is or may be liable for remediation under a remedial program.

(10) "Prospective developer" means any person with a bona fide, demonstrable desire to develop or redevelop a brownfields property and who did not cause or contribute to the contamination at the brownfields property.

(11) "Regulated substance" means a hazardous waste, as defined in G.S 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil, as defined in G.S. 143-215.77; or other substance regulated under any remedial program implemented by the Department.

(12) "Remedial program" means a program implemented by the Department for the remediation of any contaminant, including the Inactive Hazardous Sites Response Act of 1987 under Part 3 of this Article, the Superfund Program under Part 4 of this Article, and the Oil Pollution and Hazardous Substances Control Act of 1978 under Part 2 of Article 21A of Chapter 143 of the General Statutes.

(13) "Remediation" means action to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health or the environment.

(14) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition). (1997-357, s. 2; 1997-392, ss. 4.2-4.4; 2001-384, s. 11; 2006-71, ss. 1, 2, 3; 2013-108, s. 1; 2014-122, s. 11(h); 2015-286, s. 4.10(a).)

§ 130A-310.32. Brownfields agreement.

(a) The Department may, in its discretion, enter into a brownfields agreement with a prospective developer who satisfies the requirements of this section. A prospective developer shall provide the Department with any information necessary to demonstrate that:

(1) The prospective developer, and any parent, subsidiary, or other affiliate of the prospective developer has substantially complied with:

a. The terms of any brownfields agreement or similar agreement to which the prospective developer or any parent, subsidiary, or other affiliate of the prospective developer has been a party.
b. The requirements applicable to any remediation in which the applicant has previously engaged.
c. Federal and state laws, regulations, and rules for the protection of the environment.

(2) As a result of the implementation of the brownfields agreement, the brownfields property will be suitable for the uses specified in the agreement while fully protecting public health and the environment instead of being remediated to unrestricted use standards.

(3) There is a public benefit commensurate with the liability protection provided under this Part.

(4) The prospective developer has or can obtain the financial, managerial, and technical means to fully implement the brownfields agreement and assure the safe use of the brownfields property.

(5) The prospective developer has complied with or will comply with all applicable procedural requirements.

(b) In negotiating a brownfields agreement, parties may rely on land-use restrictions that will be included in a Notice of Brownfields Property required under G.S. 130A-310.35. A brownfields agreement may provide for remediation standards that are based on those land-use restrictions.

(c) A brownfields agreement shall contain a description of the brownfields property that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

(1) Any remediation to be conducted on the property, including:
a. A description of specific areas where remediation is to be conducted.
b. The remediation method or methods to be employed.
c. The resources that the prospective developer will make available.
d. A schedule of remediation activities.
e. Applicable remediation standards.
f. A schedule and the method or methods for evaluating the remediation.

(2) Any land-use restrictions that will apply to the brownfields property.

(3) The desired results of any remediation or land-use restrictions with respect to the brownfields property.

(4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.

(5) The consequences of achieving or not achieving the desired results.

(d) Any failure of the prospective developer or the prospective developer's agents and employees to comply with the brownfields agreement constitutes a violation of this Part by the prospective developer. (1997-357, s. 2; 2001-384, s. 11.)

§ 130A-310.33. Liability protection.

(a) A prospective developer who enters into a brownfields agreement with the Department and who is complying with the brownfields agreement shall not be held liable

for remediation of areas of contaminants identified in the brownfields agreement except as specified in the brownfields agreement, so long as the activities conducted on the brownfields property by or under the control or direction of the prospective developer do not increase the risk of harm to public health or the environment and the prospective developer is not required to undertake additional remediation to unrestricted use standards pursuant to subsection (c) of this section. The liability protection provided under this Part applies to all of the following persons to the same extent as to a prospective developer, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties and the person is not required to undertake additional remediation to unrestricted use standards pursuant to subsection (c) of this section:

(1) Any person under the direction or control of the prospective developer who directs or contracts for remediation or redevelopment of the brownfields property.
(2) Any future owner of the brownfields property.
(3) A person who develops or occupies the brownfields property.
(4) A successor or assign of any person to whom the liability protection provided under this Part applies.
(5) Any lender or fiduciary that provides financing for remediation or redevelopment of the brownfields property.

(b) A person who conducts an environmental assessment or transaction screen on a brownfields property and who is not otherwise a potentially responsible party is not a potentially responsible party as a result of conducting the environmental assessment or transaction screen unless that person increases the risk of harm to public health or the environment by failing to exercise due diligence and reasonable care in performing the environmental assessment or transaction screen.

(c) If a land-use restriction set out in the Notice of Brownfields Property required under G.S. 130A-310.35 is violated, the owner of the brownfields property at the time the land-use restriction is violated, the owner's successors and assigns, and the owner's agents who direct or contract for alteration of the brownfields property in violation of a land-use restriction shall be liable for remediation to unrestricted use standards. A prospective developer who completes the remediation or redevelopment required under a brownfields agreement or other person who receives liability protection under this Part shall not be required to undertake additional remediation at the brownfields property unless any of the following apply:

(1) The prospective developer knowingly or recklessly provides false information that forms a basis for the brownfields agreement or that is offered to demonstrate compliance with the brownfields agreement or fails to disclose relevant information about contamination at the brownfields property.
(2) New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the brownfields property that has not been remediated to unrestricted use standards, unless the brownfields agreement is amended to include any previously unreported contaminants and any additional areas of contamination. If the

brownfields agreement sets maximum concentrations for contaminants, and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by the brownfields agreement.

(3) The level of risk to public health or the environment from contaminants is unacceptable at or in the vicinity of the brownfields property due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants or in the vicinity of the brownfields property or (ii) the failure of remediation to mitigate risks to the extent required to make the brownfields property fully protective of public health and the environment as planned in the brownfields agreement.

(4) The Department obtains new information about a contaminant associated with the brownfields property or exposures at or around the brownfields property that raises the risk to public health or the environment associated with the brownfields property beyond an acceptable range and in a manner or to a degree not anticipated in the brownfields agreement. Any person whose use, including any change in use, of the brownfields property causes an unacceptable risk to public health or the environment may be required by the Department to undertake additional remediation measures under the provisions of this Part.

(5) A prospective developer fails to file a timely and proper Notice of Brownfields Development under this Part. (1997-357, s. 2; 2001-384, s. 11.)

§ 130A-310.34. Public notice and community involvement.

(a) A prospective developer who desires to enter into a brownfields agreement shall notify the public and the community in which the brownfields property is located of planned remediation and redevelopment activities. The prospective developer shall submit a Notice of Intent to Redevelop a Brownfields Property and a summary of the Notice of Intent to the Department. The Notice of Intent shall provide, to the extent known, a legal description of the location of the brownfields property, a map showing the location of the brownfields property, a description of the contaminants involved and their concentrations in the media of the brownfields property, a description of the intended future use of the brownfields property, any proposed investigation and remediation, and a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed brownfields agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of the Notice of Intent and summary of the Notice of Intent by the Department, the prospective developer shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the brownfields property. The prospective developer shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the brownfields property is located. The prospective developer shall conspicuously post a copy of the summary of the Notice of Intent at the brownfields property, and the prospective developer

shall mail or deliver a copy of the summary to each owner of property contiguous to the brownfields property. The prospective developer shall submit documentation of the public notices to the Department prior to the Department entering into a brownfields agreement.

(b) Publication of the approved summary of the Notice of Intent in a newspaper of general circulation, posting the summary at the brownfields property, and mailing or delivering the summary to each owner of property contiguous to the brownfields property shall begin a public comment period of at least 30 days from the latest date of publication, posting, and mailing or delivering. During the public comment period, members of the public, residents of the community in which the brownfields property is located, and local governments having jurisdiction over the brownfields property may submit comment on the proposed brownfields agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed brownfields agreement shall submit a written request for a public meeting to the Department within 21 days after the public comment period begins. The Department shall consider all requests for a public meeting and shall hold a public meeting if the Department determines that there is significant public interest in the proposed brownfields agreement. If the Department decides to hold a public meeting, the Department shall, at least 15 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to each owner of property contiguous to the brownfields property. The Department shall also direct the prospective developer to publish, at least 15 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in such county where the brownfields property is located. In any county in which there is more than one newspaper having general circulation, the Department shall direct the prospective developer to publish a copy of the notice in as many newspapers having general circulation in the county as the Department in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Department shall prescribe the form and content of the notice to be published. The Department shall prescribe the procedures to be followed in the public meeting. The Department shall take detailed minutes of the meeting. The minutes shall include any written comments, exhibits, or documents presented at the meeting.

(d) Prior to entering into a brownfields agreement, the Department shall take into account the comment received during the comment period and at the public meeting if the Department holds a public meeting. The Department shall incorporate into the brownfields agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Department shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis and to written comment from the units of local government that have taxing jurisdiction over the brownfields property. (1997-357, s. 2; 2000-158, s. 2; 2006-71, ss. 4, 5; 2009-181, s. 1.)

§ 130A-310.35. Notice of Brownfields Property; land-use restrictions in deed.

(a) In order to reduce or eliminate the danger to public health or the environment posed by a brownfields property being addressed under this Part, a prospective developer who desires to enter into a brownfields agreement with the Department shall submit to the Department a proposed Notice of Brownfields Property. A Notice of Brownfields Property shall be entitled "Notice of Brownfields Property", shall include a survey plat of areas designated by the Department that has been prepared and certified by a professional land surveyor and that meets the requirements of G.S. 47-30, shall include a legal description of the brownfields property that would be sufficient as a description of the property in an instrument of conveyance, and shall identify all of the following:

(1) The location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location, and quantity of regulated substances and contaminants known to exist on the brownfields property.

(3) Any restrictions on the current or future use of the brownfields property or, with the owner's permission, other property that are necessary or useful to maintain the level of protection appropriate for the designated current or future use of the brownfields property and that are designated in the brownfields agreement. These land-use restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Where a brownfields property encompasses more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded.

(b) After the Department approves and certifies the Notice of Brownfields Property under subsection (a) of this section, a prospective developer who enters into a brownfields agreement with the Department shall file a certified copy of the Notice of Brownfields Property in the register of deeds' office in the county or counties in which the land is located. The prospective developer shall file the Notice of Brownfields Property within 15 days of the prospective developer's receipt of the Department's approval of the notice or the prospective developer's entry into the brownfields agreement, whichever is later.

(c) Repealed by Session Laws 2012-18, s. 1.19, effective July 1, 2012.

(d) When a brownfields property is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the brownfields property has been classified and, if appropriate, cleaned up as a brownfields property under this Part.

(e) A Notice of Brownfields Property filed pursuant to this section may, at the request of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the notice is recorded a statement that the hazards have been eliminated and request that the notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the notice and reference the plat book and page where the notice is recorded.

(f) Any land-use restriction filed pursuant to this section shall be enforced by any owner of the land. Any land-use restriction may also be enforced by the Department through the remedies provided in Part 2 of Article 1 of this Chapter or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the brownfields property by means of a civil action without the unit of local government having first exhausted any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(g) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for brownfields properties remediated under this Part. (1997-357, s. 2; 1997-443, s. 11A.119(b); 2012-18, s. 1.19.)

§ 130A-310.36. Appeals.

A decision by the Department as to whether or not to enter into a brownfields agreement including the terms of any brownfields agreement is reviewable under Article 3 of Chapter 150B of the General Statutes. (1997-357, s. 2.)

§ 130A-310.37. Construction of Part.

(a) This Part is not intended and shall not be construed to:

(1) Affect the ability of local governments to regulate land use under Article 19 of Chapter 160A of the General Statutes and Article 18 of Chapter 153A of the General Statutes. The use of the identified brownfields property and any land-use restrictions in the brownfields agreement shall be consistent with local land-use controls adopted under those statutes.

(2) Amend, modify, repeal, or otherwise alter any provision of any remedial program or other provision of this Chapter, Chapter 143 of the General Statutes, or any other provision of law relating to civil and criminal penalties or enforcement actions and remedies available to the Department, except as may be provided in a brownfields agreement.

(3) Prevent or impede the immediate response of the Department or responsible party to an emergency that involves an imminent or actual release of a regulated substance that threatens public health or the environment.

(4) Relieve a person receiving liability protection under this Part from any liability for contamination later caused by that person on a brownfields property.

(5) Affect the right of any person to seek any relief available against any party to the brownfields agreement who may have liability with respect to the brownfields property, except that this Part does limit the relief available against any party to a brownfields agreement with respect to remediation of the

brownfields property to the remediation required under the brownfields agreement.

(6) Affect the right of any person who may have liability with respect to the brownfields property to seek contribution from any other person who may have liability with respect to the brownfields property and who neither received nor has liability protection under this Part.

(7) Prevent the State from enforcing specific numerical remediation standards, monitoring, or compliance requirements specifically required to be enforced by the federal government as a condition to receive program authorization, delegation, primacy, or federal funds.

(8) Create a defense against the imposition of criminal and civil fines or penalties or administrative penalties otherwise authorized by law and imposed as the result of the illegal disposal of waste or for the pollution of the land, air, or waters of this State on a brownfields property.

(9) Relieve a person of any liability for failure to exercise due diligence and reasonable care in performing an environmental assessment or transaction screen.

(b) Notwithstanding the provisions of the Tort Claims Act, G.S. 143-291 through G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the State of North Carolina, the State, its agencies, officers, employees, and agents shall be absolutely immune from any liability in any proceeding for any injury or claim arising from negotiating, entering, monitoring, or enforcing a brownfields agreement or a Notice of Brownfields Property under this Part or any other action implementing this Part.

(c) The Department shall not enter into a brownfields agreement for a site listed on the National Priorities List pursuant to 42 U.S.C. § 9605. (1997-357, s. 2; 1997-392, s. 4.5; 2006-71, s. 6.)

§ 130A-310.38. Brownfields Property Reuse Act Implementation Account.

The Brownfields Property Reuse Act Implementation Account is created as a nonreverting account in the Office of the State Treasurer. The Account shall consist of fees and interest collected under G.S. 130A-310.39, moneys appropriated to it by the General Assembly, moneys received from the federal government, moneys contributed by private organizations, and moneys received from any other source. Funds in the Account shall be used by the Department to defray the costs of implementing this Part. The Department may contract with a private entity for any services necessary to implement this Part. (1997-357, s. 2; 1999-360, s. 17.2; 2014-100, s. 14.21(j).)

§ 130A-310.39. Fees.

(a) The Department shall collect the following fees:

(1) A prospective developer who submits a proposed brownfields agreement for review by the Department shall pay an initial fee of two thousand dollars ($2,000).

(2) A prospective developer who enters into a brownfields agreement with the Department shall pay a fee in an amount equal to the full cost to the Department and the Department of Justice of all activities related to the brownfields

agreement, including but not limited to negotiation of the brownfields agreement, public notice and community involvement, and monitoring the implementation of the brownfields agreement. The procedure by which the amount of this fee is determined shall be established by agreement between the prospective developer and the Department and shall be set out as a part of the brownfields agreement. The fee imposed by this subdivision shall be paid in two installments. The first installment shall be due at the time the prospective developer and the Department enter into the brownfields agreement and shall equal all costs that have been incurred by the Department and the Department of Justice at that time less the amount of the initial fee paid pursuant to subdivision (1) of this subsection. The Department shall not enter into the brownfields agreement unless the first installment is paid in full when due. The second installment shall be due at the time the prospective developer submits a final report certifying completion of remediation under the brownfields agreement and shall include any additional costs that have been incurred by the Department and the Department of Justice, including all costs of monitoring the implementation of the brownfields agreement.

(b) Fees and interest imposed under this section shall be credited to the Brownfields Property Reuse Act Implementation Account.

(c) If a prospective developer fails to pay the full amount of any fee due under this section, interest on the unpaid portion of the fee shall accrue from the time the fee is due until paid at the rate established by the Secretary of Revenue pursuant to G.S. 105-241.21. A lien for the amount of the unpaid fee plus interest shall attach to the real and personal property of the prospective developer and to the brownfields property until the fee and interest is paid. The Department may collect unpaid fees and interest in any manner that a unit of local government may collect delinquent taxes. (1997-357, s. 2; 1999-360, s. 17.3; 2007-491, s. 44(1)(a).)

§ 130A-310.40. Legislative reports.

The Department shall include in the status of solid waste management report required to be submitted on or before January 15 of each year pursuant to G.S. 130A-309.06(c) an evaluation of the effectiveness of this Part in facilitating the remediation and reuse of existing industrial and commercial properties. This evaluation shall include any recommendations for additional incentives or changes, if needed, to improve the effectiveness of this Part in addressing such properties. This evaluation shall also include a report on receipts by and expenditures from the Brownfields Property Reuse Act Implementation Account. (1997-357, s. 2; 2017-10, s. 4.14(c).)

§ 130A-310.41: Reserved for future codification purposes.

§ 130A-310.42: Reserved for future codification purposes.

§ 130A-310.43: Reserved for future codification purposes.

§ 130A-310.44: Reserved for future codification purposes.

§ 130A-310.45: Reserved for future codification purposes.

§ 130A-310.46: Reserved for future codification purposes.

§ 130A-310.47: Reserved for future codification purposes.

§ 130A-310.48: Reserved for future codification purposes.

§ 130A-310.49: Reserved for future codification purposes.

Part 6. Mercury Switch Removal.

§ 130A-310.50. (Repealed effective June 30, 2021) Definitions.

As used in this Part:

(1) Repealed by Session Laws 2007-142, s. 1, effective June 29, 2007.

(2) "End-of-life vehicle" means a vehicle that is sold, given, or otherwise conveyed to a vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility for the purpose of recycling.

(2a) "Inaccessible", when used in connection with mercury switch, means that, due to the condition of the vehicle, the mercury switch cannot be removed from a vehicle without a significant risk of a release of mercury into the environment.

(3) (4) Repealed by Session Laws 2007-142, s. 1, effective June 29, 2007.

(4a) "Mercury recovery performance ratio" means the ratio of the number of pounds of mercury recovered from mercury switches from the State in a calendar year to the estimated number of pounds of mercury available to be recovered from mercury switches from the State in the same calendar year.

(5) "Mercury switch" means each capsule or assembly containing mercury that is part of a convenience light switch installed in a vehicle.

(5a) Reserved for future codification purposes.

(5b) "National mercury recovery performance ratio" means the ratio of the number of pounds of mercury recovered from mercury switches from the United States in a calendar year to the estimated number of pounds of mercury available to be recovered from mercury switches from the United States in the same calendar year.

(5c) "NVMSRP" means the Memorandum of Understanding to establish the National Vehicle Mercury Switch Recovery Program dated 11 August 2006.

(6) "Scrap vehicle processing facility" means a fixed location where machinery and equipment are used to process scrap vehicles into specification grade commodities including facilities where a shredder or fragmentizer is used to process scrap vehicles into shredded scrap and facilities where end-of-life vehicles are prepared to be shredded.

(7) "Vehicle" means any passenger automobile or passenger car, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than 12,000 pounds.

(7a) "Vehicle crusher" means a person who engages in the business of flattening, crushing, or otherwise processing end-of-life vehicles for recycling. Vehicle crusher includes, but is not limited to, a person who uses fixed or mobile equipment to flatten or crush end-of-life vehicles for a vehicle recycler or a scrap vehicle processing facility.

(7b) "Vehicle dismantler" has the same meaning as "vehicle recycler."

(7c) "Vehicle manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that is the last person in the production or assembly process of a motor vehicle that contains one or more mercury switches, or in the case of an imported vehicle, the importer or domestic distributor of the vehicle. "Vehicle manufacturer" does not include any person engaged in the business of selling new motor vehicles at retail or any person who converts or modifies new motor vehicles after the production or assembly process.

(8) "Vehicle recycler" means a person or entity engaged in the business of acquiring, dismantling, or destroying six or more end-of-life vehicles in a calendar year for the primary purpose of resale of parts of the vehicle, including scrap metal. (2005-384, s. 1; 2006-255, s. 5; 2007-142, s. 1; 2016-94, s. 14.1(a); 2017-57, s. 13.21(a).)

§ 130A-310.51. (Repealed effective June 30, 2021) Purpose.

The purpose of this Part is to reduce the quantity of mercury that is released into the environment by removing mercury switches from end-of-life vehicles and by creating a removal, collection, and recovery program for mercury switches that are removed from end-of-life vehicles in this State. (2005-384, s. 1; 2006-255, s. 5; 2016-94, s. 14.1(a); 2017-57, s. 13.21(a).)

§ 130A-310.52: Repealed by Session Laws 2007-142, s. 2, as amended by Session Laws 2016-94, s. 14.1(a), effective June 29, 2007.

§ 130A-310.53. (Repealed effective June 30, 2021) Removal of mercury switches from end-of-life vehicles.

(a) A vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall not flatten, crush, bale, or shred an end-of-life vehicle that contains accessible mercury switches. Except as provided in this subsection, a vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall remove all accessible mercury switches from end-of-life vehicles before the vehicle is flattened, crushed, baled, or shredded, or before the vehicle is conveyed to another vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility. If a vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility conveys an end-of-life vehicle to another vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility without removing accessible mercury switches, the receiving vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility must agree to accept the end-of-life vehicle and assume responsibility for the proper

removal of all accessible mercury switches. The agreement to assume responsibility for the proper removal of all accessible mercury switches shall be documented on an invoice that is provided by the vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility to the person to whom the vehicle is conveyed.

(b) A vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility that removes all accessible mercury switches from an end-of-life vehicle shall mark the vehicle to indicate that all accessible mercury switches have been removed. The vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall certify to any person to whom the vehicle is conveyed, in a form acceptable to the Department, that all accessible mercury switches have been removed from the vehicle.

(c), (d) Repealed by Session Laws 2007-142, s. 3, effective July 1, 2007.

(e) Mercury switches that are removed from end-of-life vehicles are considered "universal waste" as defined in 40 Code of Federal Regulations § 273.9 (July 1, 2006 Edition). Mercury switches that are removed from end-of-life vehicles shall be collected, transported, treated, stored, disposed of, and otherwise handled in accordance with rules adopted by the Commission governing universal waste.

(f) Vehicle manufacturers, in cooperation with the Department, shall develop, implement, and bear the costs of a mercury switch collection system in accordance with the NVMSRP. This system shall be developed and implemented so as to enhance vehicle recyclability, promote public education and outreach, and provide for the proper removal, collection, and disposal of mercury switches from end-of-life vehicles. (2005-384, s. 1; 2006-255, s. 5; 2007-142, s. 3; 2016-94, s. 14.1(a); 2017-57, s. 13.21(a).)

§ 130A-310.54. (Repealed effective June 30, 2021) Mercury Pollution Prevention Fund.

(a) The Mercury Pollution Prevention Fund is established in the Department. Revenue is credited to the Fund from the certificate of title fee under G.S. 20-85.

(b) Revenue in the Mercury Pollution Prevention Fund shall be used for the following purposes:

(1) To reimburse the Department and others for costs incurred in implementing the mercury switch removal program.

(2) To establish and implement recycling programs for products containing mercury, including at least recycling programs for light bulbs and thermostats.

(b1) The reimbursable costs under subdivision (1) of subsection (b) of this section are:

(1) Five dollars ($5.00) for each mercury switch removed by a vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility pursuant to this Article and sent to destination facilities in accordance with the NVMSRP for recycling or disposal.

(2) Costs incurred by the Department in administering the program.

(c) The Department shall reimburse vehicle crushers, vehicle dismantlers, vehicle recyclers, and scrap vehicle processing facilities based on a reimbursement request that attests to the number of switches sent to destination facilities for recycling or disposal in

accordance with the NVMSRP. Each reimbursement request shall be verified against information posted on the Internet site provided by the vehicle manufacturers in accordance with the NVMSRP, or against other information that verifies the reimbursement requested to the satisfaction of the Department. The vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall provide the Department with any information requested by the Department to verify the accuracy of a reimbursement request. Each vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall maintain accurate records that support each reimbursement request for a minimum of three years from the date the reimbursement request is approved. (2005-384, s. 1; 2006-255, s. 5; 2007-142, ss. 4, 9; 2011-145, s. 13.10B(a); 2016-94, s. 14.1(a); 2017-57, s. 13.21(a), (b).)

§ 130A-310.55. (Repealed effective June 30, 2021) Violations of Article; enforcement.

(a) It is unlawful for a person to do any of the following:

(1) Knowingly flatten, crush, bale, shred, or otherwise alter the condition of a vehicle from which accessible mercury switches have not been removed, in any manner that would prevent or significantly hinder the removal of a mercury switch.

(2) Willfully fail to remove a mercury switch when the person is required to do so.

(3) Knowingly make a false report that a mercury switch has been removed from an end-of-life vehicle.

(4) Obtain a mercury switch from another source and falsely report that it was removed from a vehicle processed for recycling.

(b) Any person who violates subdivision (1) or (2) of subsection (a) of this section shall be punished as provided in G.S. 14-3.

(c) Any person who violates subdivision (3) or (4) of subsection (a) of this section shall be guilty of a Class 2 misdemeanor and, upon conviction, shall be punished as provided in G.S. 130A-26.2.

(d) A violation of any provision of this Part, any rule adopted pursuant to this Part, or any rule governing universal waste may be enforced by an administrative or civil action as provided in Part 2 of Article 1 of this Chapter. (2005-384, s. 1; 2006-255, s. 5; 2007-142, ss. 5, 9; 2016-94, s. 14.1(a); 2017-57, s. 13.21(a).)

§ 130A-310.56: Repealed by Session Laws 2007-142, s. 6, as amended by Session Laws 2016-94, s. 14.1(a), effective June 29, 2007.

§ 130A-310.57: Repealed by Session Laws 2012-200, s. 21(f), effective August 1, 2012.

§ 130A-310.58. (Repealed effective June 30, 2021) Adoption of rules; administrative procedure.

(a) The Department may adopt rules to implement this Part.

(b) Chapter 150B of the General Statutes governs implementation of this Part. (2005-384, s. 1; 2006-255, s. 5; 2016-94, s. 14.1(a); 2017-57, s. 13.21(a).)

§ 130A-310.59: Reserved for future codification purposes.

Part 7. Management of Certain Products That Contain Mercury.

§ 130A-310.60. Recycling required by public agencies.

(a) Each State agency, including the General Assembly, the General Court of Justice, universities, community colleges, public schools, and political subdivisions using State funds for the construction or operation of public buildings shall establish a program in cooperation with the Department of Environmental Quality and the Department of Administration for the collection and recycling of all spent fluorescent lights and thermostats that contain mercury generated in public buildings owned by each respective entity. The program shall include procedures for convenient collection, safe storage, and proper recycling of spent fluorescent lights and thermostats that contain mercury and contractual or other arrangements with buyers of the recyclable materials.

(b) Each State agency, including the General Assembly, the General Court of Justice, universities, community colleges, the Department of Public Instruction on behalf of the public schools, and political subdivisions shall submit a report on or before December 1, 2011, that documents the entity's compliance with the requirements of subsection (a) of this section to the Department of Environmental Quality and the Department of Administration. The Departments shall compile the information submitted and jointly shall submit a report to the Environmental Review Commission on or before January 15, 2012, concerning the activities required by subsection (a) of this section. The information provided shall also be included in the report required by G.S. 130A-309.06(c).

(c) For purposes of this section, a political subdivision is using State funds when it receives grant funding from the State for the construction or operation of a public building. (2010-180, s. 14(a); 2011-394, s. 5; 2015-241, s. 14.30(u).)

§ 130A-310.61. Removal and recycling of mercury-containing products from structures to be demolished.

Prior to demolition of any building or structure in the State, the contractor responsible for the demolition activity or the owner of the building or structure to be demolished shall remove all fluorescent lights and thermostats that contain mercury from the building or structure to be demolished. (2010-180, s. 14(a).)

§ 130A-310.62: Reserved for future codification purposes.

§ 130A-310.63: Reserved for future codification purposes.

§ 130A-310.64: Reserved for future codification purposes.

Part 8. Risk-Based Environmental Remediation of Sites.

§ 130A-310.65. Definitions.

As used in this Part:

(1) "Background standard" means the naturally occurring concentration of a substance in the absence of the release of a contaminant.
(2) Repealed by Session Laws 2014-122, s. 11(i), effective September 20, 2014.
(3) "Contaminant" means any substance regulated under any program listed in G.S. 130A-310.67(a).
(3a) "Contaminated off-site property" or "off-site property" means property under separate ownership from the contaminated site that is contaminated as a result of a release or migration of contaminants at the contaminated site. This term includes publicly owned property, including rights-of-way for public streets, roads, or sidewalks.
(4) "Contaminated site," "source site," or "site" means any real property that is contaminated, and is the property from which the contamination originated, and may be subject to remediation under any of the programs or requirements set out in G.S. 130A-310.67(a).
(5) "Contamination" means a contaminant released into an environmental medium that has resulted in or has the potential to result in an increase in the concentration of the contaminant in the environmental medium in excess of unrestricted use standards.
(6) "Fund" means the Risk-Based Remediation Fund established pursuant to G.S. 130A-310.76.
(7) "Institutional controls" means nonengineered measures used to prevent unsafe exposure to contamination, such as land-use restrictions.
(8) "Registered environmental consultant" means an environmental consulting or engineering firm approved to implement and oversee voluntary remedial actions pursuant to Part 3 of Article 9 of Chapter 130A of the General Statutes and rules adopted to implement the Part.
(9) "Remedial action plan" means a plan for eliminating or reducing contamination or exposure to contamination.
(10) "Remediation" means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.
(11) "Systemic toxicant" means any substance that may enter the body and have a harmful effect other than causing cancer.
(12) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses; that are protective of public health, safety, and welfare and the environment; and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Commission or the Department. (2011-186, s. 2; 2014-122, s. 11(i); 2015-286, s. 4.7(a).)

§ 130A-310.66. Purpose.

It is the purpose of this Part to authorize the Department to approve the remediation of contaminated sites based on site-specific remediation standards in circumstances where site-specific remediation standards are adequate to protect public health, safety, and

welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination. (2011-186, s. 2; 2015-286, s. 4.7(a).)

§ 130A-310.67. Applicability.

(a) This Part applies to contaminated sites subject to remediation pursuant to any of the following programs or requirements:

(1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9 of Chapter 130A of the General Statutes, including voluntary actions under G.S. 130A-310.9 of that act, and rules promulgated pursuant to those statutes.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended, and Article 9 of Chapter 130A of the General Statutes.

(3) The solid waste management program administered pursuant to Article 9 of Chapter 130A of the General Statutes.

(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article 9 of Chapter 130A of the General Statutes.

(5) The groundwater protection corrective action requirements adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes, except with respect to those sites identified in subdivision (1a) of subsection (b) of this section.

(b) This Part shall not apply to contaminated sites subject to remediation pursuant to any of the following programs or requirements:

(1) The Leaking Petroleum Underground Storage Tank Cleanup program under Part 2A of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(1a) Leaking petroleum aboveground storage tanks and other sources of petroleum releases governed by Part 7 of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that Part.

(2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(3) The pre-1983 landfill assessment and remediation program established under G.S. 130A-310.6(c) through (g).

(4) The Coal Ash Management Act of 2014 under Part 2I of Article 9 of Chapter 130A of the General Statutes and rules promulgated pursuant to that Part.

(5) Animal waste management systems permitted under Part 1 or Part 1A of Article 21 of Chapter 143 of the General Statutes.

(c) Repealed by Session Laws 2015-286 s. 4.7(a), effective October 22, 2015. (2011-186, s. 2; 2015-286, s. 4.7(a).)

§ 130A-310.68. Remediation standards.

(a) When conducting remediation activities pursuant to this Part, a person who proposes to or is required to respond to the release of a contaminant at a contaminated industrial site shall comply with one of the following standards:

(1) The unrestricted use standards applicable to each affected medium.

(2) The background standard, if the background standard exceeds the unrestricted use standards.

(3) A site-specific remediation standard developed in accordance with subsection (b) of this section that is approved by the Department.

(4) Any combination of remediation standards described in this subsection that is approved by the Department.

(b) Site-specific remediation standards shall be developed for each medium as provided in this subsection to achieve remediation that eliminates or reduces to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based upon the present or currently planned future use of the property comprising the site. Site-specific remediation standards shall be developed in accordance with all of the following:

(1) Remediation methods and technologies that result in emissions of air pollutants shall comply with applicable air quality standards adopted by the Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Commission.

(3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated whether the receptors are located on or off the site where the source of contamination is located. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(4) Permits for facilities located at sites covered by any of the programs or requirements set out in G.S. 130A-310.67(a) shall contain conditions to avoid exceedances of applicable groundwater standards adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to operation of the facility.

(5) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.

(6) Soil shall be remediated to unrestricted use standards on residential property with the following exceptions:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to contaminated soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.

b. If soil remediation is impracticable because of the presence of preexisting structures or impracticability of removal, all areas of the real property at which a person may come into contact with soil shall be

remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.

(7) The potential for human inhalation of contaminants from the outdoor air and other site-specific indoor air exposure pathways shall be considered, if applicable.

(8) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.

(9) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart from the one-in-1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9)(July 1, 2003 Edition). The cumulative excess lifetime cancer risk to an exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.

(10) For systemic toxicants, site-specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effect during a lifetime or part of a lifetime. Site-specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases where two or more systemic toxicants affect the same organ or organ system.

(11) The site-specific remediation standards for each medium shall be adequate to avoid foreseeable adverse effects to other media or the environment that are inconsistent with the risk-based approach under this Part. (2011-186, s. 2.)

§ 130A-310.69. Remedial investigation report; remedial action plans.

(a) A person who proposes to conduct remediation pursuant to this Part shall submit a remedial investigation report to the Department prior to submitting a remedial action plan. The remedial investigation report shall include, but is not limited to, a legal description of the location of the site; a map showing the location of the site; a description of the contaminants involved and their concentration in the media of the site; a narrative description of the methodology used in the investigation; a description of all on-site releases of contamination; a site map, drawn to scale, showing benchmarks, directional arrow, location of property boundaries, buildings, structures, all perennial and nonperennial surface water features, drainage ditches, dense vegetation, contaminant spill or disposal areas, underground utilities, storage vessels, and existing on-site wells; identification of adjacent property owners and adjacent land uses; description of local geologic and hydrologic conditions; an evaluation of the site and adjacent properties for the existence of environmentally sensitive areas; a description of groundwater monitoring well design and installation procedures; a map, drawn to scale, that shows all groundwater sample locations; a description of field and laboratory quality control and quality assurance procedures followed during the remedial investigation; a description of methods used to

manage investigation-derived wastes; tabulation of analytical results for all sampling; copies of all laboratory reports; a description of procedures and the results of any special assessments; and any other information required by the Department or considered relevant by the investigator. The remedial investigation shall assess all contaminated areas of the site, including types and levels of contamination, and the risk that the contamination poses to public health, safety, and welfare and to the environment.

(b) A person who proposes to conduct remediation pursuant to this Part shall develop and submit a proposed remedial action plan to the Department. A remedial action plan shall provide for the protection of public health, safety, and welfare and the environment. A remedial action plan shall do all of the following:

(1) Identify actions required to remove, treat, or otherwise appropriately mitigate or isolate the source of contamination to ensure that the source will not cause unrestricted use standards to be exceeded in any medium.

(2) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 130A-310.68. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(3) Identify the current and anticipated future uses of property comprising the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(4) Identify the current and anticipated future uses of groundwater in the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(5) Determine the appropriate method of remediation to achieve the site-specific remediation standards.

(6) Specify any measures that may be necessary to prevent adverse effects to the environment that may occur at levels of contamination that are lower than the standard necessary to protect human health.

(7) Specify any measures that may be necessary to prevent any discharge into surface waters during implementation of the remedial action plan that violates applicable surface water quality standards adopted by the Commission.

(8) Specify any measures that may be necessary to prevent any air emission during implementation of the remedial action plan that violates applicable air quality standards adopted by the Commission.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 130A-310.68.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated site at the conclusion of the contaminant-reduction phase of remediation meets the remediation standards established for the site, that an acceptable level of risk has been achieved, and that no further remediation is required.

(11) Provide for the imposition and recordation of land-use restrictions as provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85A if the remedial action plan allows contamination in excess of the greater of unrestricted use standards or

background standards to remain on any real property or in groundwater that underlies any real property.

