Chapter 143.

State Departments, Institutions, and Commissions

Article 1.

Executive Budget Act.

§§ 143-1 through 143-3.5: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§§ 143-1 through 143-3.5: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§§ 143-1 through 143-3.5: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

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§§ 143-1 through 143-3.5: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§§ 143-1 through 143-3.5: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§§ 143-1 through 143-3.5: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-3.6: Repealed.

§ 143-3.7: Repealed by Session Laws 1997-443, s. 23(b).

§§ 143-4 through 143-10. Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§§ 143-4 through 143-10. Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§§ 143-4 through 143-10. Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

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§§ 143-4 through 143-10. Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-10.1: Repealed by Session Laws 1991, c. 689, s. 342.

§ 143-10.1A: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-10.2: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§§ 143-10.3 through 143-10.6: Repealed by Session Laws 2001-424, s. 12.2(a), effective July 1, 2001.

§ 143-10.7: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-11: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-11.1: Repealed by Session Laws 1983, c. 717, s. 55.

§§ 143-12 through 143-16.4: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§§ 143-12 through 143-16.4: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§§ 143-12 through 143-16.4: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§§ 143-12 through 143-16.4: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

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§§ 143-12 through 143-16.4: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-16.5: Repealed by Session Laws 1999-237, s. 19a, effective June 30, 1999, and applicable to agreements entered on or after November 15, 1998.

§ 143-16.6: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-16.7: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-17: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-18: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-18.1: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-19: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-20: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-20.1: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-21: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-22: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-23: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-23.1. Repealed by Session Laws 1985, c. 290, s. 4, effective July 1, 1985.

§ 143-23.2: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-23.3: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-24: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-25: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-26: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-27: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-27.1. Repealed by Session Laws 1979, 2nd Session, c. 1137, s. 43.

§ 143-27.2. Repealed.

§ 143-28: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-28.1: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-29: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-30: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-31: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-31.1: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-31.2. Repealed.

§ 143-31.3: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-31.4: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-31.5: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-32: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-33: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-34: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-34.1: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-34.2: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-34.3. Repealed by Session Laws 1977, c. 802, s. 15.20.

§ 143-34.4: Repealed.

§ 143-34.5: Repealed by Sessions Laws 1985, c. 479, s. 160.

§ 143-34.6: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-34.7: Repealed by Session Laws 2006-203, s. 1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-34.8. Repealed.

§ 143-34.9. Repealed.

Article 1A.

Periodic Review of Certain State Agencies.

§ 143-34.10: Repealed by Session Laws 1981, c. 932, s. 1.

§ 143-34.11. Certain General Statutes provisions repealed effective July 1, 1979.

The following statutes are repealed effective July 1, 1979, (except for purposes of the winding-up period, as provided by section 5 of this act):

Chapter 87, Article 3, entitled "Tile Contractors."

Chapter 87, Article 6, entitled "Water Well Contractors."

Chapter 66, Article 9A, entitled "Private Detectives."

Chapter 93C, entitled "Watchmakers."

Chapter 74, Article 6, entitled "Mining Registration." (1977, c. 712, s. 2; 1979, c. 616, s. 9; c. 629; c. 712, s. 6; c. 713, s. 9; c. 736, s. 1; c. 740, s. 1; c. 744, ss. 1-3; c. 750, s. 1; c. 780, s. 3; c. 819, s. 7; c. 834, s. 13; c. 871, s. 2; c. 872, s. 6; c. 904, s. 15.)

§§ 143-34.12 through 143-34.21: Repealed by Session Laws 1981, c. 932, s. 1.

§ 143-34.22. Reserved for future codification purposes.

§ 143-34.23. Reserved for future codification purposes.

§ 143-34.24. Reserved for future codification purposes.

Article 1.2.

Legislative Committee on Agency Review.

§§ 143-34.25 through 143-34.27: Expired.

§§ 143-34.28 through 143-34.39. Reserved for future codification purposes.

Article 1B.

Capital Improvement Planning Act.

§ 143-34.40: Repealed by Session Laws 2006-203, s. 2, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-34.41: Repealed by Session Laws 2006-203, s. 2, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-34.42: Repealed by Session Laws 2006-203, s. 2, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-34.43: Repealed by Session Laws 2006-203, s. 2, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-34.44: Repealed by Session Laws 2006-203, s. 2, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-34.45: Repealed by Session Laws 2006-203, s. 2, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

Article 2.

State Personnel Department.

§§ 143-35 through 143-47: Repealed by Session Laws 1965, c. 640, s. 1.

Article 2A.

Incentive Award Program for State Employees.

§§ 143-47.1 through 143-47.5: Repealed by Session Laws 1965, c. 640, s. 1.

Article 2B.

Notice of Appointments to Public Offices.

§ 143-47.6. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1) "Appointing authority" means the Governor, Chief Justice of the Supreme Court, Lieutenant Governor, Speaker of the House, President pro tempore of the Senate, members of the Council of State, all heads of the executive departments of State government, the Board of Governors of The University of North Carolina, and any other person or group authorized by law to appoint to a public office.

(2) "Public office" means appointive membership on any State commission, council, committee, board, including occupational licensing boards as defined in G.S. 93B-1, board of trustees, including boards of constituent institutions of The University of North Carolina and boards of community colleges operated pursuant to Chapter 115D of the General Statutes, and any other State agency

created by law, where the appointee is entitled to draw subsistence, per diem compensation, or travel allowances, in whole or in part from funds deposited with the State Treasurer or any other funds subject to being audited by the State Auditor, by reason of his service in the public office; provided that "public office" does not include an office for which a regular salary is paid to the holder as an employee of the State or of one of its departments, agencies, or institutions. (1979, c. 477, s. 1; 1987, c. 564, s. 27.)

§ 143-47.7. Notice and record of appointment required.

(a) Within 30 days after acceptance of appointment by a person appointed to public office, the appointing authority shall file written notice of the appointment with the Governor, the Secretary of State, the Legislative Library, the Bipartisan State Board of Elections and Ethics Enforcement, and the State Controller. For the purposes of this section, a copy of the letter from the appointing authority, a copy of the properly executed notice of appointment as set forth in subsection (c) of this section, or a copy of the properly executed Commission of Appointment shall be sufficient to be filed if the copy contains the information required in subsection (b) of this section.

(b) The notice required by this Article shall contain the following information:

(1) The name and office of the appointing authority;
(2) The public office to which the appointment is made;
(3) The name and address of the appointee;
(4) The county of residence of the appointee;
(5) The citation to the law or other authority authorizing the appointment;
(6) The specific statutory qualification for the public office to which the appointment is made, if applicable;
(7) The name of the person the appointee replaces, if applicable;
(8) The date the term of the appointment begins; and
(9) The date the term of the appointment ends.

(c) The following form may be used to comply with the requirements of this section:

"NOTICE OF APPOINTMENT

Notice is given that _____ is hereby appointed to the following public office:
Name

Public Office: _____

Citation to Law or Other Authority Authorizing the Appointment:
_____

Specific Statutory Qualification for the Public Office, if Applicable:
_____

Address of the Appointee: _____
_____
_____

County of Residence of the Appointee: _____

Date Term of Appointment Begins: _____

Date Term of Appointment Ends: _____

Name of Person the Appointee Replaces, if applicable:
_____

_____ _____
Date of Appointment Signature

_____
Office of Appointing Authority

Distribution:
Governor
Secretary of State
Legislative Library
Bipartisan State Board of Elections and Ethics Enforcement
State Controller" (1979, c. 477, s. 1; 1991, c. 542, s. 8; 2003-374, s. 2; 2009-549, s. 18; 2017-6, s. 3; 2017-212, s. 8.10.)

§ 143-47.8: Repealed by Session Laws 2003-374, s. 3, effective August 31, 2003.

§ 143-47.9. Subsistence, per diem compensation, and travel allowances conditioned on filing of notice.

No person who has been appointed to any public office and has accepted that appointment shall be entitled to receive subsistence, per diem compensation, or travel allowances unless and until compliance is made with the provisions of G.S. 143-47.7. (1979, c. 477, s. 1.)

§§ 143-47.10 through 143-47.14. Reserved for future codification purposes.

Article 2C.

Limit on Number of State Employees.

§§ 143-47.15 through 143-47.20: Repealed by Session Laws 1989, c. 752, s. 45.

Article 2D.

North Carolina Board for Need-Based Student Loans.

§§ 143-47.21 through 143-47.24: Repealed by Session Laws 1987, c. 738, s. 41(c).

Article 3.

Purchases and Contracts.

§ 143-48. State policy; cooperation in promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.

(a) Policy. – It is the policy of this State to encourage and promote the use of small contractors, minority contractors, physically handicapped contractors, and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of small contractors, minority contractors,

physically handicapped contractors, and women contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration.

(b) Reporting. – Every governmental entity required by statute to use the services of the Department of Administration in the purchase of goods and services, every local school administrative unit, and every private, nonprofit corporation other than an institution of higher education or a hospital that receives an appropriation of five hundred thousand dollars ($500,000) or more during a fiscal year from the General Assembly shall report to the department of Administration annually on what percentage of its contract purchases of goods and services, through term contracts and open-market contracts, were from minority-owned businesses, what percentage from female-owned businesses, what percentage from disabled-owned businesses, what percentage from disabled business enterprises and what percentage from nonprofit work centers for the blind and the severely disabled. The same governmental entities shall include in their reports what percentages of the contract bids for such purchases were from such businesses. The Department of Administration shall provide instructions to the reporting entities concerning the manner of reporting and the definitions of the businesses referred to in this act, provided that, for the purposes of this act:

(1) Except as provided in subdivision (1a) of this subsection, a business in one of the categories above means one:
    a. In which at least fifty-one percent (51%) of the business, or of the stock in the case of a corporation, is owned by one or more persons in the category; and
    b. Of which the management and daily business operations are controlled by one or more persons in the category who own it.

(1a) A "disabled business enterprise" means a nonprofit entity whose main purpose is to provide ongoing habilitation, rehabilitation, independent living, and competitive employment for persons who are handicapped through supported employment sites or business operated to provide training and employment and competitive wages.

(1b) A "nonprofit work center for the blind and the severely disabled" means an agency:
    a. Organized under the laws of the United States or this State, operated in the interest of the blind and the severely disabled, the net income of which agency does not inure in whole or in part to the benefit of any shareholder or other individual;
    b. In compliance with any applicable health and safety standard prescribed by the United States Secretary of Labor; and
    c. In the production of all commodities or provision of services, employs during the current fiscal year severely handicapped individuals for (i) a minimum of seventy-five percent (75%) of the hours of direct labor required for the production of commodities or provision of services, or (ii) in accordance with the percentage of direct labor required under the terms and conditions of Public Law 92-28 (41 U.S.C. § 46, et seq.) for the production of commodities or provision of services, whichever is less.

(2) A female or a disabled person is not a minority, unless the female or disabled person is also a member of one of the minority groups described in G.S. 143-128(2)a. through d.

(3) A disabled person means a person with a handicapping condition as defined in G.S. 168-1 or G.S. 168A-3.

(c) The Department of Administration shall compile information on small and medium-sized business participation in State contracts subject to this Article and report the information as provided in subsection (d) of this section. The report shall analyze (i) contract awards by business size category, (ii) historical trends in small and medium-sized business participation in these contracts, and (iii) to the extent feasible, participation by small and medium-sized businesses in the State procurement process as dealers, service companies, and other indirect forms of participation. The Department may require reports on contracting by business size in the same manner as reports are required under subsection (b) of this section.

(d) The Department of Administration shall collect and compile the data described in this section and report it annually to the General Assembly.

(d1) Repealed by Session Laws 2007-392, s. 1, effective October 1, 2007.

(e) In seeking contracts with the State, a disabled business enterprise must provide assurances to the Secretary of Administration that the payments that would be received from the State under these contracts are directed to the training and employment of and payment of competitive wages to handicapped employees. (1931, c. 261, s. 1; c. 396; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1983, c. 692, s. 2; 1989 (Reg. Sess., 1990), c. 1051, s. 1; 1993, c. 252, s. 1; 1995, c. 265, s. 2; 1999-20, s. 1; 1999-407, s. 1; 2003-147, s. 6; 2004-203, s. 72(b); 2005-270, s. 1; 2007-392, s. 1.)

§ 143-48.1. Medicaid program exemption.

(a) This Article shall not apply to any capitation arrangement or prepaid health service arrangement implemented or administered by the North Carolina Department of Health and Human Services or its delegates pursuant to the Medicaid waiver provisions of 42 U.S.C. § 1396n, or to the Medicaid program authorizations under Chapter 108A of the General Statutes.

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

(1) "Capitation arrangement" means an agreement whereby the Department of Health and Human Services pays a periodic per enrollee fee to a contract entity that provides medical services to Medicaid recipients during their enrollment period.

(2) "Prepaid health services" means services provided to Medicaid recipients that are paid on the basis of a prepaid capitation fee, pursuant to an agreement between the Department of Health and Human Services and a contract entity.

(c) The Department of Health and Human Services shall: (i) submit all proposed contracts for a capitation arrangement or prepaid health services, as defined by this section, that exceed one million dollars ($1,000,000) to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all agreements or contracts to be awarded by the Department under this section a standard clause which provides that the State Auditor and internal auditors of the Department may audit the

records of the contractor during and after the term of the contract to verify accounts and data affecting fees and performance. The Department shall not award a cost plus percentage of cost agreement or contract for any purpose. (1993, c. 529, s. 7.4; 1997-443, s. 11A.118(a); 2010-194, s. 20.2; 2011-326, s. 15(v).)

§ 143-48.2. Procurement program for nonprofit work centers for the blind and the severely disabled.

(a) An agency subject to the provisions of this Article for the procurement of goods may purchase goods directly from a nonprofit work center for the blind and severely disabled, subject to the following provisions:

(1) The purchase may not exceed the applicable expenditure benchmark under G.S. 143-53.1.

(2) The goods must not be available under a State requirements contract.

(3) The goods must be of suitable price and quality, as determined by the agency.

(b) An agency subject to the provisions of this Article for the procurement of services may purchase services directly from a nonprofit work center for the blind and severely disabled, subject to the following provisions:

(1) The services must not be available under a State requirements contract.

(2) The services must be of suitable price and quality, as determined by the agency.

(c) The provisions of G.S. 143-52 shall not apply to purchases made pursuant to this section. However, nothing in this section shall prohibit a nonprofit work center for the blind and severely disabled from submitting bids or making offers for contracts under G.S. 143-52.

(d) For the purpose of this subsection, a "nonprofit work center for the blind and severely disabled" has the same meaning as under G.S. 143-48. (1995, c. 265, s. 3; 1999-20, s. 1.)

§ 143-48.3. Electronic procurement.

(a) The Department of Administration shall develop and maintain electronic or digital standards for procurement. The Department of Administration shall consult with the Office of the State Controller, the Department of Information Technology, the Department of State Auditor, the Department of State Treasurer, The University of North Carolina System Office, the Community Colleges System Office, and the Department of Public Instruction.

(a1) The Department of Administration shall comply with the State government-wide technical architecture for information technology, as required by the State Chief Information Officer.

(b) The Department of Administration, in conjunction with the Office of the State Controller and the Department of Information Technology may, upon request, provide to all State agencies, universities, and community colleges, training in the use of the electronic procurement system.

(c) The Department of Administration shall utilize the Department of Information Technology as an Application Service Provider for an electronic procurement system. The Department of Information Technology shall operate this electronic procurement system, through State ownership or commercial leasing, in accordance with the requirements and

operating standards developed by the Department of Administration and the financial reporting and accounting procedures of the Office of the State Controller.

(d) This section does not otherwise modify existing law relating to procurement between The University of North Carolina, UNC Health Care, community colleges, and the Department of Administration.

(e) The Board of Governors of The University of North Carolina shall exempt North Carolina State University and The University of North Carolina at Chapel Hill from the electronic procurement system authorized by this Article until May 1, 2003. Each exemption shall be subject to the Board of Governors' annual review and reconsideration. Exempted constituent institutions shall continue working with the North Carolina E-Procurement Service as that system evolves and shall ensure that their proposed procurement systems are compatible with the North Carolina E-Procurement Service so that they may take advantage of this service to the greatest degree possible. Before an exempted institution expands any electronic procurement system, that institution shall consult with the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology. By May 1, 2003, the General Assembly shall evaluate the efficacy of the State's electronic procurement system and the inclusion and participation of entities in the system.

(f) Any State entity or community college operating a functional electronic procurement system established prior to September 1, 2001, may until May 1, 2003, continue to operate that system independently or may opt into the North Carolina E-Procurement Service. Each entity subject to this section shall notify the Department of Information Technology by January 1 of each year of its intent to participate in the North Carolina E-Procurement Service. (2000-67, s. 7.8; 2000-140, ss. 95(a), 95(b); 2001-424, s. 15.6(b); 2001-513, s. 28(a); 2002-126, ss. 27.1(a), 27.1(b), 27.1(c); 2003-147, s. 7; 2004-129, ss. 40, 40A, 41; 2004-203, s. 72(b); 2015-241, s. 7A.4(o); 2018-12, s. 15.)

§ 143-48.4. Statewide uniform certification of historically underutilized businesses.

(a) In addition to the powers and duties provided in G.S. 143-49, the Secretary of Administration shall have the power, authority, and duty to:

(1) Develop and administer a statewide uniform program for: (i) the certification of a historically underutilized business, as defined in G.S. 143-128.4, for use by State departments, agencies, and institutions, and political subdivisions of the State; and (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses.

(2) Adopt rules and procedures for statewide uniform certification of historically underutilized businesses.

(3) Provide for the certification of all businesses designated as historically underutilized businesses to be used by State departments, agencies, and institutions, and political subdivisions of the State.

(b) The Secretary of Administration shall seek input from State departments, agencies, and institutions, political subdivisions of the State, and any other entity deemed appropriate to determine the qualifications and criteria for statewide uniform certification of historically underutilized businesses.

(c) Only businesses certified in accordance with this section shall be considered by State departments, agencies, and institutions, and political subdivisions of the State as historically underutilized businesses for minority business participation purposes under this Chapter. (2007-392, s. 2; 2009-243, s. 2.)

§ 143-48.5. Contractors must use E-Verify.

No contract subject to the provisions of this Article may be entered into unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes. (2013-418, s. 2(d).)

§ 143-48.6. Personal services contracts subject to Article.

(a) Requirement. – Notwithstanding any other provision of law, personal services contracts for executive branch agencies shall be subject to the same requirements and procedures as service contracts.

(b) Personal Services Contract Defined. – For purposes of this section, the term "personal services contract" means a contract for services provided by a professional individual as an independent contractor on a temporary or occasional basis, but does not include, and nothing in this Article shall apply to, the engagement of experts or expert witnesses who are to be involved in the planning, prosecution, or defense of any litigation, by the Department of Justice, the Governor, State agencies, or institutions.

(c) Rules Required. – The Department of Administration shall adopt rules consistent with this section. (2015-241, s. 26.2(a); 2015-264, s. 74(a).)

§ 143-49. Powers and duties of Secretary.

The Secretary of Administration has the power and authority, and it is the Secretary's duty, subject to the provisions of this Article:

(1) To canvass sources of supply, including sources of goods with recycled content, and to purchase or to contract for the purchase, lease and lease-purchase of all goods required by the State government, or any of its departments, institutions or agencies under competitive bidding or other suitable means authorized by the Secretary including, without limitation, negotiations, reverse auctions, a best value procurement method such as that defined in G.S. 143-135.9(a)(1), and the solicitation, offer, and acceptance of electronic bids. For purposes of this Article, the term "goods" includes, without limitation, all commodities, supplies, materials, equipment, and other tangible personal property.

(2) To establish and enforce specifications which shall apply to all goods and services to be purchased or leased for the use of the State government or any of its departments, institutions or agencies.

(3) To purchase or to contract for, by sealed, competitive bidding or other suitable means authorized by the Secretary including, without limitation, negotiations, reverse auctions, a best value procurement method such as that defined in G.S. 143-135.9(a)(1), and the solicitation, offer, and

acceptance of electronic bids, all services of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.

(3a) To notify the Attorney General of pending contracts for contractual services exceeding a cost of five million dollars ($5,000,000) and that are not otherwise excepted by this subdivision. Upon notification, the Attorney General shall assign a representative from within the office of the Attorney General, the Contract Management Section of the Division of Purchase and Contract, Department of Administration, or other qualified counsel to assist in negotiation for the award of the contract. It is the duty of the representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. An attorney from within the office of the Attorney General shall review all contracts and drafts of contracts, and the office shall retain copies for a period of three years following the termination of the contracts. The term "contractual services" as used in this subsection and G.S. 143-52.2 means work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. This subdivision does not apply to contracts entered into or to be entered into as a result of a competitive bidding process. In order to be valid, any contract for services reviewed pursuant to this subdivision must include the signature and title of the attorney designated from within the office of the Attorney General to review the contract. If the contract commences without the required signature, the State has the right to terminate the contract, and the other party or parties to the contract shall only be entitled to the value of all services provided to the State prior to the termination. The Secretary is not required to notify the Attorney General for the appointment of a representative for any contracts for contractual services to be entered into by the constituent institutions of The University of North Carolina pursuant to G.S. 114-8.3(b), or for contracts to be entered into by the Department of Treasurer pursuant to G.S. 114-8.3(b1), unless requested to do so by the General Counsel of The University of North Carolina or the General Counsel of the Department of State Treasurer, respectively.