(12) Provide for submission of an annual certification to the Department by the property owner that land use at the site is in compliance with land-use restrictions recorded pursuant to this Part and that the land-use restrictions are still properly recorded in the chain of title for the property.

(13) Provide a detailed description of the proposed remedial action to be taken; the results of any treatability studies and additional site characterization needed to support the proposed remedial action; plans for postremedial and confirmatory sampling; a project schedule; a schedule for progress reports to the Department; and any other information required by the Department or considered relevant by the person who submits the proposed remedial action plan.

(14) Provide a description of measures that will be employed to ensure that the safety and health of persons on properties in the vicinity of the site and persons visiting or doing business on the site will not be adversely affected by any remediation activity.

(15) Provide a reasonable estimate of the probable cost of the remedial action sufficient for the Department to determine an acceptable level of financial assurance.

(16) Provide proof of financial assurance as required by G.S. 130A-310.72.

(c) A remedial action plan shall also include an analysis of each of the following factors:

(1) Long-term risks and effectiveness of the proposed remediation, including an evaluation of all of the following:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any postremediation activity that may be required, including, but not limited to, operation and maintenance, monitoring, inspection, reports, and other activities necessary to protect public health, safety, and welfare and the environment.

c. Potential for exposure of human and environmental receptors to contaminants remaining at the site.

d. Long-term reliability of any engineering and voluntary institutional controls, including repair, maintenance, or replacement of components.

e. Time required to achieve remediation standards.

(2) Toxicity, mobility, and volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, and volume; and the type, quantity, toxicity, and mobility of contaminants that will remain after implementation of the remedial action plan.

(3) Short-term risks and effectiveness of the remediation, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedial action plan, and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the remedial action plan, including commercially available remedial measures; expected operational reliability;

available capacity and location of needed treatment, storage, and disposal services for wastes; time to initiate remediation; and approvals necessary to implement the remediation.

(d) The development of a remedial action plan may require supplemental submissions and revisions based on Department review, remedial action pilot studies, and public comment from local government and citizens. (2011-186, s. 2.)

§ 130A-310.70. Notice of intent to remediate.

In addition to the public participation requirements of the individual programs listed in G.S. 130A-310.67(a), the person who proposes to remediate a site under this Part shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site, and to all adjoining landowners. The notice shall include all of the information required in G.S. 130A-310.69(a) and include a statement of intent to clean up the site to site-specific remediation standards. The person shall submit to the Department a copy of the notice of intent provided to local governments and adjoining landowners, a certification that the notice of intent to remediate was so provided to those parties, and all information and comments that the person received in response to the notice. In addition, the person shall, when appropriate, describe how the remedial action plan was modified to address comments received in response to the notice. (2011-186, s. 2.)

§ 130A-310.71. Review and approval of proposed remedial action plans.

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall do all of the following:

(1) Determine whether site-specific remediation standards are appropriate for a particular contaminated site. In making this determination, the Department shall consider proximity of the contamination to water supply wells or other receptors; current and probable future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.

(2) Determine whether the party conducting the remediation has adequately demonstrated through modeling or other scientific means acceptable to the Department that no contamination will migrate to off-site property at levels above unrestricted use standards, except as may remain pursuant to a cleanup conducted pursuant to G.S. 130A-310.73A(a)(2).

(3) Determine whether the proposed remedial action plan meets the requirements of G.S. 130A-310.69.

(4) Determine whether the proposed remedial action plan meets the requirements of any other applicable remediation program except those pertaining to remediation standards.

(5) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(6) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated site at the conclusion of the contaminant-reduction phase of the remediation.

(7) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(8) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.

(9) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment. In making this determination, the Department may consider, in lieu of land-use restrictions authorized under G.S. 130A-310.69, reliance on other State or local land-use controls. Any land-use controls implemented shall adequately protect public health, safety, and welfare and the environment and provide adequate notice to current and future property owners of any residual contamination and the land-use controls in place.

(10) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan has the burden of demonstrating with reasonable assurance that contamination from the site will not migrate to off-site property above unrestricted use levels, except as may remain pursuant to a cleanup conducted pursuant to G.S. 130A-310.73A(a)(2), and that the remedial action plan is protective of public health, safety, and welfare and the environment by virtue of its compliance with this Part. The demonstration shall (i) take into account actions proposed in the remedial action plan that will prevent contamination from migrating off the site; and (ii) use scientifically valid site-specific data.

(c) The Department may require a person who proposes a remedial action plan to supply any additional information necessary for the Department to approve or disapprove the plan.

(d) In making a determination on a proposed remedial action plan, the Department shall consider the information provided by the person who proposes the remedial action plan as well as information provided by local governments and adjoining landowners pursuant to G.S. 130A-310.70. The Department shall disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. If the Department disapproves a proposed remedial action plan, the person who submitted the plan may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or disapprove a proposed remedial action plan within 120 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved at the end of that time period.

(e) If, pursuant to subdivision (9) of subsection (a) of this section, reliance on other State or local land-use controls is approved by the Department in lieu of land-use restrictions, a "Notice of Residual Contamination" shall be prepared and filed in the chain of title of each contaminated site or contaminated off-site property where any contamination has or will in the future exceed unrestricted use standards. The Notice shall identify the type of contamination on the site or property and the land-use controls that address the contamination and may be filed by the person who proposes to remediate the site. Provided, however, the Department may only approve imposition of land-use controls on contaminated off-site property with the written consent of the owner of the property in conformance with G.S. 130A-310.73A(a)(2). (2011-186, s. 2; 2015-286, s. 4.7(a).)

§ 130A-310.72. Financial assurance requirement.

The person conducting remediation of a contaminated site pursuant to the provisions of this Part shall establish financial assurance that will ensure that sufficient funds are available to implement and maintain the actions or controls specified in the remedial action plan for the site. The person conducting remediation of a site may establish financial assurance through one of the following mechanisms, or any combination of the following mechanisms, in a form specified or approved by the Department: insurance products issued from entities having no corporate or ownership association with the person conducting the remediation; funded trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local government financial tests; corporate guarantees; local government guarantees; capital reserve funds; or any other financial mechanism authorized for the demonstration of financial assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition) and (ii) Section.1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. Proof of financial assurance shall be provided in the remedial action plan and annually thereafter on the anniversary date of the approval of the plan. The Department may waive the requirement for a person conducting remediation of a contaminated site pursuant to the provisions of this Part to establish or maintain financial assurance if the Department finds that the only actions or controls to be implemented or maintained as part of the remedial action plan for the site include either or both of the following:

(1) Annual reporting of land-use controls.

(2) The maintenance of durable or low-maintenance covers for contaminated soil. (2011-186, s. 2; 2017-209, s. 1.)

§ 130A-310.73. Attainment of the remediation standards.

(a) Compliance with the approved remediation standards is attained for a site or portion of a site when a remedial action plan approved by the Department has been implemented and applicable soil, groundwater, surface water, and air emission standards have been attained. The remediation standards may be attained through a combination of remediation activities that can include treatment, removal, engineering, or institutional controls, except that the person conducting the remediation may not demonstrate attainment of a remediation standard through the use of institutional controls that result in

an incompatible use of the property relative to surrounding land uses. When the remedial action plan has been fully implemented, the person conducting the remediation shall submit a final report to the Department, with notice to all local governments with taxing and land-use jurisdiction over the site, that demonstrates that the remedial action plan has been fully implemented, that any land-use restrictions have been certified on an annual basis, and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a determination that no further remediation beyond that specified in the approved remedial action plan is required.

(b) The person conducting the remediation has the burden of demonstrating that the remedial action plan has been fully implemented and that the remediation standards have been attained in compliance with the requirements of this Part. The Department may require a person who implements the remedial action plan to supply any additional information necessary for the Department to determine whether the remediation standards have been attained.

(c) The Department shall review the final report, and, upon determining that the person conducting the remediation has completed remediation to the approved remediation standard and met all the requirements of the approved remedial action plan, the Department shall issue a determination that no further remediation beyond that specified in the approved remedial action plan is required at the site. Once the Department has issued a no further action determination, the Department may require additional remedial action by the responsible party only upon finding any of the following:

(1) Monitoring, testing, or analysis of the site subsequent to the issuance of the no further action determination indicates that the remediation standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the site as part of the remediation have been violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action plan or no further action determination for the site are not adequately funded or are not adequately implemented.

(4) A contaminant or hazardous substance release is discovered at the site that was not the subject of the remedial investigation report or the remedial action plan.

(5) A material change in the facts known to the Department at the time the written no further action determination was issued, or new facts, cause the Department to find that further assessment or remediation is necessary to prevent a significant risk to human health and safety or to the environment.

(6) The no further action determination was based on fraud, misrepresentation, or intentional nondisclosure of information by the person conducting the remediation, or that person's agents, contractors, or affiliates.

(7) Installation or use of wells would induce the flow of contaminated groundwater off the contaminated site, as defined in the remedial action plan.

(d) The Department shall issue a final decision on a request for a determination that remediation has been completed to approved standards and that no further remediation beyond that specified in the approved remedial action plan is required within 180 days after receipt of a complete final report. Failure of the Department to issue a final decision on a

no further remediation determination within 180 days after receipt of a complete final report and request for a determination of no further remediation may be treated as a denial of the request for a no further remediation determination. The responsible person may seek review of a denial of a request for a release from further remediation as provided in Article 3 of Chapter 150B of the General Statutes. (2011-186, s. 2; 2015-286, s. 4.7(a).)

§ 130A-310.73A. Remediation of sites with off-site migration of contaminants.

(a) Contaminated sites at which contamination has migrated to off-site properties may be remediated pursuant to this Part consistent with the remediation standards set out in G.S. 130A-310.68 if either of the following occur:

(1) The person who proposes to conduct the remediation pursuant to this Part remediates the contaminated off-site property to unrestricted use standards.

(2) The person who proposes to conduct the remediation pursuant to this Part (i) provides the owner of the contaminated off-site property with a copy of this Part and the publication produced by the Department pursuant to subsection (b) of this section and (ii) obtains written consent from the owner of the contaminated off-site property for the person to remediate the contaminated off-site property using site-specific remediation standards pursuant to this Part; provided that the site-specific remediation standards shall not allow concentrations of contaminants on the off-site property to increase above the levels present on the date the written consent is obtained. Written consent from the owner of the off-site property shall be on a form prescribed by the Department and include an affirmation that the owner has received and read the publication and authorizes the person to remediate the owner's property using site-specific remediation standards pursuant to this Part.

(b) In order to inform owners of contaminated off-site property of the issues and liabilities associated with the contamination on their property, the Department, in consultation with the Consumer Protection Division of the North Carolina Department of Justice and the North Carolina Real Estate Commission, shall develop and make available a publication entitled "Contaminated Property: Issues and Liabilities" to provide information on the nature of risk-based remediation and how it differs from remediation to unrestricted use standards, potential health impacts that may arise from residual contamination, as well as identification of liabilities that arise from contaminated property and associated issues, including potential impacts to real estate transactions and real estate financing. The Department shall update the publication as necessary.

(c) If, after issuance of a no further action determination, the Department determines that additional remedial action is required for a contaminated off-site property pursuant to G.S. 130A-310.73(c), the responsible party shall be liable for the additional remediation deemed necessary.

(d) Nothing in this section shall be construed to preclude or impair any person from obtaining any and all other remedies allowed by law. (2015-286, s. 4.7(a).)

§ 130A-310.74. Compliance with other laws.

Where a site is covered by an agreement under the Brownfields Property Reuse Act of 1997, as codified as Part 5 of Article 9 of Chapter 130A of the General Statutes, any work performed by the prospective developer pursuant to that agreement is not required to comply with this Part, but any work not covered by such agreement and performed at the site by another person not a party to that agreement may be performed pursuant to this Part. (2011-186, s. 2.)

§ 130A-310.75. Use of registered environmental consultants.

The Department may approve the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part based on the risk posed by the site and the availability of Department staff for oversight of remediation activities. If remediation under this Part is not undertaken voluntarily, the Department may not require the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part. (2011-186, s. 2; 2015-286, s. 4.7(a).)

§ 130A-310.76. Fees; permissible uses of fees.

(a) The following fees, payable to the Risk-Based Remediation Fund established under G.S. 130A-310.76A, are applicable to activities under this Part:

(1) Application fee. – A person who proposes to conduct remediation pursuant to this Part shall pay an application fee due at the time a proposed remedial action plan is submitted to the Department for approval. The application fee shall not exceed five thousand dollars ($5,000) for each acre or portion of an acre of contamination, including any area that will become contaminated as a result of the release; however, no person shall be required to pay more than one hundred thousand dollars ($100,000) in fees attributable to this subdivision to the Fund, with the total amount owed calculated by the Department after evaluation of the factors set forth in subsection (a1) of this section and any rules promulgated thereunder.

(2) Oversight fee. – A person who has been approved by the Department to conduct a remedial action plan pursuant to this Part shall pay an oversight fee to the Department within 30 days of such approval or at such other time as the Department may authorize. The total ongoing oversight fees shall not exceed five hundred dollars ($500.00) for each acre or portion of an acre of contamination, including any area that will become contaminated as a result of the release; however, no person shall be required to pay more than twenty-five thousand dollars ($25,000) in fees attributable to this subdivision to the Fund, with the total amount owed calculated by the Department after evaluation of the factors set forth in subsection (a1) of this section and any rules promulgated thereunder.

(a1) The Department shall take all of the following factors into account prior to imposing a fee on a person pursuant to subsection (a) of this section and provide the person written documentation of the Department's findings with respect to each factor at the time the fee is imposed:

(1) The size of the site subject to a proposed remedial action plan.

(2) Whether groundwater contamination from the site has migrated, or is likely to migrate, to off-site properties.

(3) The complexity of the work to be conducted at a site under a proposed remedial action plan.

(4) The resources that the Department will need to evaluate and oversee the work to be conducted at a site under a proposed remedial action plan and the resources the Department will need to monitor a site after completion of remediation. If such work, or any portion thereof, is to be performed by a registered environmental consultant in accordance with the provisions of G.S. 130A-310.75, the Department shall take this into account accordingly in imposing a reduced fee.

(b) Funds collected pursuant to subsection (a) of this section may be used only for the following purposes:

(1) To pay for administrative and operating expenses necessary to implement this Part, including the full cost of the Department's activities associated with any human health or ecological risk assessments, groundwater modeling, financial assurance matters, or community outreach.

(2) To establish, administer, and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated pursuant to this Part.

(c) The Department shall report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Environmental Review Commission, and the Fiscal Research Division on or before October 1 of each year on the amounts and sources of funds collected by year received pursuant to this Part, the amounts and sources of those funds paid into the Risk-Based Remediation Fund established under G.S. 130A-310.76A, the number of acres of contamination for which funds have been received pursuant to subsection (a) of this section, and a detailed annual accounting of how the funds collected pursuant to this Part have been utilized by the Department to advance the purposes of this Part.

(d) The Commission may adopt rules to implement the requirements of subsection (a1) of this section. (2011-186, s. 2; 2015-286, s. 4.7(a); 2017-57, s. 14.1(a).)

§ 130A-310.76A. Risk-Based Remediation Fund.

There is established under the control and direction of the Department the Risk-Based Remediation Fund. This fund shall be a revolving fund consisting of fees collected pursuant to G.S. 130A-310.76 and other monies paid to it or recovered by or on behalf of the Department. The Risk-Based Remediation Fund shall be treated as a nonreverting special trust fund pursuant to G.S. 147-69.2 and G.S. 147-69.3, except that interest and other income received on the Fund balance shall be treated as set forth in G.S. 147-69.1(d). (2015-286, s. 4.7(a).)

§ 130A-310.77. Construction of Part.

This Part shall not be construed or implemented in any of the following ways:

(1) In any manner that would jeopardize federal authorization under any of the federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or would otherwise conflict with federal authority under those statutes, programs,

and requirements. This Part is supplemental to the programs and requirements set out in G.S. 130A-310.67(a) that would otherwise govern the remediation of a contaminated industrial site. Where the definitions, provisions, or requirements of this Part conflict with the definitions, provisions, or requirements of an otherwise applicable remediation program, this Part shall control, unless expressly stated to the contrary.

(2) To limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of State or federal law necessary to address an imminent threat to public health, safety, or welfare or the environment.

(3) To alter the requirements of programs to prevent or mitigate the release or discharge of contaminants to the environment, including permitting requirements that regulate the handling of hazardous substances or wastes.

(4) To supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a site and any land-use restrictions imposed as part of a remedial action plan shall comply with land-use and development controls adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes. (2011-186, s. 2.)

§ 130A-310.78: Reserved for future codification purposes.

§ 130A-310.79: Reserved for future codification purposes.

§ 130A-310.80: Reserved for future codification purposes.

Article 10.

North Carolina Drinking Water Act.

§ 130A-311. Short title.

This Article shall be cited as the "North Carolina Drinking Water Act." (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

§ 130A-312. Purpose.

The purpose of this Article is to regulate water systems within the State which supply drinking water that may affect the public health. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

§ 130A-313. Definitions.

The following definitions shall apply throughout this Article:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(2) "Certified laboratory" means a facility for performing bacteriological, chemical or other analyses on water which has received interim or final certification by either the Environmental Protection Agency or the Department.

(3) "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

(3a) "Department" means the Department of Environmental Quality.

(4) "Drinking water rules" means rules adopted pursuant to this Article.

(5) "Federal act" means the Safe Drinking Water Act of 1974, P.L. 93-523, as amended.

(6) "Federal agency" means any department, agency or instrumentality of the United States.

(7) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(8) "National primary drinking water regulations" means primary drinking water regulations promulgated by the Administrator pursuant to the federal act.

(9) "Person" means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

(10) "Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if the system serves 15 or more service connections or which regularly serves 25 or more individuals. The term includes:

a. Any collection, treatment, storage or distribution facility under control of the operator of the system and used primarily in connection with the system; and

b. Any collection or pretreatment storage facility not under the control of the operator of the system that is used primarily in connection with the system.

A public water system is either a "community water system" or a "noncommunity water system" as follows:

a. "Community water system" means a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

b. "Noncommunity water system" means a public water system that is not a community water system.

A connection to a system that delivers water by a constructed conveyance other than a pipe is not a connection within the meaning of this subdivision under any one of the following circumstances:

a. The water is used exclusively for purposes other than residential uses. As used in this subdivision, "residential uses" mean drinking, bathing, cooking, or other similar uses.

b. The Department determines that alternative water to achieve the equivalent level of public health protection pursuant to applicable drinking water rules is provided for residential uses.

c. The Department determines that the water provided for residential uses is centrally treated or treated at the point of entry by the provider, a

pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable drinking water rules.

(10a) "Secretary" means the Secretary of Environmental Quality.

(11) "Supplier of water" means a person who owns, operates or controls a public water system.

(12) "Treatment technique requirement" means a requirement of the drinking water rules which specifies a specific treatment technique for a contaminant which leads to reduction in the level of the contaminant sufficient to comply with the drinking water rules. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1987, c. 704, s. 2; 1993 (Reg. Sess., 1994), c. 776, s. 14; 1997-30, s. 1; 1997-443, s. 11A.81A; 2012-200, s. 10; 2015-241, ss. 14.30(u), (v).)

§ 130A-314. Scope of the Article.

(a) The provisions of this Article shall apply to each public water system in the State unless the public water system meets all of the following conditions:

(1) Consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(2) Obtains all of its water from, but is not owned or operated by, a public water system to which the drinking water rules apply;

(3) Does not sell water to any person; and

(4) Is not a carrier which conveys passengers in interstate commerce.

(b) A provision of any charter granted to a public water system in conflict with the provisions of this Article is repealed. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

§ 130A-315. Drinking water rules; exceptions; limitation on implied warranties.

(a) The Commission shall adopt and the Secretary shall enforce drinking water rules to regulate public water systems. The rules may distinguish between community water systems and noncommunity water systems.

(b) The rules shall:

(1) Specify contaminants which may have an adverse effect on the public health;

(2) Specify for each contaminant either:

a. A maximum contaminant level which is acceptable in water for human consumption, if it is feasible to establish the level of the contaminant in water in public water systems; or

b. One or more treatment techniques which lead to a reduction in the level of contaminants sufficient to protect the public health, if it is not feasible to establish the level of the contaminants in water in a public water system; and

(3) Establish criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels and treatment techniques as determined in paragraph (2) of this subsection. These rules may provide for:

a. The minimum quality of raw water which may be taken into a public water system;

b. A program of laboratory certification;

c. Monitoring and analysis;

d. Record-keeping and reporting;
e. Notice of noncompliance, failure to perform monitoring, variances and exemptions;
f. Inspection of public water systems; inspection of records required to be kept; and the taking of samples;
g. Criteria for design and construction of new or modified public water systems;
h. Review and approval of design and construction of new or modified public water systems;
i. Siting of new public water system facilities;
j. Variances and exemptions from the drinking water rules; and
k. Additional criteria and procedures as may be required to carry out the purpose of this Article.

(b1) The rules may also establish criteria and procedures to insure an adequate supply of drinking water. The rules may:

(1) Provide for record keeping and reporting.
(2) Provide for inspection of public water systems and required records.
(3) Establish criteria for the design and construction of new public water systems and for the modification of existing public water systems.
(4) Establish procedures for review and approval of the design and construction of new public water systems and for the modification of existing public water systems.
(4a) Limit the number of service connections to a public water system based on the quantity of water available to the public water system, provided that the number of service connections shall not be limited for a public water system operating in accordance with a local water supply plan that meets the requirements of G.S. 143-355(l).
(5) Establish criteria and procedures for siting new public water systems.
(6) Provide for variances and exemptions from the rules.
(7) Provide for notice of noncompliance in accordance with G.S. 130A-324.

(b2) Two or more water systems that are adjacent, that are owned or operated by the same supplier of water, that individually serve less than 15 service connections or less than 25 persons but that in combination serve 15 or more service connections or 25 or more persons, and that individually are not public water systems shall meet the standards applicable to public water systems for the following contaminants: coliform bacteria, nitrates, nitrites, lead, copper, and other inorganic chemicals for which testing and monitoring is required for public water systems on 1 July 1994. The standards applicable to these contaminants shall be enforced by the Commission as though the water systems to which this subsection applies were public water systems.

(b3) The Department shall not certify or renew a certification of a laboratory under rules adopted pursuant to subdivision (3)b. of subsection (b) of this section unless the laboratory offers to perform composite testing of samples taken from a single public water supply system for those contaminants that the laboratory is seeking certification or renewal of certification to the extent allowed by regulations adopted by the United States Environmental Protection Agency.

(c) The drinking water rules may be amended as necessary in accordance with required federal regulations.

(d) When a person that receives water from a public water system is authorized by the Utilities Commission, pursuant to G.S. 62-110(g), to charge for the costs of providing water or sewer service, that person shall not be subject to regulation under this Article solely as a result of submetering and billing for water service. The supplying water system shall perform the same level of monitoring, analysis, and record keeping that the supplying system would perform if the providing water system had not been authorized to charge for the costs of providing water or sewer service pursuant to G.S. 62-110(g).

(e) When a public water system supplies water through a master meter to a water system not regulated by this Article, the supplying water system is not responsible for operation, maintenance, or repair of the providing water system. The supplying water system shall not be responsible for contamination that is confined to the providing water system if the supplying water system meets applicable requirements for water quality, treatment, and system operation for that contaminant. The supplying water system may monitor the water within the providing water system for contamination pursuant to rules adopted under this Article. The supplying water system and the Department shall have access to the providing water system to investigate water quality problems and to determine whether any contamination is confined to the providing water system and whether the quality of the water supplied by the supplying water system is contributing contamination to the providing water system.

(f) If water in the providing water system exceeds the maximum contaminant levels established pursuant to this Article and the Department determines that the supplying water system is not responsible, the supplying water system must notify the providing water system owner in writing within one day of determining that the contamination is confined solely to the providing water system for bacteria, nitrate, and nitrite, and within 30 days for all other contaminants.

(g) A supplier of water regulated under this Article shall not be deemed to provide any warranty under Article 2 of Chapter 25 of the General Statutes, including an implied warranty of merchantability or an implied warranty of fitness for a particular purpose. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1985, c. 417, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 826, s. 1; 1993 (Reg. Sess., 1994), c. 776, s. 15; 1995, c. 25, s. 1; 2000-172, s. 1.1; 2001-502, s. 6; 2004-143, s. 8; 2008-140, s. 1.)

§ 130A-316. Department to examine waters.

The Department shall examine all waters and their sources and surroundings which are used as, or proposed to be used as, sources of public water supply to determine whether the waters and their sources are suitable for use as public water supply sources. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

§ 130A-317. Department to provide advice; submission and approval of public water system plans.

(a) The Department shall advise all persons and units of local government locating, constructing, altering or operating or intending to locate, construct, alter or operate a public water system of the most appropriate source of water supply and the best practical method of purifying water from that source having regard to the present and prospective needs and interests of other persons and units of local government which may be affected. The Department shall also advise concerning accepted engineering practices in the location, construction, alteration and operation of public water systems.

(b) All persons and units of local government constructing or altering a public water system shall give prior notice and submit plans, specifications and other information to the Department. The Commission shall adopt rules providing for the amount of prior notice required to be given and the nature and detail of the plans, specifications and other information required to be submitted. The Commission shall take into consideration the complexity of the construction or alteration which may be involved and the resources of the Department to review the plans, specifications and other information. The Department shall review the plans, specifications and other information, and notify the person, Utilities Commission and unit of local government of compliance or lack of compliance with applicable statutes and rules of the Commission.

(c) No person or unit of local government shall begin construction or alteration of a public water system or award a contract for construction or alteration unless all of the following conditions are met:

(1) The plans for construction or alteration have been prepared by an engineer licensed by this State.

(2) The Department has determined that the system, as constructed or altered, will be capable of compliance with the drinking water rules.

(3) The Department has determined that the system is capable of interconnection at an appropriate time with an expanding municipal, county or regional system.

(4) The Department has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water system.

(5) The Department has approved the plans and specifications.

(d) Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own approval program in lieu of State approval of water system plans required in subsection (c) of this section for construction or alteration of the distribution system of a proposed or existing public water system, subject to the prior certification of the Department. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where water service is already being provided to the permit applicant by the municipality or connection to the municipal water system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where water service is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of an approval program and statement submitted by any local government, commission, authority, or board, the Department shall certify any local program that meets all of the following conditions:

(1) Provides by ordinance or local law for requirements compatible with those imposed by this Article, and the standards and rules adopted pursuant to this Article.

(2) Provides that the Department receives notice and a copy of each application for approval and that the Department receives copies of approved plans.

(3) Provides that plans and specifications for all construction and alterations be prepared by or under the direct supervision of an engineer licensed to practice in this State.

(4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial process.

(5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review program. A local government, commission, authority, or board may either employ an engineer licensed under Chapter 89C of the General Statutes to practice as a professional engineer in the State or contract with an engineer licensed under Chapter 89C of the General Statutes to practice as a professional engineer in the State in order to provide for adequate engineering staff under this subdivision.

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional system.

(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the public water system.

(8) Provides that an approved system, as constructed or altered, will be capable of compliance with the drinking water rules.

(9) Is approved by the Department as adequate to meet the requirements of this Article and any applicable rules adopted pursuant to this Article.

(e) The Department may deny, suspend, or revoke the certification of a local program upon a finding that a violation of the provisions in subsection (d) of this section has occurred. A local government administering an approval program shall be given notice that there has been a tentative decision to deny, suspend, or revoke certification and that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes where the decision may be challenged. If a violation of the provisions in subsection (d) of this section presents an imminent hazard, certification may be suspended or revoked immediately. The Department shall give notice of the immediate suspension or revocation and notice that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes where the decision may be challenged.

(f) Notwithstanding any other provisions of subsection (d) of this section, if the Department determines that a public water system is violating plan approval requirements of a local program and that the local government has not acted to enforce those approval requirements, the Department may, after written notice to the local government, take enforcement action in accordance with the provisions of this Article.

(g) The Department shall identify systems meeting all of the following criteria:

(1) As constructed or altered, the system appears capable of interconnectivity with another system or systems located within the same river basin, as set out in G.S. 143-215.22.

(2) The system appears to have adequate unallocated capacity to expand.

(3) Interconnectivity would promote public health, protect the environment, or ensure compliance with established drinking water rules.

The Department shall notify the identified systems of the potential for interconnectivity in the future. The systems so notified may discuss options for potential interconnectivity,

including joint operations, regionalization, or merger. The Local Government Commission shall be copied on the notice from the Department and shall assist the systems with any questions regarding liabilities of the systems and alterations to the operational structure of the systems. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1985, c. 697, s. 1; 1987, c. 827, s. 1; 2006-238, s. 1; 2015-241, s. 14.14A(a).)

§ 130A-318. Disinfection of public water systems.

(a) The Department is authorized to require disinfection of:

(1) Public water systems introduced on or after January 1, 1972; and

(2) All public water systems, regardless of the date introduced, whenever:

a. The maximum microbiological contaminant level is exceeded; or

b. Conditions exist which make continued use of the water potentially hazardous to public health.

(b) Public water systems shall employ disinfection methods and procedures approved by the Department. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

§ 130A-319. Condemnation of lands for public water systems.

All units of local government operating public water systems and all water companies operating under franchise from the State or units of local government, may acquire by condemnation lands and rights in lands and water necessary for the successful operation and protection of their systems. Condemnation proceedings under this section shall be the same as prescribed by law under Chapter 40A of the General Statutes. (1979, c. 788, s. 1; 1981, c. 919, s. 14; 1983, c. 891, s. 2.)

§ 130A-320. Sanitation of watersheds; rules; inspections; local source protection planning.

(a) The Commission shall adopt rules governing the sanitation of watersheds from which public drinking water supplies are obtained. In adopting these rules the Commission is authorized to consider the different classes of watersheds, taking into account general topography, nature of watershed development, density of population and need for frequency of sampling of raw water. The rules shall govern the keeping of livestock, operation of recreational areas, maintenance of residences and places of business, disposal of sewage, establishment of cemeteries or burying grounds, and any other factors which would endanger the public water supply.

(b) Any supplier of water operating a public water system and furnishing water from unfiltered surface supplies shall inspect the watershed area at least quarterly, and more often when the Department determines that more frequent inspections are necessary.

(c) Every supplier of water operating a public water system treating and furnishing water from surface supplies shall create and implement a source water protection plan (SWPP). The Commission shall adopt rules that provide all of the following:

(1) A standardized format for use by suppliers of water in creating their SWPP. The Commission may create different formats and required plan elements for public water systems based on the system type, source type, watershed classification, population served, source susceptibility to contamination, proximity of

potential contamination sources to the intake, lack of water supply alternatives, or other characteristics the Commission finds to be relevant.

(2) Schedules for creating a SWPP, implementing mandatory provisions of the SWPP, and for review and update of the SWPP by suppliers of water.

(3) Reporting requirements sufficient for the Department to monitor the creation, implementation, and revision by suppliers of water. The Commission may provide different reporting requirements based on the public water system characteristics set forth in subdivision (1) of this subsection. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 2014-41, s. 1; 2014-115, s. 55.5.)

§ 130A-321. Variances and exemptions; considerations; duration; condition; notice and hearing.

(a) The Secretary may authorize variances from the drinking water rules.

(1) The Secretary may grant one or more variances to a public water system from any requirement respecting a maximum contaminant level of an applicable drinking water rule upon a finding that:

a. Because of characteristics of the raw water sources reasonably available to the system, the system cannot meet the requirements respecting the maximum contaminant levels of the drinking water rules after application of the best technology, treatment techniques, or other means which the Secretary finds are available (taking costs into consideration); and

b. The granting of a variance will not result in an unreasonable risk to public health when considering the population exposed, the projected duration of the requested variance and the degree to which the maximum contaminant level is being or will be exceeded.

(2) The Secretary may grant one or more variances to a public water system from any requirement of a specified treatment technique of an applicable drinking water rule upon a finding that the public water system applying for the variance has demonstrated that the treatment technique is not necessary to protect the public health because of the nature of the raw water source of the system.

(3) In consideration of whether the public water system is unable to comply with a contaminant level required by the drinking water rules because of the nature of the raw water sources, the Secretary shall consider factors such as:

a. The availability and effectiveness of treatment methods for the contaminant for which the variance is requested; and

b. Costs of implementing the best treatment(s), improving the quality of the raw water by the best means or using an alternate source.

(4) In consideration of whether a public water system should be granted a variance from a required treatment technique because the treatment is unnecessary to protect the public health, the Secretary shall consider factors such as:

a. Quality of the water source including water quality data and pertinent sources of pollution; and

b. Source protection measures employed by the public water system.

(5) In order to implement sub-subdivision a. of subdivision (1) of this subsection, the Commission shall adopt by rule a list of the best available technologies, treatment techniques, or other means available, to deal with each contaminant for which a maximum contaminant level is established.

(b) The Secretary may authorize exemptions from the drinking water rules.

(1) The Secretary may exempt a public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable drinking water rule upon a finding that:

a. Due to compelling factors, including economic factors, the public water system is unable to comply with the contaminant level or treatment technique requirement;

b. The public water system was in operation on the effective date of the contaminant level or treatment technique requirement or, for a system that was not in operation on that date, only if no reasonable alternative source of drinking water is available to the new system; and

c. The granting of the exemption will not result in an unreasonable risk to public health when considering the population exposed, the projected duration of the requested exemption and the degree to which the maximum contaminant level is being or will be exceeded.

(2) In consideration of whether the public water system is unable to comply due to compelling factors, the Secretary shall consider factors such as:

a. Construction, installation or modification of treatment equipment or systems;

b. The time needed to put into operation a new treatment facility to replace an existing system which is not in compliance; and

c. Economic feasibility of immediate compliance.

(c) As a condition of issuance of either a variance or an exemption, the Secretary shall issue a schedule of compliance for the public water system, including increments of progress for each drinking water rule for which the variance or exemption was issued. As a further condition of a variance or exemption, the Secretary shall require the public water system to implement any necessary control measures prescribed by the Secretary during the period of the variance or exemption. The compliance schedule for an exemption shall require compliance as expeditiously as practical but no later than June 19, 1987, for existing maximum contaminant levels and treatment techniques, or no later than one year from the issuance of the exemption for any newly adopted maximum contaminant level or treatment technique. The final date for compliance provided in any exemption schedule may be extended up to three years after the date of the issuance of the exemption if the water system establishes:

(1) The water system cannot meet the standard without capital improvements which cannot be completed within the period of exemption, or

(2) The system needs financial assistance for necessary improvements and has entered into an agreement to obtain such assistance, or

(3) The system has entered into an enforceable agreement to become part of a regional public water system and the system is taking all practical steps to meet the standard.

If a public water system serves 500 or fewer service connections and needs financial assistance for necessary improvements, an exemption may be renewed for one or more additional two-year periods if the system establishes it meets the requirements set forth in subdivisions (1) and (2) of this section.

(d) The Secretary shall provide notice and opportunity for public hearing on proposed variances and proposed variance and exemption schedules. (1979, c. 788, s. 1; 1981, c. 353, ss. 1, 2; 1983, c. 891, s. 2; 1987, c. 704, ss. 3-5.)

§ 130A-322. Imminent hazard; power of the Secretary.

(a) The Secretary shall judge whether an imminent hazard exists concerning a present or potential condition in a public water system.

(b) In order to eliminate an imminent hazard, the Secretary may, without notice or hearing, issue an order requiring the person or persons involved to immediately take action necessary to protect the public health. A copy of the order shall be delivered by certified mail or personal service. The order shall become effective immediately and shall remain in effect until modified or rescinded by the Secretary or by a court of competent jurisdiction. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

§ 130A-323. Emergency plan for drinking water; emergency circumstances defined.

(a) The Secretary shall develop and implement an adequate plan for the provision of drinking water under emergency circumstances. When the Secretary determines that emergency circumstances exist with respect to a need for drinking water, the Secretary may take action in accordance with the plan as necessary in order to provide drinking water.

(b) Emergency circumstances shall exist whenever the available supply of drinking water is inadequate. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

§ 130A-324. Notice of noncompliance; failure to perform monitoring; variances and exemptions.