(4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies and to have supervision of inventories of all tangible personal property

belonging to the State government, or any of its departments, institutions or agencies. The duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials, supplies and tangible personal property under its control.

(5) To make provision for or to contract for all State printing, including all printing, binding, paper stock, recycled paper stock, supplies, and supplies with recycled content, or materials in connection with the same.

(6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education institutions that are described as nonprofit postsecondary educational institutions in G.S. 116-280 and to counties, cities, towns, local school administrative units, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of goods and services under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract.

(7) To evaluate the nonprofit qualifications and capabilities of qualified work centers to manufacture commodities or perform services.

(8) To establish and maintain a procurement card program for use by State agencies, community colleges, and nonexempted constituent institutions of The University of North Carolina. The Secretary of Administration may adopt temporary rules for the implementation and operation of the program in accordance with the payment policies of the State Controller, after consultation with the Department of Information Technology. These rules would include the establishment of appropriate order limits that leverage the cost savings and efficiencies of the procurement card program in conjunction with the fullest possible use of the North Carolina E-Procurement Service. Prior to implementing the program, the Secretary shall consult with the State Controller, the UNC System Office, the Community Colleges System Office, the State Auditor, the Department of Public Instruction, a representative chosen by the local school

administrative units, and the Department of Information Technology. The Secretary may periodically adjust the order limit authorized in this section after consulting with the State Controller, the UNC System Office, the Community Colleges System Office, the Department of Public Instruction, and the Department of Information Technology.

(9) To include a standard clause in all contracts awarded by the State and departments, agencies, and institutions of the State, providing that the State Auditor and internal auditors of the affected department, agency, or institution may audit the records of the contractor during and after the term of the contract to verify accounts and data affecting fees or performance.

(10) To monitor and enforce the terms and conditions of statewide term contracts. The Secretary of Administration shall not delegate the power and authority granted under this subdivision to any other department, agency, or institution of the State.

(11) To develop rules, regulations, and procedures specifying the manner in which departments, agencies, and institutions of the State shall monitor and enforce agency term and non-term contracts.

(12) To consult with the Attorney General or the Attorney General's designee in developing rules, regulations, and procedures providing for the orderly and efficient submission of proposed contracts to the Attorney General for review as provided in G.S. 114-8.3 and G.S. 143-52.2.

(13) Repealed by Session Laws 2013-234, s. 2, effective October 1, 2013, and applicable to contracts entered into on or after that date.

(14) To work in conjunction with the Office of State Human Resources to create a Contracting Specialist career path to provide for the designation of one or more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution. Employees on the Contracting Specialist career path shall receive training and guidance as to the provisions of this Article.

(15) To work in conjunction with the Office of State Human Resources, the Division of Purchase and Contract, and the University of North Carolina School of Government to develop a rigorous contract management training and certification program for State employees. Certification in the contract management training program is mandatory for all State employees who are responsible for awarding contracts or monitoring contract compliance. The program shall be administered by the Office of State Human Resources.

(16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code. The

recommendations shall be reported by the Secretary to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division by June 30, 2014.

(17) To establish procedures to permit State government, or any of its departments, institutions, or agencies, to join with any federal, State, or local government agency, entity, or subdivision, or any nonprofit organization in cooperative purchasing plans, projects, arrangements, or agreements if the interest of the State would be served thereby. (1931, c. 261, s. 2; 1951, c. 3, s. 1; c. 1127, s. 1; 1957, c. 269, s. 3; 1961, c. 310; 1971, c. 587, s. 1; 1975, c. 580; c. 879, s. 46; 1977, c. 733; 1979, c. 759, s. 1; 1983, c. 717, ss. 60, 62; 1985 (Reg. Sess., 1986), c. 955, ss. 79-82; 1989, c. 408; 1991, c. 358, s. 1; 1993, c. 256, s. 1; 1995, c. 265, ss. 1, 5; 1996, 2nd Ex. Sess., c. 18, s. 24.17; 1997-443, s. 11A.118(a); 1999-20, s. 1; 2000-67, s. 10.9(a); 2001-424, s. 15.6(a); 2001-424, s. 15.6(d); 2001-513, s. 28(b); 2003-147, s. 8; 2004-203, s. 72(b); 2005-213, s. 2; 2006-203, s. 82; 2010-194, s. 21; 2011-145, s. 9.18(h); 2011-326, s. 15(w); 2011-338, s. 1; 2013-234, s. 2; 2013-382, s. 9.1(c); 2015-241, s. 7A.4(p); 2017-102, s. 42.1; 2018-5, s. 31.1(a); 2018-12, s. 16.)

§ 143-49.1. Purchases by volunteer nonprofit fire department and lifesaving and rescue squad.

In consideration of public service, any volunteer nonprofit fire department, lifesaving and rescue squad in this State may purchase gas, oil, and tires for their official vehicles and any other materials and supplies under State contract through the Department of Administration, and may purchase surplus property through the Department of Administration on the same basis applicable to counties and municipalities.

The Department of Administration shall make its services available to these organizations in the purchase of such supplies under the same laws, rules and regulations applicable to nonprofit organizations as provided in G.S. 143-49. (1973, c. 442; 1991, c. 199.)

§ 143-50. Certain contractual powers exercised by other departments transferred to Secretary.

All rights, powers, duties and authority relating to State printing, or to the acquisition of supplies, materials, equipment, and contractual services, now imposed upon or exercised by any State department, institution or agency under the several statutes relating thereto, are hereby transferred to the Secretary of Administration and all said rights, powers, duty and authority are hereby imposed upon and shall hereafter be exercised by the Secretary of Administration under the provisions of this Article. (1931, c. 261, s. 3; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

§ 143-50.1. Division of Purchase and Contract; Contract Management Section.

(a) The Contract Management Section (CMS) is established in the Division of Purchase and Contract, Department of Administration. The CMS shall include legal counsel with the duties and responsibilities included in this section.

(b) Unless otherwise provided in G.S. 114-8.3(b) or (b1), or in this section, for all proposed solicitations for supplies, materials, printing, equipment, or contractual services that exceed one million dollars ($1,000,000), the CMS shall:

(1) Participate and assist in the preparation of all proposed solicitations, and review all available proposals from prospective contractors, with the goal of obtaining the most favorable contract for the State.

(2) Interpret proposed contract terms and advise the Secretary or the Secretary's designee of the potential liabilities to the State.

(3) Review all proposed contracts to ensure that the contracts:

a. Are in proper legal form.

b. Contain all clauses required by law.

c. Are legally enforceable.

d. Require performance that will accomplish the intended purposes of the proposed contract.

The review and evaluation required by this subsection does not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract.

(c) With respect to proposed contracts for services that exceed five million dollars ($5,000,000), the CMS shall perform the duties required under G.S. 143-49(3a).

(d) The CMS shall:

(1) Assist State departments, agencies, and institutions to establish formal contract administration procedures and functions.

(2) Advise personnel in contracting specialist roles as to appropriate contract management and administrative techniques and activities.

(3) Act as a general resource to State agencies on contracting issues related to procurement, including contract drafting, clarification of terms and conditions, proper solicitation and bid evaluation procedures, contract negotiation, and other matters as directed by the State Purchasing Officer.

(4) Assist representatives of the Attorney General, agency counsel, and other legal staff, as requested, in matters related to contracting for goods and services.

(e) The Department of Administration shall adopt procedures for the record keeping of the information provided by State agencies and that has been received by the Secretary or the Secretary's designee pursuant to G.S. 114-8.3(c). The Department shall keep the records, and shall include a log with information that provides identification of individual contracts and where the contract documents are located. The Secretary is authorized to require that entities reporting pursuant to G.S. 114-8.39(c) provide additional information that may be required to identify the individual contracts.

(f) The CMS shall consist of personnel designated by the Secretary and perform other functions as directed by the Secretary that are not inconsistent with this section. (2013-234, s. 3.)

§ 143-51. Reports to Secretary required of all agencies as to needs and purchases.

(a) It shall be the duty of all departments, institutions, or agencies of the State government to furnish to the Secretary of Administration when requested, and on forms to be prescribed by him, estimates of all goods and services needed and required by such department, institution or agency for such periods in advance as may be designated by the Secretary of Administration.

(b) In addition to the report required by subsection (a) of this section, all departments, institutions, or agencies of the State government shall furnish to the Secretary of Administration when requested, and on forms to be prescribed by him, actual expenditures for all goods and services needed and required by the department, institution, or agency for such periods after the expenditures have been made as may be designated by the Secretary of Administration. (1931, c. 261, s. 4; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, s. 1; 2011-338, s. 2.)

§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts; cost plus percentage of cost contracts strictly prohibited.

(a) The Secretary of Administration shall compile and consolidate all estimates of goods and services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where the total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. Except as otherwise provided under this Article, contracts for the purchase of goods and services shall be based on competitive bids and suitable means authorized by the Secretary as provided in G.S. 143-49. The acceptance of bid(s) most advantageous to the State shall be determined upon consideration of the following criteria: prices offered; best value, as the term is defined in G.S. 143-135.9(a)(1); the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for the articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that

tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of goods exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the State Purchasing Officer pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the goods so contracted for.

(b) Expired.

(c) Neither the Department of Administration nor any department, agency, or institution of the State may award a cost plus percentage of cost contract for any purpose, except as provided in G.S. 18C-150. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, ss. 2, 3; 1983, c. 717, s. 61; 1985 (Reg. Sess., 1986), c. 955, ss. 83-86; 1989 (Reg. Sess., 1990), c. 936, s. 3(a); 1997-412, s. 2; 1999-434, s. 12; 2006-203, s. 83; 2009-475, s. 1; 2010-194, s. 22; 2011-338, s. 3; 2013-234, s. 8.)

§ 143-52.1. Award recommendations; State Purchasing Officer action.

(a) Award Recommendation. – When the dollar value of a contract to be awarded under Article 3 of Chapter 143 of the General Statutes exceeds the benchmark established pursuant to G.S. 143-53.1, an award recommendation shall be submitted to the State Purchasing Officer for approval or other action. The State Purchasing Officer shall promptly notify the agency or institution making the recommendation, or for which the purchase is to be made, of the action taken.

(b) through (d) Repealed by Session Laws 2013-234, s. 4, effective July 3, 2013.

(e) Reporting. – The State Procurement Officer shall provide a monthly report of all contract awards greater than twenty-five thousand dollars ($25,000) approved through the Division of Purchase and Contract to the Cochairs of the Joint Legislative Committee on Governmental Operations. The report shall include the amount of the award, the award recipient, the using agency, and a short description of the nature of the award. (1999-434, s. 13; 2001-487, s. 21(e); 2004-129, s. 41A; 2013-234, s. 4.)

§ 143-52.2: Repealed by Session Laws 2014-115, s. 11.1, effective August 11, 2014.

§ 143-52.3. Multiple award schedule contracts.

(a) Definitions. – The following definitions apply in this section:

(1) Communications equipment. – Mobile communications systems, desktop communications systems, base and repeater communications systems, gateway devices, audio switch units, radio routers, microwave radios,

microwave antennae, Ethernet switches, wireless access points, or equivalent products and attachments.

(2) Construction equipment. – Excavators, wheel excavators, track loaders, compact track loaders, wheel loaders, skid steer loaders, backhoe loaders, crawler dozers, crawler loaders, wheel dozers, motor graders, utility cranes, compactors, and appropriate attachments, or equivalent products and attachments.

(3) Forestry equipment. – Feller bunchers, knuckleboom loaders, forestry swing machines, harvesters, and appropriate attachments, or equivalent products and attachments.

(4) Ground maintenance equipment. – Hand-held equipment, walk-behind products, lawn tractors, lawn and garden tractors, commercial walk-behind mowers, zero turn radius mowers, front mowers, compact utility tractors, utility tractors, utility vehicles, golf and turf equipment, agricultural tractors and implements, and appropriate attachments, or equivalent products and attachments.

(5) Multiple award schedule contract. – A contract that allows multiple vendors to be awarded a State contract for goods or services by providing their total catalogues for lines of equipment and attachments to eligible purchasers, including State agencies, departments, institutions, public school districts, political subdivisions, community colleges, and constituent institutions of The University of North Carolina.

(b) Intent. – The intent of multiple award schedule contracts is to evaluate vendors based upon a variety of factors, including discounts, total lifecycle costs, service, warranty, distribution channel, and past vendor performance. Multiple award schedule contracts allow multiple vendors to compete and be awarded a contract based upon the value of their products or services and result in competitive pricing, transparency, administrative savings, expedited procurement, and flexibility for State purchasers.

(c) Multiple Award Schedule Contracts Required. – The acquisition of ground maintenance equipment, construction equipment, communications equipment, and forestry equipment shall be conducted using multiple award schedule contracts, except as provided in this section. Not later than August 31, 2011, the Department of Administration shall issue requests for proposals for multiple award schedule contracts for all ground maintenance equipment product categories, construction equipment product categories, communications equipment product categories, and forestry equipment product categories. Contracts awarded under this subsection shall be for a term of not less than three years with annual product and pricing update periods.

(d) Limitation. – Any contract awarded under subsection (c) of this section shall be in addition to any existing term contracts for ground maintenance equipment, construction equipment, communications equipment, and forestry equipment. Nothing in this section shall limit the ability of the Department of Administration to issue additional term contracts for the specific purchase of equipment otherwise available through a multiple award schedule contract. The Department of Public Safety shall not be required to purchase from

contracts awarded under subsection (c) of this section for communications equipment. (2011-145, s. 19.1(g); 2011-360, s. 1.)

§ 143-53. Rules.

(a) The Secretary of Administration may adopt rules governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review. The Division of Purchase and Contract shall review and decide a protest on a contract valued at twenty-five thousand dollars ($25,000) or more. The Secretary shall adopt rules or criteria governing the review of and decision on a protest on a contract of less than twenty-five thousand dollars ($25,000) by the agency that awarded the contract.

(2) **(See Editor's note)** Prescribing the routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. 143-53.1, 115D-58.14, or 116-31.10. The bid value benchmark for securing offers for each State department, institution, and agency established under the provisions of G.S. 143-53.1 shall be determined by the Director of the Division of Purchase and Contract following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the benchmark, or raise the benchmark upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.

(3) Repealed by Session Laws 2011-338, s. 4, effective July 1, 2011.

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, installment or lease-purchase, rental or lease of goods and services may be entered into by means other than competitive bidding, including, but not limited to, negotiation, reverse auctions, and acceptance of electronic bids. Notwithstanding the provisions of subsections (a) and (b) of this section, any waiver of competition for the

purchase, rental, or lease of goods and services is subject to prior review by the Secretary, if the expenditure exceeds ten thousand dollars ($10,000). The Division may levy a fee, not to exceed one dollar ($1.00), for review of each waiver application.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used goods.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Repealed by Session Laws 1987, c. 827, s. 216.

(b) In adopting the rules authorized by subsection (a) of this section, the Secretary shall include special provisions for the purchase of goods and services, which provisions are necessary to meet the documented training, work, or independent living needs of persons with disabilities according to the requirements of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act, as amended. The Secretary may consult with other agencies having expertise in meeting the needs of individuals with disabilities in developing these provisions. These special provisions shall establish purchasing procedures that:

(1) Provide for the involvement of the individual in the choice of particular goods, service providers, and in the methods used to provide the goods and services;

(2) Provide the flexibility necessary to meet those varying needs of individuals that are related to their disabilities;

(3) Allow for purchase outside of certified sources of supply and competitive bidding when a single source can provide multiple pieces of equipment, including adaptive equipment, that are more compatible with each other than they would be if they were purchased from multiple vendors;

(4) Permit priority consideration for vendors who have the expertise to provide appropriate and necessary training for the users of the equipment and who will guarantee prompt service, ongoing support, and maintenance of this equipment;

(5) Permit agencies to give priority consideration to suppliers offering the earliest possible delivery date of goods or services especially when a time factor is crucial to the individual's ability to secure a job, meet the probationary training periods of employment, continue to meet job

requirements, or avoid residential placement in an institutional setting; and

(6) Allow consideration of the convenience of the provider's location for the individual with the disability.

In developing these purchasing provisions, the Secretary shall also consider the following criteria: (i) cost-effectiveness, (ii) quality, (iii) the provider's general reputation and performance capabilities, (iv) substantial conformity with specifications and other conditions set forth for these purchases, (v) the suitability of the goods or services for the intended use, (vi) the personal or other related services needed, (vii) transportation charges, and (viii) any other factors the Secretary considers pertinent to the purchases in question.

(c) The purpose of rules promulgated hereunder shall be to promote sound purchasing management.

(d) Notwithstanding the provisions of this section or any rule adopted pursuant to this Article, The University of North Carolina may solicit bids for service contracts with a term of 10 years or less, including extensions and renewals, without the prior approval of the State Purchasing Officer.

(e) Expired. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, s. 4; 1983, c. 717, ss. 63-64.1; 1985 (Reg. Sess., 1986), c. 955, ss. 87, 88; 1987, c. 827, s. 216; 1989 (Reg. Sess., 1990), c. 936, s. 3(b); 1995, c. 256, s. 1; 1997-412, s. 3; 1998-217, s. 15; 1999-400, ss. 1, 2; 2002-107, s. 2; 2003-147, s. 9; 2004-203, s. 72(b); 2005-125, s. 1; 2006-203, s. 84; 2009-475, s. 2; 2011-338, s. 4; 2013-289, s. 7.)

§ 143-53.1. Setting of benchmarks; increase by Secretary.

(a) On and after July 1, 2014, the procedures prescribed by G.S. 143-52 with respect to competitive bids and the bid value benchmark authorized by G.S. 143-53(a)(2) with respect to rule making by the Secretary of Administration for competitive bidding shall promote compliance with the principles of procurement efficiency, transparency, and fair competition to obtain the State's business. For the President of The University of North Carolina or a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section is as provided in G.S. 116-31.10. For community colleges, the benchmark prescribed in this section is as provided in G.S. 115D-58.14.

(b) The benchmarks set by the Secretary of Administration, The University of North Carolina, and the State Board of Community Colleges in subsection (a) of this section shall be applicable to all contracts for goods, equipment, or services awarded by the Department of Administration, State departments, institutions, agencies, universities, and community colleges using funds from the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). (1989 (Reg. Sess., 1990), c. 936, s. 3(c); 1991, c. 689, s. 206.2(b); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); c. 769, s. 17.6(b); 1997-412, s. 4; 2009-475, s. 5; 2011-326, s. 18(a); 2013-289, s. 8; 2017-68, s. 4(b).)

§ 143-54. Certification that bids were submitted without collusion.

(a) The Director of Administration shall require bidders to certify that each bid is submitted competitively and without collusion. False certification is a Class I felony.

(b) Expired. (1961, c. 963; 1971, c. 587, s. 1; 1993, c. 539, s. 1310; 1994, Ex. Sess., c. 24, s. 14(c); 2009-475, s. 6.)

§ 143-55. Requisitioning by agencies; must purchase through sources certified.

(a) Unless otherwise provided by law, where sources of supply have been established by contract and certified by the Secretary of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition or issue orders on forms to be prescribed by the Secretary of Administration, for purchases required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase from other sources than those certified by the Secretary of Administration. One copy of such requisition or order shall be furnished to and when requested by the Secretary of Administration.

(b) Expired. (1931, c. 261, s. 6; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 2006-264, s. 59(c); 2009-475, s. 7; 2011-338, s. 5.)

§ 143-56. Certain purchases excepted from provisions of Article.

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

(1) Published books, manuscripts, maps, pamphlets and periodicals.

(2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for information technology purchased in accordance with Article 15 of Chapter 143B of the General Statutes, for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than the expenditure benchmark established under the provisions of G.S. 143-53.1, for group purchases made by hospitals, developmental centers, neuromedical treatment centers, and alcohol and drug abuse treatment centers through a competitive bidding purchasing program, as defined in G.S. 143-129, by the University of North Carolina Health Care System pursuant to G.S. 116-37(h), by the University of North Carolina Hospitals at Chapel Hill pursuant to G.S. 116-37(a)(4), by the University of North Carolina at Chapel Hill on behalf of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill pursuant to G.S. 116-37(a)(4), or by East Carolina University on behalf of the Medical Faculty Practice Plan pursuant to G.S. 116-40.6(c).

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review. (1931, c. 261, s. 7; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 953;

1983, c. 717, ss. 65, 66; 1985, c. 145, s. 3; 1989 (Reg. Sess., 1990), c. 936, s. 3(e); 1998-212, s. 11.8(c); 1999-434, s. 14; 1999-456, s. 7; 2001-487, s. 21(f); 2009-184, s. 1; 2015-241, s. 7A.4(q).)

§ 143-57. Purchases of articles in certain emergencies.

In case of any emergency or pressing need arising from unforeseen causes including but not limited to delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Secretary of Administration shall have power to obtain or authorize obtaining in the open market any necessary supplies, materials, equipment, printing or services for immediate delivery to any department, institution or agency of the State government. A report on the circumstances of such emergency or need and the transactions thereunder shall be made a matter of record promptly thereafter. If the expenditure exceeds ten thousand dollars ($10,000), the report shall also be made promptly thereafter to the Division of Purchase and Contract. (1931, c. 261, s. 8; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1999-400, s. 3.)

§ 143-57.1. Furniture requirements contracts.

(a) State Furniture Requirements Contract. – To ensure agencies access to sufficient sources of furniture supply and service, to provide agencies the necessary flexibility to obtain furniture that is compatible with interior architectural design and needs, to provide small and disadvantaged businesses additional opportunities to participate on State requirements contracts, and to restore the traditional use of multiple award contracts for purchasing furniture requirements, each State furniture requirements contract shall be awarded on a multiple award basis, subject to the following conditions:

(1) Competitive, sealed bids must be solicited for the contract in accordance with Article 3 of Chapter 143 of the General Statutes unless otherwise provided for by the State Purchasing Officer pursuant to that Article. Bids shall be solicited on a historical weighted average of specific contract items and not on a single item within a class of items. Historical weighted average shall be based on information derived from the State's electronic procurement system, when available, or other available data.

(2) Subject to the provisions of this section, bids shall be evaluated and the contract awarded in accordance with Article 3 of Chapter 143 of the General Statutes.

(3) For each category of goods under each State requirements furniture contract, awards shall be made to at least three qualified vendors unless three qualified vendors are not available. Additionally, if the State Purchasing Officer determines that there are no qualified vendors within the three best qualified vendors who offer furniture manufactured or produced in North Carolina or who are incorporated in the State, the State Purchasing Officer shall expand the number of qualified vendors awarded contracts to as many qualified vendors as is necessary to include a qualified vendor who offers furniture manufactured or produced in North Carolina or who is incorporated in the State, but the State Purchasing Officer shall not be required to expand the number of qualified vendors

to more than six qualified vendors. A vendor is qualified under this subsection if the vendor's products conform to the term contract specifications, the vendor is listed on the State's qualified products list, and the vendor submits a responsive bid.

(4) Repealed by Session Laws 2013-73, s. 1, effective June 12, 2013.

(a1) GSA Furniture Schedule. – Vendors meeting the following requirements are treated as qualified vendors under any State furniture requirements contract:

(1) The vendor's products are included on a United States General Services Administration (GSA) Furniture Schedule.

(2) The vendor is a federally qualified vendor within the GSA Furniture Schedule.

(3) The vendor offers products on the same pricing and specifications as the vendor's products included on the GSA Furniture Schedule.

(4) The vendor is a resident bidder as defined in G.S. 143-59(c) or the vendor offers products manufactured or produced in North Carolina.

(b) Definition. – For purposes of this section, "furniture requirements contract" means State requirements contracts for casegoods, classroom furniture, bookcases, ergonomic chairs, office swivel and side chairs, computer furniture, mobile and folding furniture, upholstered seating, commercial dining tables, and related items.

(c) Authority to Purchase. – An agency may purchase from any vendor certified on the State furniture requirements contract, including vendors meeting the requirements of subsection (a1) of this section. An agency shall make the most economical purchase that it determines meets its needs, based upon price, compatibility, service, delivery, freight charges, contract terms, and other factors that it considers relevant. (1995, c. 136, ss. 1, 3; 1995 (Reg. Sess., 1996), c. 716, s. 30; 2004-115, s. 1; 2013-73, s. 1.)

§ 143-58. Contracts contrary to provisions of Article made void.

If any department, institution or agency of the State government, required by this Article and the rules adopted pursuant thereto applying to the purchase or lease of supplies, materials, equipment, printing or services through the Secretary of Administration, or any nonstate institution, agency or instrumentality duly authorized or required to make purchases through the Department of Administration, shall contract for the purchase or lease of such supplies, materials, equipment, printing or services contrary to the provisions of this Article or the rules made hereunder, such contract shall be void and of no effect. If any such State or nonstate department, institution, agency or instrumentality purchases any supplies, materials, equipment, printing or services contrary to the provisions of this Article or the rules made hereunder, the executive officer of such department, institution, agency or instrumentality shall be personally liable for the costs thereof. (1931, c. 261, s. 9; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1977, c. 148, s. 3; 1987, c. 827, s. 217.)

§ 143-58.1. Unauthorized use of public purchase or contract procedures for private benefit.

(a) It shall be unlawful for any person, by the use of the powers, policies or procedures described in this Article or established hereunder, to purchase, attempt to purchase, procure or attempt to procure any property or services for private use or benefit.

(b) This prohibition shall not apply if:

(1) The department, institution or agency through which the property or services are procured had theretofore established policies and procedures permitting such purchases or procurement by a class or classes of persons in order to provide for the mutual benefit of such persons and the department, institution or agency involved, or the public benefit or convenience; and

(2) Such policies and procedures, including any reimbursement policies, are complied with by the person permitted thereunder to use the purchasing or procurement procedures described in this Article or established thereunder.

(c) A violation of this section is a Class 1 misdemeanor. (1983, c. 409; 1993, c. 539, s. 1004; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 143-58.2. State policy; bid procedures and specifications; identification of products.

(a) It is the policy of this State to encourage and promote the purchase of products with recycled content. All State departments, institutions, agencies, community colleges, and local school administrative units shall, to the extent economically practicable, purchase and use, or require the purchase and use of, products with recycled content.

(b) No later than January 1, 1995, the Secretary of Administration and each State department, institution, agency, community college, and local school administrative unit authorized to purchase materials and supplies or to contract for services shall review and revise its bid procedures and specifications for the purchase or use of materials and supplies to eliminate any procedures and specifications that explicitly discriminate against materials and supplies with recycled content, except where procedures and specifications are necessary to protect the health, safety, and welfare of the citizens of this State.

(c) The Secretary of Administration and each State department, institution, agency, community college, and local school administrative unit shall review and revise its bid procedures and specifications on a continuing basis to encourage the purchase or use of materials and supplies with recycled content and to the extent economically practicable, the use of materials and supplies with recycled content.

(d) The Department of Administration, in cooperation with the Division of Environmental Assistance and Outreach of the Department of Environmental Quality, shall identify materials and supplies with recycled content that meet appropriate standards for use by State departments, institutions, agencies, community colleges, and local school administrative units.

(e) A list of materials and supplies with recycled content that are identified pursuant to subsection (d) of this section and that are available for purchase under a statewide term contract shall be distributed annually to each State agency authorized to purchase materials and supplies for use by its departments, institutions, agencies, community colleges, or local school administrative units.

(f) Repealed by Session Laws 2009-484, s. 15, effective January 1, 2010.

(g) The Department of Administration and the Department of Environmental Quality shall develop guidelines for minimum content standards for materials and supplies with recycled content and may recommend appropriate goals in addition to those goals set

forth in G.S. 143-58.3, for types of materials and supplies with recycled content to be purchased by the State.

(h) The Secretary of Administration may adopt rules to implement the provisions of this section and G.S. 143-58.3. (1993, c. 256, s. 2; 1995 (Reg. Sess., 1996), c. 743, ss. 10, 11; 1997-443, s. 11A.119(a); 2001-452, s. 3.7; 2009-484, s. 15; 2010-31, s. 13.1(f); 2015-241, s. 14.30(u).)

§ 143-58.3. Purchase of recycled paper and paper products; goals.

In furtherance of the State policy, it is the goal of the State that each department, institution, agency, community college, and local school administrative unit purchase paper and paper products with recycled content according to the following schedule:

(1) At least ten percent (10%) by June 30, 1994;
(2) At least twenty percent (20%) by June 30, 1995;
(3) At least thirty-five percent (35%) by June 30, 1996; and
(4) At least fifty percent (50%) by June 30, 1997, and the end of each subsequent fiscal year,

of the total amount spent for the purchase of paper and paper products during that fiscal year. (1993, c. 256, s. 2.)

§ 143-58.4. Energy credit banking and selling program.

(a) The following definitions apply in this section:

(1) AFV. – A hybrid electric vehicle that derives its transportation energy from gasoline and electricity. AFV also means an original equipment manufactured vehicle that operates on compressed natural gas, propane, or electricity.
(2) Alternative fuel. – Biodiesel, biodiesel blend, ethanol, compressed natural gas, propane, and electricity used as a transportation fuel in blends or in a manner as defined by the Energy Policy Act.
(3) B-20. – A blend of twenty percent (20%) by volume biodiesel fuel and eighty percent (80%) by volume petroleum-based diesel fuel.
(3a) Biodiesel. – A fuel comprised of mono-alkyl esters of long fatty acids derived from vegetable oils or animal fats, designated B100 and meeting the requirements of the American Society for Testing and Materials (ASTM) D-6751.
(3b) Biodiesel blend. – A blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX where XX represents the percentage of volume of fuel in the blend meeting the requirements of ASTM D-6751.
(4) Department. – The Department of Environmental Quality.
(5) Energy Policy Act. – The federal Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2782, 42 U.S.C. § 13201, et seq.
(6) EPAct credit. – A credit issued pursuant to the Energy Policy Act.
(7) E-85. – A blend of eighty-five percent (85%) by volume ethanol and fifteen percent (15%) by volume gasoline.

(8) Incremental fuel cost. – The difference in cost between an alternative fuel and conventional petroleum fuel at the time the fuel is purchased.

(9) Incremental vehicle cost. – The difference in cost between an AFV and conventional vehicle of the same make and model. For vehicles with no comparable conventional model, incremental vehicle cost means the generally accepted difference in cost between an AFV and a similar conventional model.

(b) Establish Program. – The State Energy Office of the Department, in cooperation with State departments, institutions, and agencies, shall establish and administer an energy credit banking and selling program to allow State departments, institutions, and agencies to use moneys generated by the sale of EPAct credits to purchase alternative fuel, develop alternative fuel refueling infrastructure, and purchase AFVs for use by State departments, institutions, and agencies. Each State department, institution, and agency shall provide the State Energy Office with all vehicle fleet information necessary to determine the number of EPAct credits generated annually by the State. The State Energy Office may sell credits in any manner that is in accordance with the provisions of the Energy Policy Act.

(c) Adopt Rules. – The Secretary of Environmental Quality shall adopt rules as necessary to implement this section. (2005-413, s. 1; 2009-237, s. 1; 2009-446, s. 1(g), (h); 2013-360, s. 15.22(n); 2015-241, s. 14.30(u), (v).)

§ 143-58.5. Alternative Fuel Revolving Fund.

(a) The definitions set out in G.S. 143-58.4 apply to this section.

(b) The Alternative Fuel Revolving Fund is created and shall be held by the State Treasurer. The Fund shall consist of moneys received from the sale of EPAct credits under G.S. 143-58.4, any moneys appropriated to the Fund by the General Assembly, and any moneys obtained or accepted by the Department for deposit into the Fund. The Fund shall be managed to maximize benefits to the State for the purchase of alternative fuel, related refueling infrastructure, and AFV purchases. To the extent possible, benefits from the sale of EPAct credit shall be distributed to State departments, institutions, and agencies in proportion to the number of EPAct credits generated by each. No portion of the Fund shall be transferred to the General Fund, and any appropriation made to the Fund shall not revert. The State Treasurer shall invest moneys in the Fund in the same manner as other funds are invested. Interest and moneys earned on such investments shall be credited to the Fund.

(c) The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy Policy Council.

(d) The Secretary of Environmental Quality shall adopt rules as necessary to implement this section.

(e) The Department shall submit to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division no later

than October 1 of each year a report on the expenditures from the Fund during the preceding fiscal year. (2005-413, s. 1; 2009-237, s. 2; 2017-57, s. 14.1(a); 2017-102, s. 20.1(a).)

§ 143-58.6. Specifications for use of coal combustion products.

(a) State Construction Office to Develop Technical Specifications. – The State Construction Office shall develop recommended technical specifications for the use of coal combustion products that may be utilized in any construction by all State departments, institutions, agencies, community colleges, and local school administrative units, other than the Department of Transportation. The technical specifications shall address all products used in construction, including, but not limited to, the use of coal combustion products in concrete and cement products and in construction fill.

(b) Department of Transportation to Develop Technical Specifications. – The Department of Transportation shall develop recommended technical specifications for the use of coal combustion products that may be utilized in any construction by the Department of Transportation. The technical specifications shall address all products used in construction, including, but not limited to, the use of coal combustion products in concrete and cement products and in construction fill.

(c) Specification Factors. – The State Construction Office and the Department of Transportation shall consider safety, best practice engineering standards, quality, cost, and availability of an in-State source of coal combustion products in developing the recommended technical specifications pursuant to this section.

(d) Consultation. – The State Construction Office and the Department of Transportation shall consult with each other in the development of the recommended technical specifications pursuant to the provisions of this section in order to ensure that the recommended technical standards are uniform for similar types of construction. The goal of the Department of Administration and the Department of Transportation shall be to increase the usage and consumption of coal combustion products in their respective construction projects.

(e) Report of Recommended Specifications. – The State Construction Office and the Department of Transportation shall report the recommended technical specifications developed pursuant to this section to the Environmental Review Commission and the Joint Legislative Transportation Oversight Committee on or before February 1, 2015. (2014-122, s. 16.)

§ 143-58.7. Contracts with Youth Conservation Corps.

State departments, institutions, and agencies may contract with the North Carolina Youth Conservation Corps to perform trail construction and maintenance, invasive species removal, and other conservation projects in State parks, State forests, and other State-owned facilities where the projects provide direct public benefits to the citizens of the State and offer youth and young adults of the State a structured program that connects them to natural resources and teaches job skills, leadership, community service, and personal responsibility. Contracts under this section are exempt from the competitive

bidding procedures described in this Article and the rules adopted under it. (2017-57, s. 14.12.)

§ 143-59. Preference given to North Carolina products and citizens, and articles manufactured by State agencies; reciprocal preferences.

(a) Preference. – The Secretary of Administration and any State agency authorized to purchase foodstuff or other products, shall, in the purchase of or in the contracting for foods, supplies, materials, equipment, printing or services give preference as far as may be practicable to such products or services manufactured or produced in North Carolina or furnished by or through citizens of North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted; and provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution.

(b) Reciprocal Preference. – For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over twenty-five thousand dollars ($25,000), a percent of increase shall be added to a bid of a nonresident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state. Any amount due under a contract awarded to a nonresident bidder shall not be increased by the amount of the increase added by this subsection. On or before January 1 of each year, the Secretary of Administration shall electronically publish a list of states that give preference to in-State bidders and the amount of the percent increase added to out-of-state bids. All departments, institutions, and agencies of the State shall use this list when evaluating bids. If the reciprocal preference causes the nonresident bidder to no longer be the lowest bidder, the Secretary of Administration may waive the reciprocal preference. In determining whether to waive the reciprocal preference, the Secretary of Administration shall consider factors that include competition, price, product origination, and available resources.

(c) Definitions. – The following definitions apply in this section:

(1) Resident bidder. – A bidder that has paid unemployment taxes or income taxes in this State and whose principal place of business is located in this State.

(2) Nonresident bidder. – A bidder that is not a resident bidder as defined in subdivision (1) of this subsection.

(3) Principal place of business. – The principal place from which the trade or business of the bidder is directed or managed.

(d) Exemptions. – Subsection (b) of this section shall not apply to contracts entered into under G.S. 143-53(a)(5) or G.S. 143-57.

(e) When a contract is awarded by the Secretary using the provisions of subsection (b) of this section, a report of the nature of the contract, the bids received, and the award to the successful bidder shall be posted on the Internet as soon as practicable.

(f) Resident Bidder Notification. – When the Secretary puts a contract up for competitive bidding, the Secretary shall endeavor to provide notice to all resident bidders

who have expressed an interest in bidding on contracts of that nature. The Secretary may opt to provide notice under this section by electronic means only. (1931, c. 261, s. 10; 1933, c. 441, s. 2; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 2001-240, s. 1; 2005-213, ss. 1, 3; 2013-234, s. 9.)

§ 143-59.1. Contracts with certain foreign vendors.

(a) Ineligible Vendors. – The Secretary of Administration, State Chief Information Officer, and other entities to which this Article applies shall not contract for goods or services with either of the following:

(1) A vendor if the vendor or an affiliate of the vendor if the Secretary of Revenue has determined that the vendor or affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. The Secretary of Revenue shall provide the Secretary of Administration periodically with a list of vendors to which this section applies.

(2) A vendor if the vendor or an affiliate of the vendor incorporates or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country.

(b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that the vendor is not an ineligible vendor as set forth in subsection (a) of this section. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.

(c) Definitions. – The following definitions apply in this section:

(1) Affiliate. – As defined in G.S. 105-163.010.

(2) Tax haven country. – Means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Gibraltar, Isle of Man, the Principality of Monaco, and the Republic of the Seychelles. (1999-341, s. 7; 2002-189, s. 6; 2003-413, s. 28; 2012-79, s. 2.14; 2015-241, s. 7A.4(r).)

§ 143-59.1A. Preference given to products made in United States.

If the Secretary of Administration or a State agency cannot give preference to North Carolina products or services as provided in G.S. 143-59, the Secretary or State agency shall give preference, as far as may be practicable and to the extent permitted by State law, federal law, and federal treaty, to products or services manufactured or produced in the United States. Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted; and provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution. (2004-124, s. 6.1.)

§ 143-59.2. Certain vendors prohibited from contracting with State.

(a) Ineligible Vendors. – A vendor is not entitled to enter into a contract for goods or services with any department, institution, or agency of the State government subject to the provisions of this Article if any officer or director of the vendor, or any owner if the vendor is an unincorporated business entity, within 10 years immediately prior to the date of the bid solicitation, has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934.

(b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violation referenced in subsection (a) of this section within 10 years immediately prior to the date of the bid solicitation. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.

(c) Void Contracts. – A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved by the Secretary of Administration. Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare. (2002-189, s. 5.)

§ 143-59.3. Contracts for the purchase of reconstituted or recombined fluid milk products prohibited.

(a) As used in this section, "fluid milk product" has the same meaning as in 7 Code of Federal Regulations § 1000.15 (1 January 2003 Edition).

(b) No department, institution, or agency of the State shall enter into any contract for the purchase of any fluid milk product that is labeled or that is required to be labeled as "reconstituted" or "recombined".

(c) The Secretary of Administration may temporarily suspend the provisions of subsection (b) of this section in case of any emergency or pressing need as provided in G.S. 143-57. (2003-367, s. 1.)

§ 143-59.4. Contracts performed outside the United States.

(a) A vendor submitting a bid shall disclose in a statement, provided contemporaneously with the bid, where services will be performed under the contract sought, including any subcontracts, and whether any services under that contract, including any subcontracts, are anticipated to be performed outside the United States. Nothing in this section is intended to contravene any existing treaty, law, agreement, or regulation of the United States.

(b) The Secretary of Administration shall retain the statements required by subsection (a) of this section regardless of the State entity that awards the contract and shall report annually to the Joint Legislative Commission on Governmental Operations on the number of contracts which are anticipated to be performed outside the United States. (2005-169, s. 1.)

§ 143-60. Rules covering certain purposes.

The Secretary of Administration may adopt, modify, or abrogate rules covering the following purposes, in addition to those authorized elsewhere in this Article:

(1) Requiring reports by State departments, institutions, or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.
(2) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.
(3) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemicals and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made in compliance with specifications. However, the provisions of this subdivision shall not apply to the constituent institutions of The University of North Carolina. The President of The University of North Carolina shall issue regulations or guidelines for the conducting of quality inspections by constituent institutions to ensure that deliveries have been made in compliance with specifications.
(4) Prescribing the manner in which purchases shall be made in emergencies.
(5) Providing for such other matters as may be necessary to give effect to foregoing rules and provisions of this Article.
(6) Prescribing the manner in which passenger vehicles shall be purchased.

Further, the Secretary of Administration may prescribe appropriate procedures necessary to enable the State, its institutions and agencies, to obtain materials surplus or otherwise available from federal, State or local governments or their disposal agencies. (1931, c. 261, s. 11; 1945, c. 145; 1957, c. 269, s. 3; 1961, c. 772; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 268, s. 2; 1983, c. 717, ss. 67, 68; 1985 (Reg. Sess., 1986), c. 955, ss. 89, 90; 1987, c. 282, s. 27; c. 827, s. 217; 2006-203, s. 85; 2011-145, s. 9.6G(a).)

§ 143-61. Repealed by Session Laws 1975, c. 879, s. 45.

§ 143-62. Law applicable to printing Supreme Court Reports not affected.

Nothing in this Article shall be construed as amending or repealing G.S. 7A-6(b), relating to the printing of the Supreme Court Reports, or in any way changing or interfering with the method of printing or contracting for the printing of the Supreme Court Reports as provided for in said section. (1931, c. 261, s. 13; 1969, c. 44, s. 75; 1971, c. 587, s. 1.)

§ 143-63. Financial interest of officers in sources of supply; acceptance of bribes.