Whenever a public water system:

(1) Is not in compliance with the drinking water rules;

(2) Fails to perform an applicable testing procedure or monitoring required by the drinking water rules;

(3) Is subject to a variance granted for inability to meet a maximum contaminant level requirement;

(4) Is subject to an exemption; or

(5) Fails to comply with the requirements prescribed by a variance or exemption,

the supplier shall as soon as possible, but not later than 48 hours after discovery, notify the Department and give public notification as prescribed by the drinking water rules. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

§ 130A-325. Prohibited acts.

The following acts are prohibited:

(1) Failure by a supplier of water to comply with this Article, an order issued under this Article, or the drinking water rules;

(2) Failure by a supplier of water to comply with the requirements of G.S. 130A-324 or the dissemination by a supplier of any false or misleading

information with respect to remedial actions being undertaken to achieve compliance with the drinking water rules;

(3) Refusal by a supplier of water to allow the Department or local health department to inspect a public water system as provided for in G.S. 130A-17;

(4) The willful defiling by any person of any water supply of a public water system or the willful damaging of any pipe or other part of a public water system;

(5) The discharge by any person of sewage or other waste above the intake of a public water system, unless the sewage or waste has been passed through a system of purification approved by the Department ; and

(6) The failure by a person to maintain a system approved by the Department for collecting and disposing of all accumulations of human excrement located on the watershed of a public water system. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1985, c. 462, s. 2; 1989, c. 727, s. 146.)

§ 130A-326. Powers of the Secretary.

To carry out the provisions of this Article, the Secretary is authorized to:

(1) Administer and enforce the provisions of this Article, the drinking water rules and orders issued under this Article;

(2) Enter into agreements or cooperative arrangements with, or participate in related programs of other states, other state agencies, federal or interstate agencies, units of local government, educational institutions, local health departments or other organizations or individuals;

(3) Receive financial and technical assistance from the federal government and other public or private agencies;

(4) Require public water systems to take actions or make modifications as necessary to comply with the requirements of this Article or the drinking water rules;

(5) Prescribe policies and procedures necessary or appropriate to carry out the Secretary's function under this Article;

(6) Establish and collect fees to recover the costs of laboratory analyses performed for compliance with this Article. The fees shall not exceed two hundred dollars ($200.00) for each analysis; and

(7) Establish and collect fees for certification and certification renewal of laboratories to perform analyses for compliance under this Article. The fees shall not exceed twenty dollars ($20.00) per analyte certified. The minimum fee for certification or certification renewal shall be two hundred fifty dollars ($250.00) per analyte category. The maximum fee for certification or certification renewal shall be six hundred dollars ($600.00) per analyte category. The fees collected under this subdivision shall be used to administer blind performance evaluation samples to certified laboratories to determine compliance with certification requirements. (1979, c. 788, s. 1; 1981, c. 562, s. 9; 1983, c. 891, s. 2; 1987, c. 471; 1991 (Reg. Sess., 1992), c. 1039, s. 10.)

§ 130A-327. Construction.

This Article shall be interpreted as giving the State the authority needed to assume primary enforcement responsibility under the federal act. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

§ 130A-328. Public water system operating permit and permit fee.

(a) No person shall operate a community or non transient non-community water system who has not been issued an operating permit by the Department. A community or non transient non-community water system operating permit shall be valid from January 1 through December 31 of each year unless suspended or revoked by the Department for cause. The Commission shall adopt rules concerning permit issuance and renewal and permit suspension and revocation. The annual fees in subsection (b) shall be prorated on a monthly basis for permits obtained after January 1 of each year.

(b) The following fees are imposed for the issuance or renewal of a permit to operate a community or non transient non-community water system; the fees are based on the number of persons served by the system:

Non Community Water Systems:	Fee
Base Fee:	
Non transient non-community	$150
Community Water Systems:	
Number of Persons Served	
50 or fewer	$255
More than 50 but no more than 100	$270
More than 100 but no more than 200	$330
More than 200 but no more than 300	$350
More than 300 but no more than 400	$385
More than 400 but no more than 500	$420
More than 500 but no more than 750	$780
More than 750 but no more than 1000	$810
More than 1000 but no more than 2000	$840
More than 2000 but no more than 3000	$870
More than 3000 but no more than 4000	$1350
More than 4000 but no more than 5000	$1460
More than 5000 but no more than 7500	$1925
More than 7500 but no more than 10,000	$2065
More than 10,000 but no more than 25,000	$2600
More than 25,000 but no more than 50,000	$2925
More than 50,000 but no more than 75,000	$4250
More than 75,000 but no more than 100,000	$4675
More than 100,000 but no more than 250,000	$5100
More than 250,000 but no more than 500,000	$5525
More than 500,000	$5950

(c) The following fees are imposed for the review of plans, specifications, and other information submitted to the Department for approval of construction or alteration of a public water system. The fees are based on the type of constructions or alteration proposed:

Distribution system:	Fee
Construction of water lines, less than 5000 linear feet	$150
Construction of water lines, 5000 linear feet or more	$200

Other construction or alteration to a distribution system	$75
Ground water system:	
Construction of a new ground water system or adding a new well	$200
Alteration to an existing ground water system	$100
Surface Water system:	
Construction of a new surface water treatment facility	$250
Alteration to an existing surface water treatment facility	$150
Water System Management Plan review	$75
Miscellaneous changes or maintenance not covered above	$50

(d) The Department may charge an administrative fee of up to one hundred fifty dollars ($150.00) for failure to pay the permit fee by January 31 of each year.

(e) All fees collected under this section shall be applied to the costs of administering and enforcing this Article. (1991, c. 576, s. 1; 1991 (Reg. Sess., 1992), c. 811, s. 6; c. 1039, s. 11; 2006-66, s. 11.7(a).)

§ 130A-329. Reporting.

Reports required to be submitted under this Article or under rules adopted by the Commission shall be submitted electronically on a form specified by the Department. The Department may waive the requirement for electronic submission of a report if the water system demonstrates that it lacks the technical capability to report electronically. (2008-143, s. 12.)

§ 130A-330. Reserved for future codification purposes.

§ 130A-331. Reserved for future codification purposes.

§ 130A-332. Reserved for future codification purposes.

Article 11.

Wastewater Systems.

§ 130A-333. Purpose.

The General Assembly finds and declares that continued installation, at a rapidly and constantly accelerating rate, of septic tank systems and other types of wastewater systems in a faulty or improper manner and in areas where unsuitable soil and population density adversely affect the efficiency and functioning of these systems, has a detrimental effect on the public health and environment through contamination of land, groundwater and surface waters. Recognizing, however, that wastewater can be rendered ecologically safe and the public health protected if methods of wastewater collection, treatment and disposal are properly regulated and recognizing that wastewater collection, treatment and disposal will continue to be necessary to meet the needs of an expanding population, the General Assembly intends to ensure the regulation of wastewater collection, treatment and disposal systems so that these systems may continue to be used, where appropriate, without jeopardizing the public health. (1973, c. 452, s. 3; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1991 (Reg. Sess., 1992), c. 944, ss. 1, 2.)

§ 130A-334. Definitions.

The following definitions shall apply throughout this Article:

(1) "Accepted wastewater system" has the same meaning as in G.S. 130A-343.

(1a) "Approved agency for special inspection" means an individual, corporation, company, association, or partnership that is objective, competent, and independent from the contractor who is responsible for the work that is inspected. The agency shall disclose possible conflicts of interest in a manner such that objectivity can be confirmed.

(1b) "Approved special inspector" means a person who demonstrates competence to the satisfaction of the professional engineer who designed the wastewater system for the inspection of the construction or operation subject to special inspection.

(1c) "Construction" means any work at the site of placement done for the purpose of preparing a residence, place of business or place of public assembly for initial occupancy, or subsequent additions or modifications which increase sewage flow.

(1d) "Construction observation" means the visual observation of the construction and installation of the wastewater system for general conformance with the construction documents prepared by the professional engineer who designed the wastewater system. Construction observation that is conducted by the professional engineer who designed the wastewater system does not include or waive the requirement to conduct special inspections.

(1e) "Conventional wastewater system" has the same meaning as in G.S. 130A-343.

(1f) "Department" means the Department of Health and Human Services.

(1g) "Engineered option permit" means an on-site wastewater system that is permitted pursuant to the rules adopted by the Commission in accordance with this Article, meets the criteria established by G.S. 130A-336.1, and is designed by a professional engineer who is licensed under Chapter 89C of the General Statutes who has expertise in the design of on-site wastewater systems.

(1h) "Ground absorption system" means a system of tanks, treatment units, nitrification fields, and appurtenances for wastewater collection, treatment, and subsurface disposal.

(2) Repealed by Session Laws 1985, c. 462, s. 18.

(2a) "Industrial process wastewater" means any water-carried waste resulting from any process of industry, manufacture, trade, or business.

(2b) "Licensed geologist" means a person who is licensed as a geologist under the provisions of Chapter 89E of the General Statutes.

(2c) "Licensed soil scientist" has the same meaning as in G.S. 89F-3.

(3) "Location" means the initial placement for occupancy of a residence, place of business or place of public assembly.

(3a) "Maintenance" means normal or routine maintenance including replacement of broken pipes, cleaning, or adjustment to an existing wastewater system.

(4), (5) Repealed by Session Laws 1985, c. 462, s. 18.

(6) "Place of business" means a store, warehouse, manufacturing establishment, place of amusement or recreation, service station, office building or any other place where people work.

(7) "Place of public assembly" means a fairground, auditorium, stadium, church, campground, theater or any other place where people assemble.

(7a) "Plat" means a property survey prepared by a registered land surveyor, drawn to a scale of one inch equals no more than 60 feet, that includes: the specific location of the proposed facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters. "Plat" also means, for subdivision lots approved by the local planning authority if a local planning authority exists at the time of application for a permit under this Article, a copy of the subdivision plat that has been recorded with the county register of deeds and is accompanied by a site plan that is drawn to scale.

(7b) "Pretreatment" means any biological, chemical, or physical process or system for improving wastewater quality and reducing wastewater constituents prior to final treatment and disposal in a subsurface wastewater system and includes, but is not limited to aeration, clarification, digestion, disinfection, filtration, separation, and settling.

(7c) "Professional engineer" has the same meaning as in G.S. 89C-3.

(8) "Public or community wastewater system" means a single system of wastewater collection, treatment and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality or a public utility.

(9) "Relocation" means the displacement of a residence or place of business from one site to another.

(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.

(10) "Residence" means a private home, dwelling unit in a multiple family structure, hotel, motel, summer camp, labor work camp, manufactured home, institution or any other place where people reside.

(10a) "Secretary" means the Secretary of Health and Human Services.

(11) Repealed by Session Laws 1992, c. 944, s. 3.

(12) "Septic tank system" means a subsurface wastewater system consisting of a settling tank and a subsurface disposal field.

(13) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.

(13a) "Site plan" means a drawing not necessarily drawn to scale that shows the existing and proposed property lines with dimensions, the location of the facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters.

(13b) "Special inspection" means a required inspection of the materials, installation, fabrication, erection, or placement of components and systems that require special expertise to ensure compliance with referenced standards and the construction documents prepared by the professional engineer.

(14) "Wastewater" means any sewage or industrial process wastewater discharged, transmitted, or collected from a residence, place of business, place of public assembly, or other places into a wastewater system.

(14a) "Wastewater dispersal product" means a product approved by the Department for dispersing wastewater effluent within the subsurface dispersal field in a ground absorption system.

(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. (1973, c. 452, s. 4; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1985, c. 462, s. 18; c. 487, s. 9; 1987, c. 435; 1991, c. 256, s. 1; 1991 (Reg. Sess., 1992), c. 944, s. 3; c. 1028, s. 4; 1995, c. 285, s. 1; 1995 (Reg. Sess., 1996), c. 585, s. 1; 1996, 2nd Ex. Sess., c. 18, ss. 27.31(a), (b); 1997-443, s. 11A.82; 2011-145, s. 13.3(bbb); 2014-120, s. 40(a); 2015-241, s. 14.30(v); 2015-286, s. 4.14(a); 2017-139, s. 2; 2018-114, ss. 11(a), (b).)

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

(a) A person owning or controlling a residence, place of business or a place of public assembly shall provide an approved wastewater system. Except as may be allowed under another provision of law, all wastewater from water-using fixtures and appliances connected to a water supply source shall discharge to the approved wastewater system. A wastewater system may include components for collection, treatment and disposal of wastewater.

(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 evalutation 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.

(b) All wastewater systems shall either (i) be regulated by the Department under rules adopted by the Commission or (ii) conform with the engineered option permit criteria set forth in G.S. 130A-336.1 and under rules adopted by the Commission except for the following wastewater systems that shall be regulated by the Department under rules adopted by the Environmental Management Commission:

(1) Wastewater collection, treatment, and disposal systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(4) Gray water systems as defined in G.S. 143-350.

(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. 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, 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.

(c1) The rules adopted by the Commission for wastewater systems approved under the engineered option permit criteria pursuant to G.S. 130A-336.1 shall be, at a minimum, as stringent as the rules for wastewater systems established by the Commission.

(d) The Department may, upon its own motion, upon the request of a local board of health or upon the request of a citizen of an affected county, review its findings under subsection (c) of this section.

The Department shall review its findings under subsection (c) of this section upon modification by the Commission of the rules applicable to wastewater systems. The Department may deny, suspend, or revoke the approval of local board of health wastewater system rules upon a finding that the local wastewater rules are not as stringent as rules adopted by the Commission, are not sufficient and necessary to safeguard the public health,

or are not being enforced. Suspension and revocation of approval shall be in accordance with G.S. 130A-23.

(d1) The Department or owner of a wastewater system may file a written complaint with the North Carolina Board of Examiners for Engineers and Surveyors in accordance with rules and procedures adopted by the Board pursuant to Chapter 89C of the General Statutes citing failure of a professional engineer to adhere to the rules adopted by the Commission pursuant to this Article. The Department or owner of a wastewater system may file a written complaint with the North Carolina Board of Licensed Soil Scientists in accordance with rules and procedures adopted by the Board pursuant to Chapter 89F of the General Statutes citing failure of a licensed soil scientist to adhere to the rules adopted by the Commission pursuant to this Article. The Department or owner of a wastewater system may file a written complaint with the North Carolina Board for Licensing of Geologists in accordance with rules and procedures adopted by the Board pursuant to Chapter 89E of the General Statutes citing failure of a licensed geologist to adhere to the rules adopted by the Commission pursuant to this Article. The Department or owner of a wastewater system may file a written complaint with the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board in accordance with rules and procedures adopted by the Board pursuant to Article 5 of Chapter 90A of the General Statutes citing failure of a contractor to adhere to the rules adopted by the Commission pursuant to this Article.

(e) The rules of the Commission and the rules of the local board of health shall address at least the following: Wastewater characteristics; Design unit; Design capacity; Design volume; Criteria for the design, installation, operation, maintenance and performance of wastewater collection, treatment and disposal systems; Soil morphology and drainage; Topography and landscape position; Depth to seasonally high water table, rock and water impeding formations; Proximity to water supply wells, shellfish waters, estuaries, marshes, wetlands, areas subject to frequent flooding, streams, lakes, swamps and other bodies of surface or groundwaters; Density of wastewater collection, treatment and disposal systems in a geographical area; Requirements for issuance, suspension and revocation of permits; and Other factors which affect the effective operation and performance of wastewater collection, treatment and disposal systems. The rules regarding required design capacity and required design volume for wastewater systems shall provide that exceptions may be granted upon a showing that a system is adequate to meet actual daily water consumption.

(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the rules, or this Article. Permits other than improvement permits shall be valid

for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit.

(f1) A preconstruction conference with the owner or developer, or an agent of the owner or developer, and a representative of the local health department shall be required for any authorization for wastewater system construction issued with an improvement permit under G.S. 130A-336 when the authorization is greater than five years old. Following the conference, the local health department shall advise the owner or developer of any rule changes for wastewater system construction incorporating current technology that can reasonably be expected to improve the performance of the system. The local health department shall issue a revised authorization for wastewater system construction incorporating the rule changes upon the written request of the owner or developer.

(f2) For each septic tank system that is designed to treat 3,000 gallons per day or less of sewage, rules adopted pursuant to subsection (f) of this section shall require the use of an effluent filter to reduce the total suspended solids entering the drainfield and the use of an access device for each compartment of the septic tank to provide access to the compartment in order to facilitate maintenance of the septic tank. The Commission shall not adopt specifications for the effluent filter and access device that exceed the requirements of G.S. 130A-335.1. Neither this section nor G.S. 130A-335.1 shall be construed to prohibit the use of an effluent filter or access device that exceeds the requirements of G.S. 130A-335.1. The Department shall approve effluent filters that meet the requirements of this section, G.S. 130A-335.1, and rules adopted by the Commission.

(g) Prior to denial of an improvement permit, the local health department shall advise the applicant of possible site modifications or alternative systems, and shall provide a brief description of those systems. When an improvement permit is denied, the local health department shall issue the site evaluation in writing stating the reasons for the unsuitable classification. The evaluation shall also inform the applicant of the right to an informal review by the Department, the right to appeal under G.S. 130A-24, and to have the appeal held in the county in which the site for which the improvement permit was requested is located.

(h) Except as provided in this subsection, a chemical or portable toilet may be placed at any location where the chemical or portable toilet can be operated and maintained under sanitary conditions. A chemical or portable toilet shall not be used as a replacement or substitute for a water closet or urinal where a water closet or urinal connected to a permanent wastewater treatment system is required by the North Carolina State Building Code, except that a chemical or portable toilet may be used to supplement a water closet

or urinal during periods of peak use. A chemical or portable toilet shall not be used as an alternative to the repair of a water closet, urinal, or wastewater treatment system. It shall be unlawful to discharge sewage or other waste from a chemical or portable toilet used for human waste except into a wastewater system that has been approved by the Department under rules adopted by the Commission or by the Environmental Management Commission or at a site that is permitted by the Department under G.S. 130A-291.1.

(i) The Department shall notify the Department of Revenue of all wastewater dispersal product approvals and revocations within 60 days of approval or revocation. (1957, c. 1357, s. 1; 1973, c. 471, s. 1; c. 476, s. 128; c. 860; 1977, c. 857, s. 1; 1979, c. 788, s. 2; 1981, c. 949, s. 3; c. 1127, s. 47; 1983, c. 891, s. 2; 1987, c. 267, ss. 1, 2; 1989, c. 727, s. 147; c. 764, ss. 6, 7; 1989 (Reg. Sess., 1990), c. 1075, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 4; 1993, c. 173, s. 5; 1995, c. 285, s. 1; 1995 (Reg. Sess., 1996), c. 585, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 27.31(c); 1998-126, s. 1; 1998-217, s. 46(a); 2008-143, s. 13; 2011-394, s. 12(c); 2014-115, s. 10.1; 2014-120, s. 40(b); 2015-286, s. 4.14(b); 2017-139, s. 3; 2017-209, s. 18(a); 2018-114, s. 11(c).)

§ 130A-335.1. Effluent filters and access devices for certain septic tank systems.

(a) The person who manufactures, installs, repairs, or pumps any septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who manufactures, installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems. The person who installs the effluent filter shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.
(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.
(3) Be designed and constructed to allow for routine maintenance.
(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use.

(b) The access device required by G.S. 130A-335(f) shall provide access to each compartment of a septic tank for inspection and maintenance either by means of an opening in the top of the septic tank or by a riser assembly and shall include an appropriate cover. The access device shall:

(1) Be of sufficient size to facilitate inspection and service.
(2) Be designed and constructed to equal or exceed the minimum loading specifications applicable to the septic tank.
(3) Prevent water entry.
(4) Come to within six inches of the finished grade.
(5) Be visibly marked so that the access device can be readily located. (1998-126, s. 2; 2006-255, s. 4; 2006-264, s. 63(a).)

§ 130A-336. Improvement permit and authorization for wastewater system construction required.

(a) Any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system shall be evaluated by either (i) the local health department in accordance with rules adopted pursuant to this Article or (ii) by a professional engineer, licensed soil scientist, or licensed geologist acting within the engineer's, soil scientist's, or geologist's scope of work, as applicable, and pursuant to the conditions of the engineered option permit in G.S. 130A-336.1. An improvement permit issued by a local health department shall include:

(1) For permits that are valid without expiration, a plat, or, for permits that are valid for five years, a site plan.
(2) A description of the facility the proposed site is to serve.
(3) The proposed wastewater system and its location.
(4) The design wastewater flow and characteristics.
(5) The conditions for any site modifications.
(6) Any other information required by the rules of the Commission.

Neither the improvement permit nor the authorization for wastewater system construction shall be affected by change of ownership of the site for the wastewater system provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility. No person shall commence or assist in the construction, location, or relocation of a residence, place of business, or place of public assembly in an area not served by an approved wastewater system unless an improvement permit and an authorization for wastewater system construction are obtained from the local health department unless that person is acting in accordance with the conditions and criteria of an engineered option permit pursuant to G.S. 130A-336.1. This requirement shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale.

(b) The local health department shall issue an authorization for wastewater system construction authorizing work to proceed and the installation or repair of a wastewater system when it has determined after a field investigation that the system can be installed and operated in compliance with this Article and rules adopted pursuant to this Article. This authorization for wastewater system construction shall be valid for a period equal to the period of validity of the improvement permit and may be issued at the same time the improvement permit is issued. No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the Department or the local health department unless that person is acting in accordance with the conditions and criteria of an engineered option permit pursuant to G.S. 130A-336.1. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department and the local health department may impose conditions on the issuance of an improvement permit and an authorization for wastewater system construction.

(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.

(c) Unless the Commission otherwise provides by rule, plans, and specifications for all wastewater systems designed for the collection, treatment, and disposal of industrial process wastewater shall be reviewed and approved by the Department prior to the issuance of an authorization for wastewater system construction by the local health department.

(d) If a local health department repeatedly fails to issue or deny improvement permits for conventional or accepted septic tank systems within 60 days, or within 90 days for provisional or innovative systems, after receiving completed applications for the permits, then the Department of Health and Human Services may withhold public health funding from that local health department. (1973, c. 452, s. 5; c. 476, s. 128; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1985, c. 273; 1991, c. 256, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 5; 1995, c. 285, s. 1; 1995 (Reg. Sess., 1996), c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 27.31(d)-(f); 1997-443, ss. 11A.83, 11A.119(a); 2014-120, s. 40(c); 2015-241, s. 14.30(u); 2015-286, s. 4.14(g); 2017-211, s. 19; 2018-114, s. 9.)

§ 130A-336.1. Alternative process for wastewater system approvals.

(a) Engineered Option Permit Authorized. – A professional engineer licensed under Chapter 89C of the General Statutes may, at the direction of the owner of a proposed wastewater system who wishes to utilize the engineered option permit, prepare signed and sealed drawings, specifications, plans, and reports for the design, construction, operation, and maintenance of the wastewater system in accordance with this section and rules adopted thereunder.

(b) Notice of Intent to Construct. – Prior to commencing or assisting in the construction, siting, or relocation of a wastewater system, the owner of a proposed wastewater system who wishes to utilize the engineered option permit, or a professional engineer authorized as the legal representative of the owner, shall submit to the local health department with jurisdiction over the location of the proposed wastewater system a notice of intent to construct a wastewater system utilizing the engineered permit option. The Department shall develop a common form for use as the notice of intent to construct that includes all of the following:

(1) The owner's name, address, e-mail address, and telephone number.

(2) The professional engineer's name, license number, address, e-mail address, and telephone number.
(3) For the professional engineer, the licensed soil scientist, the licensed geologist, and any on-site wastewater contractors, proof of errors and omissions insurance coverage or other appropriate liability insurance.
(4) A description of the facility the proposed site is to serve and any factors that would affect the wastewater load.
(5) The type of proposed wastewater system and its location.
(6) The design wastewater flow and characteristics.
(7) Any proposed landscape, site, drainage, or soil modifications.
(8) A soil evaluation that is conducted and signed and sealed by a either a licensed soil scientist or licensed geologist.
(9) A plat, as defined in G.S. 130A-334(7a).

(c) Completeness Review for Notice of Intent to Construct. – The local health department shall determine whether a notice of intent to construct, as required pursuant subsection (b) of this section, is complete within 15 business days after the local health department receives the notice of intent to construct. A determination of completeness means that the notice of intent to construct includes all of the required components. If the local health department determines that the notice of intent to construct is incomplete, the department shall notify the owner or the professional engineer of the components needed to complete the notice. The owner or professional engineer may submit additional information to the department to cure the deficiencies in the notice. The local health department shall make a final determination as to whether the notice of intent to construct is complete within 10 business days after the department receives the additional information from the owner or professional engineer. If the department fails to act within any time period set out in this subsection, the owner or professional engineer may treat the failure to act as a determination of completeness.

(d) Submission of Notice of Intent to Construct to Department for Certain Systems. – Prior to commencing in the construction, siting, or relocation of a wastewater system designed (i) for the collection, treatment, and disposal of industrial process wastewater or (ii) to treat greater than 3,000 gallons per day, the owner of a proposed wastewater system who wishes to utilize the engineered option permit, or a professional engineer authorized as the legal representative of the owner, shall provide to the Department a duplicate copy of the notice of intent to construct submitted to the local health department required pursuant to subsection (b) of this section.

(e) Site Design, Construction, and Activities. –
(1) The professional engineer designing the proposed wastewater system shall use recognized principles and practices of engineering and applicable rules of the Commission in the calculations and design of the wastewater system. The investigations and findings of the professional engineer shall include, at a minimum, the information required in rules adopted by the Commission pursuant to G.S. 130A-335(e). The professional engineer may, at the engineer's discretion, employ pretreatment technologies not yet approved in this State.
(2) Notwithstanding G.S. 130A-335(a1), the owner of the proposed wastewater system shall employ a person licensed pursuant to Chapter 89F of the General

Statutes as a licensed soil scientist to conduct soil and site evaluations and, as applicable, a person licensed pursuant to Chapter 89E of the General Statutes as a licensed geologist to evaluate geologic and hydrogeologic conditions.

(3) The professional engineer designing the proposed wastewater system:

a. Shall be responsible for the engineer's scope of work, including all aspects of the design and any drawings, specifications, plans, or reports that are signed and sealed by the professional engineer.

b. Shall prepare a signed and sealed statement of special inspections that includes the following items:

1. The materials, systems, components, and work subject to special inspection or testing.

2. The type and extent of each special inspection and each test.

3. The frequency of each type of special inspection. For purposes of this sub-sub-subdivision, frequency of special inspections shall be required on either a continuous or periodic basis. Continuous special inspections mean the full-time observation of work requiring special inspection by an approved special inspector who is present in the area where the work is performed. Periodic special inspections mean the part-time or intermittent observation of work requiring a special inspection by an approved special inspector who is present in the area where the work is or has been performed and at the completion of the work.

c. May assist the owner of the proposed wastewater system with the selection of an on-site wastewater system contractor certified pursuant to Article 5 of Chapter 90A of the General Statutes.

(4) An on-site wastewater system contractor, licensed pursuant to Article 5 of Chapter 90A of the General Statutes, who is employed by the owner of the wastewater system, shall:

a. Be responsible for all aspects of the construction and installation of the wastewater system or components of the wastewater system, including adherence to the design, specifications, and any special inspections that are prepared, signed, and sealed by the professional engineer in accordance with all the applicable provisions of this section.

b. Submit a signed and dated statement of responsibility to the owner of the wastewater system, prior to the commencement of work, that contains acknowledgement and awareness of the requirements in the professional engineer's statement of special inspections.

(5) Where the professional engineer's designs, plans, and specifications call for the installation of a conventional wastewater system, such designs, plans, and specifications shall allow for the installation of an accepted system in lieu of a conventional system in accordance with the accepted system approval.

(6) In addition to the requirements of this section, the owner, the professional engineer designing the proposed wastewater system, and any on-site wastewater system contractors employed to construct or install the wastewater system shall comply with applicable federal, State, and local laws, regulations, rules, and ordinances.

(f) No Public Liability. – The Department, the Department's authorized agents, or local health departments shall have no liability for wastewater systems designed, constructed, and installed pursuant to a engineered option permit.

(g) Inspections, Construction Observations, and Reports. –

(1) Site visits. – The local health department may, at any time, conduct a site visit of the wastewater system.

(2) Construction observations. – The professional engineer who designed the wastewater system shall make periodic visits to the site, at intervals appropriate to the stage of construction, to observe the progress and quality of the construction and to determine, generally, if the construction is proceeding in accordance with the engineer's plans and specifications.

(3) Special inspections. – The owner of the proposed wastewater system shall employ one or more approved special inspectors to conduct special inspections during the construction of the wastewater system. The professional engineer who designed the wastewater system, or the engineer's personnel, may function as an approved agency to conduct special inspections required by this subdivision. The professional engineer's personnel shall only operate as an approved agency for special inspections if the personnel can demonstrate competence and relevant experience or training. For purposes of this subdivision, experience or training shall be considered relevant when the documented experience or training is related in complexity to the same type of special inspection activities for projects of similar complexity and material qualities.

(4) Inspection reports. – Approved special inspectors shall maintain and furnish all inspection records to the professional engineer who designed the wastewater system. The records shall indicate whether the work inspected was completed in conformance with the engineer's design and specifications. Any discrepancies identified between the completed work and the engineer's design shall be brought to the immediate attention of the on-site wastewater system contractor for correction. If discrepancies are not corrected, they shall be brought to the attention of the professional engineer who designed the wastewater system prior to completion of work. A final inspection report documenting the required special inspections and the correction of any identified discrepancies shall be provided to the professional engineer and the owner of the wastewater system for review at the post-construction conference required pursuant to subsection (j) of this section.

(h) Local Authority. – This section shall not relieve the owner or operator of a wastewater system from complying with any and all modifications or additions to rules adopted by a local health department to protect public health pursuant to G.S. 130A-335(c) that are required at the time the owner or operator submits the notice of intent to construct pursuant to G.S. 130A-336.1(b). The local health department shall notify the owner or operator of the wastewater system of any issues of compliance related to such modifications or additions.

(i) Operations and Management. –

(1) The professional engineer designing the wastewater system shall establish a written operations and management program based on the size and complexity of the wastewater system and shall provide the program to the owner.

(2) The owner shall enter into a contract with a water pollution control system operator certified pursuant to Part 1 of Article 3 of Chapter 90A of the General Statutes and who is selected from the list of certified operators maintained by the Division of Water Resources in the Department of Environment and Natural Resources for operation and maintenance of the wastewater system in accordance with rules adopted by the Commission.

(3) The owner of the wastewater system shall be responsible for the continued adherence to the operations and management program established by the professional engineer pursuant to subdivision (1) of this subsection.

(j) Post-Construction Conference. – The professional engineer designing the wastewater system shall hold a post-construction conference with the owner of the wastewater system; the licensed soil scientist or licensed geologist who performed the soils evaluation for the wastewater system; the on-site wastewater system contractor, certified pursuant to Article 5 of Chapter 90A of the General Statutes, who installed the wastewater system; the certified operator of the wastewater system, if any; and representatives from the local health department and, as applicable, the Department. The post-construction conference shall include start-up of the wastewater system and any required verification of system design or system components.

(k) Required Documentation. –

(1) At the completion of the post-construction conference conducted pursuant to subsection (j) of this section, the professional engineer who designed the wastewater system shall deliver to the owner signed, sealed, and dated copies of the engineer's report, which, for purposes of this subsection, shall include the following:

a. The evaluation of soil conditions and site features as prepared by either the licensed soil scientist or licensed geologist.

b. The drawings, specifications, plans, and reports of the wastewater system, including the statement of special inspections required pursuant to G.S. 130A-336.1(e)(3); the on-site wastewater system contractor's signed statement of responsibility required pursuant to G.S. 130A-336.1(e)(4); records of all special inspections; and the final inspection report documenting the correction of any identified discrepancies required pursuant to subsection (g) of this section.

c. The operator's management program manual that includes a copy of the contract with the certified water pollution control system operator required pursuant to subsection (i) of this section.

d. Any reports and findings related to the design and installation of the wastewater system.

(2) Upon reviewing the professional engineer's report, the owner of the wastewater system shall sign and notarize the report as having been received.

(*l*) Reporting Requirements. –

(1) The owner of the wastewater system shall submit the following to the local health department:

a. A copy of the professional engineer's report required pursuant to G.S. 130A-336.1(k)(1).
b. A copy of the operations and management program.
c. The fee required pursuant to subsection (n) of this section.
d. A notarized letter that documents the owner's acceptance of the system from the professional engineer.

(2) The owner of any wastewater system that is subject to subsection (d) of this section shall deliver to the Department copies of the engineer's report, as described G.S. 130A-336.1(k)(1).

(m) Authorization to Operate. – Within 15 business days of receipt of the documents and fees required pursuant to G.S. 130A-336.1(*l*)(1), the local health department shall issue the owner a letter of confirmation that states the documents and information contained therein have been received and that the wastewater system may operate in accordance with rules adopted by the Commission.

(n) Fees. – The local health department may assess a fee for the engineered option permit of up to thirty percent (30%) of the cumulative total of the fees the department has established to obtain an improvement permit, an authorization to construct, and an operations permit for wastewater systems under its jurisdiction. The fee shall only be used by the department in support of its work pursuant to this section to conduct site inspections; support the department's staff participation at post-construction conference meetings; and archive the engineered permit with the county register of deeds or other recordation of the wastewater system as required.

(o) Change in System Ownership. – A wastewater system authorized pursuant to this section shall not be affected by change in ownership of the site for the wastewater system, provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility.

(p) Remedies. – Notwithstanding any other provision of this section or any other provision of law, owners; operators; professional engineers who utilize the engineered option permit, who prepare drawings, specifications, plans, and reports; licensed soil scientists; licensed geologists; and on-site wastewater system contractors employed for the construction or installation of the wastewater system shall be subject to the provisions and remedies provided to the Department and local health departments pursuant to Article 1 of this Chapter.

(q) Rule Making. – The Commission shall adopt rules to implement the provisions of this section.

(r) Reports. – The Department shall report to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services on or before January 1, 2017, and annually thereafter, on the implementation and effectiveness of this section. For the report due on or before January 1, 2017, the Department shall specifically study (i) whether the engineered option permit resulted in a reduction in the length of time improvement permits or authorizations to construct are pending; (ii) whether the engineered option permit resulted in increased system failures or other adverse impacts; (iii) if the engineered option permit resulted in new or increased environmental or public health impacts; (iv) an amount of errors and omissions insurance

or other liability sufficient for covering professional engineers, licensed soil scientists, licensed geologists, and contractors who employ the engineered option permit; and (v) the fees charged by local health departments to administer the engineered option permit pursuant to subsection (n) of this section. The Department may include recommendations, including any legislative proposals, in its reports to the Commission and Committee. (2015-286, s. 4.14(c); 2017-209, s. 18(b).)

§ 130A-337. Inspection; operation permit required.

(a) No system of wastewater collection, treatment and disposal shall be covered or placed into use by any person until an inspection by the local health department has determined that the system has been installed or repaired in accordance with any conditions of the improvement permit, the rules, and this Article.

(b) Upon determining that the system is properly installed or repaired and that the system is capable of being operated in accordance with the conditions of the improvement permit, the rules, this Article and any conditions to be imposed in the operation permit, as applicable, the local health department shall issue an operation permit authorizing the residence, place of business or place of public assembly to be occupied and for the system to be placed into use or reuse.

(c) Upon determination that an existing wastewater system has a valid operation permit and is operating properly in a manufactured home park, the local health department shall issue authorization in writing for a manufactured home to be connected to the existing system and to be occupied. Notwithstanding G.S. 130A-336, an improvement permit is not required for the connection of a manufactured home to an existing system with a valid operation permit in a manufactured home park.

(d) No person shall occupy a residence, place of business or place of public assembly, or place a wastewater system into use or reuse for a residence, place of business or place of public assembly until an operation permit has been issued or authorization has been obtained pursuant to G.S. 130A-337(c). (1973, c. 452, s. 6; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1985, c. 487, s. 9; 1991 (Reg. Sess., 1992), c. 944, s. 6; 1995, c. 285, s. 1.)

§ 130A-338. Authorization for wastewater system construction required before other permits to be issued.