Neither the Secretary of Administration, nor any assistant of the Secretary's shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials or equipment to the State government, or any of its departments, institutions or agencies, nor shall such Secretary, assistant, or member of the Commission accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a Class F felony. Upon conviction thereof, any such Secretary or assistant shall be removed from office. (1931, c. 261, s. 15; 1957, c. 269, s. 3; 1971,

c. 587, s. 1; 1975, c. 879, s. 46; 1983, c. 717, s. 81; 1993, c. 539, s. 1311; 1994, Ex. Sess., c. 24, s. 14(c); 2006-203, s. 86.)

§ 143-63.1. Sale, disposal and destruction of firearms.

(a) Except as hereinafter provided, it shall be unlawful for any employee, officer or official of the State in the exercise of his official duty to sell or otherwise dispose of any pistol, revolver, shotgun or rifle to any person, firm, corporation, county or local governmental unit, law-enforcement agency, or other legal entity.

(b) It shall be lawful for the Department of Administration, in the exercise of its official duty, to sell any weapon described in subsection (a) hereof, to any county or local governmental unit, law-enforcement agency in the State; provided, however, that such law-enforcement agency files a written statement, duly notarized, with the seller of said weapon certifying that such weapon is needed in law enforcement by such law-enforcement agency.

(c) All weapons described in subsection (a) hereof which are not sold as herein provided within one year of being declared surplus property shall be destroyed by the Department of Administration.

(d) Notwithstanding the provisions of this section, but subject to the provisions of G.S. 20-187.2, the North Carolina State Highway Patrol, the North Carolina Division of Adult Correction and Juvenile Justice of the Department of Public Safety, and the North Carolina State Bureau of Investigation may sell, trade, or otherwise dispose of any or all surplus weapons they possess to any federally licensed firearm dealers. The sale, trade, or disposal of these weapons shall be in a manner prescribed by the Department of Administration. Any moneys or property obtained from the sale, trade, or disposal shall go to the general fund. (1973, c. 666, ss. 1-3; 1975, c. 879, s. 46; 1981, c. 604; 1981 (Reg. Sess., 1982), c. 1282, s. 52; 2011-145, s. 19.1(h); 2017-186, s. 2(zzzzz).)

§ 143-63.2. Purchase of tires for State vehicles; repair or refurbishment of tires for State vehicles.

(a) Definitions. – The following terms apply in this section:

(1) Critical tire information. – Tire brand name, tire line name, tire identification numbers, load and pressure markings, tire size designation, service descriptions such as load and speed ratings, and other information and specifications placed on the original tire sidewall by the original tire manufacturer.

(2) State vehicle. – Any vehicle owned, rented, or leased by the State, or an institution, department, or agency of the State, that is driven on a public road consistently at speeds greater than 30 miles per hour.

(b) Forensic Tire Standards. – In order to preserve critical tire information, the Secretary of Administration and any institution, department, or agency of the State shall only procure and install tires for State vehicles that possess the original, unaltered, and uncovered tire sidewall. Furthermore, neither the Secretary of Administration nor any institution, department, or agency of the State shall execute a contract for the repair or

refurbishment of tires for State vehicles that provides for the removal, covering, or other alteration in any manner of the critical tire information contained on the original tire sidewall.

(c) Tire Purchase and Contract Standards Applicability. – All contracts for the purchase, repair, or refurbishment of tires for State vehicles, or contracts for the purchase of products or services related to the repair or refurbishment of tires for State vehicles, executed on or after the date this section becomes effective shall comply with the provisions of this section.

(d) Exemption. – Notwithstanding the provisions of this section, the State or any institution, department, or agency of the State that owns or has a legally binding contract in place for the future purchase of tires having altered or covered sidewalls prior to the date that this section becomes effective shall perform its existing contractual obligations related thereto and may continue to use those tires on State vehicles for the useful life of the retreaded tire. (2011-145, s. 28.36(a).)

§ 143-64: Repealed by Session Laws 2012-89, s. 1, effective June 28, 2012.

Article 3A.

Surplus Property.

Part 1. State Surplus Property Agency.

§ 143-64.01. Department of Administration designated State Surplus Property Agency.

The Department of Administration is designated as the State agency for State surplus property, and with respect to the acquisition of State surplus property the agency shall be subject to the supervision and direction of the Secretary of Administration. (1991, c. 358, s. 2.)

§ 143-64.02. Definitions.

As used in Part 1 of this Article, except where the context clearly requires otherwise:

(1) "Agency" means an existing department, institution, commission, committee, board, division, or bureau of the State.

(2) "Nonprofit tax exempt organizations" means the following entities certified by the Internal Revenue Service as tax-exempt nonprofit organizations under section 501(c)(3) of the United States Internal Revenue Code of 1954: medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations, public libraries, civil defense organizations, and nonprofit entities that are qualified under rules adopted by the State Surplus Property Agency of the Department of Administration to refurbish computers and donate them to low-income students or households throughout the State.

(3) "Recyclable material" means a recyclable material, as defined in G.S. 130A-290, that the Secretary of Administration determines, consistent with G.S. 130A-309.14, to be a recyclable material.

(4) "State owned" means supplies, materials, and equipment in the possession of the State of North Carolina and purchased with State funds, personal property donated to the State, or personal property purchased with other funds that give ownership to the State.

(5) "Surplus property" means personal property that is no longer needed by a State agency. (1991, c. 358, s. 2; 1998-223, s. 1; 2015-241, s. 27.3(e); 2017-67, s. 1(a).)

§ 143-64.03. Powers and duties of the State agency for surplus property.

(a) The State Surplus Property Agency is authorized and directed to:

(1) Sell all State owned supplies, materials, and equipment that are surplus, obsolete, or unused and sell all seized vehicles and other conveyances that the State Surplus Property Agency is authorized to sell;

(2) Warehouse such property; and

(3) Distribute such property to tax-supported or nonprofit tax-exempt organizations.

(b) The State Surplus Property Agency is authorized and empowered to act as a clearinghouse of information for agencies and private nonprofit tax-exempt organizations, to locate property available for acquisition from State agencies, to ascertain the terms and conditions under which the property may be obtained, to receive requests from agencies and private nonprofit tax-exempt organizations, and transmit all available information about the property, and to aid and assist the agencies and private nonprofit tax-exempt organizations in transactions for the acquisition of State surplus property. When distributing computer equipment to nonprofit entities that refurbish computers and donate them to low-income students or households in this State, the State Surplus Property Agency must give consideration to the counties where the computer equipment will be donated to ensure that all geographic regions of the State benefit from the distributions.

(c) The State agency for surplus property, in the administration of Part 1 of this Article, shall cooperate to the fullest extent consistent with the provisions of Part 1 of this Article, with the departments or agencies of the State.

(d) The State agency for surplus property may sell or otherwise dispose of surplus property, including motor vehicles, through an electronic auction service. (1991, c. 358, s. 2; 2003-284, s. 18.6(a); 2015-241, s. 27.3(f); 2017-67, s. 1(b).)

§ 143-64.04. Powers of the Secretary to delegate authority.

(a) The Secretary of Administration may delegate to any employees of the State agency for surplus property such power and authority as he or they deem reasonable and proper for the effective administration of Part 1 of this Article. The Secretary of Administration may, in his discretion, bond any person in the employ of the State agency for surplus property, handling moneys, signing checks, or receiving or distributing property from the United States under authority of Part 1 of this Article.

(b) The Secretary of Administration may adopt rules necessary to carry out Part 1 of this Article. (1991, c. 358, s. 2.)

§ 143-64.05. Service charge; receipts.

(a) The State agency for surplus property may assess and collect a service charge (i) for the acquisition, receipt, warehousing, distribution, or transfer of any State surplus property; (ii) for the transfer or sale of recyclable material; and (iii) for the towing, storing, processing, maintaining, and selling of motor vehicles seized pursuant to G.S. 20-28.3. The service charge authorized by this subsection does not apply to the transfer or sale of timber on land owned by the Wildlife Resources Commission or the Department of Agriculture and Consumer Services.

(b) All receipts from the transfer or sale of surplus, obsolete, or unused equipment of State departments, institutions, and agencies that are supported by appropriations from the General Fund, except where the receipts have been anticipated for or budgeted against the cost of replacements, shall be credited by the Secretary to the Office of State Treasurer as nontax revenue.

(c) A department, institution, or agency may retain receipts derived from the transfer or sale of recyclable material, less any charge collected pursuant to subsection (a) of this section, and may use the receipts to defray the costs of its recycling activities. A contract for the transfer or sale of recyclable material to which a department, institution, or agency is a party shall not become effective until the contract is approved by the Secretary of Administration. The Secretary of Administration shall adopt rules governing the transfer or sale of recyclable material by a department, institution, or agency and specifying the conditions and procedures under which a department, institution, or agency may retain the receipts derived from the transfer or sale, including the appropriate allocation of receipts when more than one department, institution, or agency is involved in a recycling activity. (1991, c. 358, s. 2; 1991 (Reg. Sess., 1992), c. 900, s. 24; 1998-223, s. 2; 2006-231, s. 3; 2007-323, s. 11.1; 2015-241, s. 27.3(g).)

§ 143-64.06. North Carolina State University may sell timber.

Notwithstanding any provision of this Part or Chapter 146 of the General Statutes, the Board of Trustees of North Carolina State University may cause to be severed and sold or transferred timber from any unimproved timberlands owned by or allocated to the University without involvement by the State Surplus Property Agency and without being required to pay any service charge or surcharge to the State Surplus Property Agency. Any such severance shall be reported to the Council of State through the State Property Office. The Board of Trustees may delegate the authority set out above to responsible University officials. The proceeds of any sales or transfers under this section shall be used to support the management of, and programming costs associated with, forest properties owned, allocated, or managed by North Carolina State University. (2011-145, s. 9.6H.)

Part 2. State Agency for Federal Surplus Property.

§ 143-64.1. Department of Administration designated State agency for federal surplus property.

The Department of Administration is hereby designated as the State agency for federal surplus property, and with respect to the acquisition of federal surplus property said agency shall be subject to the supervision and direction of the Secretary of Administration. (1953, c. 1262, s. 1; 1957, c. 269, s. 3; 1975, c. 879, s. 46; 1991, c. 358, s. 3.)

§ 143-64.2. Authority and duties of the State agency for federal surplus property.

(a) The State agency for federal surplus property is hereby authorized and empowered

(1) To acquire from the United States of America such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for educational purposes, public health purposes, or civil defense purposes, including research;

(2) To warehouse such property; and

(3) To distribute such property to tax-supported or nonprofit and tax-exempt (under section 501(c)(3) of the United States Internal Revenue Code of 1954) medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations, public libraries, civil defense organizations, and such other eligible donees within the State as are permitted to receive surplus property of the United States of America under the Federal Property and Administrative Services Act of 1949, as amended.

(b) The State agency for federal surplus property may adopt rules necessary to carry out Part 2 of this Article.

(c) The State agency for federal surplus property may appoint advisory boards or committees as needed to ensure that Part 2 of this Article and the rules adopted under Part 2 of this Article are consistent with federal law concerning surplus property.

(d) The State agency for surplus property is authorized and empowered to take such action, make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the State, require such reports and make such investigations as may be required by law or regulation of the United States of America in connection with the receipt, warehousing, and distribution of property received by the State agency for federal surplus property from the United States of America.

(e) The State agency for federal surplus property is authorized and empowered to act as clearinghouse of information for the public and private nonprofit institutions and agencies referred to in subsection (a) of this section, to locate property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from the above-mentioned institutions and agencies and to transmit to them all available information in reference to such property, and to aid and assist such institutions and agencies in every way possible in the consummation or acquisition or transactions hereunder.

(f) The State agency for federal surplus property, in the administration of Part 2 of this Article, shall cooperate to the fullest extent consistent with the provisions of Part 2 of this Article, with the departments or agencies of the United States of America and shall make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use, or accounting for, property donable or donated to the State. (1953, c. 1262, s. 2; 1965, c. 1105, ss. 1, 2; 1987, c. 827, s. 218; 1991, c. 358, s. 3.)

§ 143-64.3. Power of Department of Administration and Secretary to delegate authority.

The Department of Administration and/or the Secretary of Administration may delegate to any employees of the State agency for federal surplus property such power and authority as he or they deem reasonable and proper for the effective administration of Part 2 of this Article. The Department of Administration and/or the Secretary of Administration may, in his or their discretion, bond any person in the employ of the State agency for surplus property, handling moneys, signing checks, or receiving or distributing property from the United States under authority of Part 2 of this Article. (1953, c. 1262, s. 3; 1957, c. 269, s. 3; 1975, c. 879, s. 46; 1991, c. 358, s. 3.)

§ 143-64.4. Warehousing, transfer, etc., charges.

The State agency for federal surplus property is hereby authorized and empowered to assess and collect service charges or fees for the acquisition, receipts, warehousing, distribution or transfer of any property acquired by donation from the United States of America for educational purposes, public health purposes, public libraries or civil defense purposes, including research, and any such charges made or fees assessed shall be limited to those reasonably related to the costs of care and handling in respect to the acquisition, receipts, warehousing, distribution or transfer of the property by the State agency for surplus property. (1953, c. 1262, s. 4; 1965, c. 1105, s. 3; 1991, c. 358, s. 3.)

§ 143-64.5. Department of Agriculture and Consumer Services exempted from application of Article.

Notwithstanding any provisions or limitations of Part 2 of this Article, the North Carolina Department of Agriculture and Consumer Services is authorized and empowered to distribute food, surplus commodities and agricultural products under contracts and agreements with the federal government or any of its departments or agencies, and is authorized and empowered to adopt rules in order to conform with federal requirements and standards for such distribution and also for the proper distribution of such food, commodities and agricultural products. To the extent set forth above and in this section, the provisions of Part 2 of this Article shall not apply to the North Carolina Department of Agriculture and Consumer Services. (1953, c. 1262, s. 5; 1987, c. 827, s. 217; 1997-261, s. 89.)

Part 3. Public Agencies.

§ 143-64.6: Repealed by Session Laws 2004-199, s. 36(a), effective August 17, 2004.

§§ 143-64.7 through 143-64.9. Reserved for future codification purposes.

Article 3B.

Conservation of Energy, Water, and Other Utilities in Government Facilities.

Part 1. Energy Policy and Life-Cycle Cost Analysis.

§ 143-64.10. Findings; policy.

(a) The General Assembly finds all of the following:

(1) That the State shall take a leadership role in aggressively undertaking the conservation of energy, water, and other utilities in North Carolina.

(2) That State facilities and facilities of State institutions of higher learning have a significant impact on the State's consumption of energy, water, and other utilities.

(3) That practices to conserve energy, water, and other utilities that are adopted for the design, construction, operation, maintenance, and renovation of these facilities and for the purchase, operation, and maintenance of equipment for these facilities will have a beneficial effect on the State's overall supply of energy, water, and other utilities.

(4) That the cost of the energy, water, and other utilities consumed by these facilities and the equipment for these facilities over the life of the facilities shall be considered, in addition to the initial cost.

(5) That the cost of energy, water, and other utilities is significant and facility designs shall take into consideration the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of the facility, of the energy, water, and other utilities consumed, and of operation and maintenance of the facility as it affects the consumption of energy, water, or other utilities.

(6) That State government shall undertake a program to reduce the use of energy, water, and other utilities in State facilities and facilities of the State institutions of higher learning and equipment in those facilities in order to provide its citizens with an example of energy-use, water-use, and utility-use efficiency.

(b) It is the policy of the State of North Carolina to ensure that practices to conserve energy, water, and other utilities are employed in the design, construction, operation, maintenance, and renovation of State facilities and facilities of the State institutions of higher learning and in the purchase, operation, and maintenance of equipment for these facilities. (1975, c. 434, s. 1; 1993, c. 334, s. 2; 2001-415, s. 1; 2006-190, s. 8; 2007-546, s. 3.1(b).)

§ 143-64.11. Definitions.

For purposes of this Article:

(1) "Economic life" means the projected or anticipated useful life of a facility.

(2) "Energy-consumption analysis" means the evaluation of all energy- consuming systems, including systems that consume water or other utilities, and components of these systems by demand and type of energy or other utility use, including the internal energy load imposed on

a facility by its occupants, equipment and components, and the external energy load imposed on the facility by climatic conditions.

(2a) "Energy Office" means the State Energy Office of the Department of Environmental Quality.

(2b) "Energy-consuming system" includes but is not limited to any of the following equipment or measures:

a. Equipment used to heat, cool, or ventilate the facility;
b. Equipment used to heat water in the facility;
c. Lighting systems;
d. On-site equipment used to generate electricity for the facility;
e. On-site equipment that uses the sun, wind, oil, natural gas, liquid propane gas, coal, or electricity as a power source; and
f. Energy conservation measures, as defined in G.S. 143-64.17, in the facility design and construction that decrease the energy, water, or other utility requirements of the facility.

(3) "Facility" means a building or a group of buildings served by a central distribution system for energy, water, or other utility or components of a central distribution system.

(4) "Initial cost" means the required cost necessary to construct or renovate a facility.

(5) "Life-cycle cost analysis" means an analytical technique that considers certain costs of owning, using, and operating a facility over its economic life, including but not limited to:

a. Initial costs;
b. System repair and replacement costs;
c. Maintenance costs;
d. Operating costs, including energy costs; and
e. Salvage value.

(6) Repealed by Session Laws 1993, c. 334, s. 3, effective July 13, 1993.

(7) "State agency" means the State of North Carolina or any board, bureau, commission, department, institution, or agency of the State.

(8) "State-assisted facility" means a facility constructed or renovated in whole or in part with State funds or with funds guaranteed or insured by a State agency.

(9) "State facility" means a facility constructed or renovated, by a State agency.

(10) "State institution of higher learning" means any constituent institution of The University of North Carolina. (1975, c. 434, s. 2; 1989, c. 23, s. 1; 1993, c. 334, s. 3; 2001-415, s. 2; 2006-190, ss. 9, 10, 11; 2007-546, s. 3.1(c); 2009-446, s. 1(f); 2013-360, s. 15.22(o); 2015-241, s. 14.30(u).)

§ 143-64.12. Authority and duties of the Department; State agencies and State institutions of higher learning.

(a) The Department of Environmental Quality through the State Energy Office shall develop a comprehensive program to manage energy, water, and other utility use for State agencies and State institutions of higher learning and shall update this program annually. Each State agency and State institution of higher learning shall develop and implement a management plan that is consistent with the State's comprehensive program under this subsection to manage energy, water, and other utility use, and that addresses any findings or recommendations resulting from the energy audit required by subsection (b1) of this section. The energy consumption per gross square foot for all State buildings in total shall be reduced by twenty percent (20%) by 2010 and thirty percent (30%) by 2015 based on energy consumption for the 2002-2003 fiscal year. Each State agency and State institution of higher learning shall update its management plan biennially and include strategies for supporting the energy consumption reduction requirements under this subsection. Each community college shall submit to the State Energy Office a biennial written report of utility consumption and costs. Management plans submitted biennially by State institutions of higher learning shall include all of the following:

(1) Estimates of all costs associated with implementing energy conservation measures, including pre-installation and post-installation costs.
(2) The cost of analyzing the projected energy savings.
(3) Design costs, engineering costs, pre-installation costs, post-installation costs, debt service, and any costs for converting to an alternative energy source.
(4) An analysis that identifies projected annual energy savings and estimated payback periods.

(a1) State agencies and State institutions of higher learning shall carry out the construction and renovation of facilities in such a manner as to further the policy set forth under this section and to ensure the use of life-cycle cost analyses and practices to conserve energy, water, and other utilities.

(b) The Department of Administration shall develop and implement policies, procedures, and standards to ensure that State purchasing practices improve efficiency regarding energy, water, and other utility use and take the cost of the product over the economic life of the product into consideration. The Department of Administration shall adopt and implement Building Energy Design Guidelines. These guidelines shall include energy-use goals and standards, economic assumptions for life-cycle cost analysis, and other criteria on building systems and technologies. The Department of Administration shall modify the design criteria for construction and renovation of facilities of State buildings and State institutions of higher learning buildings to require that a life-cycle cost analysis be conducted pursuant to G.S. 143-64.15.

(b1) The Department of Administration, as part of the Facilities Condition and Assessment Program, shall identify and recommend energy conservation maintenance and operating procedures that are designed to reduce energy consumption within the facility of a State agency or a State institution of higher learning and that require no significant expenditure of funds. Every State agency or State institution of higher learning shall implement these recommendations. Where energy management equipment is proposed for

any facility of a State agency or of a State institution of higher learning, the maximum interchangeability and compatibility of equipment components shall be required. As part of the Facilities Condition and Assessment Program under this section, the Department of Administration, in consultation with the State Energy Office, shall develop an energy audit and a procedure for conducting energy audits. Every five years the Department shall conduct an energy audit for each State agency or State institution of higher learning, and the energy audits conducted shall serve as a preliminary energy survey. The State Energy Office shall be responsible for system-level detailed surveys.

(b2) The Department of Administration shall submit a report of the energy audit required by subsection (b1) of this section to the affected State agency or State institution of higher learning and to the State Energy Office. The State Energy Office shall review each audit and, in consultation with the affected State agency or State institution of higher learning, incorporate the audit findings and recommendations into the management plan required by subsection (a) of this section.