Where construction, location or relocation is proposed to be done upon a residence, place of business or place of public assembly, no permit required for electrical, plumbing, heating, air conditioning or other construction, location or relocation activity under any provision of general or special law shall be issued until an authorization for wastewater system construction has been issued under G.S. 130A-336, or authorization has been obtained under G.S. 130A-337(c), or a decision on the completeness of the notice of intent to construct is made by the local health department pursuant to G.S. 130A-336.1(c). (1973, c. 452, s. 7; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1995, c. 285, s. 1; 2015-286, s. 4.14(d).)

§ 130A-339. Limitation on electrical service.

No person shall allow permanent electrical service to a residence, place of business or place of public assembly upon construction, location or relocation until the official electrical inspector with jurisdiction as provided in G.S. 143-143.2 certifies to the electrical supplier that the required improvement permit authorization for wastewater system

construction and an operation permit or authorization under G.S. 130A-337(c) or the letter of confirmation authorizing wastewater system operation under G.S. 130A-336.1(m) has been obtained. Temporary electrical service necessary for constructing a residence, place of business or place of public assembly can be provided upon compliance with G.S. 130A-338. (1973, c. 452, s. 8; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1995, c. 285, s. 1; 2015-286, s. 4.14(e).)

§ 130A-340. Review procedures and appeals.

The Department, upon request by an applicant for an improvement permit, shall provide a technical review of any scientific data and system design submitted by the applicant. The data and system design shall be evaluated by professional peers of those who prepared the data and system design. The results of the technical review shall be available prior to a decision by the local health department and shall not affect an applicant's right to a contested hearing under Chapter 150B of the General Statutes. (1989, c. 764, s. 5.)

§ 130A-341. Consideration of a site with existing fill.

Upon application to the local health department, a site that has existing fill, including one on which fill material was placed prior to July 1, 1977, and that has sand or loamy sand for a depth of at least 36 inches below the existing ground surface, shall be evaluated for an on-site wastewater system. The Commission shall adopt rules to implement this section. (1989, c. 764, s. 8; 1991 (Reg. Sess., 1992), c. 944, s. 7.)

§ 130A-342. Residential wastewater treatment systems.

(a) Individual residential wastewater treatment systems that are approved and listed in accordance with the standards adopted by the National Sanitation Foundation, Inc. for Class I residential wastewater treatment systems, as set out in Standard 40 of the National Sanitation Foundation, Inc., (as approved 13 January 2001) as amended, shall be permitted under rules adopted by the Commission. The Commission may establish standards in addition to those set by the National Sanitation Foundation, Inc.

(b) A permitted system with a design flow of less than 1,500 gallons per day shall be operated by a person who is a Subsurface Water Pollution Control System Operator as certified by the Water Pollution Control System Operators Certification Commission and authorized by the manufacturer of the individual residential wastewater treatment system. The Commission may, in addition to the requirement for a certified Subsurface Water Pollution Control System Operator, establish additional standards for wastewater systems with a design flow of 1,500 gallons or greater per day.

(c) Each county, in which one or more residential wastewater treatment systems permitted pursuant to this section are in use, shall document the performance of each system and report the results to the Department annually. (1989, c. 727, s. 223(b); c. 764, s. 9; 1989 (Reg. Sess., 1990), c. 1004, ss. 12, 37; 1991 (Reg. Sess., 1992), c. 944, s. 8; 1995, c. 285, s. 1; 1997-443, ss. 11A.84, 11A.119(a); 2001-505, s. 2.1; 2015-286, s. 4.14(j).)

§ 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 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.

(2) Recodified as subdivision (a)(7).

(3) "Conventional wastewater system", "conventional sewage system", or "conventional septic tank system" means a subsurface wastewater system that consists of a traditional septic or settling tank and a gravity-fed subsurface dispersal field that uses washed natural stone or gravel of approved size and grade and piping to distribute effluent to soil in one or more nitrification trenches and that does not include any other appurtenance.

(4) Repealed by Session Laws 2015-286, s. 4.15(a), effective October 22, 2015.

(5) "Innovative wastewater system" means any wastewater system, other than a conventional wastewater system or a provisional wastewater system, or any technology, device, or component of a wastewater system that: (i) has been demonstrated to perform in a manner equal or superior to a conventional wastewater system; (ii) is constructed of materials whose physical and chemical properties provide the strength, durability, and chemical resistance to allow the system to withstand loads and conditions as required by rules adopted by the Commission; and (iii) has been approved by the Department for general use or for one or more specific applications. An innovative wastewater system may be approved for use in applications for which a conventional wastewater system is unsuitable. The Department may impose any design, operation, maintenance, monitoring, and management requirements on the use of an innovative wastewater system that it determines to be appropriate. A wastewater system approved by a nationally recognized certification body and in compliance with the ongoing verification program of such body may submit a sampling protocol for innovative system approval that reduces the data sets required for such approval by fifty percent (50%). Such an application shall include all of the data associated with the nationally recognized certification body's verification of the system's performance.

(6) "Nationally recognized certification body" means a third-party certification body for wastewater systems or system components that is accredited by an entity widely recognized in the United States such as the American National Standards Institute, the Standards Council of Canada, or the International Accreditation Service, Inc.

(7) "Provisional wastewater system" means any wastewater system or any technology, device, or component of a wastewater system that, on the basis of

(i) research acceptable to the Department or (ii) approval of the wastewater system by a nationally recognized certification body for a period that exceeds one year for research, testing, or trial use under actual field conditions in this State pursuant to a protocol that has been approved by the Department.

(b) Adoption of Rules Governing Approvals. – The Commission shall adopt rules for the approval and permitting of innovative, conventional, provisional, and accepted wastewater systems. The rules shall address the criteria to be considered prior to issuing an approval for a system, requirements for preliminary design plans and specifications that must be submitted, methodology to be used, standards for monitoring and evaluating the system, research evaluation of the system, the plan of work for monitoring system performance and maintenance, and any additional matters the Commission determines are necessary for verification of the performance of a wastewater system or system component.

(c) Procedure for Modifications or Revocations. – The Department may modify, suspend, or revoke the approval of a wastewater system if the Department determines that the approval is based on false, incomplete, or misleading information or if the Department finds that modification, suspension, or revocation is necessary to protect public health, safety, or welfare. The Department shall provide a listing of all approved innovative, provisional, and accepted wastewater systems to the local health departments annually, and notify the local health departments within 30 days of any modification or revocation of an approval of a wastewater system or system component.

(d) Evaluation Protocols. – The Department shall approve one or more nationally recognized protocols for the evaluation of wastewater systems. Any protocol approved by the Department shall specify a minimum number of sites that must be evaluated and the duration of the evaluation period. At the request of a manufacturer of a wastewater system, the Department may approve an alternative protocol for use in the evaluation of the performance of the manufacturer's wastewater system. A protocol for the evaluation of a wastewater system approved by the Department pursuant to this section is a scientific standard within the meaning of G.S. 150B-2(8a)h.

(e) Repealed by Session Laws 2015-286, s. 4.15(a), effective October 22, 2015.

(f) Provisional Systems. – A manufacturer of a wastewater system may apply to the Department to have the system provisionally approved for use in this State. Any wastewater system approved based on its approval by a nationally recognized certification body must be designed and installed in a manner consistent with the system evaluated and approved by the nationally recognized certification body. The manufacturer shall submit a proposal for evaluation of the system to the Department. The proposal shall contain procedures for obtaining specified information necessary to achieve innovative status upon completion of the provisional status. The proposal for evaluation shall include the design of the system, a description of any laboratory or field research or testing that will be used to evaluate the system, a description of the research or testing protocol, and the credentials of the independent laboratory, consultant, or other entity that will be conducting the research or testing on the system. The proposal may include an evaluation of research and testing conducted in other states to the extent that the research and testing involves soil types, climate, hydrology, and other relevant conditions that are comparable to conditions

in this State and if the research or testing was conducted pursuant to a protocol acceptable to the Department. The manufacturer shall enter into a contract for an evaluation of the performance of the controlled demonstration wastewater system with an independent laboratory, consultant, or other entity that has expertise in the evaluation of wastewater systems and that is approved by the Department. The manufacturer may install up to 200 provisional wastewater systems on sites that are suitable for a conventional wastewater system and that have a repair area of sufficient size to allow installation of a conventional wastewater system, an approved innovative wastewater system, or an accepted wastewater system if the provisional wastewater system fails to perform properly. If the provisional wastewater system is intended for use on sites that are not suitable for a conventional wastewater system, the Department may approve the installation of the provisional wastewater system if the Department determines that the manufacturer can provide an acceptable alternative method for collection, treatment, and dispersal of the wastewater. The Department shall approve applications for provisional systems based on approval by a nationally recognized certification body within 90 days of receipt of a complete application. A manufacturer that chooses to remove its product from the nationally recognized standard during the provisional approval may continue its application in this State pursuant to requirements and procedures established by the Department.

(g) Innovative Systems. – A manufacturer of a wastewater system for on-site subsurface use may apply for and be considered for innovative system status by the Department in one of the following ways:

(1) If the wastewater system has been approved as a provisional wastewater system pursuant to subsection (f) of this section, the manufacturer may apply to have the system approved as an innovative wastewater system based on successful completion of the evaluation protocols established pursuant to subsection (d) of this section.

(2) If the wastewater system has not been evaluated or approved as a provisional wastewater system pursuant to subsection (f) of this section, the manufacturer may apply to the Department to have the system approved as an innovative wastewater system on the basis of comparable research and testing conducted in other states. The manufacturer shall provide the Department with the data and findings of all evaluations of the performance of the system that have been conducted in any state by or on behalf of the manufacturer. The manufacturer shall also provide the Department with a summary of the data and findings of all other evaluations of the performance of the system that are known to the manufacturer.

(3) If the wastewater system has not been evaluated or approved as a provisional system pursuant to subsection (f) of this section, but has been evaluated under protocol established by a nationally recognized certification body for at least two consecutive years, has been found to perform acceptably based on the criteria of the protocol, and is designed and will be installed in a manner consistent with the system evaluated and approved by the nationally recognized certification body, the manufacturer may apply to have the system approved as an innovative wastewater system.

Within 30 days of receipt of the initial application, the Department shall either (i) notify the manufacturer of any items necessary to complete the application or (ii) notify the manufacturer that its application is complete. The Department shall publish a notice that the manufacturer has submitted an application under this subsection in the North Carolina Register and may provide additional notice to the public via the Internet or by other means. The Department shall receive public comment on the application for at least 30 days after the date the notice is published in the North Carolina Register. In making a determination under this subsection, the Department shall consider the data, findings, and recommendations submitted by the manufacturer and all public comment. The Department may also consider any other information that the Department determines to be relevant. The Department shall determine: (i) whether the system performs in a manner equal or superior to a conventional wastewater system, in terms of structural integrity, treatment, and hydraulic performance; (ii) whether the system is constructed of materials whose physical and chemical properties provide the strength, durability, and chemical resistance to allow the system to withstand loads and conditions as required by rules adopted by the Commission; (iii) the circumstances in which use of the system is appropriate; and (iv) any conditions and limitations related to the use of the system. The Department shall make the determinations required by this subsection and approve or deny the application within 90 days after the Department receives a complete application from a manufacturer. If the Department fails to act on the application within 90 days of the notice of receipt of the complete application, the manufacturer may treat the application as denied and challenge the denial by filing a contested case as provided in Article 3 of Chapter 150B of the General Statutes. If the Department approves an innovative wastewater system, the Department shall notify the manufacturer of the approval and specify the circumstances in which use of the system is appropriate and any conditions and limitations related to the use of the system.

(g1) Approval of Functionally Equivalent Trench Systems as Innovative Systems. – A manufacturer of a wastewater trench system may petition the Commission to have the wastewater trench system approved as an innovative wastewater system as provided in this subsection.

(1) The Commission shall approve a wastewater trench system as an innovative wastewater system if it finds that there is clear, convincing, and cogent evidence that the wastewater trench system is functionally equivalent to a wastewater trench system that is approved as an accepted wastewater system. A wastewater trench system shall be considered functionally equivalent to an accepted wastewater trench system if the performance characteristics of the wastewater trench system satisfy all of the following requirements:

a. The physical properties and chemical durability of the materials from which the wastewater trench system is constructed are equal to or superior to the physical properties and chemical durability of the materials from which the accepted wastewater trench system is constructed.

b. The permeable sidewall area and bottom infiltrative area of the wastewater trench system are equal to or greater than the permeable

sidewall area and bottom infiltrative area of the accepted wastewater trench system at a field-installed size.

c. The wastewater trench system utilizes a similar method and manner of function for the conveyance and application of effluent as the accepted wastewater trench system.

d. The structural integrity of the wastewater trench system is equal to or superior to the structural integrity of the accepted wastewater trench system.

e. The wastewater trench system shall provide a field installed system storage volume equal to or greater than the field installed system storage volume of the accepted wastewater trench system.

(2) As part of its petition, the manufacturer shall provide to the Commission all of the following information:

a. Specifications of the wastewater trench system.

b. Data necessary to demonstrate that the wastewater trench system is functionally equivalent to a wastewater trench system that is approved as an accepted wastewater system.

c. A certified statement from an independent, third-party professional engineer or testing laboratory that, based on verified documentation, the wastewater trench system is functionally equivalent to an accepted wastewater system.

(3) Approval of a wastewater trench system as an innovative wastewater system shall not be conditioned on the manufacturer of the wastewater trench system having operational systems installed in the State.

(4) The Commission shall authorize the use of a wastewater trench system as an innovative wastewater system in the same applications as the accepted wastewater trench system.

(5) The Commission shall not include conditions and limitations in the approval of a wastewater trench system as an innovative wastewater system that are not included in the approval of the accepted wastewater trench system.

(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 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.

(i) Nonproprietary Wastewater Systems. – The Department may initiate a review of a nonproprietary wastewater system and approve the system for use as a provisional wastewater system or an innovative wastewater system without having received an application from a manufacturer. The Department may recommend that the Commission designate a nonproprietary wastewater system as an accepted wastewater system without having received a petition from a manufacturer.

(j) Repealed by Session Laws 2015-286, s. 4.15(a), effective October 22, 2015.

(j1) Clarification With Respect to Certain Dispersal Media. – In considering the application by a manufacturer of a wastewater system utilizing expanded polystyrene synthetic aggregate particles as a septic effluent dispersal medium for approval of the system under this section, neither the Commission nor the Department may condition, delay, or deny the approval based on the particle or bulk density of the expanded polystyrene material. With respect to approvals already issued by the Department or Commission that include conditions or requirements related to the particle or bulk density of expanded polystyrene material, the Commission or Department, as applicable, shall promptly reissue all such approvals with the conditions and requirements relating to the density of expanded polystyrene material permanently deleted while leaving all other terms and conditions of the approval intact.

(k) Fees. – The Department shall collect the following fees under this section:

(1) Review of an alternative protocol under subsection (d) of this section $1,000.00

(2) Repealed by Session Laws 2015-286, s. 4.15(a), effective October 22, 2015.

(3) Review of a provisional system $3,000.00

(4) Review of an innovative system $3,000.00

(5) Review of an accepted system $3,000.00

(6) Review of a residential wastewater treatment system pursuant to G.S. 130A-342 $1,500.00

(7) Review of a component or device required of a system $100.00

(8) Modification to approved accepted, provisional, or innovative system $1,000.00

(*l*) On-Site Wastewater System Account. – The On-Site Wastewater System Account is established as a nonreverting account within the Department. Fees collected pursuant to this section shall be placed in the On-Site Wastewater System Account and shall be applied only to the costs of implementing this section. (1989, c. 764, s. 10; 1991 (Reg. Sess., 1992), c. 944, s. 9; 1995, c. 285, s. 1; 2001-505, s. 2.2; 2011-261, s. 1; 2014-120, s. 28(a); 2015-286, s. 4.15(a); 2018-114, s. 12.)

§ 130A-343.1. Transfer of ownership of provisionally approved septic tanks and innovative septic tank systems to joint agency in certain counties; inspection fees in those counties.

(a) As used in this section, "provisionally approved septic tank or innovative septic tank system" means a septic tank system located in soil that is classified as provisionally suitable or an

innovative septic tank system, as those terms are used in Subchapter 18A of Chapter 18 of Title 15A of the North Carolina Administrative Code, G.S. 130A-343, and any applicable local rules or ordinances.

(b) As used in this subsection, "unit of local government" has the same meaning as in G.S. 160A-460. One or more units of local government located in the Counties of Camden, Chowan, Currituck, Gates, Hertford, Pasquotank, Perquimans, Tyrrell, and Washington may establish a joint agency for the purpose of owning and operating a provisionally approved septic tank or innovative septic tank system as provided in Article 20 of Chapter 160A of the General Statutes. Bertie County may join any joint agency established under this subsection. The owner of any provisionally approved septic tank or innovative septic tank system may, upon acceptance by a joint agency established under this subsection, transfer ownership of any real or personal property or interest therein that is a part of or used in connection with the provisionally approved septic tank or innovative septic tank system to the joint agency. Notwithstanding G.S. 160A-462(a), a joint agency created pursuant to this subsection may hold real property necessary to the undertaking. Any county named in this subsection may accept real or personal property described in this subsection from the owner of the property for transfer to a joint agency established as provided in this subsection.

(c) The Counties of Bertie, Camden, Chowan, Currituck, Gates, Hertford, Pasquotank, Perquimans, Tyrrell, and Washington may adopt an ordinance providing that any fee for the inspection, maintenance, and repair of a provisionally approved septic tank or other innovative septic tank system may be billed as property taxes, may be payable in the same manner as property taxes, and in the case of nonpayment, may be collected in any manner by which property taxes can be collected. If the ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the delinquent fees are a lien on the real property described on the bill that includes the fee. (1999-288, ss. 1-3; 2001-78, ss. 1-3.)

§ 130A-344: Repealed by Session Laws 1995, c. 285, s. 2.

§ 130A-345. Disposal of liquid condensate from residential heating and cooling systems.

Notwithstanding any other provision of law, every public or community wastewater system, as defined in G.S. 130A-334(8), shall provide for the collection of liquid condensate from residential heating and cooling systems by the public or community wastewater system. (2015-207, s. 6.)

Article 12.

Mosquito and Vector Control.

Part 1. Mosquito and Vector Control Program.

§ 130A-346: Repealed by Session Laws 2011-145, s. 13.3(j), effective July 1, 2011.

§ 130A-347: Repealed by Session Laws 2011-145, s. 13.3(j), effective July 1, 2011.

§ 130A-348: Repealed by Session Laws 2011-145, s. 13.3(j), effective July 1, 2011.

§ 130A-349: Repealed by Session Laws 2011-145, s. 13.3(j), effective July 1, 2011.

§ 130A-350: Reserved for future codification purposes.

§ 130A-351: Reserved for future codification purposes.

Part 2. Mosquito Control Districts.

§ 130A-352. Creation and purpose of mosquito control districts.

For the purpose of protecting and promoting the public health and welfare by providing for the control of mosquitoes and other arthropods of public health significance, mosquito control districts may be created in accordance with the provisions of this Part. A mosquito control district may be comprised of one or more contiguous counties or contiguous parts of one or more counties. (1957, c. 1247, s. 1; 1983, c. 891, s. 2.)

§ 130A-353. Nature of district; procedure for forming districts.

(a) A mosquito control district shall be a body politic and corporate and a political subdivision of the State. A mosquito control district may sue and be sued in its corporate name.

(b) If the proposed district lies wholly within a county, ten percent (10%) or more of the resident freeholders within the proposed district may petition the board of commissioners of the county in which the proposed district lies setting forth the boundaries of the district and a suggested name for the district. For the purposes of this Part, the term "freeholders" shall mean persons holding a deed to a tract of land within the district or proposed district, and also shall mean a person who has entered into a contract to purchase a tract of land within the district or proposed district, is making payments pursuant to a contract, and will receive a deed upon completion of the contractual payments. If the county board of commissioners considers the formation of the district to be in the interest of the public health, the board shall forward the petition to the Department. If the Department considers the formation of the district to be in the interest of the public health, the Department shall notify the county board of commissioners. Upon notification, the board shall give notice of a public hearing on the question of the formation of the district by advertising the time, place and purpose of the hearing once a week for four successive weeks prior to the hearing in a newspaper either published in the county or having a general circulation in the county. The public hearing shall be presided over by the chairman of the county board of commissioners and shall be attended by a representative of the Department. The hearing may be continued as may be necessary to hear the proponents and opponents of the formation of the district. If after the hearing, the county board of commissioners deem it advisable that the district be created, the board shall submit the question of whether or not the district shall be created to the voters residing within the proposed district at an election called for that purpose. Upon determining that the district should be created and established, and prior to the submission of the question of the formation of the district to the voters of the proposed district, the county board of

commissioners may determine the maximum amount of special tax to be levied for mosquito control purposes should the formation of the district be approved by the voters. In no event shall the maximum authorized levy exceed thirty-five cents (35¢) upon the one hundred dollar ($100.00) assessed valuation. If the county board of commissioners determines that the maximum amount of special tax to be levied for mosquito control purposes is to be less than thirty-five cents (35¢) on the one hundred dollar ($100.00) valuation, the maximum amount must appear on the ballot to be used by the voters on the question of the creation of the district.

(c) Prior to the election, the county board of commissioners may make minor deviations in defining the boundaries of the proposed district if: (1) the board determines that minor deviation from the boundaries described in the petition is in the interest of public health; and (2) ten percent (10%) of the resident freeholders within the revised boundaries have signed the petition proposing the creation of the district or additional resident freeholders within the revised boundaries of the proposed district sign the petition to bring the total number of petitioners within the proposed revised boundaries to not less than ten percent (10%) of the voters therein.

(d) The county board of commissioners shall request the county board of elections to hold the election and shall pay the expense of the election. The election shall be held in accordance with the applicable provisions of Subchapter III of Chapter 163A of the General Statutes. Notice shall be given as provided in G.S. 163A-769(8).

(e) The form of the question to be stated on the ballot shall be in substantially the following words:

"• FOR creation of the (here insert name) Mosquito Control District and the levy of a special tax (here insert the words "not to exceed" and the maximum amount of special tax to be levied for mosquito control purposes if the county board of commissioners has determined that the maximum authorized amount is to be less than thirty-five cents (35¢) on the one hundred dollar ($100.00) assessed valuation) for mosquito control purposes.

• AGAINST creation of the (here insert name) Mosquito Control District and the levy of a special tax (here insert the words "not to exceed" and the maximum amount of special tax to be levied for mosquito control purposes if the county board of commissioners has determined that the maximum authorized amount is to be less than thirty-five cents (35¢) on the one hundred dollar ($100.00) assessed valuation) for mosquito control purposes."

The affirmative and negative forms shall be printed on one ballot and the voters shall make a mark of an "X" in one of the squares preceding the form.

(f) If a majority of the voters voting at the election vote in favor of creation of the district and the levy of the special tax, the county board of commissioners shall declare the district created and shall adopt a resolution to that effect.

(g) In the event the proposed mosquito control district shall embrace lands lying in two or more counties, the petition signed by the requisite number of resident freeholders within the proposed district shall be addressed to the Department. If the Department deems the formation of the proposed district to be in the interest of the public health, the Department shall hold public hearings within the proposed district after first giving notice

of the time and place of the hearings by publication once a week for four successive weeks in a newspaper published or circulated in the proposed district. A public hearing shall be held in the courthouse of each of the counties in which any part of the proposed district is situated. After the hearing, if the Department deems the formation of the district to be in the interest of the public health, the Department shall order an election to be held upon the question of the formation of the district after first advertising the time of the election in the manner provided in subsection (d). At the request of the Commission, the county commissioners of the counties in which the proposed district lies shall request the county board of elections to hold an election on the question with substantially the same form of ballot set forth in subsection (e). Each county shall bear the expense of the election held in that county. The board of elections shall certify the results to the county commissioners and the Commission. If a majority of the votes cast favor creation of the district and the levy of the special tax, the Commission shall declare the district created and the county commissioners shall enter the certification upon the minutes of the board. Registration shall be in accordance with G.S. 163A-1596. (1957, c. 1247, s. 2; 1959, c. 622, s. 1; 1973, c. 476, s. 128; 1981, c. 188, ss. 1, 2; 1983, c. 891, s. 2; 2017-6, s. 3.)

§ 130A-354. Governing bodies for mosquito control districts.

(a) A mosquito control district shall be governed by a board of commissioners. In the case of a district lying wholly within a single county, the board shall be composed of five members, all of whom shall be residents of the district. Three of the members shall be appointed by the county board of commissioners, one for an initial term of one year, one for an initial term of two years and one for an initial term of three years. All subsequent appointments made by the county board of commissioners shall be for terms of three years. One member shall be appointed by the Secretary and one member by the Director of the Wildlife Resources Commission. These two appointees shall serve at the pleasure of the appointing authority. A vacancy shall be filled by the authority which appointed the member creating the vacancy.

(b) In the case of a district lying in two or more counties, the Secretary shall appoint one member and the Director of the Wildlife Commission shall appoint one member. The board of commissioners of each county in which any part of the district lies shall appoint one member. In the event the district lies in only two counties, the board of commissioners of the county in which a majority of the acreage of the district lies shall appoint two members, one for an initial term of one year and the other for an initial term of two years. The other county shall appoint one member for an initial term of three years. All succeeding terms of county appointees shall be for three years. A vacancy shall be filled by the authority which appointed the member creating the vacancy, and the appointees of the Secretary and the Director of the Wildlife Resources Commission shall hold office at the pleasure of the appointing authority.

(c) At its first meeting, the board shall elect a chairman, a vice-chairman, a secretary and a treasurer. The office of secretary and treasurer may be held by the same member. All official acts done by the board shall be entered in a book of minutes to be kept by the secretary. The board shall meet at least quarterly and may meet in a special meeting at any time upon call of the chairman or any two members, and upon notice of the time, place and purpose of the meeting of not less than three days. Before entering upon the discharge of their duties, each member shall take and subscribe an oath of office as follows and the oath shall be entered in the minute book:

"I, _____, do solemnly swear that I will well and truly perform my duties as a Commissioner of the _____ Mosquito Control District.

_____ Signature

Affirmed and subscribed before me this ____ day of _____ _____

_____

Signature of Officer Administering Oath."

(1957, c. 1247, s. 3; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1999-456, s. 59.)

§ 130A-355. Corporate powers.

A mosquito control district created in accordance with the provisions of this Part shall have and exercise through its board of commissioners the following corporate powers in addition to any incidental powers as may be necessary in order to discharge its corporate functions:

(1) To levy ad valorem taxes upon all the taxable property within the district at a rate not to exceed thirty-five cents (35¢) upon the adjusted one hundred dollar ($100.00) assessed valuation, except as provided in subdivision (a) of this subsection.

a. Where a mosquito control district lies solely within a single county and includes the entire county, the county board of commissioners may levy and determine the rate of ad valorem tax to be levied at a rate not to exceed thirty-five cents (35¢) upon the adjusted one hundred dollar ($100.00) assessed valuation. Where a mosquito control district lies wholly within a single county and the maximum authorized special tax approved by the voters at the time of voting on the creation of the district was less than thirty-five cents (35¢) on the one hundred dollar assessed valuation, the ad valorem tax levy shall not exceed the lesser amount.

b. In the case of a district lying wholly within a single county, the valuations assessed by the county tax authorities shall be used by the mosquito control district or the county board of commissioners as the basis for its tax assessment. The mosquito control district or the county board of commissioners shall certify its tax rate to the county tax collector or supervisor in time to have the rate and the amount of tax due upon the valuation entered upon the official county tax receipts and stubs or duplicates. The county tax collector shall collect the taxes at the same time as county taxes are collected and shall deposit the receipts to the credit of the mosquito control district in a depository or depositories designated by the governing board of the district.

c. In the case of a district lying in two or more counties, the commissioners of the mosquito control district shall horizontally equalize the assessed valuations of the property in all counties in which the district lies by adjusting the ratio of assessed valuation in the counties to the true values of the taxable property in the counties. From the adjusted and equalized valuations, any county board of commissioners may appeal to the Department of Revenue using the procedures set forth in Subchapter II of Chapter 105 of the General Statutes.

d. The board of commissioners of the mosquito control district shall levy a tax based upon the equalized assessed valuations and shall certify the

amount of the levy against each taxpayer to the appropriate county tax collector or supervisor in time for the amount of the mosquito control district tax to be entered upon the county tax receipts and stubs or duplicates. The county tax collectors shall collect the tax and deposit the receipts to the credit of the mosquito control district in a depository or depositories designated by the commissioners of the district.

e. The taxes levied according to this Part shall become due; shall be subject to the same discounts, penalties and interest; and shall have the same remedies for the collection and refund of the taxes as provided for county and municipal ad valorem taxation by Chapter 310 of the Session Laws of 1939 as amended. These taxes shall constitute a lien to the same extent and with the same force and effect as county and municipal ad valorem taxes and shall have equal priority with those taxes;

(2) To accept gifts or endowments and to receive federal and State grants-in-aid. All money or property acquired under this section or any other source, shall be deposited in a separate fund to be used solely for the purpose of carrying out the provisions of this Part. The deposited funds shall be withdrawn by warrants signed by the chairperson of the governing board of the district and countersigned by the secretary;

(3) To take all necessary and proper steps to prevent the breeding of mosquitoes and other arthropods of public health significance within the district, and to destroy adult mosquitoes and other arthropods of public health significance found within the district;

(4) To conduct arthropod control measures in cooperation with individuals, firms and corporations, and federal, State and local governmental agencies;

(5) To enter all places both publicly and privately owned within the district to inspect, survey and treat with proper means all places where mosquitoes or other arthropods of public health significance are breeding and to take other actions as may be necessary;

(6) To acquire by purchase, condemnation or otherwise, and to hold real and personal property, easements, rights-of-way or other property necessary or convenient for accomplishing the purpose of this Part. Any land which has been acquired by the board and improved by drainage, filling, diking or other treatment, and other real property held by the board may be sold or leased through competitive bidding. All condemnation proceedings are to be in accordance with the provisions of Chapter 40A of the General Statutes;

(7) To employ necessary personnel; fix salaries; purchase equipment, supplies and materials; make contracts; rent office or storage space; and perform other administrative functions necessary for the purpose of carrying out this Part;

(8) To borrow money in anticipation of tax collection and to execute and deliver its notes or bonds. Money shall be borrowed in gross amounts not to exceed the anticipated tax receipts for the fiscal year;

(9) To reimburse members and employees of the board for actual expenditures incurred in authorized travel; and

(10) To employ a district superintendent who is an engineer, entomologist or otherwise qualified as an arthropod control specialist. The professional

qualifications of the superintendent must be approved by the Secretary. (1957, c. 1247, s. 4; 1959, c. 622, s. 2; 1973, c. 476, ss. 128, 193; 1981, c. 919, s. 15; 1983, c. 891, s. 2.)

§ 130A-356. Adoption of plan of operation.

(a) At least 60 days prior to the initiation of operations, the governing board of each mosquito control district must submit to the Secretary, a plan of procedure and operation in a form and manner prescribed by the Secretary. The Secretary shall have authority to approve, modify or take other appropriate action in regard to the plans. No contract may be entered into, program commenced or work begun prior to the approval of the plan by the Secretary.

(b) At least 60 days prior to the expiration of each fiscal year, the governing board of each mosquito control district must submit to the Secretary a plan of procedure and operation for the next fiscal year in a form and manner prescribed by the Secretary. The Secretary shall have authority to approve, modify or take other appropriate action in regard to the plans. No contract may be entered into, program commenced or work begun or continued prior to the approval of the plan by the Secretary. (1957, c. 1247, s. 5; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-357. Bond issues.

A mosquito control district shall have power to issue bonds and notes under the Local Government Bond Act. (1957, c. 1247, s. 6; 1971, c. 780, s. 25; 1983, c. 891, s. 2.)

§ 130A-358. Dissolution of certain mosquito control districts.

Fifty-one percent (51%) or more of the resident freeholders of a mosquito control district which has no outstanding indebtedness may submit a petition for dissolution to the county board of commissioners in which all or the greater portion of the resident freeholders of the district are located. The county board of commissioners shall notify the Department and the county board of commissioners of any other county or counties in which any portion of the district lies, of the receipt of the petition, and shall request the Department to hold a joint public hearing with the county commissioners concerning the dissolution of the district. The Department and the chairperson of the county board of commissioners shall name a time and place within the district for the public hearing. The chairperson of the county board of commissioners of the county in which all or the greater portion of the resident freeholders of the district are located shall give prior notice of the hearing by posting a notice at the courthouse door of each county and also by publication in a newspaper or newspapers published in the county or counties at least once a week for four successive weeks. In the event that all matters pertaining to the dissolution of the mosquito control district cannot be concluded at the hearing, the hearing may be continued to a time and place determined by the Department. If after the hearing, the Commission and the county commissioners shall deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution dissolving the district. (1959, c. 622, s. 3; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-359. Reserved for future codification purposes.

§ 130A-360. Reserved for future codification purposes.

Article 13.

Nutrition.

§ 130A-361. Department to establish nutrition program.

(a) The Department shall establish and administer a nutrition program to promote the public health by achieving and maintaining optimal nutritional status in the population through activities such as nutrition screening and assessment; dietary counseling and treatment; nutrition education; follow-up; referral; and the direct provision of food. The program may also include, but shall not be limited to, establishing policies and standards for nutritional practices; monitoring and surveillance of nutritional status; promoting interagency cooperation, professional education and consultation; providing technical assistance; conducting and supporting field research; providing direct care; and advising State and private institutions and other State and local agencies and departments in the establishment of food, nutrition and food service management standards.

(b) The Commission for Public Health shall adopt rules necessary to implement the program. (Resolution 112, 1973, p. 1413; 1983, c. 891, s. 2; 1989, c. 204; 1991, c. 188, s. 1; 2007-182, s. 2.)

§§ 130A-362 through 130A-365. Reserved for future codification purposes.

Article 14.

Dental Health.

§ 130A-366. Department to establish dental health program.

(a) The Department shall establish and administer a dental health program for the delivery of preventive, educational and dental care services to preschool children, school-age children, and adults. The program shall include, but not be limited to, providing teacher training, adult and child education, consultation, screening and referral, technical assistance, community coordination, field research and direct patient care. The primary emphasis of the program shall be the delivery of preventive, educational, and dental care services to preschool children and school-age children.

(b) The Commission shall adopt rules necessary to implement the program. (1983, c. 891, s. 2; 1993, c. 321, s. 269.)

§ 130A-367. Dental providers for problem access areas.

The State's dental public health program shall encourage the expansion of current educational and training programs for dentists, dental hygienists, and dental assistants targeted to serve citizens' unmet needs, particularly in the rural and low-income areas that have traditionally had problems in accessing dental care. The program shall also promote and encourage the recruitment of in-State and out-of-state private sector dental personnel to work in these dental health professional shortage areas. (2002-37, s. 1.)

§§ 130A-368 through 130A-370. Reserved for future codification purposes.

Article 15.

State Center for Health Statistics.

§ 130A-371. State Center for Health Statistics established.

A State Center for Health Statistics is established within the Department. (1983, c. 891, s. 2.).

§ 130A-372. Definitions.

The following definitions shall apply throughout this Article:

(1) "Health data" means information relating to the health status of individuals, the availability of health resources and services, and the use and cost of these resources and services. The term shall not include vital records registered under the provisions of Article 4 of this Chapter.

(2) "Medical records" means health data relating to the diagnosis or treatment of physical or mental ailments of individuals. (1983, c. 891, s. 2.)

§ 130A-373. Authority and duties.

(a) The State Center for Health Statistics is authorized to:

(1) Collect, maintain and analyze health data on:

a. The extent, nature and impact of illness and disability on the population of the State;

b. The determinants of health and health hazards;

c. Health resources, including the extent of available work power and resources;

d. Utilization of health care;

e. Health care costs and financing; and

f. Other health or health-related matters; and

(2) Undertake and support research, demonstrations and evaluations respecting new or improved methods for obtaining data.

(b) The State Center for Health Statistics may collect health data on behalf of other governmental or nonprofit organizations.

(c) The State Center for Health Statistics shall collect data only on a voluntary basis except when there is specific legal authority to compel mandatory reporting of the health data. In collecting health data on a voluntary basis, the State Center for Health Statistics shall give the person a statement in writing:

(1) That the data is being collected on a voluntary basis and that the person is not required to respond; and

(2) The purposes for which the health data is being collected.

(d) Subject to the provisions of G.S. 130A-374, the State Center for Health Statistics may share health data with other persons, agencies and organizations.

(e) The State Center for Health Statistics shall:

(1) Take necessary action to assure that statistics developed under this Article are of high quality, timely and comprehensive, as well as specific and adequately analyzed and indexed; and

(2) Publish, make available and disseminate statistics on as wide a basis as practical.

(f) The State Center for Health Statistics shall coordinate health data activities within the State in order to eliminate unnecessary duplication of data collection and to maximize the usefulness of data collected by:

(1) Participating with State and local agencies in the design and implementation of a cooperative system for producing comparable and uniform health information and statistics at the State and local levels; and
(2) Undertaking and supporting research, development, demonstration and evaluation respecting the cooperative system. (1983, c. 891, s. 2).

§ 130A-374. Security of health data.

(a) Medical records of individual patients shall be confidential and shall not be public records open to inspection. The State Center for Health Statistics may disclose medical records of individual patients which identify the individual described in the record only if:
(1) The individual described in the medical record has authorized the disclosure; or
(2) The disclosure is for bona fide research purposes. The Commission shall adopt rules providing for the use of the medical records for research purposes.

(b) The State Center for Health Statistics shall take appropriate measures to protect the security of health data collected by the Center, including:
(1) Limiting the access to health data to authorized individuals who have received training in the handling of this data;
(2) Designating a person to be responsible for physical security; and
(3) Developing and implementing a system for monitoring security. (1983, c. 891, s. 2.)

§§ 130A-375 through 130A-376. Reserved for future codification purposes.

Article 16.

Postmortem Investigation and Disposition.

Part 1. Postmortem Medicolegal Examinations and Services.

§ 130A-377. Establishment and maintenance of central and district offices.

The Department shall establish and maintain a central office with appropriate facilities and personnel for postmortem medicolegal examinations. District offices, with appropriate facilities and personnel, may also be established and maintained if considered necessary by the Department for the proper management of postmortem examinations. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-378. Qualifications and appointment of the Chief Medical Examiner.

The Chief Medical Examiner shall be a forensic pathologist certified by the American Board of Pathology and licensed to practice medicine. The Chief Medical Examiner shall be appointed by the Secretary. (1983, c. 891, s. 2.)

§ 130A-379. Duties of the Chief Medical Examiner.

The Chief Medical Examiner shall perform postmortem medicolegal examinations as provided in this Part. The Chief Medical Examiner may, upon request, provide instruction in health science, legal medicine and other subjects related to his duties at The University of North Carolina, the North Carolina Justice Academy and other institutions of higher learning. (1983, c. 891, s. 2.)

§ 130A-380. The Chief Medical Examiner's staff.

The Chief Medical Examiner may employ qualified pathologists to serve as Associate and Assistant Medical Examiners in the central and district offices. The Associate and Assistant Medical Examiners shall perform duties assigned by the Chief Medical Examiner. Forensic chemists may be employed by the Chief Medical Examiner to provide toxicological and related support. (1983, c. 891, s. 2.)

§ 130A-381. Additional services and facilities.

In order to provide proper facilities for investigating deaths as authorized in this Part, the Chief Medical Examiner may arrange for the use of existing public or private laboratory facilities. Each county shall provide or contract for an appropriate facility for the examination and storage of bodies under Medical Examiner jurisdiction. The Chief Medical Examiner may contract with qualified persons to perform or to provide support services for autopsies and other studies and investigations. (1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2007-187, s. 5.)

§ 130A-382. County medical examiners; appointment; term of office; vacancies; training requirements; revocation for cause.

(a) The Chief Medical Examiner shall appoint two or more county medical examiners for each county for a three-year term. In appointing medical examiners for each county, the Chief Medical Examiner shall give preference to physicians licensed to practice medicine in this State but may also appoint licensed physician assistants, nurse practitioners, nurses, or emergency medical technician paramedics. A medical examiner may serve more than one county. The Chief Medical Examiner may take jurisdiction in any case or appoint another medical examiner to do so.

(b) County medical examiners shall complete continuing education training as directed by the Office of the Chief Medical Examiner and based upon established and published guidelines for conducting death investigations. The continuing education training shall include training regarding sudden unexpected death in epilepsy. The Office of the Chief Medical Examiner shall annually update and publish these guidelines on its Internet Web site. Newly appointed county medical examiners shall complete mandatory orientation training as directed by the Office of the Chief Medical Examiner within 90 days of their appointment.

(c) The Chief Medical Examiner may revoke a county medical examiner's appointment for failure to adequately perform the duties of the office after providing the county medical examiner with written notice of the basis for the revocation and an opportunity to respond. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1981, c. 187, ss. 2-4; 1983, c. 891, s. 2; 2007-187, s. 4; 2014-100, s. 12E.6(a); 2015-211, s. 1.)

§ 130A-383. Medical examiner jurisdiction.

(a) Upon the death of any person resulting from violence, poisoning, accident, suicide or homicide; occurring suddenly when the deceased had been in apparent good health or when unattended by a physician; occurring in a jail, prison, correctional institution or in police custody; occurring in State facilities operated in accordance with Part 5 of Article 4 of Chapter 122C of the General Statutes; occurring pursuant to Article 19 of Chapter 15 of the General Statutes; or

occurring under any suspicious, unusual or unnatural circumstance, the medical examiner of the county in which the body of the deceased is found shall be notified by a physician in attendance, hospital employee, law-enforcement officer, funeral home employee, emergency medical technician, relative or by any other person having suspicion of such a death. No person shall disturb the body at the scene of such a death until authorized by the medical examiner unless in the unavailability of the medical examiner it is determined by the appropriate law enforcement agency that the presence of the body at the scene would risk the integrity of the body or provide a hazard to the safety of others. For the limited purposes of this Part, expression of opinion that death has occurred may be made by a nurse, an emergency medical technician or any other competent person in the absence of a physician.

(b) The discovery of anatomical material suspected of being part of a human body shall be reported to the medical examiner of the county in which the material is found.

(c) Upon completion of the investigation and in accordance with the rules of the Commission, the medical examiner shall release the body to the next of kin or other interested person who will assume responsibility for final disposition. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1; 1983, c. 891, s. 2; 1989, c. 353, s. 1; 2008-131, s. 2.)

§ 130A-384. Notification concerning out-of-state body.

When a body is brought into this State for disposal and there is reason to believe either that the death was not investigated properly or that there is not an adequate certificate of death, the body shall be reported to a medical examiner in the county where the body resides or to the Chief Medical Examiner. These deaths may be investigated by the same procedure as deaths occurring in this State under G.S. 130A-383. (1983, c. 891, s. 2.)

§ 130A-385. Duties of medical examiner upon receipt of notice; reports; copies.

(a) Upon receipt of a notification under G.S. 130A-383, the medical examiner shall take charge of the body, make inquiries regarding the cause and manner of death, reduce the findings to writing and promptly make a full report to the Chief Medical Examiner on forms prescribed for that purpose.

The Chief Medical Examiner or the county medical examiner is authorized to inspect and copy the medical records of the decedent whose death is under investigation. In addition, in an investigation conducted pursuant to this Article, the Chief Medical Examiner or the county medical examiner is authorized to inspect all physical evidence and documents which may be relevant to determining the cause and manner of death of the person whose death is under investigation, including decedent's personal possessions associated with the death, clothing, weapons, tissue and blood samples, cultures, medical equipment, X rays and other medical images. The Chief Medical Examiner or county medical examiner is further authorized to seek an administrative search warrant pursuant to G.S. 15-27.2 for the purpose of carrying out the duties imposed under this Article. In addition to the requirements of G.S. 15-27.2, no administrative search warrant shall be issued pursuant to this section unless the Chief Medical Examiner or county medical examiner submits an affidavit from the office of the district attorney in the district in which death occurred stating that the death in question is not under criminal investigation.

The Chief Medical Examiner shall provide directions as to the nature, character and extent of an investigation and appropriate forms for the required reports. The facilities of the central and district offices and their staff services shall be available to the medical examiners and designated pathologists in their investigations.

(b) The medical examiner shall complete a certificate of death, stating the name of the disease which in his opinion caused death. If the death was from external causes, the medical examiner shall state on the certificate of death the means of death, and whether, in the medical examiner's opinion, the manner of death was accident, suicide, homicide, execution by the State, or undetermined. The medical examiner shall also furnish any information as may be required by the State Registrar of Vital Statistics in order to properly classify the death.

(c) The Chief Medical Examiner shall have authority to amend a medical examiner death certificate.

(d) A copy of the report of the medical examiner investigation may be forwarded to the appropriate district attorney.

(e) In cases where death occurred due to an injury received in the course of the decedent's employment, the Chief Medical Examiner shall forward to the Commissioner of Labor a copy of the medical examiner's report of the investigation, including the location of the fatal injury and the name and address of the decedent's employer at the time of the fatal injury. The Chief Medical Examiner shall forward this report within 30 days of receipt of the information from the medical examiner.

(f) If a death occurred in a facility licensed subject to Article 2 or Article 3 of Chapter 122C of the General Statutes, or Articles 1 or 1A of Chapter 131D of the General Statutes, and the deceased was a client or resident of the facility or a recipient of facility services at the time of death, then the Chief Medical Examiner shall forward a copy of the medical examiner's report to the Secretary of Health and Human Services within 30 days of receipt of the report from the medical examiner. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1977, 2nd Sess., c. 1145; 1983, c. 891, s. 2; 1989, c. 353, s. 2; c. 797; 1991 (Reg. Sess., 1992), c. 894, s. 6; 2000-129, s. 4.)

§ 130A-386. Subpoena authority.

The Chief Medical Examiner and the county medical examiners are authorized to issue subpoenas for the attendance of persons and for the production of documents as may be required by their investigation. (1983, c. 891, s. 2.)

§ 130A-387. Fees.

For each investigation and prompt filing of the required report, the medical examiner shall receive a fee paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be two hundred dollars ($200.00). (1983, c. 891, s. 2; 1991, c. 463, s. 1; 2005-368, s. 1; 2015-241, s. 12E.6(a).)

§ 130A-388. Medical examiner's permission necessary before embalming, burial and cremation.

(a) No person knowing or having reason to know that a death may be under the jurisdiction of the medical examiner pursuant to G.S. 130A-383 or 130A-384, shall embalm, bury or cremate the body without the permission of the medical examiner.

(b) A dead body shall not be cremated or buried at sea unless a medical examiner certifies that he has inquired into the cause and the manner of death and has the opinion that no further examination is necessary. This subsection shall not apply to deaths occurring less than 24 hours after birth or to deaths of patients resulting only from natural disease and occurring in a licensed

hospital unless the death falls within the jurisdiction of the medical examiner under G.S. 130A-383 or 130A-384. The Commission is authorized to adopt rules creating additional exceptions to this subsection. For making this certification, the medical examiner shall be entitled to a fee in an amount determined reasonable and appropriate by the Secretary, not to exceed fifty dollars ($50.00), to be paid by the applicant. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1; 1971, c. 444, s. 7; 1973, c. 873, s. 7; 1983, c. 891, s. 2.)

§ 130A-389. Autopsies.

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. Subject to the limitations of G.S. 130A-389.1 relating to photographs and video or audio recordings of an autopsy, a copy of the report shall be furnished to any person upon request. The fee for the autopsy or other study shall be two thousand eight hundred dollars ($2,800) to be paid as follows:

(1) Except as provided in subdivision (2) of this subsection, the county in which the deceased resided shall pay a fee of one thousand seven hundred fifty dollars ($1,750) and the State shall pay the remaining balance of one thousand fifty dollars ($1,050).

(2) If the death or fatal injury occurred outside the county in which the deceased resided, the State shall pay the entire fee in the amount of two thousand eight hundred dollars ($2,800).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy, unless the deceased's health care power of attorney granted authority for such decisions to the health care agent. If the Chief Medical Examiner or a designated pathologist performs the autopsy at the request of the next of kin, the cost shall be paid by the next of kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1; 1973, c. 47, s. 2; c. 476, s. 128; 1975, c. 9; 1981, c. 187, s. 7; c. 562, p. 5; 1983, c. 891, s. 2; 1991, c. 463, s. 2; 1998-212, s. 29A.10(a); 2005-351, s. 4; 2005-393, s. 2; 2006-226, s. 32; 2013-360, s. 12E.8(a); 2015-241, s. 12E.5(a).)

§ 130A-389.1. Photographs and video or audio recordings made pursuant to autopsy.

(a) Except as otherwise provided by law, any person may inspect and examine original photographs or video or audio recordings of an autopsy performed pursuant to G.S. 130A-389(a) at reasonable times and under reasonable supervision of the custodian of the photographs or recordings. Except as otherwise provided by this section, no custodian of the original recorded images shall furnish copies of photographs or video or audio recordings of an autopsy to the public. For purposes of this section, the Chief Medical Examiner shall be the custodian of all autopsy photographs or video or audio recordings unless the photographs or recordings were taken by or at the direction of an investigating medical examiner and the investigating medical examiner retains the original photographs or recordings. If the investigating medical examiner has retained the original photographs or recordings, then the investigating medical examiner is the custodian of the photographs or video or audio recordings and must allow the public to inspect and examine them in accordance with this subsection.

(b) The following public officials may obtain copies of autopsy photographs or video or audio recordings for official use only. These public officials shall not disclose the photographs or video or audio recordings to the public except as provided by law:

(1) The Chief Medical Examiner or a pathologist designated by the Chief Medical Examiner.
(2) Investigating Medical Examiner.
(3) District attorney.
(4) Superior court judge.
(5) Law enforcement officials conducting an investigation relating to the death.

A public official authorized by this subsection to obtain copies may provide a copy of the photograph or videotape to another person for the sole purpose of aiding in the identification of the deceased through publication of the photograph or videotape.

(c) The following persons may obtain copies of autopsy photographs or video or audio recordings but may not disclose the photographs or video or audio recordings to the public unless otherwise authorized by law:

(1) The personal representative of the estate of the deceased.
(2) A person authorized by an order issued in a special proceeding pursuant to subsection (d) of this section.
(3) A physician licensed to practice in North Carolina who uses a copy of the photographs or video or audio recording to confer with attorneys or others with a bona fide professional need to use or understand forensic science, provided that the physician promptly returns the copy to the custodian.
(4) After redacting all information identifying the decedent, including name, address, and social security number, and after anonymizing any physical recognition, a medical examiner, coroner, physician, or their designee who uses such material for:
    a. Medical or scientific teaching or training purposes;
    b. Teaching or training of law enforcement personnel;
    c. Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;
    d. Conferring with medical or scientific experts in the field of forensic science; or
    e. Publication in a scientific or medical journal or textbook.

A medical examiner, coroner, or physician who has in good faith complied with this subsection shall not be subject to any penalty under this section.

Any person who lawfully obtains a copy of a photograph or video or audio recording pursuant to this subsection shall be required to sign a statement acknowledging that they have received notice that any unauthorized disclosure of the photograph or video or audio recording is a Class 2 misdemeanor.

(d) A person who is denied access to copies of photographs or video or audio recordings, or who is restricted in the use the person may make of the photographs or video or audio recordings under this section, may commence a special proceeding in accordance with Article 33 of Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose a photograph or video or audio recording of an autopsy and may prescribe any restrictions or stipulations that the clerk deems appropriate. In determining good cause, the clerk shall consider whether the disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording of an autopsy shall be under the direct supervision of the Chief Medical Examiner or the Chief Medical Examiner's designee. A party aggrieved by an order of the clerk may appeal to the appropriate court in accordance with Article 27A of Chapter 1 of the General Statutes.

(e) The petitioner shall provide reasonable notice of the commencement of a special proceeding, as authorized by subsection (d) of this section, and reasonable notice of the opportunity to be present and heard at any hearing on the matter in accordance with Rule 5 of the Rules of Civil Procedure. The notice shall be provided to the personal representative of the estate of the deceased, if any, and to the surviving spouse of the deceased. If there is no surviving spouse, then the notice shall be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased or to the guardian or custodian of a minor child of the deceased.

(f) This section does not apply to the use of autopsy photographs or video or audio recordings in a criminal, civil, or administrative proceeding except that nothing in this section prohibits a court or presiding officer, upon good cause shown, from restricting or otherwise controlling the disclosure to persons other than the parties and attorneys to the proceeding of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner provided under this section.

(g) Any person who willfully and knowingly violates this section is guilty of a Class 2 misdemeanor, provided that more than one disclosure of the same item by the same person is not a separate offense.

(h) Any person not authorized by this section to obtain a copy of an autopsy photograph or video or audio recording, who knowingly and willfully removes, copies, or otherwise creates an image of an autopsy photograph or video or audio recording with intent to steal the same, is guilty of a Class 1 misdemeanor. (2005-393, s. 3.)

§ 130A-390. Exhumations.

(a) In any case of death described in G.S. 130A-383 or 130A-384 where the body is buried without investigation by a medical examiner as to the cause and manner of death or where sufficient cause develops for further investigation after a body is buried as determined by a county

medical examiner or the Chief Medical Examiner, the Chief Medical Examiner shall authorize an investigation and send a report of the investigation with recommendations to the appropriate district attorney. The district attorney may forward the report to the superior court judge and petition for disinterment. The judge may order that the body be exhumed and that an autopsy be performed by the Chief Medical Examiner. A report of the autopsy and other pathological studies shall be delivered to the judge. The cost of the exhumation, autopsy, transportation and disposition of the body shall be paid by the State. However, if the deceased is a resident of the county in which death or fatal injury occurred, that county shall pay the cost.

(b) Any person may petition a judge of the superior court for an order of exhumation. Upon showing of sufficient cause, the judge may order the body exhumed. The cost incurred shall be assigned to the petitioner.

(c) Without applying for a judicial exhumation order, the next-of-kin of a deceased person may have the remains exhumed, examined by the Chief Medical Examiner and redisposed. The cost shall be paid by the next-of-kin. (1983, c. 891, s. 2; 1991, c. 463, s. 3.)

§ 130A-391: Repealed by Session Laws 2008-153, s. 3, effective August 2, 2008.

§ 130A-392. Reports and records as evidence.

Reports of investigations made by a county medical examiner or by the Chief Medical Examiner and toxicology and autopsy reports made pursuant to this Part may be received as evidence in any court or other proceeding. Copies of records, photographs, laboratory findings and records in the Office of the Chief Medical Examiner, any county medical examiner or designated pathologist, when duly certified, shall have the same evidentiary value as the original. (1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1981, c. 187, s. 8; 1983, c. 891, s. 2.)

§ 130A-393. Rules.

The Commission shall adopt rules to carry out the intent and purpose of this Part. (1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1981, c. 614, s. 15; 1983, c. 891, s. 2.)

§ 130A-394. Coroner to hold inquests.

In every case requiring the medical examiner to be notified, as provided by G.S. 130A-383, the coroner shall be notified by the medical examiner, and the coroner shall hold an inquest and preliminary hearing in those instances as required in G.S. 152-7. The coroner shall file a written report of his investigation with the district attorney of the superior court and the medical examiner. The body shall remain in the custody and control of the medical examiner. However, if a county has abolished the office of coroner pursuant to the provisions of Chapter 152A at a time when Chapter 152A was in effect in the county: (i) The provisions of this Article relating to coroner shall not be applicable to the county, (ii) the provisions of G.S. 152A-9 shall remain in full force and effect in the county, and (iii) Chapter 152 of the General Statutes shall not be applicable in the county. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1; 1969, c. 299; 1973, c. 47, s. 2; 1983, c. 891, s. 2; 1985, c. 462, s. 1.)

§ 130A-395. Handling and transportation of bodies.

(a) It shall be the duty of the physician licensed to practice medicine under Chapter 90 attending any person who dies and is known to have smallpox, plague, HIV infection, hepatitis B infection, rabies, or Jakob-Creutzfeldt to provide written notification to all individuals handling

the body of the proper precautions to prevent infection. This written notification shall be provided to funeral service personnel at the time the body is removed from any hospital, nursing home, or other health care facility. When the patient dies in a location other than a health care facility, the attending physician shall notify the funeral service personnel verbally of the precautions required in subsections (b) and (c) as soon as the physician becomes aware of the death.

(b) The body of a person who died from smallpox or plague shall not be embalmed. The body shall be enclosed in a strong, tightly sealed outer case which will prevent leakage or escape of odors as soon as possible after death and before the body is removed from the hospital room, home, building, or other premises where the death occurred. This case shall not be reopened except with the consent of the local health director.

(c) Persons handling bodies of persons who died and were known to have HIV infection, hepatitis B infection, Jakob-Creutzfeldt, or rabies shall be provided written notification to observe blood and body fluid precautions. (1989, c. 698, s. 4.)

§§ 130A-396 through 130A-397: Reserved for future codification purposes.

Part 2. Autopsies.

§ 130A-398. Limitation on right to perform autopsy.

The right to perform an autopsy shall be limited to those cases in which:

(1) The Chief Medical Examiner or a county medical examiner, acting pursuant to G.S. 130A-389, directs that an autopsy be performed;

(2) The Commission of Anatomy, acting pursuant to G.S. 130A-415, has given written consent for an autopsy to be performed on an unclaimed body;

(3) A prosecuting officer or district attorney, acting pursuant to G.S. 15-7 in case of homicide, directs that an autopsy be performed;

(4) The decedent directs in writing prior to death that an autopsy be performed upon the occurrence of the decedent's death;

(4a) The health care agent under a health care power of attorney with authority to make decisions with respect to autopsies requests that an autopsy be performed upon the deceased principal;

(5) The personal representative of the estate of the decedent requests that an autopsy be performed upon the decedent; or

(6) Any of the following persons, in order of priority, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual opposition by a member of the same or prior class, authorizes an autopsy to be performed:

a. The spouse;

b. Any adult child or stepchild;

c. Any parent or stepparents;

d. Any adult sibling;

e. A guardian of the person of the decedent at the time of the decedent's death;

f. Any relative or person who accepts responsibility for final disposition of the body by other customary and lawful procedures;

g. Any person under obligation to dispose of the body. (1931, c. 152; 1933, c. 209; 1967, c. 1154, s. 4; 1969, c. 444; 1973, c. 47, s. 2; 1983, c. 891, s. 2; 2005-351, s. 5; 2006-226, s. 32.)

§ 130A-399. Postmortem examination of inmates of certain public institutions.

Upon the death of any inmate of an institution maintained by the State, or a city, county, or other political subdivision of the State, for the care of individuals with a sickness, mental illness, or intellectual disability, the administrator of the institution in which the death occurs may authorize a postmortem examination of the deceased person. The examination shall be of a scope and nature necessary to promote knowledge of the human organism and its disorders. (1943, c. 87, s. 1; 1983, c. 891, s. 2; 2018-47, s. 10(a).)

§ 130A-400. Written consent for postmortem examinations required.

An administrator of an institution shall not authorize a postmortem examination described in G.S. 130A-399 without first securing the written consent of the deceased person's spouse, one of the next-of-kin or nearest known relative, or other person charged by law with the duty of burial, in the order named and as known. A copy of the written consent shall be filed in the office of the administrator of the institution where the inmate died. (1943, c. 87, s. 3; 1983, c. 891, s. 2.)

§ 130A-401. Postmortem examinations in certain medical schools.

The postmortem examinations and studies authorized by G.S. 130A-399 may be made in the laboratories of medical schools of colleges and universities on conditions established by the administrator. (1943, c. 87, s. 2; 1983, c. 891, s. 2.)

Part 3. Uniform Anatomical Gift Act.

§ 130A-402: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-403: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-404: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-405: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-406: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-407: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-408: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-409: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-410: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-411: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-412: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-412.1: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-412.2: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

Part 3A. Revised Uniform Anatomical Gift Act.

§ 130A-412.3. Short title.

This Part may be cited as the Revised Uniform Anatomical Gift Act. (2007-538, s. 1.)

§ 130A-412.4. Definitions.

The following definitions apply in this Part:

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Agent" means an individual:

a. Authorized to make an anatomical gift on the principal's behalf under a power of attorney for health care; or

b. Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Body part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(5) "Decedent" means a deceased individual whose body or body part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this Article, a fetus.

(6) "Disinterested witness" means any individual except for the following:

a. The donor's: spouse, child, parent, sibling, grandchild, grandparent, or guardian.

b. An adult who exhibited special care and concern for the donor.

c. A person to whom an anatomical gift could pass under G.S. 130A-412.13.

(7) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a drivers license, identification card, or donor registry.

(8) "Donor" means an individual whose body or body part is the subject of an anatomical gift.

(9) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(10) "Drivers license" means a license or permit issued by the North Carolina Department of Transportation, Division of Motor Vehicles, to operate a vehicle, whether or not conditions are attached to the license or permit.

(11) "Eye bank" means an entity that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(12) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12a) "Health care decision" means any decision made regarding the health care of the prospective donor.

(13) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(14) "Identification card" means an identification card issued by the North Carolina Department of Transportation, Division of Motor Vehicles.

(15) "Know" means to have actual knowledge.

(16) "Minor" means an individual who is under 18 years of age.

(17) "Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(18) "Parent" means a parent whose parental rights have not been terminated.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

(21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(22) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a body part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(23) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(24) "Recipient" means an individual into whose body a decedent's body part has been or is intended to be transplanted.

(25) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Refusal" means a record created under G.S. 130A-412.9 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or body part.

(27) "Sign" means, with the present intent to authenticate or adopt a record:

a. To execute or adopt a tangible symbol; or

b. To attach to or logically associate with the record an electronic symbol, sound, or process.

(28) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(29) "Technician" means an individual determined to be qualified to remove or process body parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(30) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(31) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(32) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients. (2007-538, s. 1.)

§ 130A-412.5. Applicability.

This act applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made. (2007-538, s. 1.)

§ 130A-412.6. Who may make an anatomical gift before donor's death.

Subject to G.S. 130A-412.10, an anatomical gift of a donor's body or body part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in G.S. 130A-412.7 by:

(1) The donor, if the donor is an adult or if the donor is a minor and is:

a. Emancipated; or

b. Authorized under State law to apply for a drivers license because the donor is at least 16 years of age;

(2) An agent of the donor to the extent authorized under a power of attorney for health care or other record;

(3) A parent of the donor, if the donor is an unemancipated minor; or

(4) The donor's guardian. (2007-538, s. 1.)

§ 130A-412.7. Manner of making anatomical gift before donor's death.

(a) A donor may make an anatomical gift by any of the following methods:

(1) By authorizing that a statement or symbol be imprinted on the donor's drivers license or identification card indicating that the donor has made an anatomical gift. Anatomical gifts made by this method shall not include a donation of tissue or the donor's body.

(2) In a will.

(3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness.

(4) As provided in subsection (b) of this section.

(b) A donor or other person authorized to make an anatomical gift under G.S. 130A-412.6 may make a gift by a signed donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Revocation, suspension, expiration, or cancellation of a drivers license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift. (2007-538, s. 1.)

§ 130A-412.8. Amending or revoking anatomical gift before donor's death.

(a) Subject to G.S. 130A-412.10, a donor or other person authorized to make an anatomical gift under G.S. 130A-412.6 may amend or revoke an anatomical gift by:

(1) A record signed by:

a. The donor;

b. The other person; or

c. Subject to subsection (b) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to sub-subdivision c. of subdivision (1) of subsection (a) of this section must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Subject to G.S. 130A-412.10, a donor or other person authorized to make an anatomical gift under G.S. 130A-412.6 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section. (2007-538, s. 1.)

§ 130A-412.9. Refusal to make anatomical gift; effect of refusal.

(a) An individual may refuse to make an anatomical gift of the individual's body or body part by:

(1) A record signed by:

a. The individual; or

b. Subject to subsection (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to sub-subdivision b. of subdivision (1) of subsection (a) of this section must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) In the manner provided in subsection (a) of this section for making a refusal;

(2) By subsequently making an anatomical gift pursuant to G.S. 130A-412.7 that is inconsistent with the refusal; or

(3) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in G.S. 130A-412.10(h), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or body part bars all other persons from making an anatomical gift of the individual's body or body part. (2007-538, s. 1.)

§ 130A-412.10. Preclusive effect of an anatomical gift, amendment, or revocation.

(a) Except as otherwise provided in subsection (g) of this section and subject to subsection (f) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or body part if either of the following apply:

(1) The donor made an anatomical gift of the donor's body or body part under G.S. 130A-412.7.

(2) The donor made an amendment to an anatomical gift of the donor's body or body part under G.S. 130A-412.8.

(b) A donor's revocation of an anatomical gift of the donor's body or body part under G.S. 130A-412.8 is not a refusal and does not bar another person specified in G.S. 130A-412.6 or G.S. 130A-412.11 from making an anatomical gift of the donor's body or body part under G.S. 130A-412.7 or G.S. 130A-412.12.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or body part under G.S. 130A-412.7 or an amendment to an anatomical gift of the donor's body or body part under G.S. 130A-412.8, another person may not make, amend, or revoke the gift of the donor's body or body part under G.S. 130A-412.12.

(d) A revocation of an anatomical gift of a donor's body or body part under G.S. 130A-412.8 by a person other than the donor does not bar another person from making an anatomical gift of the body or body part under G.S. 130A-412.7 or G.S. 130A-412.12.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under G.S. 130A-412.6, an anatomical gift of a body part is neither a refusal to give another body part nor a limitation on the making of an anatomical gift of another body part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under G.S. 130A-412.6, an anatomical gift of a body part for one or more of the purposes set forth in G.S. 130A-412.6 is not a limitation on the making of an anatomical gift of the body part for any of the other purposes by the donor or any other person under G.S. 130A-412.7 or G.S. 130A-412.12.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or body part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal. (2007-538, s. 1.)

§ 130A-412.11. Who may make an anatomical gift of decedent's body or body part.

(a) Subject to subsections (b) and (c) of this section, and unless barred by G.S. 130A-412.9 or G.S. 130A-412.10, an anatomical gift of a decedent's body or body part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under G.S. 130A-412.6(2) immediately before the decedent's death;
(2) The spouse of the decedent;
(3) Adult children of the decedent;
(4) Parents of the decedent;
(5) Adult siblings of the decedent;
(6) Adult grandchildren of the decedent;
(7) Grandparents of the decedent;
(8) An adult who exhibited special care and concern for the decedent;
(9) The persons who were acting as the guardians of the person of the decedent at the time of death; and
(10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subdivision (a)(1), (3), (4), (5), (6), (7), or (9) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under G.S. 130A-412.13 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) of this section is reasonably available to make or to object to the making of an anatomical gift. (2007-538, s. 1.)

§ 130A-412.12. Manner of making, amending, or revoking anatomical gift of decedent's body or body part.

(a) A person authorized to make an anatomical gift under G.S. 130A-412.11 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c) of this section, an anatomical gift by a person authorized under G.S. 130A-412.11 may be amended or revoked orally or in a record by any member of a prior class

who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under G.S. 130A-412.11 may be:

(1) Amended only if a majority of the reasonably available members agrees to the amending of the gift; or

(2) Revoked only if a majority of the reasonably available members agrees to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) of this section is effective only if, before an incision has been made to remove a body part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation. (2007-538, s. 1.)

§ 130A-412.13. Persons that may receive anatomical gift; purpose of anatomical gift.

(a) An anatomical gift may be made to the following persons named in the document of gift:

(1) A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, including the Commission on Anatomy, for research or education;

(2) Subject to subsection (b) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the body part;

(3) An eye bank or tissue bank.

(b) If an anatomical gift to an individual under subdivision (a)(2) of this section cannot be transplanted into the individual, the body part passes in accordance with subsection (g) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific body parts or of all body parts is made in a document of gift that does not name a person described in subsection (a) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the body part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(2) If the body part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(3) If the body part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(4) If the body part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d) For the purpose of subsection (c) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific body parts is made in a document of gift that does not name a person described in subsection (a) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(g) For purposes of subsections (b), (e), and (f) of this section, the following rules apply:

(1) If the body part is an eye, the gift passes to the appropriate eye bank.

(2) If the body part is tissue, the gift passes to the appropriate tissue bank.

(3) If the body part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subdivision (a)(2) of this section, passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) of this section or the decedent's body or body part is not used for transplantation, therapy, research, or education, then custody of the body or body part passes to the person under obligation to dispose of the body or body part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under G.S. 130A-412.7 or G.S. 130A-412.12 or if the person knows that the decedent made a refusal under G.S. 130A-412.9 that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subdivision (a)(2) of this section, nothing in this act affects the allocation of organs for transplantation or therapy. (2007-538, s. 1.)

§ 130A-412.14. Search and notification.

A search of an individual who is reasonably believed to be dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal, and, if applicable, notification of the hospital to which the individual is taken, shall be governed by G.S. 90-602. (2007-538, s. 1; 2008-153, s. 2.)

§ 130A-412.15. Delivery of document of gift not required; right to examine.

(a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under G.S. 130A-412.13. (2007-538, s. 1.)

§ 130A-412.16. Rights and duties of procurement organization and others.

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the North Carolina Department of Transportation, Division of Motor Vehicles, and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the North Carolina Department of Transportation, Division of Motor Vehicles, to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a body part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the body part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this Part, at any time after a donor's death, the person to which a body part passes under G.S. 130A-412.13 may conduct any reasonable examination necessary to ensure the medical suitability of the body or body part for its intended purpose.

(e) Unless otherwise prohibited by law, an examination under subsection (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in G.S. 130A-412.11 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to G.S. 130A-412.13(i) and G.S. 130A-412.25, the rights of the person to which a body part passes under G.S. 130A-412.13 are superior to the rights of all others with respect to the body part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this Part, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a body part, the person to which the body part passes under G.S. 130A-412.13, upon the death of the donor and before embalming, burial, or cremation, shall cause the body part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated body part from the body of a donor that the physician or technician is qualified to remove. (2007-538, s. 1.)

§ 130A-412.17. Coordination of procurement and use.

Each hospital in this State shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts. (2007-538, s. 1.)

§ 130A-412.18. Sale or purchase of body parts prohibited.

(a) Except as otherwise provided in subsection (b) of this section, a person, that for valuable consideration, knowingly purchases or sells a body part for transplantation or therapy if

removal of a body part from an individual is intended to occur after the individual's death commits a Class H felony and upon conviction may be fined up to fifty thousand dollars ($50,000) for each offense.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a body part. (2007-538, s. 1.)

§ 130A-412.19. Other prohibited acts.

A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a Class H felony and upon conviction may be fined up to fifty thousand dollars ($50,000) for each offense. (2007-538, s. 1.)

§ 130A-412.20. Immunity.

(a) A person that acts with due care in accordance with this Part or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under this Part, a person may rely upon representations of an individual listed in subdivisions (2) through (8) of G.S. 130A-412.11(a) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue. (2007-538, s. 1.)

§ 130A-412.21. Law governing validity; choice of law as to execution of document of gift; presumption of validity.

(a) A document of gift is valid if executed in accordance with:

(1) This Part;

(2) The laws of the state or country where it was executed; or

(3) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this State governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked. (2007-538, s. 1.)

§ 130A-412.22. Donor registry.

The online Organ Donor Registry Internet site established pursuant to G.S. 20-43.2 shall be the State donor registry for anatomical gifts made pursuant to this Part. Requirements for maintenance and use of the State donor registry shall be as provided under G.S. 20-43.2. (2007-538, s. 1.)

§ 130A-412.23. Cooperation between a medical examiner and the procurement organization.

(a) The medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(b) If a medical examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the medical examiner and a postmortem examination is going to be performed, unless the medical examiner denies recovery in accordance with G.S. 130A-412.24, the medical examiner or designee shall conduct a postmortem examination of the body or the body part in a manner and within a period compatible with its preservation for the purposes of the gift.

(c) A body part may not be removed from the body of a decedent under the jurisdiction of a medical examiner for transplantation, therapy, research, or education unless the body part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a medical examiner from performing the medicolegal investigation upon the body or body parts of a decedent under the jurisdiction of the medical examiner.

(d) As used in this section and G.S. 130A-412.24, "medical examiner" includes the Chief Medical Examiner, a county medical examiner, or a designee of either. (2007-538, s. 1.)

§ 130A-412.24. Facilitation of anatomical gift from decedent whose body is under the jurisdiction of a medical examiner.