(c) through (g) Repealed by Session Laws 1993, c. 334, s. 4.

(h) When conducting a facilities condition and assessment under this section, the Department of Administration shall identify and recommend to the State Energy Office any facility of a State agency or State institution of higher learning as suitable for building commissioning to reduce energy consumption within the facility or as suitable for installing an energy savings measure pursuant to a guaranteed energy savings contract under Part 2 of this Article.

(i) Consistent with G.S. 150B-2(8a)h., the Department of Administration may adopt architectural and engineering standards to implement this section.

(j) The State Energy Office shall submit a report by December 1 of every odd-numbered year to the Joint Legislative Energy Policy Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division describing the comprehensive program to manage energy, water, and other utility use for State agencies and State institutions of higher learning required by subsection (a) of this section. The report shall also contain the following:

(1) A comprehensive overview of how State agencies and State institutions of higher learning are managing energy, water, and other utility use and achieving efficiency gains.

(2) Any new measures that could be taken by State agencies and State institutions of higher learning to achieve greater efficiency gains, including any changes in general law that might be needed.

(3) A summary of the State agency and State institutions of higher learning management plans required by subsection (a) of this section and the energy audits required by subsection (b1) of this section.

(4) A list of the State agencies and State institutions of higher learning that did and did not submit management plans required by subsection (a) of this section and a list of the State agencies and State institutions of higher learning that received an energy audit.

(5) Any recommendations on how management plans can be better managed and implemented. (1975, c. 434, s. 3; 1993, c. 334, s. 4; 2000-140, s. 76(f); 2001-415, s. 3; 2006-190, s. 12; 2007-546, s. 3.1(a); 2008-198, s. 11.1; 2009-446, s. 1(e); 2010-31, s. 14.3; 2010-196, s. 2; 2013-360, s. 15.22(p); 2014-120, s. 55; 2015-241, s. 14.30(u); 2017-57, s. 14.1(f).)

§ 143-64.13: Repealed by Session Laws 1993, c. 334, s. 5.

§ 143-64.14: Recodified as § 143-64.16 by Session Laws 1993, c. 334, s. 7.

§ 143-64.15. Life-cycle cost analysis.

(a) A life-cycle cost analysis shall be commenced at the schematic design phase of the construction or renovation project, shall be updated or amended as needed at the design development phase, and shall be updated or amended again as needed at the construction document phase. A life-cycle cost analysis shall include, but not be limited to, all of the following elements:

(1) The coordination, orientation, and positioning of the facility on its physical site.
(2) The amount and type of fenestration and the potential for daylighting employed in the facility.
(3) Thermal characteristics of materials and the amount of insulation incorporated into the facility design.
(4) The variable occupancy and operating conditions of the facility, including illumination levels.
(5) Architectural features that affect the consumption of energy, water, and other utilities.

(b) The life-cycle cost analysis performed for any State facility shall, in addition to the requirements set forth in subsection (a) of this section, include, but not be limited to, all of the following:

(1) An energy-consumption analysis of the facility's energy-consuming systems in accordance with the provisions of subsection (g) of this section.
(2) The initial estimated cost of each energy-consuming system being compared and evaluated.
(3) The estimated annual operating cost of all utility requirements.
(4) The estimated annual cost of maintaining each energy-consuming system.
(5) The average estimated replacement cost for each system expressed in annual terms for the economic life of the facility.

(c) Each entity shall conduct a life-cycle cost analysis pursuant to this section for the construction or the renovation of any State facility or State-assisted facility of 20,000 or more gross square feet. For the replacement of heating, ventilation, and air-conditioning equipment in any State facility or State-assisted facility of 20,000 or more gross square feet, the entity shall conduct a life-cycle cost analysis of the replacement equipment pursuant to this section when the replacement is financed under a guaranteed energy savings contract or financed using repair and renovation funds.

(d) The life-cycle cost analysis shall be certified by a registered professional engineer or bear the seal of a North Carolina registered architect, or both. The engineer or architect shall be particularly qualified by training and experience for the type of work involved, but shall not be employed directly or indirectly by a fuel provider, utility company, or group supported by fuel

providers or utility funds. Plans and specifications for facilities involving public funds shall be designed in conformance with the provisions of G.S. 133-1.1.

(e) In order to protect the integrity of historic buildings, no provision of this Article shall be interpreted to require the implementation of measures to conserve energy, water, or other utility use that conflict with respect to any property eligible for, nominated to, or entered on the National Register of Historic Places, pursuant to the National Historic Preservation Act of 1966, P.L. 89-665; any historic building located within an historic district as provided in Chapters 160A or 153A of the General Statutes; any historic building listed, owned, or under the jurisdiction of an historic properties commission as provided in Chapter 160A or 153A; nor any historic property owned by the State or assisted by the State.

(f) Each State agency shall use the life-cycle cost analysis over the economic life of the facility in selecting the optimum system or combination of systems to be incorporated into the design of the facility.

(g) The energy-consumption analysis of the operation of energy-consuming systems utilities in a facility shall include, but not be limited to, all of the following:

(1) The comparison of two or more system alternatives.

(2) The simulation or engineering evaluation of each system over the entire range of operation of the facility for a year's operating period.

(3) The engineering evaluation of the consumption of energy, water, and other utilities of component equipment in each system considering the operation of such components at other than full or rated outputs. (1993, c. 334, s. 6; 2001-415, ss. 4, 5; 2006-190, s. 13; 2007-546, s. 4.1.)

§ 143-64.15A. Certification of life-cycle cost analysis.

Each State agency and each State institution of higher learning performing a life-cycle cost analysis for the purpose of constructing or renovating any facility shall, prior to selecting a design option or advertising for bids for construction, submit the life-cycle cost analysis to the Department for certification at the schematic design phase and again when it is updated or amended as needed in accordance with G.S. 143-64.15. The Department shall review the material submitted by the State agency or State institution of higher learning, reserve the right to require an agency or institution to complete additional analysis to comply with certification, perform any additional analysis, as necessary, to comply with G.S. 143-341(11), and require that all construction or renovation conducted by the State agency or State institution of higher learning comply with the certification issued by the Department. (2001-415, s. 6; 2007-546, s. 4.2.)

§ 143-64.16. Application of Part.

The provisions of this Part shall not apply to municipalities or counties, nor to any agency or department of any municipality or county; provided, however, this Part shall apply to any board of a community college. Community college is defined in G.S. 115D-2(2). (1975, c. 434, s. 5; 1989, c. 23, s. 2; 1993, c. 334, s. 7; 1993 (Reg. Sess., 1994), c. 775, s. 2.)

Part 2. Energy Saving Measures for Governmental Units.

§ 143-64.17. Definitions.

As used in this Part:

(1) "Energy conservation measure" means a facility or meter alteration, training, or services related to the operation of the facility or meter, when

the alteration, training, or services provide anticipated energy savings or capture lost revenue. Energy conservation measure includes any of the following:

a. Insulation of the building structure and systems within the building.

b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption.

c. Automatic energy control systems.

d. Heating, ventilating, or air-conditioning system modifications or replacements.

e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made.

f. Energy recovery systems.

g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings.

h. Repealed by Session Laws 2006-190, s. 2, effective August 3, 2006, and applicable to contracts entered into or renewed on or after that date.

i. Faucets with automatic or metered shut-off valves, leak detection equipment, water meters, water recycling equipment, and wastewater recovery systems.

j. Other energy conservation measures that conserve energy, water, or other utilities.

(2) "Energy savings" means a measured reduction in fuel costs, energy costs, water costs, stormwater fees, other utility costs, or operating costs, including environmental discharge fees, water and sewer maintenance fees, and increased meter accuracy, created from the implementation of one or more energy conservation measures when compared with an established baseline of previous costs, including captured lost revenues, developed by the governmental unit.

(2a) "Governmental unit" means either a local governmental unit or a State governmental unit.

(3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or

replacement of existing equipment or meters, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs.

(4) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.

(5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures who has been prequalified by the State Energy Office according to the prequalification criteria established by that Office.

(5a) "Qualified reviewer" means an architect or engineer who is (i) licensed in this State and (ii) experienced in the design, implementation, and installation of energy efficiency measures.

(6) "Request for proposals" means a negotiated procurement initiated by a governmental unit by way of a published notice that includes the following:

a. The name and address of the governmental unit.

b. The name, address, title, and telephone number of a contact person in the governmental unit.

c. Notice indicating that the governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.

d. The date, time, and place where proposals must be received.

e. The evaluation criteria for assessing the proposals.

f. A statement reserving the right of the governmental unit to reject any or all the proposals.

g. Any other stipulations and clarifications the governmental unit may require.

(7) "State governmental unit" means the State or a department, an agency, a board, or a commission of the State, including the Board of Governors of The University of North Carolina and its constituent institutions. (1993 (Reg. Sess., 1994), c. 775, s. 3; 1995, c. 295, s. 1; 1999-235, ss. 1, 2; 2002-161, s. 2; 2006-190, s. 2; 2013-396, s. 1.)

§ 143-64.17A. Solicitation of guaranteed energy savings contracts.

(a) RFP Issuance. – Before entering into a guaranteed energy savings contract, a governmental unit shall issue a request for proposals. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in at least one newspaper of general circulation in the geographic area for which the local governmental unit is responsible or, in the case of a State governmental unit, in which the facility or facilities are located. No guaranteed energy savings contract shall be awarded

by any governmental unit unless at least two proposals have been received from qualified providers. Provided that if after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers, or fewer than two qualified providers attend the mandatory prebid meeting, the governmental unit may then open the proposals and select a qualified provider even if only one proposal is received.

(b) Preliminary Proposal Evaluation. – The governmental unit shall evaluate a sealed proposal from any qualified provider. A qualified reviewer shall be required to evaluate the proposals and will provide the governmental unit with a letter report containing both qualitative and quantitative evaluation of the proposals. The report may include a recommendation for selection, but the governmental unit is not obligated to follow it.

(c) Receipt of Proposals for Unit of Local Government. – In the case of a local governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the governing body of the local governmental unit at a public opening at which the contents of the proposals shall be announced and recorded in the minutes of the governing body. Proposals shall be evaluated for the local governmental unit by a qualified reviewer on the basis of:

(1) The information required in subsection (b) of this section; and

(2) The criteria stated in the request for proposals.

The local governmental unit may require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local governmental unit for the evaluation of the proposal by a qualified reviewer not employed as a member of the staff of the local governmental unit or the qualified provider.

(c1) Receipt of Proposals for Unit of State Government. – In the case of a State governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the State governmental unit at a public opening and the contents of the proposals shall be announced at this opening. Proposals shall be evaluated for the State governmental unit by a qualified reviewer who is either privately retained, employed with the Department of Administration, or employed as a member of the staff of the State governmental unit. The proposal shall be evaluated on the basis of the information and report required in subsection (b) of this section and the criteria stated in the request for proposals.

The State governmental unit shall require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the State governmental unit for evaluation of the proposal by a qualified reviewer not employed as a member of the staff of the State governmental unit or the qualified provider. The Department of Administration may charge the State governmental unit a reasonable fee for the evaluation of the proposal if the Department's services are used for the evaluation and the cost paid by the State governmental unit to the Department of Administration shall be calculated in the cost of the proposal under this subsection.

(d) Criteria for Selection of Provider. – The governmental unit shall select the qualified provider that it determines to best meet the needs of the governmental unit by

evaluating all of the following and following the procedures set forth in subsection (d1) of this section:

(1), (2) Repealed by Session Laws 2013-396, s. 2, effective August 23, 2013.

(3) Quality of the products and energy conservation measures proposed.

(4) Repealed by Session Laws 2013-396, s. 2, effective August 23, 2013.

(5) General reputation and performance capabilities of the qualified providers.

(6) Substantial conformity with the specifications and other conditions set forth in the request for proposals.

(7) Time specified in the proposals for the performance of the contract.

(8) Any other factors the governmental unit deems necessary, which factors shall be made a matter of record.

(d1) Process for Selection of Provider. – The governmental unit shall select a short list of finalists on the basis of its rankings of the written proposals under the criteria set forth in subsection (d) of this section as well as references from past clients. The governmental unit shall have the highest ranked qualified provider prepare a cost-savings analysis for the proposed contract showing at a minimum a comparison of the total estimated project savings to the total estimated project costs for the proposed term. If the governmental unit and the qualified provider cannot negotiate acceptable terms, pricing, and savings estimates, the governmental unit may terminate the process and begin negotiations with the second highest ranked qualified provider. The State Energy Office shall review the selected qualified provider's proposal, cost-benefit analysis, and other relevant documents prior to the governmental unit announcing the award.

(e) Nothing in this section shall limit the authority of governmental units as set forth in Article 3D of this Chapter. (1993 (Reg. Sess., 1994), c. 775, s. 3; 2002-161, s. 3; 2013-396, s. 2.)

§ 143-64.17B. Guaranteed energy savings contracts.

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

(1) The term of the contract does not exceed 20 years from the date of the installation and acceptance by the governmental unit of the energy conservation measures provided for under the contract.

(2) The governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building or utility system, or utility consuming device or equipment when the utility cost is paid by the governmental unit.

(b) Before entering into a guaranteed energy savings contract, the governmental unit shall provide published notice of the time and place or of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's

purpose. The notice must be published at least 15 days before the date of the proposed award or meeting.

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

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

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

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

(g) A qualified provider shall provide an annual reconciliation statement based upon the results of the measurement and verification review. The statement shall disclose any shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual, not stipulated, energy and operational savings incurred during a given guarantee year. Any guaranteed energy and operational savings shall be determined by using one of the measurement and verification

methodologies listed in the United States Department of Energy's Measurement and Verification Guidelines for Energy Savings Performance Contracting, the International Performance Measurement and Verification Protocol (IPMVP) maintained by the Efficiency Valuation Organization, or Guideline 14-2002 of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers. If due to existing data limitations or the nonconformance of specific project characteristics, none of the three methodologies listed in this subsection is sufficient for measuring guaranteed savings, the qualified provider shall develop an alternate method that is compatible with one of the three methodologies and mutually agreeable to the governmental unit. The guarantee year shall consist of a 12-month term commencing from the time that the energy conservation measures become fully operational. A qualified provider shall pay the governmental unit or its assignee any shortfall in the guaranteed energy and operational savings after the total year savings have been determined. In the case of a governmental unit, a surplus in any one year shall not be carried forward or applied to a shortfall in any other year. (1993 (Reg. Sess., 1994), c. 775, s. 3; 1995, c. 295, s. 2; 1999-235, s. 3; 2002-161, s. 4; 2003-138, s. 1; 2006-190, s. 3; 2009-375, s. 2; 2013-396, s. 3; 2014-115, s. 56.7.)

§ 143-64.17C: Repealed by Session Laws 2002, ch. 161, s. 5, effective January 1, 2003, and applicable to contracts entered into on or after that date.

§ 143-64.17D. Contract continuance.

A guaranteed energy savings contract may extend beyond the fiscal year in which it becomes effective. Such a contract shall stipulate that it does not constitute a direct or indirect pledge of the taxing power or full faith and credit of any governmental unit. (1993 (Reg. Sess., 1994), c. 775, s. 3; 2002-161, s. 6.)

§ 143-64.17E. Payments under contract.

A local governmental unit may use any funds, whether operating or capital, that are not otherwise restricted by law for the payment of a guaranteed energy savings contract. State appropriations to any local governmental unit shall not be reduced as a result of energy savings occurring as a result of a guaranteed energy savings contract. (1993 (Reg. Sess., 1994), c. 775, s. 3.)

§ 143-64.17F. State agencies to use contracts when feasible; rules; recommendations.

(a) State governmental units shall evaluate the use of guaranteed energy savings contracts in reducing energy costs and may use those contracts when feasible and practical.

(b) The Department of Administration, in consultation with the Department of Environmental Quality, through the State Energy Office, shall adopt rules for: (i) agency evaluation of guaranteed energy savings contracts; (ii) establishing time periods for consideration of guaranteed energy savings contracts by the Office of State Budget and Management, the Office of the State Treasurer, and the Council of State, and (iii) setting measurements and verification criteria, including review, audit, and precertification. Prior to adopting any rules pursuant to this section, the Department shall consult with and obtain approval of those rules from the State Treasurer. The rules adopted pursuant to this

subsection shall not apply to energy conservation measures implemented pursuant to G.S. 143-64.17L.

(c) The Department of Administration, and the Department of Environmental Quality through the State Energy Office, may provide to the Council of State its recommendations concerning any energy savings contracts being considered. (2002-161, s. 7; 2003-138, s. 2; 2009-446, s. 1(d); 2011-145, s. 9.6D(d); 2013-360, s. 15.22(d); 2015-241, s. 14.30(u).)

§ 143-64.17G. Report on guaranteed energy savings contracts entered into by local governmental units.

A local governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the Local Government Commission and the State Energy Office of the Department of Environmental Quality. The Commission shall compile the information and report it biennially to the Joint Commission on Governmental Operations. In compiling the information, the Local Government Commission shall include information on the energy savings expected to be realized from a contract and, with the assistance of the Office of State Construction and the State Energy Office, shall evaluate whether expected savings have in fact been realized. (1993 (Reg. Sess., 1994), c. 775, s. 9; 2006-190, s. 4; 2009-375, s. 3; 2013-360, s. 15.22(e); 2015-241, s. 14.30(u).)

§ 143-64.17H. Report on guaranteed energy savings contracts entered into by State governmental units.

A State governmental unit that enters into a guaranteed energy savings contract or implements an energy conservation measure pursuant to G.S. 143-64.17L must report either (i) the contract and the terms of the contract or (ii) the implementation of the measure to the State Energy Office of the Department of Environmental Quality within 30 days of the date the contract is entered into or the measure is implemented. In addition, within 60 days after each annual anniversary date of a guaranteed energy savings contract, the State governmental unit must report the status of the contract to the State Energy Office, including any details required by the State Energy Office. The State Energy Office shall compile the information for each fiscal year and report it to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Fiscal Research Division, and the Local Government Commission annually by December 1. In compiling the information, the State Energy Office shall include information on the energy savings expected to be realized from a contract or implementation and shall evaluate whether expected savings have in fact been realized. (2002-161, s. 8; 2006-190, s. 5; 2009-446, s. 1(c); 2011-145, s. 9.6D(e); 2013-360, s. 15.22(f); 2015-241, s. 14.30(u); 2017-57, s. 14.1(g).)

§ 143-64.17I. Installment and lease purchase contracts.

A local governmental unit may provide for the acquisition, installation, or maintenance of energy conservation measures acquired pursuant to this Part by installment or lease purchase

contracts in accordance with and subject to the provisions of G.S. 160A-20 and G.S. 160A-19, as applicable. (2002-161, s. 8.)

§ 143-64.17J. Financing by State governmental units.

State governmental units may finance the acquisition, installation, or maintenance of energy conservation measures acquired pursuant to this Part in the manner and to the extent set forth in Article 8 of Chapter 142 of the General Statutes or as otherwise authorized by law. (2002-161, s. 8.)

§ 143-64.17K. Inspection and compliance certification for State governmental units.

The provisions of G.S. 143-341(3) shall not apply to any energy conservation measure for State governmental units provided pursuant to this Part, except as specifically set forth in this section. Except as otherwise exempt under G.S. 116-31.11, the following shall apply to all energy conservation measures provided to State governmental units pursuant to this Part:

(1) The provisions of G.S. 133-1.1.

(2) Inspection and certification by:

a. The applicable local building inspector under Part 4 of Article 18 of Chapter 153A of the General Statutes or Part 5 of Article 19 of Chapter 160A of the General Statutes; or

b. At the election of the State governmental unit, the Department of Administration under G.S. 143-341(3)d.

The cost of compliance with this section may be included in the cost of the project in accordance with G.S. 143-64.17A(c1) and may be included in the cost financed under Article 8 of Chapter 142 of the General Statutes. (2002-161, s. 8.)

§ 143-64.17L. Board of Governors may authorize energy conservation measures at constituent institutions.

(a) Authority. – Notwithstanding the provisions of this Part to the contrary, the Board of Governors of The University of North Carolina may authorize any constituent institution listed in subsection (e) of this section to implement an energy conservation measure without entering into a guaranteed energy savings contract if both of the following conditions are met:

(1) The Board of Governors finds that the energy savings resulting from the implementation of the energy conservation measure shall, according to the energy savings analysis received pursuant to G.S. 143-64.17M(a), equal or exceed the total cost of implementing the measure. If the proposed implementation will be financed with debt, then the energy savings analysis must project sufficient energy savings to pay the debt service on any bonds to be issued. As used in this subdivision, the term "total cost' shall have the same meaning as it does in G.S. 143-64.17B(d).

(2) The energy conservation measure is for an existing building or utility system.

(b) Scope of Authority. – In implementing an energy conservation measure pursuant to subsection (a) of this section, the Board of Governors may undertake or authorize any

constituent institution listed in subsection (e) of this section to undertake any action that (i) could be required of a qualified provider under a guaranteed energy savings contract or (ii) is otherwise permissible under this Part.