(a) Upon request of a procurement organization, a medical examiner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is or will come under the jurisdiction of the medical examiner. If the decedent's body or body part is medically suitable for transplantation, therapy, research, or education, the medical examiner shall release postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the medical examiner only if relevant to transplantation or therapy.

(b) The medical examiner may conduct a medicolegal examination, including physical examination of a donor or prospective donor and review of all medical records, laboratory test results, X-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the medical examiner or whose body would be under the medical examiner's jurisdiction upon death and that the medical examiner determines may be relevant to the investigation.

(c) A person that has any information requested by a medical examiner pursuant to subsection (b) of this section shall provide that information as expeditiously as possible to allow the medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of body parts for the purpose of transplantation, therapy, research, or education.

(d) If an anatomical gift has been or might be made of a body part of a decedent whose body is under the jurisdiction of the medical examiner and a postmortem examination is not required, or the medical examiner determines that a postmortem examination is required but that the recovery of the body part that is the subject of an anatomical gift will not interfere with the examination, the medical examiner and procurement organization shall cooperate in the timely removal of the body part from the decedent for the purpose of transplantation, therapy, research, or education.

(e) If an anatomical gift of a body part from the decedent under the jurisdiction of the medical examiner has been or might be made, but the medical examiner initially believes that the recovery of the body part could interfere with the postmortem investigation into the decedent's

cause or manner of death, the collection of evidence, or the description, documentation, or interpretation of injuries on the body, the medical examiner shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the medical examiner may deny or allow the recovery.

(f) If the medical examiner or designee allows recovery of a body part under subsection (d) or (e) of this section, the procurement organization shall provide the medical examiner or designee with a record describing the condition of the body part signed by the physician or technician who removes the body part and any other information and observations that would assist in the postmortem examination. (2007-538, s. 1.)

§ 130A-412.25: Reserved for future codification purposes.

§ 130A-412.26: Reserved for future codification purposes.

§ 130A-412.27: Reserved for future codification purposes.

§ 130A-412.28: Reserved for future codification purposes.

§ 130A-412.29: Reserved for future codification purposes.

§ 130A-412.30. Use of tissue declared a service; standard of care; burden of proof.

The procurement, processing, distribution or use of whole blood, plasma, blood products, blood derivatives and other human tissues such as corneas, bones or organs for the purpose of injecting, transfusing or transplanting any of them into the human body is declared to be, for all purposes, the rendition of a service by every participating person or institution. Whether or not any remuneration is paid, the service is declared not to be a sale of whole blood, plasma, blood products, blood derivatives or other human tissues, for any purpose. No person or institution shall be liable in warranty, express or implied, for the procurement, processing, distribution or use of these items but nothing in this section shall alter or restrict the liability of a person or institution in negligence or tort in consequence of these services. (1971, c. 836; 1983, c. 891, s. 2; 2007-538, s. 3(a).)

§ 130A-412.31. Giving of blood by persons 16 years of age or more.

A person who is 16 years of age or more may give or donate blood to an individual, hospital, blood bank or blood collection center without the consent of the parent or parents or guardian of the donor. It shall be unlawful for a person under the age of 18 years to sell blood. (1971, c. 10; c. 1093, s. 16; 1977, c. 373; 1983, c. 891, s. 2; 2007-538, s. 3(a); 2008-153, s. 9.)

§ 130A-412.32. Duty of hospitals to establish organ procurement protocols.

(a) In order to facilitate the goals of this Part, each hospital shall establish written protocols that:

(1) Require that only the organ procurement organization designated by the Secretary of Health and Human Services be notified of all deaths or impending brain deaths meeting criteria for notification as established by the designated organ procurement organization; and

(2) Ensure that notification required under subdivision (1) of this subsection be made as soon as it is determined that brain death is imminent or cardiac death has occurred.

(b) Hospitals shall provide their federally designated organ procurement organizations and tissue banks reasonable access to patients' medical records for the purpose of determining organ or tissue donation potential.

(c) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation, or for any costs of retrieval of the organ or tissue.

(d) Each hospital shall provide its federally designated organ procurement organization with reasonable access during regular business hours to the medical records of deceased patients for the following purposes:

(1) Determining the hospital's organ and tissue donation potential;

(2) Assessing the educational needs of the hospital in regard to the organ and tissue donation process; and

(3) Providing documentation to the hospital to evaluate the effectiveness of the hospital's efforts.

(e) Each hospital shall have a signed agreement with its federally designated organ procurement organization that addresses the requirements of this section and the requirements of G.S. 130A-412.33.

(f) The requirements of this section, or of any hospital procurement protocols established pursuant to this section, shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term "organ and tissue donors" shall include cornea and tissue donors for transplantation.

(g) Hospitals and hospital personnel shall not be subject to civil or criminal liability nor to discipline for unprofessional conduct for actions taken in good faith to comply with this section. This subsection shall not provide immunity from civil liability arising from gross negligence. (1987, c. 719, s. 1; 1989, c. 537, s. 4; 1997-192, s. 2; 1997-456, s. 48; 2007-538, ss. 3(a), 4.)

§ 130A-412.33. Duty of designated organ procurement organizations and tissue banks.

(a) After notification regarding an impending brain death, brain death, or cardiac death has been made to the federally designated organ procurement organization, the federally designated organ procurement organization shall evaluate donation potential.

(b) The federally designated organ procurement organization or tissue bank shall assure that families of potential organ and tissue donors are made aware of the option of organ and tissue donation and their option to decline.

(c) The federally designated organ procurement organization or tissue bank shall, working collaboratively with the hospital, request consent for organ or tissue donation in the order of priority established under G.S. 130A-412.11 and shall have designated, trained staff available to perform the consent process 24 hours a day, 365 days a year.

(d) The federally designated organ procurement organization or tissue bank shall encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential organ and tissue donors.

(e) All hospital and patient information, interviews, reports, statements, memoranda, and other data obtained or created by a tissue bank or federally designated organ procurement organization from the medical records review described in G.S. 130A-412.33 shall be privileged

and confidential and may be used by the tissue bank or federally designated organ procurement organization only for the purposes set forth in G.S. 130A-412.33 and shall not be subject to discovery or introduction as evidence in any civil action, suit, or proceeding. However, hospital and patient information, interviews, reports, statements, memoranda, and other data otherwise available are not immune from discovery or use in a civil action, suit, or proceeding merely because they were obtained or created by a tissue bank or federally designated organ procurement organization from the medical records review described in G.S. 130A-412.33.

(f) If the hospital is made a party of any action, suit, or proceeding arising out of the failure of a federally designated organ procurement organization or tissue bank to comply with the requirements of this section, the hospital shall be held harmless from any and all liability and costs, including the amounts of judgments, settlements, fines, or penalties, and expenses and reasonable attorneys' fees incurred in connection with the action, suit, or proceeding. (1997-192, s. 3; 2007-538, ss. 3(a), 5, 6.)

Part 4. Human Tissue Donation Program.

§ 130A-413. Coordinated human tissue donation program; legislative findings and purpose; program established.

(a) The General Assembly finds that there is an increasing need for human tissues for transplantation purposes; that there is a continuing need for human tissues for the purposes of medical education and research; and that these needs are not being sufficiently filled at the present because of a shortage of human tissue donors. The General Assembly establishes a coordinated human tissue donation program to facilitate the acquisition and distribution of human tissues to promote the public health. For the purposes of this Part, the term "human tissue" includes cadavers.

(b) The Department shall establish and administer a coordinated program among departments and agencies of the State and all groups, both public and private, involved in the acquisition and distribution of human tissue to:

(1) Increase awareness of the need for human tissue donations and of the methods by which these donations are made;

(2) Increase awareness of the existing programs of human tissue transplantation and of medical research and education which employs human tissue and share information with the public;

(3) Study the problems surrounding the acquisition and distribution of human tissue and make suggestions for their solution;

(4) Disseminate information to health and other professionals concerning the techniques of human tissue retrieval and transplantation, the legalities involved in making anatomical gifts; and

(5) Arrange for the quick and precise transportation of donated human tissue in emergency transplant situations.

(c) All departments and agencies of the State and county and municipal law-enforcement agencies shall cooperate with the coordinated human tissue donation program instituted by the Department. (1983, c. 891, s. 2.)

§ 130A-414. Repealed by Session Laws 1987, c. 719, s. 2.

Part 5. Disposition of Unclaimed Bodies.

§ 130A-415. Unclaimed bodies; bodies claimed by the Lifeguardianship Council of The Arc of North Carolina, Inc.; disposition.

(a) Any person, other than a person licensed as a funeral director or funeral service licensee in this State, including officers, employees, and agents of the State or of any unit of local government in the State, hospitals, nursing homes, or other institutions, having physical possession of a dead body shall make reasonable efforts to contact relatives of the deceased or other persons who may wish to claim the body for final disposition. If the body remains unclaimed for final disposition, the person having possession shall notify the Commission of Anatomy. Upon request of the Commission of Anatomy, the person having possession shall deliver the dead body to the Commission of Anatomy at a time and place specified by the Commission of Anatomy or shall permit the Commission of Anatomy to take and remove the body.

(a1) A dead body shall be deemed unclaimed if either of the following conditions apply:

(1) No individual notifies the person in possession of the dead body within 10 days of the date of death that the individual wishes to dispose of the dead body.

(2) All individuals who have expressed interest in arranging for disposition of the dead body have (i) ceased communicating with the person in possession of the dead body for five days, (ii) at least 10 days have passed from the date of death, and (iii) the person in possession of the dead body has used reasonable efforts to contact all individuals interested in arranging for final disposition.

(b) Unless the provisions of subsection (j) of this section apply, all dead bodies not claimed for final disposition within 10 days of the decedent's death may be received and delivered by the Commission of Anatomy pursuant to the authority contained in G.S. 130A-33.30 and this Part and in accordance with the rules of the Commission of Anatomy. Upon receipt of a body by the Commission of Anatomy all interests in and rights to the unclaimed dead body shall vest in the Commission of Anatomy. The recipient to which the Commission of Anatomy delivers the body shall pay all expenses for the embalming and delivery of the body and for the reasonable expenses arising from efforts to notify relatives or others.

(b1) The 10-day periods referenced in subdivisions (1) and (2) of subsection (a1) of this section may be shortened by the county director of social services upon determination that a dead body will not be claimed for final disposition within the 10-day period.

(c) Unless the provisions of subsection (j) of this section apply, if the Commission of Anatomy declines to receive a dead body, the person with possession shall inform the director of social services of the county that is responsible for the expense of the final disposition of the decedent. Upon notification, all interests in and rights to the abandoned dead body shall vest in the director of social services of that county, who then shall arrange for prompt final disposition of the body, either by cremation, hydrolysis, or burial.

(c1) Reasonable costs of disposition and of efforts made to notify relatives and others shall be considered funeral expenses and shall be paid in accordance with G.S. 28A-19-6 and G.S. 28A-19-8. If those expenses cannot be satisfied from the decedent's estate, they shall be borne by the decedent's county of residence. If the deceased is not a resident of

this State, or if the county of residence is unknown, those expenses shall be borne by the county in which the death occurred or, if the county of residence and death of the decedent are unknown, the county where the deceased was located.

(d) No autopsy shall be performed on an unclaimed body without the written consent of the Commission of Anatomy except that written consent is not required for an autopsy performed pursuant to Part 2 of this Article.

(e) Due caution shall be taken to shield the unclaimed body from public view.

(f) Notwithstanding this section, an unclaimed body does not mean a dead body for which the deceased has made a gift pursuant to Part 3A of this Article.

(g) Nothing in this Part requires the officers, employees, or agents of a county to notify the Commission of Anatomy regarding the bodies of minors who were in the custody of the county at the time of death and whose final disposition will be arranged by the county. In the absence of notification, the expenses of the final disposition shall be a charge upon the county having custody.

(h) This Part does not apply to bodies within the jurisdiction of the medical examiner under G.S. 130A-383 or G.S. 130A-384.

(i) In addition to the other duties of the Commission of Anatomy, when the Commission of Anatomy is notified by the Lifeguardianship Council of The Arc of North Carolina, Inc., that the Council intends to claim a body, the Commission shall release the body to the Council. The Lifeguardianship Council shall notify the Commission of Anatomy within 24 hours after death of its intent to claim a body for burial or other humane and caring disposition.

(j) Any funeral director or funeral service licensee doing business within the State having physical possession of a dead body shall make reasonable efforts to contact relatives of the deceased or other persons who may wish to claim the body for final disposition. If the body remains unclaimed for final disposition for 10 days, or if the right to authorize the type, method, place, and disposition, of the dead body is waived under G.S. 130A-420(b1) or G.S. 90-210.124(b), and if all persons who have expressed interest in arranging for the disposition for the dead body have ceased communication with the person in possession of the dead body for five days, the dead body shall be deemed abandoned. If the funeral director or funeral service licensee receives the dead body from a person or entity listed in subsection (a) of this section, the 10-day period shall run concurrently with any period imposed on that person or entity. Any person having possession of an abandoned dead body shall notify the Commission of Anatomy. Upon request of the Commission of Anatomy, the person having possession of the abandoned dead body shall deliver the abandoned dead body to the Commission of Anatomy at a time and place specified by the Commission of Anatomy or shall permit the Commission of Anatomy to take and remove the abandoned dead body.

(k) If the Commissioner of Anatomy fails to request delivery of the abandoned dead body within two days of receipt of the notification required by subsection (j) of this section, or if the Commissioner of Anatomy declines delivery of the abandoned dead body, the funeral director or funeral services licensee shall notify the director of social services of the county where the abandoned dead body is located. The notice to the director of social

services shall contain a sworn statement that (i) the body is an abandoned dead body, (ii) reasonable efforts have been made to inform relatives and others of the death, and (iii) the Commission of Anatomy has failed to request or has declined delivery of the abandoned dead body. Upon receipt of the sworn statement, the director of social services shall arrange for final disposition of the abandoned dead body and all interests in and rights to the abandoned dead body shall vest in the director of social services, who shall then arrange for prompt final disposition of the abandoned dead body by cremation, hydrolysis, or burial. Upon payment by the director of social services for final disposition of the abandoned dead body, the director shall have a claim of reasonable funeral expenses which shall be paid in accordance with G.S. 28A-19-6 and G.S. 28A-19-8. If those expenses cannot be satisfied from the decedent's estate, they shall be borne by the decedent's county of residence. If the decedent is not a resident of this State, or if the county of residence is unknown, those expenses shall be borne by the county in which the death occurred, or if the county of residence and death of the decedent is unknown, the county where the deceased was located. (1975, c. 694, s. 3; 1977, c. 458; 1983, c. 891, s. 2; 1987, c. 470; 1989, c. 222; c. 770, s. 75; 2008-153, s. 7; 2018-47, s. 10(b); 2018-78, s. 21.)

§ 130A-416. Commission of Anatomy rules.

The Commission of Anatomy is authorized to adopt rules necessary to implement the provisions of this Part. (1983, c. 891, s. 2.)

Part 6. Final Disposition or Transportation of Deceased Migrant Agricultural Workers and Their Dependents.

§ 130A-417. Definitions.

The following definitions shall apply throughout this Part:

(1) "Dependent" means child, grandchild, spouse or parent of a migrant agricultural worker who moves with the migrant agricultural worker in response to the demand for seasonal agricultural labor.

(2) "Migrant agricultural worker" means a worker who moves in response to the demand for seasonal agricultural labor. (1983, c. 891, s. 2.)

§ 130A-418. Deceased migrant agricultural workers and their dependents.

(a) Notwithstanding any other provisions of law, a person having knowledge of the death of a migrant agricultural worker or a worker's dependent shall without delay report the death to the department of social services in the county in which the body is located together with any information regarding the deceased including identity, place of employment, permanent residence, and the name, address and telephone number of any relative and any interested person. The county department of social services shall, within a reasonable time of receiving this report, transmit to the Department notice of the death and information received upon notification. The Department shall make reasonable effort to inform the next-of-kin and any interested person of the death.

(b) If the identity of the person cannot be determined within a reasonable period of time, or if the body is unclaimed 10 days after death, the body shall be offered to the Commission of Anatomy and, upon its request, shall be delivered to the Commission of Anatomy. If the Commission of Anatomy does not request an unclaimed body offered it or the estate, and if the relatives or other interested persons claiming the body are unable to provide for the final

disposition of the migrant agricultural worker or dependent, the Department is authorized and directed to arrange for the final disposition of the decedent.

(c) If the estate, relatives or interested persons are able to provide for final disposition but are unable to effect the transportation of the decedent to the decedent's legal residence or the legal residence of the relatives or interested persons, the Department is authorized and directed to allocate a sum of not more than two hundred dollars ($200.00) to defray the transportation expenses.

(d) The Secretary is authorized to adopt rules necessary to implement this section. (1975, c. 891; 1977, c. 648; 1983, c. 891, s. 2.)

§ 130A-419. Reserved for future codification purposes.

Part 7. Disposition of Body or Body Parts.

§ 130A-420. Authority to dispose of body or body parts.

(a) An individual at least 18 years of age may authorize the type, place, and method of disposition of the individual's own dead body by methods in the following order:

(1) Pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes.

(2) Pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes.

(3) Pursuant to a written will.

(4) Pursuant to a written statement other than a will signed by the individual and witnessed by two persons who are at least 18 years old.

(a1) An individual at least 18 years of age may delegate his or her right to dispose of his or her own dead human body to any person by one of the following methods:

(1) Any means authorized in subsection (a) of this section.

(2) By completing United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form. A delegation made by filling out this form shall only be effective if the individual dies under the circumstances described in 10 U.S.C. § 1481(a)(1) through (8). A delegation under this subdivision takes precedence over any of the methods set forth in this section.

(a2) Unless expressly prohibited by the order of appointment, a guardian of the person shall have the authority to direct the final disposition of the remains of the ward through the methods authorized in subdivision (1) of subsection (a) of this section if executed before the death of the ward.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

(1) The surviving spouse.

(2) A majority of the surviving children over 18 years of age, who can be located after reasonable efforts.

(3) The surviving parents.

(4) A majority of the surviving siblings over 18 years of age, who can be located after reasonable efforts.

(5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.

(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

(7) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent.

(8) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution.

(9) In the absence of any of the persons described in subdivisions (1) through (8) of this subsection, any person willing to assume responsibility for the disposition of the body.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63, or to permit modification of preneed contracts under G.S. 90-210.63A. If an individual is incompetent at the time of the decedent's death, the individual shall be treated as if he or she predeceased the decedent. An attending physician may certify the incompetence of an individual and the certification shall apply to the rights under this section only. Any individual under this section may waive his or her rights under this subsection by any written statement notarized by a notary public or signed by two witnesses.

(b1) A person who does not exercise his or her right to dispose of the decedent's body under subsection (b) of this section within five days of notification or 10 days from the date of death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body or contest disposition in accordance with this section. Under G.S. 130A-415(c) or (j), upon such a waiver, and upon the Commission of Anatomy declining or failing to request delivery of the abandoned dead body, the director of social services of the county in which the dead body is located shall become vested with all interests and rights to the dead body and shall authorize and arrange for disposition by cremation, hydrolysis, or burial.

(b2) Once the burial of an individual is completed under the provisions of this section, the method and location of disposition shall not be changed unless otherwise authorized by law or by a court order upon a showing of good cause.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in

subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3A of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes. (1997-399, s. 34; 2007-531, s. 26; 2008-153, s. 8; 2010-191, s. 1; 2018-78, s. 22.)

§ 130A-421. Reserved for future codification purposes.

Article 17.

Childhood Vaccine-Related Injury Compensation Program.

§ 130A-422. Definitions.

The following definitions apply throughout this Article, unless the context clearly implies otherwise:

(1) "Claimant" means any person who files a claim for compensation for a vaccine-related injury pursuant to G.S. 130A-425(b). In the case of a minor or incompetent, a claim may be filed by a guardian ad litem, parent, guardian, or other legal representative; and, in the case of a decedent, the claim may be filed by an administrator, executor, or other legal representative.

In the event that more than one person claims to have suffered compensable injuries as the result of the administration of a covered vaccine to a single individual, all these persons shall be treated for purposes of this Article as if they were a single claimant. A single joint claim shall be filed on behalf of all these persons, and the limitations on awards set forth in G.S. 130A-427(b) apply to that joint claim or subsequent joint action as if it were a claim filed on behalf of a single individual.

(2) "Commission" means the North Carolina Industrial Commission.

(3) "Covered vaccine" means a vaccine administered pursuant to the requirements of G.S. 130A-152.

(4) "Respondent" means the person or entity the claimant identifies in the claim as the agent of causality of the vaccine-related injury.

(5) "Vaccine-related injury", with respect to persons engaged in the manufacture, distribution, or sale, or administration of a covered vaccine, means any injury, disability, illness, death, or condition caused by the vaccine. "Vaccine-related injury" shall not mean any injury, disability, illness, death, or condition caused by the method of injection of the vaccine into the body. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, s. 8.)

§ 130A-423. North Carolina Childhood Vaccine-Related Injury Compensation Program; exclusive remedy; relationship to federal law; subrogation.

(a) There is established the North Carolina Childhood Vaccine-Related Injury Compensation Program.

(b) The rights and remedies granted the claimant, the claimant's parent, guardian ad litem, guardian, or personal representative shall exclude all other rights and remedies of the claimant, his

parent, guardian ad litem, guardian, or personal representative against any respondent at common law or otherwise on account of injury, illness, disability, death, or condition. If an action is filed, it shall be dismissed, with prejudice, on the motion of any party under law.

(b1) A claimant may file a petition pursuant to this Article only after the claimant has filed an election pursuant to Section 2121 of the Public Health Service Act, P.L. 99-660, permitting the claimant to file a civil action for damages for a vaccine-related injury or death or if the claimant is otherwise permitted by federal law to file an action against a vaccine manufacturer.

(c) Nothing in this Article prohibits any individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-related injury or death if the action is not barred by federal law under subtitle 2 of Title XXI of the Public Health Service Act.

(d) If any action is brought against a vaccine manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c) of this section, the plaintiff in the action may recover damages only to the extent permitted by subdivisions (1) through (3) of subsection (a) of G.S. 130A-427. The aggregate amount awarded in any action may not exceed the limitation established by subsection (b) of G.S. 130A-427. Regardless of whether an action is brought against a vaccine manufacturer, a claimant who has filed an election pursuant to Section 2121 of the Public Health Service Act, as enacted into federal law by Public Law 99-660, permitting a claimant to file a civil action for damages for a vaccine-related injury or death, or who is otherwise permitted by federal law to file an action against a vaccine manufacturer, may file a petition pursuant to G.S. 130A-425 to obtain services from the Department pursuant to subdivision (5) of subsection (a) of G.S. 130A-427 and, if no action has been brought against a vaccine manufacturer, to obtain other relief available pursuant to G.S. 130A-427.

(e) In order to prevent recovery of duplicate damages, or the imposition of duplicate liability, in the event that an individual seeks an award pursuant to G.S. 130A-427 and also files suit against the manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c) of this section, the following provisions shall apply:

(1) If, at the time an award is made pursuant to G.S. 130A-427, an individual has already recovered damages from a manufacturer pursuant to a judgment or settlement, the award shall consist only of a commitment to provide services pursuant to subdivision (5) of subsection (a) of G.S. 130A-427.

(2) If, at any time after an award is made to a claimant pursuant to G.S. 130A-427, an individual recovers damages for the same vaccine-related injury from a manufacturer pursuant to a judgment or settlement, the individual who recovers the damages shall reimburse the State for all amounts previously recovered from the State in the prior proceeding. Before a defendant in any action for a vaccine-related injury pays any amount to a plaintiff to discharge a judgment or settlement, he shall request from the Secretary a statement itemizing any reimbursement owed by the plaintiff pursuant to this subdivision, and, if any reimbursement is owed by the plaintiff to the Department, the defendant shall pay the reimbursable amounts, as determined by the Secretary, directly to the Department. This payment shall discharge the plaintiff's obligations to the State under this subdivision and any obligation the defendant may have to the plaintiff with respect to these amounts.

(3) If:

a. An award has been made to a claimant for an element of damages pursuant to G.S. 130A-427; and

b. An individual has recovered for the same element of damages pursuant to a judgment in, or settlement of, an action for the same vaccine-related injury brought against a manufacturer, and that amount has not been remitted to the State pursuant to subdivision (2) of this subsection; and

c. The State seeks to recover the amounts it paid in an action it brings against the manufacturer pursuant to G.S. 130A-430;

any judgment obtained by the State under G.S. 130A-430 shall be reduced by the amount necessary to prevent the double recovery of any element of damages from the manufacturer. Nothing in this subdivision limits the State's right to obtain reimbursement from a claimant under subdivision (2) of this subsection with respect to any double payment that might be received by the claimant.

(f) Subrogation claims pursued under the National Childhood Vaccine Injury Act of 1986 shall be filed with the appropriate court, not with the Industrial Commission. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, ss. 1, 2; 1989, c. 727, ss. 148, 149; 1991, c. 410, s. 1; 1997-443, s. 11A.85.)

§ 130A-424. Industrial Commission authorized to hear and determine claims; damages.

The North Carolina Industrial Commission is authorized to hear and pass upon all claims filed pursuant to this Article. The members of the Commission, or a deputy thereof, have power to issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders, opinions, settlements, and awards, and punish for contempt. The Commission may appoint deputies and clerical assistants to carry out the purpose and intent of this Article, and this deputy or deputies are vested with the same power and authority to hear and determine claims filed pursuant to this Article as is by this Article vested in the members of the Commission. (1985 (Reg. Sess., 1986), c. 1008, s. 1.)

§ 130A-425. Filing of claims.

(a) Notwithstanding any other provision of State law, no action for compensation for a vaccine-related injury may be filed against any person unless that person was named as a respondent in a claim filed pursuant to this section and unless the claim was filed within the applicable time period set forth in G.S. 130A-429.

(b) In all claims filed pursuant to this Article, the claimant or the person in whose behalf the claim is made shall file with the Commission a verified petition in duplicate, setting forth the following information:

(1) The name and address of the claimant;

(2) The name and address of each respondent;

(3) The amount of compensation in money and services sought to be recovered;

(4) The time and place where the injury occurred;

(5) A brief statement of the facts and circumstances surrounding the injury and giving rise to the claim; and

(6) Supporting documentation and a statement of the claim that the claimant or the person in whose behalf the claim is made suffered a vaccine-related injury and has not previously collected an award or settlement of a civil action for damages for this injury. This supporting documentation shall include all available medical records pertaining to the alleged injury, including autopsy reports, if any, and if the injured person was under two years of age at the time of injury, all prenatal, obstetrical, and pediatric records of care preceding the injury, and

an identification of any unavailable records known to the claimant or the person in whose behalf the claim is made.

(7) Documentation to show that the claimant has filed an election pursuant to Section 2121 of the Public Health Service Act, P.L. 99-660, permitting such claimant to file a civil action for damages for a vaccine-related injury or death or documentation to show that such claimant is otherwise permitted by federal law to file an action against a vaccine manufacturer.

(c) Upon receipt of this verified petition in duplicate, the Commission shall enter the case upon its hearing docket and shall determine the matter in the county where the injury occurred unless the parties agree or the Commission directs that the case may be heard in some other county. All parties shall be given reasonable notice of the date when and the place where the claim will be heard. Immediately upon receipt of the claim, the Commission shall serve a copy of the verified petition on each respondent by registered or certified mail. The Commission shall also send a copy of the verified petition to the Secretary, who shall be a party to all proceedings involving the claim, and to the Attorney General who shall represent the State's interest in all the proceedings involving the claim.

(d) The Commission shall adopt rules necessary to govern the proceedings required by this Article. The Rules of Civil Procedure as contained in G.S. 1A-1 **et seq.** and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 apply to claims filed with the Industrial Commission under this Article. The Commission shall keep a record of all proceedings conducted under this Article, and has the right to subpoena any persons and records it considers necessary in making its determinations. The Commission may require all persons called as witnesses to testify under oath or affirmation, and any member of the Commission may administer oaths. If any persons refuse to comply with any subpoena issued pursuant to this Article or to testify with respect to any matter relevant to proceedings conducted under this Article, the Superior Court of Wake County, on application of the Commission, may issue an order requiring the person to comply with the subpoena and to testify. Any failure to obey any such order may be punished by the court as for contempt. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, s. 3; 1989, c. 727, s. 150; 1991, c. 410, s. 2.)

§ 130A-426. Determination of claims.

(a) The Commission shall determine, on the basis of the evidence presented to it, the following issues:

(1) Whether any injuries alleged in the claim are vaccine-related injuries; and

(2) How much compensation, if any, is awardable pursuant to G.S. 130A-427.

(b) If the Commission determines pursuant to subsection (a) of this section that the injuries alleged in the claim are not vaccine-related injuries, it shall render a decision denying any compensation. If the Commission decides that any of the injuries are vaccine-related injuries it shall make an award pursuant to guidelines it establishes specifically adopted to relate to vaccine-related injuries. (1985 (Reg. Sess., 1986), c. 1008, s. 1.)

§ 130A-427. Commission awards for vaccine-related injuries; duties of Secretary.

(a) Upon determining that a claimant has sustained a vaccine-related injury, the Commission shall make an award providing compensation or services for any or all of the following:

(1) Actual and projected reasonable expenses of medical care, developmental evaluation, special education, vocational training, physical, emotional or behavioral therapy, and residential and custodial care and service expenses, that cannot be provided by the Department pursuant to subdivision (5) of this subsection;

(2) Loss of earnings and projected earnings, determined in accordance with generally accepted actuarial principles;

(3) Noneconomic, general damages arising from pain, suffering, and emotional distress;

(4) Reasonable attorneys' fees;

(5) Needs that the Secretary determines on a case-by-case basis shall be met by medical, health, developmental evaluation, special education, vocational training, physical, emotional, or behavioral therapy, residential and custodial care, and other essential and necessary services, to be provided the injured party by the programs and services administered by the Department. The Secretary shall develop an itemized list of the service needs of the injured party upon review and evaluation of the injured party's medical record and shall present it to the Commission prior to the Commission's determination. In the event that the Commission's award includes the provision of any of these services, the Secretary shall develop a comprehensive, coordinated plan for the delivery of these services to the injured party. Notwithstanding any other provision of State law, the Secretary shall waive all eligibility criteria in determining eligibility for services provided by the Department under the plan of care developed pursuant to this subdivision. If the award includes any such services, these services shall be provided by the Department free of any cost to the injured party.

(b) The money compensation component of the award may not be made pursuant to this section in excess of an aggregate amount of the present day value amount of three hundred thousand dollars ($300,000) with respect to all injuries claimed to have resulted from the administration of a covered vaccine to a single individual. The value of all services to be provided by the Department, as part of this award is in addition to the total amount of money compensation, and is not included in the limitation prescribed by this subsection on the amount of money compensation that may be awarded. No damages may be awarded pursuant to subdivision (a)(3) on behalf of any person to whom the covered vaccine was not administered. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1989, c. 727, s. 151; 1997-443, s. 11A.86.)

§ 130A-428. Notice of determination of claim; appeal to full commission.

(a) Decisions of the Commission pursuant to G.S. 130A-427 shall be final and binding on the claimant and each respondent.

(b) Notwithstanding subsection (a), upon determination of the claim, the Commission shall notify all parties concerned in writing of its decision and any party shall have 15 days after receipt of such notice within which to file notice of appeal with the Commission. This appeal, when so taken, shall be heard by the Commission, sitting as a full commission, on the basis of the record in the matter and upon oral argument of the parties, and the full commission may amend, set aside, or strike out the decision of the hearing commissioner and may issue its own findings of

fact and conclusions of law. Upon determination of the claim by the Commission, sitting as a full commission, the Commission shall notify all parties concerned in writing of its decision.

(c) The decision of the Commission, if not reviewed in due time, or an award of the Commission, shall be conclusive and binding as to all questions of fact; but any party to the proceedings may, within 30 days from the date of the decision or award, or within 30 days after receipt of notice to be sent by registered mail or certified mail of the award, but not thereafter, appeal from the decision or award of the Commission to the Court of Appeals for errors of law under the same terms and conditions as govern appeals from the Superior Court to the Court of Appeals in ordinary civil actions. The procedure for the appeal shall be provided by the Rules of Appellate Procedure. (1985 (Reg. Sess., 1986), c. 1008, s. 1.)

§ 130A-429. Limitation on claims.

(a) Except as provided in subsection (b) of this section, any claim under this Article that is filed more than six years after the administration of a vaccine alleged to have caused a vaccine-related injury is barred. Claims on behalf of minors or incompetent persons shall be filed by their parents, guardians ad litem, or guardians within the applicable limitations period established by this section.

(b) Claims that are filed in accordance with the procedures set forth in G.S. 130A-425(b) within six years after the date of the enactment of this Article shall not be barred unless, on the date the claim was filed, the claimant was barred by the applicable statute of limitations from filing an action for damages with respect to the subject matter of the claim.

(c) The period of limitation set forth in this section shall be stayed beginning on the date the claimant files a petition under Section 2111 of the Public Health Service Act, P.L. 99-660, and ending 120 days after the date final judgment is entered on the petition. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1991, c. 410, s. 3.)

§ 130A-430. Right of State to bring action against health care provider and manufacturer.

(a) If the Industrial Commission makes an award for a claimant who it determines has sustained a vaccine-related injury, the State may, within two years of the date the Commission renders its decision, bring an action against the health care provider who administered the vaccine on the ground that the health care provider was negligent in administering the vaccine. Damages in an action brought under this section are limited to the amount of the award made by the Commission plus the estimated present value of all the services to be provided to the claimant by the Department under G.S. 130A-427.

(b) Manufacturer. – If the Industrial Commission makes an award for a claimant who it determines has sustained a vaccine-related injury, the State may, within two years of the date the Commission renders its decision, bring an action against the manufacturer who made the vaccine on the ground that the vaccine was a defective product. Damages in an action brought under this section are limited to the amount of the award made by the Commission plus the estimated present value of all the services to be provided to the claimant by the Department under G.S. 130A-427, the reasonable costs of prosecuting the action, including, but not limited to, attorneys' fees, fees charged by witnesses, and costs of exhibits. For purposes of this subsection, a defective product is a covered vaccine that was manufactured, transported, or stored in a negligent manner, or was distributed after its expiration date, or that otherwise violated the applicable requirements of any license, approval, or permit, or any applicable standards or requirements issued under Section 351 of the Public Health Service Act, as amended, or the federal Food, Drug, and Cosmetic Act, as

these standards or requirements were interpreted or applied by the federal agency charged with their enforcement. The negligence or other action in violation of applicable federal standards or requirements shall be demonstrated by the State, by a preponderance of the evidence, to be the proximate cause of the injury for which an award was rendered pursuant to G.S. 130A-427, in order to allow recovery by the State against the manufacturer pursuant to this subsection. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, s. 4; 1989, c. 727, s. 152; 1997-443, s. 11A.87.)

§ 130A-431. Certain vaccine diversions made felony.

Any person who (i) receives a vaccine designated by the manufacturer for use in the State, (ii) directly or indirectly diverts the vaccine to a location outside the State, and (iii) directly or indirectly profits as a result of this diversion, is guilty of a Class I felony. The fine shall be twenty-five dollars ($25.00) per dose of the diverted vaccine or one hundred thousand dollars ($100,000), whichever is less. A health care professional convicted of a Class I felony pursuant to this section who is found by the court to have diverted more than 300 doses of covered vaccine shall have his license suspended for one year. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, s. 5; 1993, c. 539, s. 1306; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 130A-432. Scope.

This Article applies to all claims for vaccine-related injuries occurring on and after October 1, 1986 and, at the option of the claimant, to claims for vaccine-related injuries that occurred before October 1, 1986 if such claim has not been resolved by final judgment or by settlement agreement or is not barred by a statute of limitations.

This Article applies to all claims for vaccine-related injuries alleged to have been caused by covered vaccines administered within the State, regardless of where an action relating to the injuries is brought and regardless of where the injuries are alleged to have occurred. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, s. 6.)

§ 130A-433. Contracts for purchase of vaccines; distribution; fee; rules.

(a) Notwithstanding any law to the contrary, the Secretary may enter into contracts with the manufacturers and suppliers of covered vaccines and with other public entities either within or without the State for the purchase of covered vaccines and may provide for the distribution or sale of the covered vaccines to health care providers. Local health departments shall distribute the covered vaccines at the request of the Department. The Secretary shall adopt rules to implement this Article except for subsection (b) of this section.