(c) Projects Consisting of Multiple Energy Conservation Measures. – The Board of Governors may authorize the implementation of multiple energy conservation measures simultaneously as part of a single project. When doing so, the findings required by subsection (a) of this section may be made with respect to the project as a whole and need not be made with respect to individual energy conservation measures. Similarly, the analyses required by G.S. 143-64.17M may be conducted for the project as a whole instead of for individual energy conservation measures.

(d) Continuing Applicability of Part to Contracts. – If the Board of Governors or a constituent institution implements an energy conservation measure through a guaranteed energy savings contract, that contract shall accord in all respects with the requirements of this Part.

(e) The Board of Governors may authorize North Carolina State University and the University of North Carolina at Charlotte to implement an energy conservation measure without entering into a guaranteed energy savings contract pursuant to this section. (2011-145, s. 9.6D(a); 2013-396, s. 4(a).)

§ 143-64.17M. Energy savings analysis required prior to implementation; post-implementation analyses required.

(a) Energy Savings Analysis Required Prior to Implementation. – Prior to implementing an energy conservation measure pursuant to G.S. 143-64.17L, an energy savings analysis shall be performed to validate the economic assumptions that purportedly support the implementation of the measure. This analysis shall be performed by a third party selected by the constituent institution and shall include an energy consumption analysis to develop a baseline of previous costs of all utilities' energy consumption for the institution on the assumption that the energy conservation measure was not undertaken. The completed analysis shall be submitted to The University of North Carolina System Office and to the State Energy Office.

(b) Post-Implementation Analyses Required. – A constituent institution that implements an energy conservation measure pursuant to G.S. 143-64.17L shall retain a third party to perform an annual measurement and verification of energy savings resulting from the energy conservation measure as compared to the baseline of previous costs set forth in the energy savings analysis required by subsection (a) of this section. The third party shall annually provide a reconciliation statement based upon the results of a preagreed upon measurement, monitoring, and verification protocol which shall disclose any shortfall or surplus between the estimated energy usage and operational savings set forth in the energy savings analysis required by subsection (a) of this section and actual, not stipulated, energy usage and operational savings incurred during a given year.

If a reconciliation statement reveals a shortfall in energy savings for a particular year, the constituent institution shall be responsible for and shall pay the shortfall. However, the institution shall not be held responsible for losses due to natural disasters or other

emergencies. Any surplus shall be retained by the institution and may be used in the same manner as any other energy savings. (2011-145, s. 9.6D(b); 2018-12, s. 17.)

§§ 143-64.17N through 143-64.19: Reserved for future codification purposes.

Article 3C.

Contracts to Obtain Consultant Services.

§ 143-64.20. "Agency" defined; Governor's approval required.

(a) For purposes of this Article the term "agency" shall mean every State agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the State government.

(b) No State agency shall contract to obtain services of a consultant or advisory nature unless the proposed contract has been justified to and approved in writing by the Governor of North Carolina. All written approvals shall be maintained on file as part of the agency's records for not less than five years. (1975, c. 887, s. 1.)

§ 143-64.21. Findings to be made by Governor.

The Governor, before granting written approval of any such contract, must find:

(1) That the contract is reasonably necessary to the proper function of such State agency; and

(2) That such services or advice cannot be performed within the resources of such State agency;

(3) That the estimated cost is reasonable as compared with the likely benefits or results; and

(4) That the General Assembly has appropriated funds for such contract or that such funds are otherwise available; and

(5) That all rules and regulations of the Department of Administration have been or will be complied with. (1975, c. 879, s. 46; c. 887, s. 2.)

§ 143-64.22. Contracts with other State agencies; competitive proposals.

The rules of the Department of Administration shall include provisions to assure that all consultant contracts let by State agencies shall be made with other agencies of the State of North Carolina, if such contract can reasonably be performed by them; or otherwise, that wherever practicable a sufficient number of sources for the performance of such contract are solicited for competitive proposals and that such proposals are properly evaluated for award to the State's best advantage. (1975, c. 879, s. 46; c. 887, s. 3; 1987, c. 827, s. 217.)

§ 143-64.23. Compliance required; penalty for violation of Article.

No disbursement of State funds shall be made and no such contract shall be binding until the provisions of G.S. 143-64.21 and 143-64.22 have been complied with. Any employee or official of the State of North Carolina who violates this Article shall be liable to repay any amount expended in violation of this Article, plus court costs. (1975, c. 887, s. 4.)

§ 143-64.24. Applicability of Article.

This Article shall not apply to the following agencies:

(1) The General Assembly.
(2) Special study commissions.
(3) The Research Triangle Institute.
(4) The School of Government at the University of North Carolina at Chapel Hill.
(5) Attorneys employed by the North Carolina Department of Justice.
(6) Physicians or doctors performing contractual services for any State agency.
(7) Independent Review Organizations selected by the Commissioner of Insurance pursuant to G.S. 58-50-85.
(8) The University of North Carolina. The Board of Governors of the University of North Carolina must adopt policies and procedures governing contracts to obtain the services of a consultant by the constituent institutions of the University of North Carolina. (1975, c. 887, s. 5; 1977, c. 802, s. 50.57; 2001-446, s. 4.6A; 2006-95, s. 2.1; 2006-264, s. 29(l).)

§§ 143-64.25 through 143-64.30. Reserved for future codification purposes.

Article 3D.

Procurement of Architectural, Engineering, and Surveying Services.

§ 143-64.31. Declaration of public policy.

(a) It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural, engineering, surveying, construction management at risk services, design-build services, and public-private partnership construction services to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm. If a contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm. Selection of a firm under this Article shall include the use of good faith efforts by the public entity to notify minority firms of the opportunity to submit qualifications for consideration by the public entity.

(a1) A resident firm providing architectural, engineering, surveying, construction management at risk services, design-build services, or public-private partnership construction services shall be granted a preference over a nonresident firm, in the same manner, on the same basis, and to the extent that a preference is granted in awarding contracts for these services by the other state to its resident firms over firms resident in the State of North Carolina. For purposes of this section, a resident firm is a firm that has paid unemployment taxes or income taxes in North Carolina and whose principal place of business is located in this State.

(b) Recodified as G.S. 143-133.1(a) by Session Laws 2014-42, s. 3, effective October 1, 2014, and applicable to contracts awarded on or after that date.

(c) Recodified as G.S. 143-133.1(b) by Session Laws 2014-42, s. 3, effective October 1, 2014, and applicable to contracts awarded on or after that date.

(d) Recodified as G.S. 143-133.1(c) by Session Laws 2014-42, s. 3, effective October 1, 2014, and applicable to contracts awarded on or after that date.

(e) For purposes of this Article, the definition in G.S. 143-128.1B and G.S. 143-128.1C shall apply.

(f) Except as provided in this subsection, no work product or design may be solicited, submitted, or considered as part of the selection process under this Article; and no costs or fees, other than unit price information, may be solicited, submitted, or considered as part of the selection process under this Article. Examples of prior completed work may be solicited, submitted, and considered when determining demonstrated competence and qualification of professional services; and discussion of concepts or approaches to the project, including impact on project schedules, is encouraged. (1987, c. 102, s. 1; 1989, c. 230, s. 2; 2001-496, s. 1; 2006-210, s. 1; 2013-401, s. 1; 2014-42, ss. 3, 4.)

§ 143-64.32. Written exemption of particular contracts.

Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of proposed projects where an estimated professional fee is in an amount less than fifty thousand dollars ($50,000). (1987, c. 102, s. 2; 2013-401, s. 2.)

§ 143-64.33. Advice in selecting consultants or negotiating consultant contracts.

On architectural, engineering, or surveying contracts, the Department of Transportation or the Department of Administration may provide, upon request by a county, city, town or other subdivision of the State, advice in the process of selecting consultants or in negotiating consultant contracts with architects, engineers, or surveyors or any or all. (1987, c. 102, s. 3; 1989, c. 230, s. 3, c. 770, s. 44.)

§ 143-64.34. Exemption of certain projects.

State capital improvement projects under the jurisdiction of the State Building Commission, capital improvement projects of The University of North Carolina, and community college capital improvement projects, where the estimated expenditure of public money is less than five hundred thousand dollars ($500,000), are exempt from the provisions of this Article. (1987, c. 102, s. 3.1; c. 830, s. 78(a); 1997-314, s. 1; 1997-412, s. 5; 2001-496, ss. 8(b), 8(c); 2005-300, s. 1; 2005-370, s. 1; 2007-322, s. 2; 2007-446, s. 7.)

§§ 143-64.35 through 143-64.49. Reserved for future codification purposes.

Article 3E.

State/Public School Child Care Contracts.

§ 143-64.50. State/public school-contracted on-, near-site child care facilities; location authorization; contract for program services authorization.

State agencies and local boards of education may contract with any city, county, or other political subdivision of the State, governmental or private agency, person, association, or corporation to establish child care services in State buildings and public schools. If the child care program is located in a State building that is not used for legislative activity, the procedure for approving the location of the program shall be pursuant to G.S. 143-341(4). If the child care program is located in a State building used for legislative activity, the procedure for approving the location of the program shall be pursuant to G.S. 120-32.1. If the child care program is located in any other State building, the procedure for contracting for child care services shall be pursuant to G.S. 143-49(3). If the child care program is located in a State building used for legislative activity, the procedure for contracting for child care services shall be pursuant to G.S. 120-32(4).

Contracts for services awarded pursuant to this section are exempt from the provisions of G.S. 66-58(a) and the contract may provide for payment of rent by the lessee or the operator of the facility. (1991, c. 345, s. 1; 1997-506, s. 49.)

§ 143-64.51. State/public school-contracted child care facilities; licensing requirements.

All child care facilities established pursuant to this Article shall be licensed and regulated under the provisions of Article 7 of Chapter 110 of the General Statutes, entitled "Child Care Facilities." (1991, c. 345, s. 1; 1997-506, s. 50.)

§ 143-64.52. State/public school-contracted child care facilities; limitation of State/local board liability.

The operators of the child care facilities established pursuant to this Article shall assume all financial and legal responsibility for the operation of the programs and shall maintain adequate insurance coverage for the operations taking place in the facilities. Neither the operator or any of the staff of the facilities are considered State employees or local board of education employees by virtue of this Article alone. The State or the local boards of education are financially and legally responsible only for the maintenance of the building. (1991, c. 345, s. 1; 1997-506, s. 51.)

Article 3F.

State Privacy Act.

§ 143-64.60. State Privacy Act.

(a) It is unlawful for any State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

The provisions of this subsection shall not apply with respect to:

(1) Any disclosure which is required or permitted by federal statute, or

(2) The disclosure of a social security number to any State or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any State or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it. (2001-256, s. 1; 2001-487, s. 87.)

§§ 143-64.61 through 143-64.69. Reserved for future codification purposes.

Article 3G.

Personal Service Contracts.

§ 143-64.70: Repealed by Session Laws 2015-241, s. 26.2(d), effective July 1, 2015.

§§ 143-64.71 through 143-64.79: Reserved for future codification purposes.

Article 3H.

Overpayments of State Funds.

§ 143-64.80. Overpayments of State funds to persons in State-supported positions; recoupment required.

(a) An overpayment of State funds to any person in a State-funded position, whether in the form of salary or otherwise, shall be recouped by the entity that made the overpayment and, to the extent allowed by law, the amount of the overpayment may be offset against the net wages of the person receiving the overpayment.

(b) No State department, agency, or institution, or other State-funded entity may forgive repayment of an overpayment of State funds, but shall have a duty to pursue the repayment of State funds by all lawful means available, including the filing of a civil action in the General Court of Justice. (2003-263, s. 1.)

§§ 143-64.81 through 143-64.85: Reserved for future codification purposes.

Article 4.

World War Veterans Loan Administration.

§§ 143-65 through 143-105: Deleted by Session Laws 1951, c. 349.

Article 5.

Check on License Forms, Tags and Certificates Used or Issued.

§ 143-106: Repealed by Session Laws 1983, c. 913, s. 33.

§ 143-107. Transferred to § 143-106 by Session Laws 1951, c. 1010, s. 2.

Article 6.

Officers of State Institutions.

§ 143-108. Secretary to be elected from directors.

The board of directors of the various State institutions shall elect one of their number as secretary, who shall act as such at all regular or special meetings of such boards. (1907, c. 883, s. 1; C.S., s. 7517.)

§ 143-109. Directors to elect officers and employees.

All officers and employees of the various State institutions who hold elective positions shall be nominated and elected by the board of directors of the respective institutions. (1907, c. 883, s. 3; C.S., s. 7518.)

§ 143-110. Places vacated for failure to attend meetings.

Unless otherwise specially provided by law, whenever a trustee or director of any institution supported in whole or in part by State appropriation shall fail to be present for two successive years at the regular meetings of the board, his place as trustee or director shall be deemed vacant and shall be filled as provided by law for other vacancies on such boards.

This section shall not apply to any trustee or director who holds office as such by virtue of another public office held by him and shall not apply to any trustee or director chosen by any agency or authority other than the State of North Carolina. (1927, c. 225.)

§ 143-111. Director not to be elected to position under board.

It shall be unlawful for any board of directors, board of trustees or other governing body of any of the various State institutions (penal, charitable, or otherwise) to appoint or elect any person who may be or has been at any time within six months a member of such board of directors, board of trustees, or other governing body, to any position in the institution, which position may be under the control of such board of directors, board of trustees, or other governing body. (1909, c. 831; C.S., s. 7519.)

§ 143-112. Superintendents to be within call of board meetings.

The superintendent of each of the various State institutions shall be present on the premises of his institution and within the call of the board of directors during all regular or special meetings of the board, and shall respond to all calls of the board for any information which it may wish at his hands. (1907, c. 883, s. 1; C.S., s. 7520.)

§ 143-113. Trading by interested officials forbidden.

The directors, stewards, and superintendents of the State institutions shall not trade directly or indirectly with or among themselves, or with any concern in which they are interested, for any supplies needed by any such institutions. (1907, c. 883, s. 2; C.S., s. 7521.)

§ 143-114. Diversion of appropriations to State institutions.

It shall be unlawful for the board of trustees, board of directors, or other body controlling any State institution, to divert, use, or expend any moneys appropriated for the use of said institutions for its permanent improvement and enlargement to the payment of any of the current expenses of said institution or for the payment of the cost of the maintenance thereof; it shall likewise be unlawful for any board of trustees, board of directors, or other controlling body of any State

institution to which money is appropriated for its maintenance by the State to divert, use or expend any money so appropriated for maintenance, for the permanent enlargement or permanent equipment, or the purchase of land for said institution. (1921, c. 232, s. 1; C.S., s. 7521 (a).)

§ 143-115. Trustee, director, officer or employee violating law guilty of misdemeanor.

Any member or members of any board of trustees, board of directors, or other controlling body governing any of the institutions of the State, or any officer, employee of, or person holding any position with any of the institutions of the State, violating any of the provisions of G.S. 143-114, shall be guilty of a Class 1 misdemeanor, and upon conviction in any court of competent jurisdiction judgment shall be rendered by such court removing such member, officer, employee, or person holding any position from his place, office or position. (1921, c. 232, s. 2; C.S., s. 7521 (b); 1993, c. 539, s. 1005; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 143-116. Venue for trial of offenses.

All offenses against G.S. 143-114 and 143-115 shall be held to have been committed in the County of Wake and shall be tried and disposed of by the courts of said county having jurisdiction thereof. (1921, c. 232, s. 3; C.S., s. 7521 (c).)

§§ 143-116.1 through 143-116.5. Reserved for future codification purposes.

Article 6A.

Rules of Conduct; Traffic Laws for Institutions.

§ 143-116.6. Rules concerning conduct; violation.

(a) The Secretary of Health and Human Services may adopt rules for State-owned institutions under the jurisdiction of the Department of Health and Human Services for the regulation and deportment of persons in the buildings and grounds of the institutions, and for the suppression of nuisances and disorder. Rules adopted under this section shall be consistent with G.S. 14-132. Copies of the rules shall be posted at the entrance to the grounds and at different places on the grounds.

(b) Any person violating such rules shall, upon conviction, be guilty of a Class 2 misdemeanor. (1981, c. 614, s. 5; 1987, c. 827, s. 255; 1993, c. 539, s. 1006; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.118(a).)

§ 143-116.7. Motor vehicle laws applicable to streets, alleys and driveways on the grounds of Department of Health and Human Services institutions; traffic regulations; registration and regulation of motor vehicles.

(a) Except as otherwise provided in this section, all the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are made applicable to the streets, alleys, roads and driveways on the grounds of all State institutions under the jurisdiction of the Department of Health and Human Services. Any person violating any of the provisions of the Chapter in or on such streets, alleys, roads or driveways shall, upon conviction be punished as prescribed in this section. Nothing herein contained shall be construed as in any way interfering with the ownership and control of the streets, alleys, roads and driveways on the grounds of the State institutions operated by the Department of Health and Human Services.

(b) The Secretary of Health and Human Services may adopt rules consistent with the provisions of Chapter 20 of the General Statutes, with respect to the use of the streets, alleys, and driveways of institutions of the Department of Health and Human Services. Based upon a traffic and engineering investigation, the Secretary of Health and Human Services may also determine and establish speed limits on streets lower than those provided in G.S. 20-141.

(c) The Secretary may, by rule, regulate parking and establish parking areas on the grounds of institutions of the Department of Health and Human Services.

(d) The Secretary may, by rule, provide for the registration and parking of motor vehicles maintained and operated by employees of the institution, and may fix fees, not to exceed ten dollars ($10.00) per year, for such registration.

(e) Rules adopted under this section may provide that violation subjects the offender to a civil penalty, not to exceed fifty dollars ($50.00). Penalties may be graduated according to the seriousness of the offense or the number of prior offenses by the person charged but shall not exceed fifty dollars ($50.00). The Secretary may establish procedures for the collection of penalties, and they may be enforced by civil action in the nature of debt.

(f) A rule adopted under this section may provide for the removal of illegally parked motor vehicles. Any such removal must be in compliance with Article 7A of Chapter 20 of the General Statutes.

(g) Any violation under this section or of a provision of Chapter 20 of the General Statutes made applicable to the grounds of State institutions solely by operation of this section shall be considered an infraction and shall be subject to an infraction penalty not to exceed fifty dollars ($50.00). A rule adopted under this section may provide that a violation shall not be an infraction, but shall be enforced by other methods available, including the methods authorized by subsection (e).

(h) Any fees or civil penalties collected pursuant to this section shall be deposited in the General Fund Budget Code of the institution where the fees or civil penalties are collected and shall only be used to support the cost of administration of this section. Infraction penalties shall be disbursed as provided in G.S. 14-3.1(a). (1981, c. 614, s. 5; 1985, c. 672; c. 764, s. 39; 1985 (Reg. Sess., 1986), c. 852, ss. 13, 14; 1987, c. 827, s. 256; 1997-443, s. 11A.118(a).)

§ 143-116.8. Motor vehicle laws applicable to State parks and forests road system.

(a) Except as otherwise provided in this section, all the provisions of Chapter 20 of the General Statutes relating to the use of highways and public vehicular areas of the State and the operation of vehicles thereon are made applicable to the State parks and forests road system. For the purposes of this section, the term "State parks and forests road system" shall mean the streets, alleys, roads, public vehicular areas and driveways of the State parks, State forests, State recreation areas, State lakes, and all other lands administered by the Department of Natural and Cultural Resources or the Department of Agriculture and Consumer Services. This term shall not be construed, however, to include streets that are a part of the State highway system. Any person violating any of the provisions of Chapter 20 of the General Statutes hereby made applicable in the State parks and forests road system shall, upon conviction, be punished in accordance with Chapter 20 of the General Statutes. Nothing herein contained shall be construed as in any way interfering with the ownership and control of the State parks road system by the Department of Natural and

Cultural Resources and the forests road system by the Department of Agriculture and Consumer Services.

(b) (1) It shall be unlawful for a person to operate a vehicle in the State parks road system at a speed in excess of twenty-five miles per hour (25 mph). When the Secretary of Natural and Cultural Resources determines that this speed is greater than reasonable and safe under the conditions found to exist in the State parks road system, the Secretary may establish a lower reasonable and safe speed limit. No speed limit established by the Secretary pursuant to this provision shall be effective until posted in the part of the system where the limit is intended to apply.

(1a) It shall be unlawful for a person to operate a vehicle in the State forests road system at a speed in excess of 25 miles per hour. When the Commissioner of Agriculture determines that this speed is greater than reasonable and safe under the conditions found to exist in the State forests road system, the Commissioner may establish a lower reasonable and safe speed limit. No speed limit established by the Commissioner pursuant to this provision shall be effective until posted in the part of the system where the limit is intended to apply.

(2) Any person convicted of violating this subsection by operating a vehicle on the State parks and forests road system while fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws, shall be punished as provided in G.S. 20-141.5.

(3) For the purposes of enforcement and administration of Chapter 20, the speed limits stated and authorized to be adopted by this section are speed limits under Chapter 20.

(4) The Secretary may designate any part of the State parks road system and the Commissioner may designate any part of the State forests road system for one-way traffic and shall erect appropriate signs giving notice thereof. It shall be a violation of G.S. 20-165.1 for any person to willfully drive or operate any vehicle on any part of the State parks and forests road system so designated except in the direction indicated.

(5) The Secretary shall have power, equal to the power of local authorities under G.S. 20-158 and G.S. 20-158.1, to place vehicle control signs and signals and yield-right-of-way signs in the State parks road system; the Secretary also shall have power to post such other signs and markers and mark the roads in accordance with Chapter 20 of the General Statutes as the Secretary may determine appropriate for highway safety and traffic control. The failure of any vehicle driver to obey any vehicle control sign or signal, or any yield-right-of-way sign placed under the authority of this section in the State parks road system shall be an infraction and shall be punished as provided in G.S. 20-176.

(5a) The Commissioner shall have power, equal to the power of local authorities under G.S. 20-158 and G.S. 20-158.1, to place vehicle control signs and signals and yield right-of-way signs in the State forests road system. The Commissioner also shall have power to post such other signs and markers and mark the roads in accordance with Chapter 20 of the General Statutes as the Commissioner may determine appropriate for highway safety and traffic control. The failure of any vehicle driver to obey any vehicle control sign or signal or any yield right-of-way sign placed under the authority of this section in the State forests road system shall be an infraction and shall be punished as provided in G.S. 20-176.

(c) The Secretary of Natural and Cultural Resources may, by rule, regulate parking and establish parking areas, and provide for the removal of illegally parked motor vehicles on the State parks road system, and the Commissioner of Agriculture may, by rule, regulate and establish parking areas and provide for the removal of illegally parked motor vehicles on the State forests road system. Any rule of the Secretary or the Commissioner shall be consistent with the provisions of G.S. 20-161, 20-161.1, and 20-162. Any removal of illegally parked motor vehicles shall be in compliance with Article 7A of Chapter 20 of the General Statutes.

(d) A violation of the rules issued by the Secretary of Natural and Cultural Resources or the Commissioner of Agriculture under subsection (c) of this section is an infraction pursuant to G.S. 20-162.1, and shall be punished as therein provided. These rules may be enforced by the Commissioner of Motor Vehicles, the Highway Patrol, forest law enforcement officers, or other law enforcement officers of the State, counties, cities or other municipalities having authority under Chapter 20 of the General Statutes to enforce laws or rules on travel or use or operation of vehicles or the use or protection of the highways of the State.

(e) The provisions of Chapter 20 of the General Statutes are applicable at all times to the State parks and forests road system, including closing hours, regardless of the fact that during closing hours the State parks and forests road system is not open to the public as a matter of right.

(f) Notwithstanding any other provision of this section, a person may petition the Department of Natural and Cultural Resources for a waiver authorizing the person to operate a vehicle in the State parks road system at a speed in excess of 25 miles per hour in connection with a special event. The Secretary may impose any conditions on a waiver that the Secretary determines to be necessary to protect public health, safety, welfare, and the natural resources of the State park. These conditions shall include a requirement that the person receiving the waiver execute an indemnification agreement with the Department and obtain general liability insurance in an amount not to exceed three million dollars ($3,000,000) covering personal injury and property damage that may result from driving in excess of 25 miles per hour in the State parks road system subject to the conditions determined by the Secretary.

(g) Notwithstanding any other provision of this section, a person may petition the Department of Agriculture and Consumer Services for a waiver authorizing the person to

operate a vehicle in the State forests road system at a speed in excess of 25 miles per hour in connection with a special event. The Commissioner may impose any conditions on a waiver that the Commissioner determines to be necessary to protect public health, safety, welfare, and the natural resources of the State forest. These conditions shall include a requirement that the person receiving the waiver execute an indemnification agreement with the Department and obtain general liability insurance in an amount not to exceed three million dollars ($3,000,000) covering personal injury and property damage that may result from driving in excess of 25 miles per hour in the State forests road system subject to the conditions determined by the Commissioner. (1987, c. 474, s. 1; 1989, c. 727, s. 218(96); 1997-443, ss. 11A.119(a), 19.26(e); 2013-155, s. 19; 2014-120, s. 31(a); 2015-241, s. 14.30(xx).)

Article 7.

Persons Admitted to Department of Health and Human Services Institutions to Pay Costs.

§ 143-117. Institutions included.

All persons admitted to the following institutions operated by the Department of Health and Human Services are required to pay the actual cost of their care, treatment, training and maintenance at these institutions: regional psychiatric hospitals, special care centers, regional mental retardation centers, schools for emotionally disturbed children, and alcohol and drug abuse treatment centers. (1925, c. 120, s. 1; 1949, c. 1070; 1957, c. 1232, s. 29; 1959, c. 1028, ss. 1-7; 1967, c. 188, s. 1; c. 834, s. 1; 1969, c. 20; c. 837, s. 4; 1971, c. 469; 1981, c. 562, s. 6; 1985, c. 508, s. 2; 1987, c. 856, s. 14; 1989, c. 145, s. 2; 1997-443, ss. 11A.92, 11A.118(a).)

§ 143-117.1. Definitions.

As used in this Article, the following terms have the meaning specified unless the content clearly implies otherwise:

(1) "Care" means care, treatment, training, maintenance, habilitation and rehabilitation of a person admitted to institutions covered by this Article.

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

(3) "Persons admitted" means clients of regional psychiatric hospitals, State special care centers, regional mental retardation centers, schools for emotionally disturbed children, and alcohol and drug abuse treatment centers, including clients who may be treated on an outpatient basis.

(4) "Secretary" means the Secretary of Health and Human Services. (1985, c. 508, s. 3; 1987, c. 856, s. 15; 1989, c. 145, s. 3; c. 770, s. 41; 1997-443, s. 11A.118(a).)

§ 143-118. Secretary of Health and Human Services to fix cost and charges.

(a) The Secretary shall determine and fix the actual cost of care to be paid by and for each person admitted to an institution. The Secretary is given full and final authority to fix a general rate of charge based on said actual cost of providing care, to be paid by persons admitted able to pay the rate or charge, or, in cases where indigent persons admitted are later found to be nonindigent, then cost for their care shall be paid in one or more payments based on the rate of

charge in effect for the period or periods of time during which the persons admitted were receiving care in the institutions.

(b), (c) Repealed by Session Laws 1985, c. 508, s. 5.

(d) The Secretary shall ascertain which of the persons admitted or persons legally responsible for them are financially able to pay the cost fixed.

(e) The Secretary is empowered to enter into contracts of compromise of accounts owing to the institution for past, present or future care at the institutions, including but not limited to the authority to enter into a contract to charge nothing, which contract shall be binding on the respective institution under the terms and for the period specified in the contract. The rates set by the compromise shall be determined in the discretion of the Secretary by the ability to pay of the person admitted or the person legally responsible for his support. This subsection shall not be construed as mandatory and if a contract is not entered into or terminates or if the obligor defaults in the payment of a compromise account or any installment, then the full actual cost of care shall be assessed against the person admitted.

(f) For any client admitted under Part 2 of Article 5 of G.S. 122C to a State facility for the mentally ill designated for research purposes in accordance with G.S. 122C-210.2, the Secretary may reduce the rates set by compromise in G.S. 143-118(e) by not more than one-half the amount of that rate. (1925, c. 120, s. 2; 1935, c. 186, s. 1; 1981, c. 562, s. 6; 1985, c. 508, ss. 4-6; 1987, c. 358, s. 2; 1997-443, s. 11A.118(a).)

§ 143-118.1: Repealed by Session Laws 1987, c. 699, s. 1.

§ 143-119. Payments.

(a) The cost of care when fixed by the Secretary shall be paid by the person admitted or by the person legally responsible for payment. The payment of the cost of care constitutes a valid expenditure of funds held by a fiduciary of a person admitted, including Clerks of Court, and a receipt for payment of such costs shall be a valid voucher in the fiduciary's settlement of his accounts of his trust.

(b) Immediately upon the determination of the cost, the person admitted or the person legally responsible for paying the cost shall be notified of the amount due and a statement shall be rendered on a monthly basis.

(c) If the person admitted or the person legally responsible for paying the cost is not able to pay the total cost due on a monthly basis, the Secretary may arrange for the payment of a portion of the cost monthly and extend the payments until the costs are paid or may arrange for any other method of payment.

(d) The institutions shall maintain a list of all unpaid accounts for audit by the State auditors.

(e) The Secretary may discharge from the institution persons admitted who have been found able to pay but who refuse to pay costs fixed against them, unless the person was committed by an order of a court of competent jurisdiction. (1925, c. 120, s. 3; 1935, c. 186, s. 2; 1983, c. 23, s. 2; c. 806; 1985, c. 508, s. 7.)

§ 143-120. Repealed by Session Laws 1985, c. 508, s. 8, effective October 1, 1985.

§ 143-121. Action to recover costs.

(a) Immediately upon the fixing of the amount of actual cost, a cause of action shall accrue for the costs in favor of the State for the use of the institution in which the person admitted received care against the person admitted or person legally responsible for paying the costs.

(b) The State for the use of the institution may sue upon the cause of action in the courts of Wake County, in the courts of the county in which the institution is located, or in the courts of the county where the defendant resides.

(c) In any action to recover the cost of care, a verified and itemized statement of the account signed by the reimbursement director of the institution showing the period of time during which the person admitted was receiving care in the institution, the daily or monthly rate of charge fixed by the Secretary, the total amount due on the account, and the proper credits for any payments which may have been made on the account, shall be filed with the complaint and shall constitute a prima facie case. The State shall be entitled to a judgment in the case in the absence of allegation and proof on the part of the person admitted or person legally responsible for paying the costs that the verified and itemized statement is not correct because of:

(1) An error in the calculation of the amount due predicated upon the rate of charge fixed by the Secretary;

(2) An error as to the period of time during which the person admitted received care in the institution; or

(3) An error in not properly crediting the account with any payment which may have been made.

(d) The provisions of this Article directing the Secretary to determine which of the persons admitted are nonindigent and able to pay for their care, notify the person admitted or person legally responsible for the cost of his care of the amount due, to render a statement of the amount due monthly, to discharge persons admitted found able to pay but who refuse to pay and all of the other provisions relating to the manner in which the Secretary shall assess and collect costs are directory and not mandatory. The failure of the Secretary to perform any of these provisions shall not affect the right of the State to recover in any action brought for the cost of care against the person admitted, a person legally responsible for the cost of his care, or his estate if he has died. (1925, c. 120, s. 5; 1985, c. 508, s. 9.)

§ 143-121.1. Ratification of past acts.

The past acts of the Secretary, boards of directors of the institutions and the North Carolina Hospital Board of Control in fixing the rate to be paid by persons admitted are hereby in every respect ratified and validated, and on all claims and causes of action now pending or which hereafter may be made or begun for the payment of the past indebtedness for care, the rates fixed by the party authorized the fix rates at the time the care was provided shall prevail and collections shall be made in accordance with those rates unless the Secretary enters into a contract compromising the account. (1985, c. 508, s. 10.)

§ 143-122. No limitation of action.

No statute of limitation shall apply to or constitute a defense to any cause of action asserted by the State under this Article and all statutes containing limitations which might apply to these actions are hereby repealed as to all such causes of action for costs previously incurred and now remaining unpaid. (1925, c. 120, s. 6; 1985, c. 508, s. 11.)

§ 143-123. Power to admit indigent persons.

(a) This Article shall not be construed to limit the authority of the institutions to provide care to all indigent persons who are otherwise entitled to admission in any of the institutions.

(b) If at any time any person admitted and determined to be indigent shall succeed to or inherit, or acquire, in any manner, property or otherwise be reputed to be solvent, then the State shall have the full right and authority to collect and sue for the entire cost of care without hinderance of any statute of limitations. (1925, c. 120, s. 7; 1985, c. 508, s. 11.)

§ 143-124. Suit by Attorney General; venue.

At the request of the institution, all actions and suits shall be prosecuted by the Attorney General. The institution shall have the right to select the venue of the action. (1925, c. 120, s. 8; 1985, c. 508, s. 11.)

§ 143-125. Judgment; never barred.

Any judgment obtained by the State under this Article shall never be barred by any statute of limitation but shall to the extent unpaid continue in force; and, at the request of the Attorney General or the director of the institution, the clerk shall issue an execution. (1925, c. 120, s. 9; 1985, c. 508, s. 11.)

§ 143-126. Death of a person admitted; lien on estate.

(a) In the event of the death of person admitted, leaving any cost of care unpaid, then the unpaid cost shall constitute a lien on all property, both real and personal of the decedent and shall be payable from the decedent's estate as a fourth class claim after the payment of taxes to the State or its subdivisions.

(b) Upon the death of person admitted, the Department shall file a verified statement of account containing the following:

(1) The name of the person admitted;
(2) The date of death of the person admitted;
(3) The inclusive dates of the provision of care;
(4) The name of the institution providing care; and
(5) The amount of the unpaid balance.

The statement shall be filed in the office of the clerk of superior court in the county of residence of the deceased person admitted and in the county or counties in which real property is located in which the decedent owns an interest. The statement shall be docketed and indexed by the clerk.

(c) From the time of docketing, the statement shall be and constitute due notice of a lien against all real property then owned in whole or in part by the decedent and lying in such county to the extent of the total amount of the unpaid balance for the decedent's care as evidenced by the verified statement of account. Payments made by a fiduciary including those made by a clerk of superior court, in full or partial satisfaction of such lien, shall constitute a valid expenditure as provided in G.S. 143-119.

(d) No action to enforce such lien may be brought more than three years from the date of death of the person admitted. The failure to bring such action or the failure of the Department to file such statement shall not be a complete bar against recovery but shall only extinguish the lien and priority established by it.

(e) Upon receipt of the unpaid balance by the institution or Department or upon agreement of compromise of such unpaid balance, the Department shall notify the clerks of superior court in the counties where the lien has been recorded that the unpaid balance has been paid, and the clerks

shall cancel the lien of record. (1925, c. 120, s. 10; 1967, c. 960; 1973, c. 476, s. 133; 1985, c. 508, s. 11.)

§ 143-126.1. Lien on property for unpaid balance due institution.

(a) There is hereby created a general lien on both the real and personal property of any person admitted who is receiving or who has received care in any of the institutions operated by the Department of Health and Human Services to the extent of the total amount of the unpaid balance shown on the verified statement of account for charges from and after July 1, 1967.

(b) Such general lien for the unpaid balance for care at the institutions shall apply to the property, both real and personal, of the person admitted whether held by him or his trustee or guardian.

(c) At the time deemed suitable in the discretion of the Department, there may be filed a verified statement of account containing the following:

(1) The name of the person admitted;
(2) The inclusive dates of the provision of care and a statement that care is continuing if applicable;
(3) The name of the institution providing care; and
(4) The amount of the unpaid balance.

The statement may be filed in the office of the clerk of superior court in the county of residence of the person admitted and in each county or counties where real property in which the patient owns an interest is found. The statement shall be docketed and indexed by the clerk.

(d) From the time of docketing, the statement shall be and constitute due notice of a lien against the real property then owned or thereafter acquired by the patient and lying in such county to the extent of the total amount of the unpaid balance for the person admitted's care as evidenced by the verified statement of account for charges from and after July 1, 1967. Payments made by a fiduciary, including those made by a clerk of superior court, in full or partial satisfaction of such lien, shall constitute a valid expenditure as provided in G.S. 143-119.

(e) The lien thus established shall take priority over all other liens subsequently acquired and shall continue from the date of filing until satisfied. No action to enforce such lien may be brought more than three years from the last date of filing of such lien nor more than three years after the death of any person admitted. The failure to bring such action or the failure of the Department to file said statement shall not be a complete bar against recovery but shall only extinguish the lien and priority established by it.

(f) Upon receipt of the full unpaid balance by the institution or Department or upon agreement of compromise of such unpaid balance, the Department shall notify the clerks of superior court in the counties where the lien has been docketed that the unpaid balance has been paid, and the clerks shall cancel the lien of record.

(g) Notwithstanding the foregoing provisions, no such lien shall be enforceable against any funds paid by the State to a person admitted after judgment or settlement of a claim for damages arising out of the negligent injury of such person at any of the institutions during the life of person admitted. Upon the death of the person admitted, any remaining proceeds of a judgment or settlement under this subsection in the hands of the deceased shall become a general asset of the estate and subject to any lien of the State. (1967, c. 959; 1973, c. 476, s. 133; 1979, c. 978, s. 1; 1985, c. 508, s. 11; 1997-443, s. 11A.118(a).)

§ 143-127. Money paid into State treasury.

All money collected by any institution pursuant to this Article shall be by such institution paid into the State treasury, and shall be by the State Treasurer credited to the account of the institution collecting and turning the same into the treasury, and shall be paid out by warrants drawn as in cases of appropriations made for the maintenance of such institutions and shall be used by such institution as it uses and is authorized by law to use appropriations made for maintenance. (1925, c. 120, s. 11; 1983, c. 913, s. 34.)

§ 143-127.1. Parental liability for payment of cost of care for long-term patients in Department of Health and Human Services facilities.

(a) Notwithstanding the foregoing provisions of G.S. 143-117 through 143-127 inclusive, the natural or adoptive parents of persons who are non-Medicaid, long-term patients at facilities owned or operated by the Department of Health and Human Services shall only be liable on the charges made by such facility for treatment, care and maintenance for an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the Department of Health and Human Services.

(b) Parents or adoptive parents of a patient in a facility owned or operated by the Department of Health and Human Services shall not be liable for any charges made by such facility for treatment, care and maintenance of such a patient incurred or accrued subsequent to such patient attaining age 18.

(c) For purposes of this section, the term "long-term patient" is defined as a person who has been a patient in a facility owned or operated by the Department of Health and Human Services for a continuous period in excess of 120 days. No absence of a patient from the facility due to a temporary or trial visit shall be counted as interrupting the accrual of the 120 days herein required to attain the status of a long-term patient.

(d) Repealed by Session Laws 1993, c. 386, s. 2. (1971, c. 218, s. 1; 1973, c. 476, s. 133; c. 775; 1975, c. 19, s. 48; 1979, c. 838, ss. 25-27; 1983, c. 12; 1983 (Reg. Sess., 1984), c. 1116, s. 82; 1987, c. 738, s. 68; 1993, c. 386, s. 2; 1997-443, s. 11A.118(a).)

Article 7A.

Damage of Personal Property in State Institutions.

§ 143-127.2. Repair or replacement of personal property.

The Secretary of Health and Human Services may adopt rules governing repair or replacement of personal property items excluding private passenger vehicles that belong to employees, volunteers, or clients of State facilities within the Department of Health and Human Services and that are damaged or stolen by clients of the State facilities provided that the item is determined by the Secretary to be:

(1) Damaged or stolen on or off facility grounds during the performance of employment or volunteer duty and necessary for the employee or volunteer to have in his possession to perform his assigned duty; or

(2) Damaged or stolen on or off the facility grounds while the client is under the supervision of the facility and necessary for the client to have in his possession as part of his treatment environment. (1985, c. 393, s. 1; 1987, c. 264, s. 4; 1989, c. 189, s. 1; 1997-443, s. 11A.118(a).)

§ 143-127.3. Negligence.

Reimbursement for items damaged or stolen shall not be granted in instances in which the employee, volunteer, or client, if competent, is determined to be negligent or otherwise at fault for the damage or loss of the property. Negligence shall be determined by the director of the facility. (1985, c. 393, s. 1; 1987, c. 264, s. 4; 1989, c. 189, s. 1.)

§ 143-127.4. Other remedies.

The director of the facility shall determine if the person seeking reimbursement has made a good faith effort to recover the loss from all other non-State sources and has failed before reimbursement is granted. (1985, c. 393, s. 1; 1987, c. 264, s. 4; 1989, c. 189, s. 1.)

§ 143-127.5. Limitations.

Reimbursement shall be limited to the amount specified in the rules and shall not exceed a maximum of two hundred dollars ($200.00) per incident. No employee, volunteer, or client shall receive more than five hundred dollars ($500.00) per year in reimbursement. Reimbursement is subject to the availability of funds. (1985, c. 393, s. 1; 1987, c. 264, s. 1; 1989, c. 189, s. 1.)

§ 143-127.6. Administrative and judicial review.

Chapter 150B of the General Statutes governs administrative and judicial review of a decision under this Article by the director of a facility. (1985, c. 393, s. 1; 1987, c. 264, ss. 2, 4, c. 827, s. 257; 1989, c. 189, s. 1.)

Article 8.

Public Contracts.

§ 143-128. Requirements for certain building contracts.

(a) Preparation of specifications. – Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any county, municipality, or other public body, shall have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

(1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system), refrigeration for cold storage (where the cold storage cooling load is 15 tons or more of refrigeration), and all related work.
(2) Plumbing and gas fittings and accessories, and all related work.
(3) Electrical wiring and installations, and all related work.
(4) General work not included in subdivisions (1), (2), and (3) of this subsection relating to the erection, construction, alteration, or repair of any building.