(b) Except as otherwise provided in G.S. 130A-153(a), a health care provider who receives vaccine from the State may charge no more than a reasonable fee established by the Commission for Public Health for the administration of the vaccine. (1985 (Reg. Sess., 1986), c. 1008, s. 2; 1987, c. 215, s. 7; 1989, c. 727, s. 153; 1993, c. 321, s. 281(b); 2007-182, s. 2; 2009-451, s. 10.29A(b).)

§ 130A-434. Child Vaccine Injury Compensation Fund established; payments from Fund; transfer of appropriations and receipts.

(a) There is established the Child Vaccine Injury Compensation Fund within the Department to finance the North Carolina Childhood Vaccine-Related Injury Compensation Program created by this article. The money compensation components of all awards made pursuant

to Article 17 of Chapter 130A of the General Statutes shall be paid by the Department from the Fund.

(b) Should the Department find that the sum of appropriations and receipts is insufficient to meet financial obligations incurred in the administration of this article, appropriations and receipts in the Department which would otherwise revert to the General Fund may be transferred to the Child Vaccine Injury Compensation Fund in order to meet such obligations. The Department may also budget anticipated receipts as needed to implement this Article. (1985 (Reg. Sess., 1986), c. 1008, s. 3(a), 3(b); 1989, c. 727, s. 154; 1997-443, s. 11A.88.)

§§ 130A-435 through 130A-439. Reserved for future codification purposes.

Article 18.

Health Assessments for Children in the Public Schools.

§ 130A-440. (Applicable to children enrolling in the public schools for the first time before the 2016-2017 school year) Health assessment required.

(a) Every child in this State entering kindergarten in the public schools shall receive a health assessment. The health assessment shall be made no more than 12 months prior to the date of school entry. No child shall attend kindergarten unless a health assessment transmittal form, developed pursuant to G.S. 130A-441, indicating that the child has received the health assessment required by this section, is presented to the school principal. The medical provider, or the parent, guardian, or person in loco parentis, must present a completed health assessment transmittal form to the principal of the school on or before the child's first day of attendance. If a health assessment transmittal form is not presented on or before the first day, the principal shall present a notice of deficiency to the parent, guardian, or responsible person. The parent, guardian, or responsible person shall have 30 calendar days from the first day of attendance to present the required health assessment transmittal form for the child. Upon termination of 30 calendar days, the principal shall not permit the child to attend the school until the required health assessment transmittal form has been presented.

(b) A health assessment shall include a medical history and physical examination with screening for vision and hearing and, if appropriate, testing for anemia and tuberculosis. Vision screening shall be conducted in accordance with G.S. 130A-440.1. The health assessment may also include dental screening and developmental screening for cognition, language, and motor function. The developmental screening of cognition and language abilities may be conducted in accordance with G.S. 115C-83.5(a).

(c) The health assessment shall be conducted by a physician licensed to practice medicine, a physician's assistant as defined in G.S. 90-18.1(a), a certified nurse practitioner, or a public health nurse meeting the Department's Standards for Early Periodic Screening, Diagnosis, and Treatment Screening.

(d) This Article shall not apply to children entering kindergarten in private church schools, schools of religious charter, or qualified nonpublic schools, regulated by Article 39 of Chapter 115C of the General Statutes. (1985 (Reg. Sess., 1986), c. 1017, s. 1; 1987,

c. 114, s. 1; 1989, c. 727, s. 155; 1993, c. 124, s. 1; 1995, c. 123, s. 10; 2006-240, s. 1(b); 2012-142, s. 7A.1(h).)

§ 130A-440. (Applicable to children enrolling in the public schools for the first time beginning with the 2016-2017 school year) Health assessment required.

(a) Every parent, guardian, or person standing in loco parentis shall submit proof of a health assessment for each child in this State who is presented for admission into kindergarten or a higher grade in the public schools for the first time. The health assessment shall be made no more than 12 months prior to the date the child would have first been eligible for initial entry into the public schools. Within 30 calendar days of a child's first day of attendance in the public schools, a health assessment transmittal form, developed pursuant to G.S. 130A-441, indicating that the child has received the health assessment required by this section, shall be presented to the school principal. The only health assessment transmittal form utilized by public schools shall be the form developed pursuant to G.S. 130A-441. A completed health assessment transmittal form shall be presented to the principal of the school by either (i) the parent, guardian, or person standing in loco parentis or (ii) the health care provider specified in G.S. 130A-440(c), if authorized in writing by the parent, guardian, or person standing in loco parentis. At the time of enrollment, the parent, guardian, or person standing in loco parentis shall be advised that a health assessment transmittal form is needed on or before the child's first day of attendance. If a health assessment transmittal form is not presented on or before the child's first day of attendance, the principal shall present a notice of deficiency to the parent, guardian, or person standing in loco parentis. The notice of deficiency shall include at least the following information: (i) the health assessment transmittal form must be submitted to the principal within 30 calendar days of the child's first day of attendance or the child will not be permitted to attend school until the form is submitted and (ii) an explanation for how the child may make up work missed in accordance with G.S. 115C-390.2(l). The parent, guardian, or person standing in loco parentis shall have 30 calendar days from the first day of attendance to present the required health assessment transmittal form for the child. Upon termination of 30 calendar days, the principal shall not permit the child to attend the school until the required health assessment transmittal form has been presented. A child shall not be suspended for absences accrued for failure to present the required health assessment transmittal form upon the termination of 30 calendar days, and the child shall be allowed to make up work missed in accordance with G.S. 115C-390.2(l). It shall be noted in the child's official school record when the health assessment transmittal form has been received.

(b) A health assessment shall include a medical history and physical examination with screening for vision and hearing and, if appropriate, testing for anemia and tuberculosis. Vision screening shall be conducted in accordance with G.S. 130A-440.1. The health assessment may also include dental screening and developmental screening for cognition, language, and motor function. The developmental screening of cognition and language abilities may be conducted in accordance with G.S. 115C-83.5(a).

(c) The health assessment shall be conducted by a physician licensed to practice medicine, a physician's assistant as defined in G.S. 90-18.1(a), a certified nurse practitioner, or a public health nurse meeting the Department's Standards for Early Periodic Screening, Diagnosis, and Treatment Screening.

(d) This Article shall not apply to children entering private church schools, schools of religious charter, or qualified nonpublic schools, regulated by Article 39 of Chapter 115C of the General Statutes.

(e) As used in this section, "parent, guardian, or person standing in loco parentis" means parent, legal guardian, legal custodian, and caregiver adult, as those terms are used in G.S. 115C-366. (1985 (Reg. Sess., 1986), c. 1017, s. 1; 1987, c. 114, s. 1; 1989, c. 727, s. 155; 1993, c. 124, s. 1; 1995, c. 123, s. 10; 2006-240, s. 1(b); 2012-142, s. 7A.1(h); 2015-222, s. 2.)

§ 130A-440.1. Early Childhood Vision Care.

(a) Vision Screening Required for Children Entering Kindergarten. – Every child in this State entering kindergarten in the public schools, beginning with the 2007-2008 school year, shall obtain vision screening in accordance with vision screening standards adopted by the Governor's Commission on Early Childhood Vision Care. Within 180 days of the start of the school year, the parent of the child shall present to the school principal or the principal's designee certification that the child has, within the past 12 months, obtained vision screening conducted by a licensed physician, optometrist, physician assistant, nurse practitioner, registered nurse, orthoptist, or a vision screener certified by Prevent Blindness North Carolina, or a comprehensive eye examination performed by an ophthalmologist or optometrist. The health assessment transmittal form required pursuant to G.S. 130A-440 qualifies as certification that the child has obtained the required vision screening. All providers conducting vision screening shall provide each parent in writing the results of the vision screening on forms bearing the signature of the provider supplied to the provider by the Governor's Commission on Early Childhood Vision Care. The provider shall also orally communicate this information to the parent and shall take reasonable steps to ensure that the parent understands the information communicated. In the instance where a child enters the first grade without having been enrolled in a kindergarten program requiring a vision screening, the requirements for vision screening under this subsection shall apply.

(a1) Comprehensive Eye Examination. – For children who receive and fail to pass a vision screening as required under subsection (a) of this section, a comprehensive eye examination is required. If a public school teacher, administrator, or other appropriate school personnel has reason to believe that a child enrolled in kindergarten through third grade is having problems with vision, the school personnel may recommend to the child's parent that the child have a comprehensive eye examination. Notification to the parent shall also inform the parent that funds may be available from the Governor's Commission on Early Childhood Vision Care to pay providers for the examination, including corrective lenses.

The comprehensive eye examination shall be conducted by a duly licensed optometrist or ophthalmologist. The comprehensive eye examination conducted pursuant to this section shall consist of a complete and thorough examination of the eye and shall include:

(1) Measurement of visual acuity;
(2) Ocular alignment and motility;
(3) Depth perception – stereopsis;
(4) Fusion;
(5) Slit lamp examination of the lid margins, conjunctivae, cornea, anterior chamber, iris, and crystalline lens;
(6) Examination of the ocular adnexa, the anterior segment, and pupils; and
(7) Cycloplegic refraction and dilated fundus examination.

Health assessment vision screening under G.S. 130A-440 is not a comprehensive eye examination for purposes of this section.

(b) Repealed by Session Laws 2006-240, s. 1(a), effective August 13, 2006.

(c) The results of a comprehensive eye examination conducted under this section shall be included on the comprehensive eye examination transmittal form developed by the Commission pursuant to G.S. 143B-216.75 and shall contain a summary of the comprehensive eye examination performed by the optometrist or ophthalmologist. Any treatment recommendations by the optometrist or ophthalmologist, such as spectacles for schoolwork, shall appear in the summary and school health card. The provider shall present a signed transmittal form to the parent upon completion of the examination. The parent shall submit the transmittal form to the school in accordance with this section.

(d) Repealed by Session Laws 2006-240, s. 1(a), effective August 13, 2006.

(e) G.S. 130A-441, 130A-442, and 130A-443, pertaining to health assessments, apply to comprehensive eye examinations required under this section.

(f) No child shall be excluded from attending school for a parent's failure to obtain a comprehensive eye examination required under this section. If a parent fails or refuses to obtain a comprehensive eye examination or to provide the certification of a comprehensive eye examination, the school shall send a written reminder to the parent of required eye examinations and shall include information about funds that may be available from the Governor's Commission on Early Childhood Vision Care.

(g) In adopting standards for vision screening under this section and as required under G.S. 130A-440, the Commission shall take into account the resources necessary to comply with the standards and, if standards will require additional resources, shall mitigate the impact on resources without compromising vision screening effectiveness.

(h) As used in this section, the term "parent" means the parent, guardian, or person standing in loco parentis. (2005-276, s. 10.59F(g); 2005-345, s. 20(d); 2006-240, s. 1(a).)

§ 130A-441. (Applicable to children enrolling in the public schools for the first time before the 2016-2017 school year) Reporting.

(a) Health assessment results shall be submitted to the school principal by the medical provider on health assessment transmittal forms developed by the Department and the Department of Public Instruction.

(b) Each school having a kindergarten shall maintain on file the health assessment results. The files shall be open to inspection by the Department, the Department of Public Instruction, or their authorized representatives and persons inspecting the files shall maintain the confidentiality of the files. Upon transfer of a child to another kindergarten, a copy of the health assessment results shall be provided upon request and without charge to the new kindergarten.

(c) Within 60 calendar days after the commencement of a new school year, the principal shall file a health assessment status report with the Department on forms developed by the Department and the Department of Public Instruction. The report shall document the number of children in compliance and not in compliance with G.S. 130A-440(a). (1985 (Reg. Sess., 1986), c. 1017, s. 1; 1989, c. 727, s. 156; 1993, c. 124, s. 2.)

§ 130A-441. (Applicable to children enrolling in the public schools for the first time beginning with the 2016-2017 school year) Reporting.

(a) Health assessment results shall be submitted on the statewide standardized health assessment transmittal form developed by the Department and the Department of Public Instruction and submitted to the school principal by either (i) the parent, guardian, or person standing in loco parentis for the student or (ii) the health care provider specified in G.S. 130A-440(c), if authorized in writing by the parent, guardian, or person standing in loco parentis. The health assessment transmittal form shall include only the items listed below:

(1) A statement that the form and information on the form will be maintained on file in the school once it has been completed.

(2) The name of the school the student is attending or will attend.

(3) A student information section to be completed by the parent, guardian, or person standing in loco parentis for the student that requires the following about the student: first, middle, and last name; date of birth; sex; race; ethnicity; county of residence; and home address.

(4) A parent information section that includes the following: name of the parent, guardian, or person standing in loco parentis for the student; a telephone number; and space allowing the parent to share any concerns about the student's health with those individuals authorized to have access to the form in subsection (b) of this section.

(5) A section that includes the following information, if applicable, supplied by a health care provider specified in G.S. 130A-440(c):

a. A list of medications prescribed for the student.

b. A list of the student's allergies, the type of allergic reaction, and the response required.

c. Guidance regarding a special diet for the student.

d. Health-related recommendations to enhance the student's school performance.

e. Information on whether the student passed a vision screening and any concerns related to the student's vision.

f. Information on whether the student passed a hearing screening and any concerns related to the student's hearing.
g. An opportunity to indicate whether there are recommendations, concerns, or needs related to the student's health and whether school follow-up is needed.
h. An opportunity to provide comments.

(6) Instructions to the health care provider specified in G.S. 130A-440(c) to provide the student's current immunization record and any of the following applicable school health forms:
a. School medication authorization form.
b. Diabetes care plan.
c. Asthma action plan.
d. Health care plans for any other condition for which the school needs to be aware.

(7) A certification from a health care provider specified in G.S. 130A-440(c) stating: "I certify that I performed, on the student named above, a health assessment in accordance with G.S. 130A-440(b) that included a medical history and physical examination with screening for vision and hearing and, if appropriate, testing for anemia and tuberculosis. I certify that the information on this form is accurate and complete to the best of my knowledge."

(8) The date the health assessment was conducted.

(9) The health care provider's name, signature, telephone and fax number, and the name and address for the health care provider's practice.

(10) A section for the health care provider's stamp.

(b) The form will be maintained on file in the school once it has been submitted. A student's official school record shall only reflect whether or not a health assessment transmittal form has been received. The health assessment transmittal form shall be open to inspection only by authorized North Carolina public school administrators, teachers, and other school personnel who require such access to perform their assigned duties. These personnel shall maintain the confidentiality of the form. Information contained on the health assessment transmittal form is confidential and is not a public record within the meaning of G.S. 132-1. The local board of education shall provide, upon request, de-identified health assessment information from the forms to authorized employees of the Department of Health and Human Services who require such information to perform their assigned duties.

(c) Within 60 calendar days after the commencement of a new school year, the principal shall file a health assessment status report with the Department on a form developed by the Department and the Department of Public Instruction. The report shall document the number of newly enrolled children in compliance and not in compliance with G.S. 130A-440(a). (1985 (Reg. Sess., 1986), c. 1017, s. 1; 1989, c. 727, s. 156; 1993, c. 124, s. 2; 2015-222, s. 3.)

§ 130A-442. Religious exemption.

If the bona fide religious beliefs of the parent, guardian or person in loco parentis of a child are contrary to the health assessment requirements contained in this Article, this

Article shall not apply to the child. Upon submission of a written statement of the bona fide religious beliefs and opposition to the health assessment requirements, the child may attend kindergarten without submitting a health assessment report. (1985 (Reg. Sess., 1986), c. 1017, s. 1; 1987, c. 114, s. 2.)

§ 130A-443. Rules.

Rules governing the contents for health assessment reports, the procedure for reporting under this Article, and those persons authorized to inspect the files shall be developed jointly by the Department of Public Instruction and the Commission for Public Health and shall be adopted by the Commission for Public Health. (1985 (Reg. Sess., 1986), c. 1017, s. 1; 2007-182, s. 2.)

Article 19.

Asbestos Hazard Management.

§ 130A-444. Definitions.

Unless a different meaning is required by the context, the following definitions apply throughout this Article:

(1) "AHERA" means Title II, Asbestos Hazard Emergency Response Act of the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., as amended by the Asbestos School Hazard Abatement Reauthorization Act of 1990, P.L. 101-637, 104 Stat. 4589 ("ASHARA").

(2) "Asbestos" means asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite and actinolite.

(3) "Asbestos containing material" means material which contains more than one percent (1%) asbestos, including friable asbestos containing material and nonfriable asbestos containing material.

(3a) "Asbestos NESHAP for demolition and renovation" means that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 CFR §§ 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition).

(4) "Abatement" means work performed to repair, maintain, remove, isolate, or encapsulate asbestos containing material. The term does not include inspections, preparation of management plans, abatement project design, taking of samples, or project overview.

(5) "Friable" means any material that when dry can be broken, crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after such material becomes damaged to the extent that when dry it can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Management" means all activities related to asbestos containing material, including inspections, preparation of management plans, abatement project design, abatement, project overview, and taking of samples.

(6a) "Person" means an individual, a corporation, a company, an association, a partnership, a unit of local government, a State or federal agency, or any other legal entity.

(7) "Public area" means those areas in any building other than a residence that are not covered under the Occupational Safety and Health Act of 1970, Pub. L. 91-596, 84 Stat. 1590, 29 U.S.C. § 651, et seq., as amended.

(8) "Removal" means stripping, chipping, sanding, sawing, drilling, scraping, sucking, and other methods of separating material from its installed location in a building.

(9) "Residence" means any single family dwelling or any multi-family dwelling of fewer than 10 units. (1989, c. 724, s. 1; 1993 (Reg. Sess., 1994), c. 686, s. 2; 1995, c. 123, s. 7.)

§ 130A-445. Management of asbestos containing material in schools.

All school buildings subject to the provisions of AHERA shall be inspected for asbestos containing materials and shall prepare and submit management plans to the Department. The Commission shall adopt rules governing school management plans. These rules shall specify the content and format of plans, the plan review and approval process, schedules and methods for implementation of approved plans, and periodic inspection requirements. (1989, c. 724, s. 1.)

§ 130A-446. Asbestos exposure standard for public areas.

The Commission shall adopt rules to establish a maximum airborne asbestos exposure level for public areas. Such rules shall also specify sampling and analysis procedures. (1989, c. 724, s. 1.)

§ 130A-447. Accreditation of persons performing asbestos management and approval of training courses.

(a) No person shall commence or continue to perform asbestos management activities unless he has been accredited by the Department. No person shall commence or continue to provide asbestos related training courses unless the course has been approved by the Department. The Commission shall adopt rules governing the accreditation of persons performing asbestos management activities and the approval of training courses. Such rules shall include categories of accreditation and shall specify appropriate education, experience, and training requirements. The rules shall establish separate categories of accreditation for inspectors, management planners, abatement designers, supervisors, workers, air monitors, and supervising air monitors. These rules shall be at least as stringent as the accreditation plan required under AHERA and regulations adopted pursuant thereto.

(b) A person who applies for accreditation in the worker category may engage in asbestos containing material management activities as though he were accredited in the worker category for up to 90 days after the date he submits his application. No person whose application is rejected may continue to engage in asbestos containing material management activities under this subsection.

(c) The following persons are exempt from the accreditation requirements:

(1) The owner or operator of a building, other than school buildings subject to the provisions of AHERA, and his permanent employees when performing small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C (1994).

(2) A person performing asbestos containing material management activities in his personal residence.

(3) Governmental regulatory personnel performing inspections of asbestos containing material management activities solely for the purpose of determining compliance with applicable statutes or regulations.

(4) Persons licensed by the General Contractors Licensing Board, State Board of Examiners of Plumbing and Heating Contractors, State Board of Examiners of Electrical Contractors, or the State Board of Refrigeration Examiners when engaged in activities associated with their license when performing small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C (1994). (1989, c. 724, s. 1; 1993 (Reg. Sess., 1994), c. 686, s. 3; 1995, c. 123, s. 8.)

§ 130A-448. Asbestos management accreditation fees and course approval fees.

(a) The Department shall establish and collect asbestos containing material management accreditation and annual renewal fees to support the asbestos hazard management program. The fees shall not exceed one hundred dollars ($100.00) per accreditation category, except that the fee for the abatement worker category shall not exceed twenty-five dollars ($25.00). A person who is accredited in more than one category shall pay a fee for each category.

(b) The Department shall establish and collect fees for approving asbestos management training courses and fees for renewing course approval annually to support the asbestos hazard management program. The fees for approving a training course shall not exceed one thousand five hundred dollars ($1,500) for each course. The annual renewal fees shall not exceed five hundred dollars ($500.00) for each course. Each category of a training course shall be subject to a separate fee for its initial approval and a separate fee for its annual renewal. (1989, c. 724, s. 1; 1993 (Reg. Sess., 1994), c. 686, s. 4.)

§ 130A-449. Asbestos containing material removal permits.

No person shall engage in asbestos abatement involving more than 35 cubic feet, 160 square feet, or 260 linear feet per job of asbestos containing material without an asbestos containing material removal permit issued by the Department. The Commission shall adopt rules governing such permits. Such rules may provide for exemption from the requirements of this section. (1989, c. 724, s. 1.)

§ 130A-450. Asbestos containing material removal permit fees.

An applicant for an asbestos containing material removal permit is subject to a fee payable to the Department. The fee is a departmental receipt of the Department and must be used to offset the cost of the asbestos hazard management program. An applicant for a permit must indicate whether the asbestos is to be removed as part of a renovation or a demolition. If the asbestos is to be removed as part of a renovation, the fee is the amount set by the Department and may not exceed one percent (1%) of the contracted price or twenty cents ($.20) per square foot or linear foot of asbestos containing material to be removed, whichever is greater. If the asbestos is to be removed

as part of a demolition, the fee is the greater of the following, not to exceed one thousand five hundred dollars ($1,500):

(1) One percent (1%) of the contracted price.

(2) An amount set by the Department not to exceed twenty cents ($.20) per square foot or linear foot of asbestos containing material to be removed. (1989, c. 724, s. 1; 2008-107, s. 29.6(a).)

§ 130A-451. Commission to adopt rules.

For the protection of the public health, the Commission shall adopt rules to implement this Article, AHERA, and the asbestos NESHAP for renovations and demolitions. (1989, c. 724, s. 1; 1993 (Reg. Sess., 1994), c. 686, s. 5.)

§ 130A-452. Local air pollution control programs.

(a) The Department may authorize any local air pollution control program to adopt and enforce the asbestos NESHAP for demolition and renovation if the local air pollution control program is certified by the North Carolina Environmental Management Commission pursuant to G.S. 143-215.112. The Department shall authorize any local air pollution control program to adopt and enforce the asbestos NESHAP for demolition and renovation if the local air pollution control program was certified by the North Carolina Environmental Management Commission pursuant to G.S. 143-215.112 prior to October 1, 1994. A local air pollution control program shall continue to be authorized by the Department to enforce the asbestos NESHAP for demolition and renovation so long as the local air pollution control program maintains its certification under G.S. 143-215.112 and complies with any rules adopted by the Commission for Public Health pursuant to subsection (b) of this section. Any local air pollution control program authorized to adopt and enforce the asbestos NESHAP for demolition and renovation shall have the authority to enforce the asbestos NESHAP for demolition and renovation under G.S. 130A-18, 130A-22(b1), 130A-22(b2), and 130A-25. Judicial review of an administrative penalty assessed under G.S. 130-22(b1) and G.S. 130A-22(b2) shall be as provided in G.S. 143-215.112(d2)(1) and Article 4 of Chapter 150B of the General Statutes.

(b) The Commission for Public Health shall adopt rules regarding the authorization of local air pollution control programs to enforce the asbestos NESHAP for demolition and renovation. (1993 (Reg. Sess., 1994), c. 686, s. 7; 1995, c. 123, s. 6; 2007-182, s. 2.)

§ 130A-453. Reserved for future codification purposes.

Article 19A.

Lead-Based Paint Hazard Management Program.

§ 130A-453.01. Definitions.

Unless otherwise required by the context, the definitions set out in 40 Code of Federal Regulations § 745.223 (As set out in Vol. 61, No. 169, of the Federal Register, pages 45813 to 45815, 29 August 1996) apply throughout this Article. (1997-523, s. 1.)

§ 130A-453.02. Purpose of Article.

(a) This Article is enacted to establish an authorized State program under section 404 of the Toxic Substances Control Act (15 U.S.C. § 2684), as enacted by Subtitle B, section 1021 of

the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Pub. L. 102-550, 106 Stat. 3916), that will apply in this State in lieu of the corresponding federal program administered by the federal Environmental Protection Agency. This Article requires a person who performs an inspection, risk assessment, or abatement of a child-occupied facility or target housing to be certified and establishes the procedure and requirements for certification. It also requires a person who conducts an abatement of a child-occupied facility or target housing to obtain a permit for the abatement.

(b) This Article does not require the inspection, risk assessment, or abatement of a child-occupied facility or target housing under any circumstance. G.S. 130A-131.5 and the rules adopted to implement that section authorize the Department to order an abatement to eliminate a lead poisoning hazard. This Article does not expand or otherwise change that authority. (1997-523, s. 1.)

§ 130A-453.03. Certification of individuals who perform inspections, risk assessments, or abatements.

(a) Requirement. – An individual shall not perform or offer to perform an inspection, risk assessment, or abatement of target housing or a child-occupied facility unless the individual is certified by the Department to perform the activity. Performance of an inspection, risk assessment, or abatement encompasses a range of activities. To ensure proper performance of all aspects of an inspection, risk assessment, or abatement, the certification requirement imposed on an individual applies to each activity. The categories of individual certification are inspector, risk-assessor, designer, supervisor, worker, and any other category required by federal law. The category of risk-assessor includes the category of inspector. Thus, a person who is certified as a risk-assessor is not required to be certified as an inspector. Otherwise, an individual who performs or offers to perform activities within the scope of more than one category must be certified in each category.

(b) Exemption. – The certification requirement imposed by this section does not apply to an individual who performs an abatement of a residential dwelling the person owns and occupies as a residence, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while an abatement is being performed, or a child residing in the dwelling has been identified as having an elevated blood lead level. (1997-523, s. 1.)

§ 130A-453.04. Certification and other requirements of firms that perform inspections, risk assessments, or abatements.

A firm or other entity shall not perform or offer to perform an inspection, risk assessment, or abatement of target housing or a child-occupied facility unless the entity is certified by the Department as a firm that is qualified to perform the activity. An entity that performs an inspection, risk assessment, or abatement of target housing or a child-occupied facility shall not use an individual to perform the inspection, risk assessment, or abatement unless the individual is certified by the Department to perform the activity. (1997-523, s. 1.)

§ 130A-453.05. Qualifications for certification of individuals and firms.

To be certified under this Article, a person must meet the qualification requirements set by the Commission. Qualification requirements include education, training, experience, the successful completion of an examination, and payment of any applicable fee. (1997-523, s. 1.)

§ 130A-453.06. Renewal of certification.

A certification of an individual or a firm issued under this Article expires on the last day of the 12th month after the certification is issued. A certification may be renewed by paying the renewal fee and meeting any standards for renewal, such as refresher training, established by the Commission. (1997-523, s. 1.)

§ 130A-453.07. Accreditation of training courses and training providers.

Completion of a training course on inspection, risk assessment, or abatement does not satisfy a training requirement that is a condition for certification under this Article unless both the course provider and the course have been accredited by the Department. The Commission shall establish the procedure and standards for a course provider and a course to be accredited. (1997-523, s. 1.)

§ 130A-453.08. Certification and accreditation fee schedule.

(a) The Commission shall establish fees for the items listed in the table below. A fee for an item may not exceed the maximum amount set in the table. The fees for examination and certification apply to each category in which a person is examined for certification or is certified.

Item	Maximum Fee
Examination for certification	$75
Certification as worker	50
Certification in any category other than worker	150
Course provider accreditation	150
Initial course accreditation	2,000
Renewal course accreditation	750.

(b) Use. – The fees imposed under this section are departmental receipts and shall be used by the Department to administer this Article.

(c) Exemptions. – The examination and certification fees imposed under this section do not apply to governmental regulatory personnel who perform inspections, risk assessments, or abatements solely for the purpose of determining compliance with applicable statutes or rules. The course provider fees imposed under this section do not apply to the State, a unit of local government, or a nonprofit entity. The course accreditation fees imposed under this section do not apply to a course offered by the State, a unit of local government, or a nonprofit entity. (1997-523, s. 1.)

§ 130A-453.09. Abatement permits.

(a) Requirement. – No person shall conduct an abatement of target housing or a child-occupied facility unless the person has obtained a permit for the abatement from the Department. The Commission shall establish the procedure for obtaining a permit.

(b) Permit Fee. – An applicant for an abatement permit must pay an application fee to the Department. The fee is two percent (2%) of the contracted price for the corrective action to be performed in the abatement, not to exceed five hundred dollars ($500.00). The fee imposed under this section is a departmental receipt and shall be used by the Department to administer this Article.

(c) Exemption. – An individual who owns a single-family dwelling, conducts an abatement on the dwelling, and will reside in the dwelling after the abatement is completed is not required to obtain a permit to conduct the abatement, unless the dwelling is occupied by a person or persons other than the owner or the owner's immediate family while the abatement is being performed, or a child residing in the building has been identified as having an elevated blood lead level. If a

permit is required, an individual who performs an abatement of a residential dwelling that the individual owns and occupies as a residence is not required to pay a fee for the permit. (1997-523, s. 1.)

§ 130A-453.10. Standards to ensure elimination of hazards; consumer information.

(a) Standards. – The Commission shall establish standards to ensure that inspections, risk assessments, and abatements performed under this Article result in the elimination of lead-based paint hazards. An inspection, risk assessment, or abatement performed under this Article must be performed in accordance with these standards.

(b) Information. – The Department shall prepare a fact sheet on abatement for distribution to consumers. The sheet shall list the various measures for abatement of a child-occupied facility or target housing and give the relative cost of each measure. A person who is certified under this Article shall give a copy of the sheet to a person for whom the certified person performs an abatement. (1997-523, s. 1.)

§ 130A-453.11. Commission to adopt rules.

The Commission shall adopt rules to implement this Article. (1997-523, s. 1.)

§ 130A-453.12: Reserved for future codification purposes.

§ 130A-453.13: Reserved for future codification purposes.

§ 130A-453.14: Reserved for future codification purposes.

§ 130A-453.15: Reserved for future codification purposes.

§ 130A-453.16: Reserved for future codification purposes.

§ 130A-453.17: Reserved for future codification purposes.

§ 130A-453.18: Reserved for future codification purposes.

§ 130A-453.19: Reserved for future codification purposes.

§ 130A-453.20: Reserved for future codification purposes.

§ 130A-453.21: Reserved for future codification purposes.

Article 19B.

Certification and Accreditation of Lead-Based Paint Renovation Activities.

§ 130A-453.22. Definitions.

(a) Except as provided in subsection (b) of this section and in any rules adopted under this Article, the definitions set out in 40 C.F.R. §§ 745.83 and 745.223, as amended, apply throughout this Article.

(b) Unless otherwise required by the context, the following definitions apply throughout this Article:

(1) Certified dust sampling technician. – An individual who (i) is employed by a certified renovation firm, (ii) has successfully completed a dust sampling technician training course accredited by the Department, and (iii) is certified by the Department to perform dust clearance sampling after the completion of renovation activities, if the person contracting for the renovation activity requests dust clearance sampling.

(2) Certified renovation firm. – A company, partnership, corporation, sole proprietorship, association, or other business entity or individual doing business in the State, or a federal, State, tribal, or local government agency, or a nonprofit organization that has been certified by the Department to perform renovation activities covered by this Article.

(3) Certified renovator. – An individual who (i) is employed by a certified renovation firm, (ii) either performs or directs trained workers who perform renovation activities, (iii) has successfully completed a renovation training course accredited by the Department or the United States Environmental Protection Agency, and (iv) is certified with the Department to perform renovation activities.

(4) Child-occupied facility. – A building, or portion of a building, constructed prior to 1978, visited regularly by the same child under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings, the child-occupied facility encompasses those common areas, both interior and exterior, routinely used by children under age 6.

(5) Renovation activities. – The activities relative to lead-based paint renovations including the use of recognized lead test kits, information distribution, work practices such as cleaning verification and dust clearance sampling, as well as the activities performed by a certified firm, certified renovator, or certified dust sampling technician. Renovation activities include all activities included in the definition of the term "renovation" in 40 C.F.R. § 745.83.

(6) Target housing – Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities, unless one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities, or any zero-bedroom dwelling. For purposes of this Article, a zero-bedroom dwelling is any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

(7) Trained renovation worker. – An individual who (i) receives on-the-job training and direction pertaining to the individual's assigned tasks in renovation work in

target housing or child-occupied facilities from a certified renovator and (ii) is employed by a certified renovation firm. (2009-488, s. 1.)

§ 130A-453.23. Purpose.

(a) This Article is enacted to establish an authorized State program under sections 402 and 406 of the Toxic Substance Control Act, 15 U.S.C. §§ 2682 and 2686, as enacted by Subtitle B of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852(d), that will apply in this State in lieu of the corresponding federal program administered by the United States Environmental Protection Agency (EPA). This Article requires that renovations for compensation in target housing and child-occupied facilities be performed or directed by certified renovators and certified firms; establishes procedures and requirements for certification of individuals and firms that perform renovation activities for compensation; and establishes renovation work practice standards. This Article also requires the accreditation of renovation training providers and courses and establishes record-keeping requirements.

(b) Certified renovation firms are required to distribute EPA-approved pamphlets. (2009-488, s. 1.)

§ 130A-453.24. Certification of individuals and firms that perform renovations, cleaning verification, and dust clearance sampling.

(a) No firm shall perform, offer, or claim to perform renovation activities for compensation in target housing or child-occupied facilities unless the firm is a certified renovation firm.

(b) No individual shall:

(1) Perform, offer, or claim to perform renovation activities for compensation in target housing or child-occupied facilities unless the individual is a certified renovator.

(2) Perform as a trained renovation worker for compensation in target housing or child-occupied facilities unless the individual is employed by a certified renovation firm and is trained and supervised in his or her assigned tasks by a certified renovator.

(3) Conduct dust clearance sampling for compensation in target housing or child-occupied facilities unless the individual is a certified dust sampling technician, risk assessor, or lead-based paint inspector. For purposes of this Article, the terms "risk assessor" and "lead-based paint inspector" shall have the same meaning as provided in Article 19A of this Chapter.

(4) Conduct cleaning verification for compensation in target housing or child-occupied facilities unless the individual is a certified renovator.

(c) The Commission shall adopt rules governing the certification of individuals and firms performing renovation, cleaning verification, or dust clearance sampling. The rules adopted shall include, but not be limited to, requirements for qualifications, training, and experience, and the payment of fees pursuant to G.S. 130A-453.27. (2009-488, s. 1.)

§ 130A-453.25. Renewals of certification.

(a) Certification as a renovation firm under this Article expires on the last day of the 12th month after the certification is issued and shall be renewed annually. A firm may renew its certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(b) Certification as a dust sampling technician expires on the last day of the month of the year after certification training is completed and shall be renewed annually. A certified dust sampling technician may renew his or her certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(c) A certified renovator shall renew his or her certification every five years by meeting the standards for renewal established by the Commission. (2009-488, s. 1.)

§ 130A-453.26. Accreditation of training courses and training providers.

(a) No training provider shall provide, offer, or claim to provide:

(1) Training or refresher courses in renovation unless the training or courses have been accredited by the Department.

(2) Dust sampling technician courses or refresher courses unless the courses have been accredited by the Department.

(b) The Commission shall adopt rules governing the annual accreditation of training providers and the annual accreditation of initial and refresher training courses.

(c) Accreditation as a training provider expires on the last day of the calendar year following the year the accreditation was issued. Accreditation of a training course or refresher course expires on the last day of the calendar year following the year the accreditation was issued. The accreditation of a training provider and the accreditation of a training or refresher course may be renewed by complying with this Article and any standards established by the Commission.

(d) Training providers and training courses accredited by the EPA are granted reciprocity, but providers and courses must be registered with the Department and comply with this Article. (2009-488, s. 1.)

§ 130A-453.27. Certification and accreditation fee schedule.

(a) The Department shall collect annual accreditation and certification fees authorized under this Article, including initial and renewal fees. The fees collected shall be used for the ongoing administration of this Article and shall not revert to the General Fund at the end of the fiscal year. The fees shall not exceed the following:

		Maximum Fee
(1)	Accreditation of a training provider	$150.00
(2)	Reaccreditation of a training provider	$150.00
(3)	Accreditation or reaccreditation of initial courses (Per course per language)	$2,000
(4)	Accreditation or reaccreditation of refresher courses (Per course per language)	$2,000
(5)	Certification or recertification of a firm	$300.00
(6)	Certification or recertification of a dust sampling technician	$150.00

(b) The accreditation fees imposed under this section do not apply to local or State governmental regulatory agency personnel, Indian tribes, or nonprofit training providers. (2009-488, s. 1.)

§ 130A-453.28. Work practices and responsibilities of renovation firms, renovators, and dust sampling technicians.

The Commission shall establish standards for work practices and define the responsibilities of certified renovators and certified renovation firms and individuals. (2009-488, s. 1.)

§ 130A-453.29. Record retention, information distribution, and reporting requirements.

The Commission shall establish standards for record keeping, record retention, and information distribution; and reporting requirements for training providers, certified renovators, and certified renovation firms and individuals. (2009-488, s. 1.)

§ 130A-453.30. Exemptions from renovation, repair, and painting requirements.

The Commission shall adopt rules exempting certain renovation activities from this Article. (2009-488, s. 1.)

§ 130A-453.31. Commission to adopt rules.

The Commission shall adopt rules to implement this Article. (2009-488, s. 1.)

§ 130A-454. Reserved for future codification purposes.

Article 20.

Occupational Health.

§ 130A-455. Reportable diseases, illnesses, and injuries.

The Commission shall adopt rules establishing a list of serious and preventable occupational injuries that occur while working on a farm, and serious and preventable occupational diseases and illnesses to be reported to the Department. Occupational diseases and illnesses are defined as those diseases and illnesses which result from exposure to a health hazard in the workplace. The Commission shall adopt rules establishing the specific information to be submitted when making a report required by this Article, time limits for reporting, and the form of the report. The rules adopted by the Commission shall avoid duplication of reporting and minimize the cost to the physicians, medical facilities, laboratories, or other persons reporting under this act. (1993, c. 486.)

§ 130A-456. Physicians to report.

A physician licensed to practice medicine in this State who treats a person for an occupational injury that occurred while working on a farm or an occupational disease, illness, declared by the Commission to be reportable, shall report the information required by the Commission to the Department. (1993, c. 486.)

§ 130A-457. Medical facilities to report.

A medical facility in which there is a patient who has an occupational injury that occurred while working on a farm, or an occupational disease, illness, declared by the Commission to be reportable, may report information specified by the Commission to the Department. (1993, c. 486.)

§ 130A-458. Persons in charge of laboratories to report.

A person in charge of a laboratory providing diagnostic service in this State shall report to the Department laboratory findings related to occupational diseases and illnesses for which laboratory reporting is required by the Commission. (1993, c. 486, s. 1; 2001-28, s. 3.)

§ 130A-459. Immunity of persons who report.

A person who in good faith makes a report pursuant to the provisions of this Article shall be immune from any civil liability that might otherwise be incurred or imposed as a result of making the report. (1993, c. 486.)

§ 130A-460. Report to Department of Labor.

(a) Each report to the Department pursuant to the Article shall be evaluated for its potential indication of an exposure to a health hazard. If an on-site visit is deemed necessary, a copy of the report for work sites for which the Department of Labor has jurisdiction for the enforcement of occupational health laws shall be forwarded to the Department of Labor. The Department of Labor and the Department may exchange information regarding specific workplaces and conditions and such information shall retain the same confidentiality provided by the originating agency.

(b) If the Department of Labor determines that an on-site visit is necessary for enforcement purposes, the Department of Labor shall inform the Department within 30 days of the receipt of the report, and a representative of the Department may participate in the visit. The Department shall not contact or otherwise notify any employer of a pending investigation prior to the determination by the Department of Labor regarding the necessity of an on-site visit and shall not give advance notice of a visit if one is necessary.

(c) Subsection (b) shall not apply to inspections conducted for the Industrial Commission pursuant to G.S. 97-76 and shall not affect the allocation of responsibilities set forth in G.S. 74-24.4(c). (1993, c. 486.)

§§ 130A-461 through 130A-464. Reserved for future codification purposes.

Article 21.

Advance Health Care Directive Registry.

§ 130A-465. Advance Health Care Directive Registry establishment.

The Secretary of State shall establish and maintain a statewide, on-line, central registry for advance health care directives. The registry shall be accessible over the Internet through a site maintained by the Secretary of State. (2001-455, s. 1; 2001-513, s. 30(b).)

§ 130A-466. Filing requirements.

(a) A person may submit any of the following documents and the revocations of these documents to the Secretary of State for filing in the Advance Health Care Directive Registry established pursuant to this Article:

(1) A health care power of attorney under Article 3 of Chapter 32A of the General Statutes.

(2) A declaration of a desire for a natural death under Article 23 of Chapter 90 of the General Statutes.

(3) An advance instruction for mental health treatment under Part 2 of Article 3 of Chapter 122C of the General Statutes.

(4) A declaration of an anatomical gift under Part 3A of Article 16 of Chapter 130A of the General Statutes.

(b) Any document and any revocation of a document submitted for filing in the registry shall be notarized regardless of whether notarization is required for its validity. This subsection does not apply to a declaration of an anatomical gift described in subdivision (a)(4) of this section.

(c) The document may be submitted for filing only by the person who executed the document.

(d) The person who submits the document shall supply a return address.

(e) The document shall be accompanied by any fee required by this Article. (2001-455, s. 1; 2001-513, s. 30(b); 2003-70, s. 1; 2007-538, s. 10.)

§ 130A-467. Validity of unregistered documents.

Failure to register a document with the registry maintained by the Secretary of State pursuant to this Article shall not affect the document's validity. Failure to notify the Secretary of State of the revocation of a document filed with the registry shall not affect the validity of a revocation that meets the statutory requirements for the revocation to be valid. (2001-455, s. 1; 2001-513, s. 30(b).)

§ 130A-468. Filing of documents with the registry.

(a) When the Secretary of State receives a document that may be filed with the registry pursuant to this Article, the Secretary shall create a digital reproduction of that document and enter the reproduced document into the registry database. The Secretary is not required to review a document to ensure that it complies with the particular statutory requirements applicable to the document. Each document entered into the registry database shall be assigned a unique file number and password.

(b) Upon entering the reproduced document into the registry database, the Secretary shall return the original document and a wallet-size card containing the document's file number and password to the person who submitted the document.

(c) When the Secretary of State receives a revocation of a document that is filed with the registry and that document's file number and password, or a request to remove that document from the registry without its revocation, the Secretary shall delete that document from the registry database.

(d) The Secretary of State's entry of a document into, or removal of a document from, the registry database does not do any of the following:

(1) Affect the validity of the document in whole or in part.

(2) Relate to the accuracy of information contained in the document.

(3) Create a presumption regarding the validity of the document, regarding the accuracy of information contained in the document, or that the statutory requirements for the document have been met. (2001-455, s. 1; 2001-513, s. 30(b); 2007-502, s. 16.)

§ 130A-469. Disclosure of information contained in the registry.

The registry shall be accessible only over the Internet. A document filed in the registry shall be accessible only if a person attempting to access the document enters both the file number and password of the document. Documents filed in the registry, file numbers, passwords, and any other information maintained by the Secretary of State under this Article shall not be subject to disclosure pursuant to Chapter 132 of the General Statutes. (2001-455, s. 1; 2001-513, s. 30(b).)

§ 130A-470. Fees for using the registry; other funds for the registry.

(a) The Secretary of State shall charge a fee of ten dollars ($10.00) for filing a document, other than a revocation, with the registry. The Secretary of State shall not charge a fee for filing a revocation with the registry. The fee shall be applied to the cost of maintaining the registry and to promoting public education and awareness of the registry.

(b) The Secretary of State, on behalf of the State, may accept gifts, donations, devises, and other forms of voluntary contributions; may apply for grants from public and private sources; and may expend funds received under this subsection for the purpose of promoting public education and awareness of the registry.

(c) All fees, funds, and gifts received pursuant to this section shall be subject to audit by the State Auditor and shall be expended in conformity with Chapter 143C of the General Statutes. (2001-455, s. 1; 2001-513, s. 30(b); 2006-203, s. 70; 2011-284, s. 89.)

§ 130A-471. Limitation of liability.

The State of North Carolina, the Secretary of State, and any agent or person employed by the Secretary of State shall not be liable for any claims or demands arising out of the administration or operation of the registry authorized by this Article, except for acts of gross negligence, willful misconduct, or intentional wrongdoing. (2001-455, s. 1; 2001-513, s. 30(b).)

§§ 130A-472 through 130A-474: Reserved for future codification purposes.

Article 22.

A Terrorist Incident Using Nuclear, Biological, or Chemical Agents.

§ 130A-475. Suspected terrorist attack.

(a) If the State Health Director reasonably suspects that a public health threat may exist and that the threat may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the State Health Director is authorized to order any of the following:

(1) Require any person or animal to submit to examinations and tests to determine possible exposure to the nuclear, biological, or chemical agents.

(2) Test any real or personal property necessary to determine the presence of nuclear, biological, or chemical agents.

(3) Evacuate or close any real property, including any building, structure, or land when necessary to investigate suspected contamination of the property. The period of closure during an investigation shall not exceed 10 calendar days. If the State Health Director determines that a longer period of closure is necessary to complete the investigation, the Director may institute an action in superior court to order the property to remain closed until the investigation is completed.

(4) Limit the freedom of movement or action of a person or animal that is contaminated with, or reasonably suspected of being contaminated with, a biological, chemical or nuclear agent that may be conveyed to other persons or animals.

(5) Limit access by any person or animal to an area or facility that is housing persons or animals whose movement or action has been limited under

subdivision (4) of this subsection or to an area or facility that is contaminated with, or reasonably suspected of being contaminated with, a biological, chemical or nuclear agent that may be conveyed to other persons or animals. Nothing in this subdivision shall be construed to restrict the access of authorized health care, law enforcement, or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties.

(b) The authority under subsection (a) of this section shall be exercised only when and so long as a public health threat may exist, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. Before applying the authority under subdivision (4) or (5) of subsection (a) of this section to livestock or poultry for the purpose of preventing the direct or indirect conveyance of a biological, chemical or nuclear agent to persons, the State Health Director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

The period of limited freedom of movement or access under subdivisions (4) and (5) of subsection (a) of this section shall not exceed 30 calendar days. Any person substantially affected by that limitation may institute, in superior court in Wake County or in the county in which the limitation is imposed, an action to review the limitation. The State Health Director shall give the persons known by the State Health Director to be substantially affected by the limitation reasonable notice under the circumstances of the right to institute an action to review the limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of the request, excluding Saturdays and Sundays. The person substantially affected by that limitation is entitled to be represented by counsel of the person's own choice or if the person is indigent, the person shall be represented by counsel appointed in accordance with Article 36 of Chapter 7A of the General Statutes and the rules adopted by the Office of Indigent Defense Services. The court shall reduce or terminate the limitation unless it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of biological, chemical or nuclear agents to others, and may apply such conditions to the limitation as the court deems reasonable and necessary.

If the State Health Director determines that a 30-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the State Health Director must institute in superior court in the county in which the limitation is imposed, an action to obtain an order extending the period limiting the freedom of movement or access. If the person substantially affected by the limitation has already instituted an action in superior court in Wake County, the State Health Director must institute the action in superior court in Wake County or as a counterclaim in the pending case. The court shall continue the limitation for a period not to exceed 30 days, subject to conditions it deems reasonable and necessary, if it determines by the preponderance of the evidence, that additional limitation is reasonably necessary to prevent or limit the conveyance of biological, chemical, or nuclear agents to others. The court order shall specify the period of time the limitation is to be continued and shall provide for automatic termination of the order upon written determination by the State Health Director or local health director that the limitation on freedom of movement or access is no longer necessary to protect the public health. In

addition, where the petitioner can prove by a preponderance of the evidence that the limitation on freedom of movement or access was not or is no longer needed for protection of the public health, the person so limited may move the trial court to reconsider its order extending the limitation on freedom of movement or access before the time for the order otherwise expires and may seek immediate or expedited termination of the order. Before the expiration of an order issued under this section, the State Health Director may move to continue the order for additional periods not to exceed 30 days each.

(c) If the State Health Director reasonably suspects that there exists a public health threat that may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the State Health Director shall notify the Governor and the Secretary of Public Safety. If the Secretary of Public Safety reasonably suspects that a public health threat may exist and that the threat may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the Secretary shall notify the Governor and the State Health Director.

(d) For the purpose of this Article, the term "public health threat" means a situation that is likely to cause an immediate risk to human life, an immediate risk of serious physical injury or illness, or an immediate risk of serious adverse health effects.

(e) Nothing in this section shall limit any authority otherwise granted to local or State public health officials under this Chapter. (2002-179, s. 1; 2004-80, s. 3; 2004-199, s. 33; 2011-145, s. 19.1(g).)

§ 130A-476. Access to health information.

(a) Notwithstanding any other provision of law, a health care provider, a person in charge of a health care facility, or a unit of State or local government may report to the State Health Director or a local health director any events that may indicate the existence of a case or outbreak of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents. Events that may be reported include unusual types or numbers of symptoms or illnesses presented to the provider, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over-the-counter pharmaceuticals. To the extent practicable, a person who makes a report under this subsection shall not disclose personally identifiable information. A person disclosing or not disclosing information pursuant to this subsection is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the health care provider was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed. Notwithstanding the foregoing, if a health care provider or unit of State or local government willfully does not disclose information pursuant to this subsection, the immunity from civil or criminal liability provided under this subsection shall not be available if the person had actual knowledge that a condition or illness was caused by use of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21(c).

(b) The State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or

other health-related information when necessary to conduct a public health investigation or surveillance of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents. The order shall specify which health care providers must report, what information is to be reported, and the period of time for which reporting is required. The period of time for which reporting is required pursuant to a temporary order shall not exceed 90 days. The Commission may adopt rules to continue the reporting requirement when necessary to protect the public health.

(c) Health care providers and persons in charge of health care facilities or laboratories shall, upon request and proper identification, permit the State Health Director or a local health director to examine, review, and obtain a copy of records containing confidential or protected health information, or a summary of pertinent portions of those records, (i) that pertain to a report authorized by subsection (a) or required by subsection (b) of this section, or (ii) that, in the opinion of the State Health Director or local health director, are necessary for an investigation of a case or outbreak of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents.

(d) A person who makes a report pursuant to subsection (b) of this section or permits examination, review, or copying of medical records pursuant to subsection (c) of this section is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with those subsections.

(e) Confidential or protected health information received by the State Health Director or a local health director pursuant to this section shall be confidential and shall not be released, except when the release is:

(1) Made pursuant to any other provision of law;

(2) To another federal, state, or local public health agency for the purpose of preventing or controlling a public health threat; or

(3) To a court or law enforcement official or law enforcement officer for the purpose of enforcing the provisions of this Chapter or for the purpose of investigating a terrorist incident using nuclear, biological, or chemical agents. A court or law enforcement official or law enforcement officer who receives the information shall not disclose it further, except (i) when necessary to conduct an investigation of a terrorist incident using nuclear, biological, or chemical agents, or (ii) when the State Health Director or a local health director seeks the assistance of the court or law enforcement official or law enforcement officer in preventing or controlling the public health threat and expressly authorizes the disclosure as necessary for that purpose.

(f) Repealed by Session Laws 2004-124, s. 10.34(a), effective January 1, 2005.

(g) In this section the following terms shall include:

(1) "Health care provider" includes a physician licensed to practice medicine in North Carolina or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, advanced practice nurses, chiropractors, respiratory care therapists, and emergency medical technicians; and

(2) "Health care facility" includes hospitals, skilled nursing facilities, intermediate care facilities, psychiatric facilities, rehabilitation facilities, home health agencies, ambulatory surgical facilities, or any other health care related facility, whether publicly or privately owned. (2002-179, s. 1; 2004-80, s. 7; 2004-124, s. 10.34(a).)

§ 130A-477. Abatement of public health threat.

If it is determined that a public health threat may exist because of the contamination of property caused by a terrorist incident using nuclear, biological, or chemical agents, the State Health Director may order any action to abate that public health threat. To the extent that any owner, lessee, operator, or other person in control of the property is innocent of culpability in the creation of the public health threat, that person shall not be responsible for the costs of abating the public health threat. (2002-179, s. 1.)

§ 130A-478. Tort liability.

Article 31 of Chapter 143 applies to negligent acts committed by any officer, employee, involuntary servant or agent of the State acting pursuant to this Article. (2002-179, s. 1.)

§ 130A-479. Biological agents registry; rules; penalties.

(a) The Department shall establish and administer a program for the registration of biological agents. The biological agents registry shall identify the biological agents possessed and maintained by any person in this State and shall contain other information required under rules adopted by the Commission.

(b) The following definitions apply in this section:

(1) "Biological agent" means:

a. Any select agent that is a microorganism, virus, bacterium, fungus, rickettsia, or toxin listed in Appendix A of Part 72 of Title 42 of the Code of Federal Regulations.

b. Any genetically modified microorganisms or genetic elements from an organism on Appendix A of Part 72 of Title 42 of the Code of Federal Regulations, shown to produce or encode for a factor associated with a disease.

c. Any genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins listed on Appendix A of Part 72 of Title 42 of the Code of Federal Regulations, or their toxic submits.

(2) "Person" means any association, business, corporation, facility, firm, individual, institution of higher education, organization, partnership, society, State agency, or other legal entity.

(c) The Commission shall adopt rules for the implementation of the registry program, as follows:

(1) Determining and listing the biological agents required to be reported under this section.

(2) Designating persons required to make reports and specific information required to be reported including time limits for reporting, form of reports, and to whom reports shall be submitted.

(3) Providing for the release of information in the registry to State and federal law enforcement agencies and the United States Centers for Disease Control and Prevention pursuant to a communicable disease investigation commenced or conducted by the Department, the Commission, or other state or federal law enforcement agency having investigatory authority, or in connection with any investigation involving release, theft, or loss of biological agents.

(4) Establishing a system of safeguards that requires persons possessing and maintaining biological agents subject to this section to comply with the same federal standards that apply to persons registered to possess the same agents under federal law.

(5) Establishing a process for persons that possess and maintain biological agents to alert appropriate authorities of unauthorized possession or attempted possession of biological agents. The rules shall designate appropriate authorities for receipt of alerts from these persons.

(d) Any person that possesses and maintains any biological agent required to be reported under this section shall report to the Department the information required by the Commission for inclusion in the biological agent registry.

(e) Except as otherwise provided in this section, information prepared for or maintained in the registry under this section shall be confidential and shall not be a public record under G.S. 132-1. The Department may, in accordance with rules adopted by the Commission, release information contained in the biological agent registry for the purpose of conducting or aiding in a communicable disease investigation. The Department shall cooperate with and may share information contained in the biological agent registry with the United States Centers for Disease Control and Prevention, and state and federal law enforcement agencies in any investigation involving the release, theft, or loss of a biological agent required to be reported under this section. Release of information from the registry as authorized under this subsection shall not render the information released a public record under G.S. 132-1. Release of information from the registry as authorized under this subsection also shall not render the information prepared for or maintained in the registry a public record under G.S. 132-1.

(f) The Department shall impose a civil penalty for a willful or knowing violation of this section in the amount of up to one thousand dollars ($1,000). Each day of a continuing violation shall be a separate offense. Any person wishing to contest a penalty shall be entitled to an administrative hearing in accordance with Chapter 150B of the General Statutes. (2001-469, s. 1; 2002-179, s. 2(a).)

§ 130A-480. Emergency department data reporting.

(a) For the purpose of ensuring the protection of the public health, the State Health Director shall develop a syndromic surveillance program for hospital emergency departments in order to detect and investigate public health threats that may result from (i) a terrorist incident using nuclear, biological, or chemical agents or (ii) an epidemic or

infectious, communicable, or other disease. The State Health Director shall specify the data to be reported by hospitals pursuant to this program, subject to the following:

(1) Each hospital shall submit electronically available emergency department data as specified by rule by the Commission. The Commission, in consultation with hospitals, shall establish by rule a schedule for the implementation of full electronic reporting capability of all data elements by all hospitals. The schedule shall take into consideration the number of data elements already reported by the hospital, the hospital's capacity to electronically maintain the remaining elements, available funding, and other relevant factors.

(2) None of the following data for patients or their relatives, employers, or household members may be collected by the State Health Director: names; postal or street address information, other than town or city, county, state, and the first five digits of the zip code; geocode information; telephone numbers; fax numbers; electronic mail addresses; social security numbers; health plan beneficiary numbers; account numbers; certificate or license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; web universal resource locators (URLs); Internet protocol (IP) address numbers; biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.

(b) The following are not public records under Chapter 132 of the General Statutes and are privileged and confidential:

(1) Data reported to the State Health Director pursuant to this section.

(2) Data collected or maintained by any entity with whom the State Health Director contracts for the reporting, collection, or analysis of data pursuant to this section.

The State Health Director shall maintain the confidentiality of the data reported pursuant to this section and shall ensure that adequate measures are taken to provide system security for all data and information. The State Health Director may share data with local health departments and the Centers for Disease Control and Prevention (CDC) for public health purposes. Local health departments are bound by the confidentiality provisions of this section. The Department shall enter into an agreement with the CDC to ensure that the CDC complies with the confidentiality provisions of this section. The State Health Director shall not allow information that it receives pursuant to this section to be used for commercial purposes and shall not release data except as authorized by other provisions of law.

(c) A person is immune from liability for actions arising from the required submission of data under this Article.

(d) For purposes of this section, "hospital" means a hospital, as defined in G.S. 131E-214.1(3), that operates an emergency room on a 24-hour basis. The term does not include a psychiatric hospital that operates an emergency room.

(e) Administrative emergency department data shall be reported by hospitals under Article 11A of Chapter 131E of the General Statutes. (2004-124, s. 10.34(b); 2006-264, s. 64(a); 2007-8, s. 1.)

§ 130A-481. Food defense.

The Department of Agriculture and Consumer Services, Department of Environmental Quality, and Department of Health and Human Services shall jointly develop a plan to protect the food supply from intentional contamination. The plan shall address protection of the food supply from production to consumption, including, but not limited to, the protection of plants, crops, and livestock. (2006-80, s. 2; 2015-241, s. 14.30(u).)

§ 130A-482. Reserved for future codification purposes.

§ 130A-483. Reserved for future codification purposes.

§ 130A-484. Reserved for future codification purposes.

§ 130A-485. Vaccination program established; definitions.

(a) The Department and local health departments shall offer a vaccination program for first responders who may be exposed to infectious diseases when deployed to disaster locations. The vaccinations shall include, but are not limited to, hepatitis A vaccination, hepatitis B vaccination, diphtheria-tetanus vaccination, influenza vaccination, pneumococcal vaccination, and other vaccinations when recommended by the United States Public Health Service and in accordance with Federal Emergency Management Directors Policy. Immune globulin will be made available when necessary, as determined by the State Health Director.

(b) Participation in the vaccination program is voluntary by the first responders, except for first responders who are classified as having "occupational exposure" to bloodborne pathogens as defined by the Occupational Safety and Health Administration Standard contained at 29 C.F.R. § 1910.10300 who shall be required to take the designated vaccinations or otherwise required by law.

(c) Nothing in this section shall require first responders, except first responders for whom the vaccination program is not voluntary as set forth in subsection (b) of this section, who present a written statement from a licensed physician indicating that a vaccine is medically contraindicated for the first responder or who sign a written statement that the administration of a vaccination conflicts with the first responder's religious tenets, to receive a vaccine.

(d) In the event of a vaccine shortage, the State Public Health Director, in consultation with the Centers for Disease Control and Prevention, shall give priority for vaccination to first responders deployed to a disaster location.

(e) The Department shall notify first responders of the availability of the vaccination program and shall provide educational materials on ways to prevent exposure to infectious diseases.

(f) As used in this section, unless the context clearly requires otherwise, the term:

(1) "Bioterrorism" means the intentional use of any microorganism, virus, infectious substance, biological product, or biological agent as defined in G.S. 130A-479 that may be engineered as a result of biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious

substance, or biological product to cause or attempt to cause death, disease, or other biological malfunction in any living organism.

(2) "Disaster location" means any geographical location where a bioterrorism attack, terrorist incident, catastrophic or natural disaster, or emergency occurs.

(3) "First responders" means State and local law enforcement personnel, fire department personnel, and emergency medical personnel who will be deployed to bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, or emergencies. (2003-227, s. 1.)

§§ 130A-486 through 130A-490. Reserved for future codification purposes.

Article 23.

Smoking Prohibited in Public Places and Places of Employment.

Part 1A. Findings and Intent.

§ 130A-491. Legislative findings and intent.

(a) Findings. – The General Assembly finds that secondhand smoke has been proven to cause cancer, heart disease, and asthma attacks in both smokers and nonsmokers. In 2006, a report issued by the United States Surgeon General stated that the scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.

(b) Intent. – It is the intent of the General Assembly to protect the health of individuals in public places and places of employment and riding in State government vehicles from the risks related to secondhand smoke. It is further the intent of the General Assembly to allow local governments to adopt local laws governing smoking within their jurisdictions that are more restrictive than the State law. (2007-193, s. 1; 2008-149, s. 1; 2009-27, s. 1.)

§ 130A-492. Definitions.

The following definitions apply in this Article:

(1) "Bar". – An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001.

(2) "Cigar bar". – An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001 that satisfies all of the following:

a. Generates sixty percent (60%) or more of its quarterly gross revenue from the sale of alcoholic beverages and twenty-five percent (25%) or more of its quarterly gross revenue from the sale of cigars;

b. Has a humidor on the premises; and

c. Does not allow individuals under the age of 21 to enter the premises.

Revenue generated from other tobacco sales, including cigarette vending machines, shall not be used to determine whether an establishment satisfies the definition of cigar bar.

(3) "Employee". – A person who is employed by an employer, or who contracts with an employer or third person to perform services for an employer, or who otherwise performs services for an employer with or without compensation.

(4) "Employer". – An individual person, business, association, political subdivision, or other public or private entity, including a nonprofit entity, that employs or contracts for or accepts the provision of services from one or more employees.

(5) "Enclosed area". – An area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one.

(6) "Grounds". – An unenclosed area owned, leased, or occupied by State or local government.

(7) "Local government". – A local political subdivision of this State, an airport authority, or an authority or body created by an ordinance, joint resolution, or rules of any such entity.

(8) "Local government building". – A building owned, leased as lessor, or the area leased as lessee and occupied by a local government.

(9) "Local vehicle". – A passenger-carrying vehicle owned, leased, or otherwise controlled by local government and assigned permanently or temporarily by local government to local government employees, agencies, institutions, or facilities for official local government business.

(10) "Lodging establishment". – An establishment that provides lodging for pay to the public.

(11) "Private club". – A country club or an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1). For the purposes of this Article, private club includes country club.

(12) "Private residence". – A private dwelling that is not a child care facility, as defined in G.S. 110-86(3), and not a long-term care facility, as defined in G.S. 131E-14.3(a)(1).

(13) "Private vehicle". – A privately owned vehicle that is not used for commercial or employment purposes.

(14) "Public place". – An enclosed area to which the public is invited or in which the public is permitted.

(15) "Restaurant". – A food or lodging establishment that prepares and serves drink or food as regulated by the Commission pursuant to Part 6 of Article 8 of this Chapter.

(16) "Smoking". – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

(17) "State government". – The political unit for the State of North Carolina, including all agencies of the executive, judicial, and legislative branches of government.

(18) "State government building". – A building owned, leased as lessor, or the area leased as lessee and occupied by State government.

(19) "State vehicle". – A passenger-carrying vehicle owned, leased, or otherwise controlled by the State and assigned permanently or temporarily to a State employee or State agency or institution for official State business.

(20) "Tobacco shop". – A business establishment, the main purpose of which is the sale of tobacco, tobacco products, and accessories for such products, that receives no less than seventy-five percent (75%) of its total annual revenues from the sale of tobacco, tobacco products, and accessories for such products, and does not serve food or alcohol on its premises. (2007-193, s. 1; 2008-149, s. 2; 2009-27, s. 1; 2009-550, s. 6(a).)

Part 1B. Smoking Prohibited in State Government Buildings and Vehicles.

§ 130A-493. Smoking prohibited in State government buildings and State vehicles.

(a) Notwithstanding Article 64 of Chapter 143 of the General Statutes pertaining to State-controlled buildings, smoking is prohibited inside State government buildings except as provided in subsection (b) of this section.

(b) Smoking is permitted inside State government buildings that are used for medical or scientific research to the extent that smoking is an integral part of the research. Smoking permitted under this subsection shall be confined to the area where the research is being conducted.

(c) The individual in charge of the State government building or the individual's designee shall post signs in conspicuous areas of the building. The signs shall state that "smoking is prohibited" and may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. In addition, the individual in charge of the building or the individual's designee shall:

(1) Direct a person who is smoking inside the building to extinguish the lighted smoking product.

(2) In a State psychiatric hospital, provide written notice to individuals upon admittance that smoking is prohibited inside the building and obtain the signature of the individual or the individual's representative acknowledging receipt of the notice.

(c1) Smoking is prohibited inside State vehicles. The individual or the individual's designee in charge of assigning the vehicle shall place one or more signs in conspicuous areas of the vehicle. The signs shall state that "smoking is prohibited" and may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. If the vehicle is used for undercover law enforcement operations, a sign is not required to be placed in the vehicle as provided in this subsection.

(d) Notwithstanding G.S. 130A-25, a violation of Article 23 of this Chapter shall not be punishable as a criminal violation. (2007-193, s. 1; 2007-459, s. 4.1; 2008-149, s. 3; 2009-27, s. 1.)

§ 130A-494. Other prohibitions.

Nothing in this Article repeals any other law prohibiting smoking, nor does it limit any law allowing regulation or prohibition of smoking on walkways or on the grounds of buildings. (2007-193, ss. 1, 3.2.)

§ 130A-495. Rules.

The Commission shall adopt rules to implement this Part. (2007-193, s. 1.)

Part 1C. Smoking Prohibited in Restaurants and Bars.

§ 130A-496. Smoking prohibited in restaurants and bars.

(a) Notwithstanding Article 64 of Chapter 143 of the General Statutes, smoking is prohibited in all enclosed areas of restaurants and bars, except as provided in subsection (b) of this section.

(b) Smoking may be permitted in the following places:

(1) A designated smoking guest room in a lodging establishment. No greater than twenty percent (20%) of a lodging establishment's guest rooms may be designated smoking guest rooms.

(2) A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. A cigar bar that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. To qualify under this subsection, the cigar bar must satisfactorily report on a quarterly basis to the Department, on a form prescribed by the Department, the revenue generated from the sale of alcoholic beverages and cigars as a percentage of quarterly gross revenue. The Department shall determine whether any additional documentation is required of the cigar bar to authenticate or verify revenue data submitted by the cigar bar. This subdivision shall not apply to any business that is established for the purpose of avoiding compliance with this Article.

(3) A private club. (2009-27, s. 1.)

§ 130A-497. Implementation and enforcement.

(a) A person who manages, operates, or controls a restaurant or bar in which smoking is prohibited shall:

(1) Conspicuously post signs clearly stating that smoking is prohibited. The signs may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

(2) Remove all indoor ashtrays and other smoking receptacles.

(3) Direct a person who is smoking to extinguish the lighted tobacco product.

(b) Continuing to smoke in a nonsmoking area described in this Part following oral or written notice by the person in charge of the area or the person's designee constitutes an infraction, and the person committing the infraction may be punished by a fine of not more than fifty dollars ($50.00).

(c) Conviction of an infraction under this section has no consequence other than payment of a penalty. A person found responsible for a violation of this section may not be assessed court costs.

(d) Notwithstanding G.S. 130A-25, a violation of this Part shall not be punishable as a misdemeanor.

(e) Administrative penalties imposed under G.S. 130A-22(h1) against a person who manages, operates, or controls a restaurant or bar and fails to comply with the provisions of this

Article and the rules adopted by the Commission to implement the provisions of this Article shall only be enforced by a local health director.

(f) The Commission shall adopt rules to implement the provisions of this Article. (2009-27, s. 1.)

Part 2. Local Government Regulation of Smoking.

§ 130A-498. Local governments may restrict smoking in public places.

(a) Except as otherwise provided in subsection (b1) of this section, and notwithstanding any other provision of Article 64 of Chapter 143 of the General Statutes to the contrary, a local government may adopt and enforce ordinances, board of health rules, and policies restricting or prohibiting smoking that are more restrictive than State law and that apply in local government buildings, on local government grounds, in local vehicles, or in public places. A rule or policy adopted on and after July 1, 2009 pursuant to this subsection by a local board of health or an entity exercising the powers of a local board of health must be approved by an ordinance adopted by the Board of County Commissioners of the county to which the rule applies. The definitions set forth in G.S. 130A-492 in Part 1A of this Article apply to this section and shall apply to any local ordinance, rule, or law adopted by a local government under this section.

(b) Repealed by Session Laws 2009-27, s. 1, effective January 2, 2010.

(b1) A local ordinance or other rules, laws, or policies adopted under this section may not restrict or prohibit smoking in the following places:

(1) A private residence.

(2) A private vehicle.

(3) A tobacco shop if smoke from the business does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. A tobacco shop that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the tobacco shop and smoke from the shop does not migrate into an enclosed area where smoking is prohibited pursuant to this Article.

(4) All of the premises, facilities, and vehicles owned, operated, or leased by any tobacco products processor or manufacturer, or any tobacco leaf grower, processor, or dealer.

(5) A designated smoking guest room in a lodging establishment. No greater than twenty percent (20%) of a lodging establishment's guest rooms may be designated smoking guest rooms.

(6) A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. A cigar bar that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. To qualify under this subsection, the cigar bar must satisfactorily report on a quarterly basis to the Department, on a form prescribed by the Department, the revenue generated from the sale of alcoholic beverages and cigars as a percentage of quarterly gross revenue. The Department shall determine whether any additional documentation is required of the cigar bar to authenticate or verify revenue data submitted by the cigar bar. This subdivision

shall not apply to any business that is established for the purpose of avoiding compliance with this Article.

(7) A private club.

(8) A motion picture, television, theater, or other live production set. This exemption applies only to the actor or performer portraying the use of tobacco products during the production.

(c) Repealed by Session Laws 2009-27, s. 1, effective January 2, 2010.

(c1) Continuing to smoke in violation of a local ordinance or other rules, laws, or policies adopted under this section constitutes an infraction, and the person committing the infraction may be punished by a fine of not more than fifty dollars ($50.00). Conviction of an infraction under this section has no consequence other than payment of a penalty. A person smoking in violation of a local ordinance or other rules, laws, or policies adopted under this section may not be assessed court costs.

(d) Repealed by Session Laws 2009-27, s. 1, effective January 2, 2010.

(d1) Notwithstanding G.S. 130A-25 or any other provision of law, a violation of a local ordinance, rule, law, or policy adopted under this section shall not be punishable as a misdemeanor.

(d2) A local government may enforce an ordinance, rule, law, or policy under this section against a person who manages, operates, or controls a public place only as provided in G.S. 130A-22(h1).

(e) A county ordinance adopted under this section is subject to the provisions of G.S. 153A-122. (2007-193, ss. 2, 3.1; 2007-484, s. 31.7; 2008-95, s. 1; 2008-149, s. 4; 2009-27, s. 1.)

§ 130A-499: Reserved for future codification purposes.

§ 130A-500: Reserved for future codification purposes.

§ 130A-501: Reserved for future codification purposes.

§ 130A-502: Reserved for future codification purposes.

§ 130A-503: Reserved for future codification purposes.

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§ 130A-506: Reserved for future codification purposes.

§ 130A-507: Reserved for future codification purposes.

§ 130A-508: Reserved for future codification purposes.

§ 130A-509: Reserved for future codification purposes.

§ 130A-510: Reserved for future codification purposes.