Specifications for contracts that will be bid under the separate-prime system or dual bidding system shall be drawn as to permit separate and independent bidding upon each of the subdivisions of work enumerated in this subsection. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board,

department, commission or commissions from preparing additional separate specifications for any other category of work.

(a1) Construction methods. – The State, a county, municipality, or other public body shall award contracts to erect, construct, alter, or repair buildings pursuant to any of the following methods:

(1) Separate-prime bidding.
(2) Single-prime bidding.
(3) Dual bidding pursuant to subsection (d1) of this section.
(4) Construction management at risk contracts pursuant to G.S. 143-128.1.
(5) Alternative contracting methods authorized pursuant to G.S. 143-135.26(9).
(6) Design-build contracts pursuant to G.S. 143-128.1A.
(7) Design-build bridging contracts pursuant to G.S. 143-128.1B.
(8) Public-private partnership construction contracts pursuant to G.S. 143-128.1C.

(a2) Repealed by Session Laws 2012-142, s. 9.4(g), effective July 1, 2012.

(b) Separate-prime contracts. – When the State, county, municipality, or other public body uses the separate-prime contract system, it shall accept bids for each subdivision of work for which specifications are required to be prepared under subsection (a) of this section and shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch for which separate bids are required by this subsection is less than twenty-five thousand dollars ($25,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost. The contracts shall be awarded to the lowest responsible, responsive bidders, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with G.S. 143-128.2. Bids may also be accepted from and awards made to separate contractors for other categories of work.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county, municipality, or other public body and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, "separate contractor" means any person, firm or corporation who shall enter into a contract with the State, or with any county, municipality, or other public entity to erect, construct, alter or repair any building or buildings, or parts of any building or buildings.

(c) Repealed by Session Laws 2001-496, s. 3, effective January 1, 2001.

(d) Single-prime contracts. – All bidders in a single-prime project shall identify on their bid the contractors they have selected for the subdivisions or branches of work for:

(1) Heating, ventilating, and air conditioning;
(2) Plumbing;
(3) Electrical; and

(4) General.

The contract shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with G.S. 143-128.2. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later determined by the contractor to be nonresponsible or nonresponsive or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or (ii) with the approval of the awarding authority for good cause shown by the contractor. The terms, conditions, and requirements of each contract between the contractor and a subcontractor performing work under a subdivision or branch of work listed in this subsection shall incorporate by reference the terms, conditions, and requirements of the contract between the contractor and the State, county, municipality, or other public body.

When contracts are awarded pursuant to this section, the public body shall make available to subcontractors the dispute resolution process as provided for in subsection (f1) of this section.

(d1) Dual bidding. – The State, a county, municipality, or other public entity may accept bids to erect, construct, alter, or repair a building under both the single-prime and separate-prime contracting systems and shall award the contract to the lowest responsible, responsive bidder under the single-prime system or to the lowest responsible, responsive bidder under the separate-prime system, taking into consideration quality, performance, compliance with G.S. 143-128.2, and time specified in the bids to perform the contract. In determining the system under which the contract will be awarded to the lowest responsible, responsive bidder, the public entity may consider cost of construction oversight, time for completion, and other factors it considers appropriate. The bids received as separate-prime bids shall be received, but not opened, one hour prior to the deadline for the submission of single-prime bids. The amount of a bid submitted by a subcontractor to the general contractor under the single-prime system shall not exceed the amount bid, if any, for the same work by that subcontractor to the public entity under the separate-prime system. The provisions of subsection (b) of this section shall apply to separate-prime contracts awarded pursuant to this section and the provisions of subsection (d) of this section shall apply to single-prime contracts awarded pursuant to this section.

(e) Project expediter; scheduling; public body to resolve project disputes. – The State, county, municipality, or other public body may, if specified in the bid documents, provide for assignment of responsibility for expediting the work on a project to a single responsible and reliable person, firm or corporation, which may be a prime contractor. In executing this responsibility, the designated project expediter may recommend to the State, county, municipality, or other public body whether payment to a contractor should be approved. The project expediter, if required by the contract documents, shall be responsible for preparing the project schedule and shall allow all contractors and subcontractors performing any of the branches of work listed in subsection (d) of this section equal input into the preparation of the initial schedule. Whenever separate contracts are awarded and separate contractors engaged for a project pursuant to this section, the public body may

provide in the contract documents for resolution of project disputes through alternative dispute resolution processes as provided for in subsection (f1) of this section.

(f) Repealed by Session Laws 2001-496, s. 3, effective January 1, 2001.

(f1) Dispute resolution. – A public entity shall use the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11), or shall adopt another dispute resolution process, which shall include mediation, to be used as an alternative to the dispute resolution process adopted by the State Building Commission. This dispute resolution process will be available to all the parties involved in the public entity's construction project including the public entity, the architect, the construction manager, the contractors, and the first-tier and lower-tier subcontractors and shall be available for any issues arising out of the contract or construction process. The public entity may set a reasonable threshold, not to exceed fifteen thousand dollars ($15,000), concerning the amount in controversy that must be at issue before a party may require other parties to participate in the dispute resolution process. The public entity may require that the costs of the process be divided between the parties to the dispute with at least one-third of the cost to be paid by the public entity, if the public entity is a party to the dispute. The public entity may require in its contracts that a party participate in mediation concerning a dispute as a precondition to initiating litigation concerning the dispute.

(g) Exceptions. – This section shall not apply to:

(1) The purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site.

(2) The erection, construction, alteration, or repair of a building when the cost thereof is three hundred thousand dollars ($300,000) or less.

(3) The erection, construction, alteration, or repair of a building by The University of North Carolina or its constituent institutions when the cost thereof is five hundred thousand dollars ($500,000) or less.

Notwithstanding the other provisions of this subsection, subsection (f1) of this section shall apply to any erection, construction, alteration, or repair of a building by a public entity. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1; 1963, c. 406, ss. 2-7; 1967, c. 860; 1973, c. 1419; 1977, c. 620; 1987 (Reg. Sess., 1988), c. 1108, ss. 4, 5; 1989, c. 480, s. 1; 1995, c. 358, s. 4; c. 367, ss. 1, 4, 5; c. 509, s. 79; 1998-137, s. 1; 1998-193, s. 1; 2001-496, ss. 3, 13; 2002-159, s. 42; 2007-322, s. 3; 2012-142, s. 9.4(g); 2013-401, s. 3).)

§ 143-128.1. Construction management at risk contracts.

(a) For purposes of this section and G.S. 143-64.31:

(1) "Construction management services" means services provided by a construction manager, which may include preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.

(2) "Construction management at risk services" means services provided by a person, corporation, or entity that (i) provides construction management

services for a project throughout the preconstruction and construction phases, (ii) who is licensed as a general contractor, and (iii) who guarantees the cost of the project.

(3) "Construction manager at risk" means a person, corporation, or entity that provides construction management at risk services.

(4) "First-tier subcontractor" means a subcontractor who contracts directly with the construction manager at risk.

(b) The construction manager at risk shall be selected in accordance with Article 3D of this Chapter. Design services for a project shall be performed by a licensed architect or engineer. The public owner shall contract directly with the architect or engineer. The public owner shall make a good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities when selecting a construction manager at risk.

(c) The construction manager at risk shall contract directly with the public entity for all construction; shall publicly advertise as prescribed in G.S. 143-129; and shall prequalify and accept bids from first-tier subcontractors for all construction work under this section. The construction manager at risk shall use the prequalification process determined by the public entity in accordance with G.S. 143-135.8, provided that public entity and the construction manager at risk shall jointly develop the assessment tool and criteria for that specific project, which must include the prequalification scoring values and minimum required score for prequalification on that project. The public entity shall require the construction manager at risk to submit its plan for compliance with G.S. 143-128.2 for approval by the public entity prior to soliciting bids for the project's first-tier subcontractors. A construction manager at risk and first-tier subcontractors shall make a good faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. A construction manager at risk may perform a portion of the work only if (i) bidding produces no responsible, responsive bidder for that portion of the work, the lowest responsible, responsive bidder will not execute a contract for the bid portion of the work, or the subcontractor defaults and a prequalified replacement cannot be obtained in a timely manner, and (ii) the public entity approves of the construction manager at risk's performance of the work. All bids shall be opened publicly, and once they are opened, shall be public records under Chapter 132 of the General Statutes. The construction manager at risk shall act as the fiduciary of the public entity in handling and opening bids. The construction manager at risk shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and other factors deemed appropriate by the public entity and advertised as part of the bid solicitation. The public entity may require the selection of a different first-tier subcontractor for any portion of the work, consistent with this section, provided that the construction manager at risk is compensated for any additional cost incurred.

When contracts are awarded pursuant to this section, the public entity shall provide for a dispute resolution procedure as provided in G.S. 143-128(f1).

(d) The construction manager at risk shall provide a performance and payment bond to the public entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes.

(e) Construction management at risk services may be used by the public entity only after the public entity has concluded that construction management at risk services is in the best interest of the project, and the public entity has compared the advantages and disadvantages of using the construction management at risk method for a given project in lieu of the delivery methods identified in G.S. 143-128(a1)(1) through G.S. 143-128(a1)(3). The public entity may not delegate this determination. (2001-496, s. 2; 2013-401, s. 5; 2014-42, s. 2.)

§ 143-128.1A. Design-build contracts.

(a) Definitions for purposes of this section:

(1) Design-builder. – As defined in G.S. 143-128.1B.

(2) Governmental entity. – As defined in G.S. 143-128.1B.

(b) A governmental entity shall establish in writing the criteria used for determining the circumstances under which the design-build method is appropriate for a project, and such criteria shall, at a minimum, address all of the following:

(1) The extent to which the governmental entity can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications for a design-builder.

(2) The time constraints for the delivery of the project.

(3) The ability to ensure that a quality project can be delivered.

(4) The capability of the governmental entity to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.

(5) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. The governmental entity shall not limit or otherwise preclude any respondent from submitting a response so long as the respondent, itself or through its proposed team, is properly licensed and qualified to perform the work defined by the public notice issued under subsection (c) of this section.

(6) The criteria utilized by the governmental entity, including a comparison of the advantages and disadvantages of using the design-build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1).

(c) A governmental entity shall issue a public notice of the request for qualifications that includes, at a minimum, general information on each of the following:

(1) The project site.

(2) The project scope.

(3) The anticipated project budget.

(4) The project schedule.

(5) The criteria to be considered for selection and the weighting of the qualifications criteria.

(6) Notice of any rules, ordinances, or goals established by the governmental entity, including goals for minority- and women-owned business participation and small business participation.

(7) Other information provided by the owner to potential design-builders in submitting qualifications for the project.

(8) A statement providing that each design-builder shall submit in its response to the request for qualifications an explanation of its project team selection, which shall consist of either of the following:

a. A list of the licensed contractors, licensed subcontractors, and licensed design professionals whom the design-builder proposes to use for the project's design and construction.

b. An outline of the strategy the design-builder plans to use for open contractor and subcontractor selection based upon the provisions of Article 8 of Chapter 143 of the General Statutes.

(d) Following evaluation of the qualifications of the design-builders, the three most highly qualified design-builders shall be ranked. If after the solicitation for design-builders not as many as three responses have been received from qualified design-builders, the governmental entity shall again solicit for design-builders. If as a result of such second solicitation not as many as three responses are received, the governmental entity may then begin negotiations with the highest-ranked design-builder under G.S. 143-64.31 even though fewer than three responses were received. If the governmental entity deems it appropriate, the governmental entity may invite some or all responders to interview with the governmental entity.

(e) The design-builder shall be selected in accordance with Article 3D of this Chapter. Each design-builder shall certify to the governmental entity that each licensed design professional who is a member of the design-build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by G.S. 143-64.31.

(f) The design-builder shall provide a performance and payment bond to the governmental entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes. The design-builder shall obtain written approval from the governmental entity prior to changing key personnel as listed in sub-subdivision (c)(8)a. of this section after the contract has been awarded. (2013-401, s. 4; 2014-42, s. 7.)

§ 143-128.1B. Design-build bridging contracts.

(a) Definitions for purposes of this section:

(1) Design-build bridging. – A design and construction delivery process whereby a governmental entity contracts for design criteria services under a separate agreement from the construction phase services of the design-builder.

(2) Design-builder. – An appropriately licensed person, corporation, or entity that, under a single contract, offers to provide or provides design services and general contracting services where services within the scope of the practice of professional engineering or architecture are performed respectively by a licensed engineer or licensed architect and where services within the scope of the practice of general contracting are performed by a licensed general contractor.

(3) Design criteria. – The requirements for a public project expressed in drawings and specifications sufficient to allow the design-builder to make a responsive bid proposal.

(4) Design professional. – Any professional licensed under Chapters 83A, 89A, or 89C of the General Statutes.

(5) First-tier subcontractor. – A subcontractor who contracts directly with the design-builder, excluding design professionals.

(6) Governmental entity. – Every officer, board, department, commission, or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration, or repair of any buildings for the State or for any county, municipality, or other public body.

(b) A governmental entity shall establish in writing the criteria used for determining the circumstances under which engaging a design criteria design professional is appropriate for a project, and such criteria shall, at a minimum, address all of the following:

(1) The extent to which the governmental entity can adequately and thoroughly define the project requirements prior to the issuance of the request for proposals for a design-builder.

(2) The time constraints for the delivery of the project.

(3) The ability to ensure that a quality project can be delivered.

(4) The capability of the governmental entity to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.

(5) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. The governmental entity shall not limit or otherwise preclude any respondent from submitting a response so long as the respondent, itself or through its proposed team, is properly licensed and qualified to perform the work defined by the public notice issued under subsection (d) of this section.

(6) The criteria utilized by the governmental entity, including a comparison of the advantages and disadvantages of using the design-build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1).

(c) On or before entering into a contract for design-build services under this section, the governmental entity shall select or designate a staff design professional, or a design

professional who is independent of the design-builder, to act as its design criteria design professional as its representative for the procurement process and for the duration of the design and construction. If the design professional is not a full-time employee of the governmental entity, the governmental entity shall select the design professional on the basis of demonstrated competence and qualifications as provided by G.S. 143-64.31. The design criteria design professional shall develop design criteria in consultation with the governmental entity. The design criteria design professional shall not be eligible to submit a response to the request for proposals nor provide design input to a design-build response to the request for proposals. The design criteria design professional shall prepare a design criteria package equal to thirty-five percent (35%) of the completed design documentation for the entire construction project. The design criteria package shall include all of the following:

(1) Programmatic needs, interior space requirements, intended space utilization, and other capacity requirements.
(2) Information on the physical characteristics of the site, such as a topographic survey.
(3) Material quality standards or performance criteria.
(4) Special material requirements.
(5) Provisions for utilities.
(6) Parking requirements.
(7) The type, size, and location of adjacent structures.
(8) Preliminary or conceptual drawings and specifications sufficient in detail to allow the design-builder to make a proposal which is responsive to the request for proposals.
(9) Notice of any ordinances, rules, or goals adopted by the governmental entity.

(d) A governmental entity shall issue a public notice of the request for proposals that includes, at a minimum, general information on each of the following:

(1) The project site.
(2) The project scope.
(3) The anticipated project budget.
(4) The project schedule.
(5) The criteria to be considered for selection and the weighting of the selection criteria.
(6) Notice of any rules, ordinances, or goals established by the governmental entity, including goals for minority- and women-owned business participation and small business entities.
(7) The thirty-five percent (35%) design criteria package prepared by the design criteria design professional.
(8) Other information provided by the owner to design-builders in submitting responses to the request for proposals for the project.
(9) A statement providing that each design-builder shall submit in its request for proposal response an explanation of its project team selection, which

shall consist of a list of the licensed contractor and licensed design professionals whom the design-builder proposes to use for the project's design and construction.

(10) A statement providing that each design-builder shall submit in its request for proposal a sealed envelope with all of the following:

a. The design-builder's price for providing the general conditions of the contract.

b. The design-builder's proposed fee for general construction services.

c. The design-builder's fee for design services.

(e) Following evaluation of the qualifications of the design-builders, the governmental entity shall rank the design-builders who have provided responses, grouping the top three without ordinal ranking. If after the solicitation for design-builders not as many as three responses have been received from qualified design-builders, the governmental entity shall again solicit for design-builders. If as a result of such second solicitation not as many as three responses are received, the governmental entity may then make its selection. From the grouping of the top three design-builders, the governmental entity shall select the design-builder who is the lowest responsive, responsible bidder based on the cumulative amount of fees provided in accordance with subdivision (d)(10) of this section and taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract. Each design-builder shall certify to the governmental entity that each licensed design professional who is a member of the design-build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by G.S. 143-64.31.

(f) The design-builder shall accept bids based upon the provisions of this Article from first-tier subcontractors for all construction work under this section.

(g) The design-builder shall provide a performance and payment bond to the governmental entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes. The design-builder shall obtain written approval from the governmental entity prior to changing key personnel, as listed under subdivision (d)(9) of this section, after the contract has been awarded. (2013-401, s. 4; 2014-42, s. 6.)

§ 143-128.1C. Public-private partnership construction contracts.

(a) Definitions for purposes of this section:

(1) Construction contract. – Any contract entered into between a private developer and a contractor for the design, construction, reconstruction, alteration, or repair of any building or other work or improvement required for a private developer to satisfy its obligations under a development contract.

(2) Contractor. – Any person who has entered into a construction contract with a private developer under this section.

(3) Design-builder. – Defined in G.S. 143-128.1B.

(4) Development contract. – Any contract between a governmental entity and a private developer under this section and, as part of the contract, the private developer is required to provide at least fifty percent (50%) of the financing for the total cost necessary to deliver the capital improvement project, whether through lease or ownership, for the governmental entity. For purposes of determining whether the private developer is providing the minimum percentage of the total financing costs, the calculation shall not include any payment made by a public entity or proceeds of financing arrangements by a private entity where the source of repayment is a public entity.

(5) Governmental entity. – Defined in G.S. 143-128.1B.

(6) Labor or materials. – Includes all materials furnished or labor performed in the performance of the work required by a construction contract whether or not the labor or materials enter into or become a component part of the improvement and shall include gas, power, light, heat, oil, gasoline, telephone services, and rental of equipment or the reasonable value of the use of equipment directly utilized in the performance of the work required by a construction contract.

(7) Private developer. – Any person who has entered into a development contract with a governmental entity under this section.

(8) Public-private project. – A capital improvement project undertaken for the benefit of a governmental entity and a private developer pursuant to a development contract that includes construction of a public facility or other improvements, including paving, grading, utilities, infrastructure, reconstruction, or repair, and may include both public and private facilities.

(9) State entity. – The State and every agency, authority, institution, board, commission, bureau, council, department, division, officer, or employee of the State. The term does not include a unit of local government as defined in G.S. 159-7.

(10) State-supported financing arrangement. – Any installment financing arrangement, lease-purchase arrangement, arrangement under which funds are to be paid in the future based upon the availability of an asset or funds for payment, or any similar arrangement in the nature of a financing, under which a State entity agrees to make payments to acquire or obtain ownership or beneficial use of a capital asset for the State entity or any other State entity for a term, including renewal options, of greater than one year. Any arrangement that results in the identification of a portion of a lease payment, installment payment, or similar scheduled payment thereunder by a State entity as "interest" for purposes of federal income taxation shall automatically be a State-supported financing arrangement for purposes of this section. A true operating lease is not a State-supported financing arrangement.

(11) Subcontractor. – Any person who has contracted to furnish labor, services, or materials to, or who has performed labor or services for, a contractor or another subcontractor in connection with a development contract.

(b) If the governmental entity determines in writing that it has a critical need for a capital improvement project, the governmental entity may acquire, construct, own, lease as lessor or lessee, and operate or participate in the acquisition, construction, ownership, leasing, and operation of a public-private project, or of specific facilities within such a project, including the making of loans and grants from funds available to the governmental entity for these purposes. If the governmental entity is a public body under Article 33C of this Chapter, the determination shall occur during an open meeting of that public body. The governmental entity may enter into development contracts with private developers with respect to acquiring, constructing, owning, leasing, or operating a project under this section. The development contract shall specify the following:

(1) The property interest of the governmental entity and all other participants in the development of the project.
(2) The responsibilities of the governmental entity and all other participants in the development of the project.
(3) The responsibilities of the governmental entity and all other participants with respect to financing of the project.
(4) The responsibilities to put forth a good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.

(c) The development contract may provide that the private developer shall be responsible for any or all of the following:

(1) Construction of the entire public-private project.
(2) Reconstruction or repair of the public-private project or any part thereof subsequent to construction of the project.
(3) Construction of any addition to the public-private project.
(4) Renovation of the public-private project or any part thereof.
(5) Purchase of apparatus, supplies, materials, or equipment for the public-private project whether during or subsequent to the initial equipping of the project.
(6) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.

(d) The development contract may also provide that the governmental entity and private developer shall use the same contractor or contractors in constructing a portion of or the entire public-private project. If the development contract provides that the governmental entity and private developer shall use the same contractor, the development contract shall include provisions deemed appropriate by the governmental entity to assure that the public facility or facilities included in or added to the public-private project are constructed, reconstructed, repaired, or renovated at a reasonable price and that the apparatus, supplies, materials, and equipment purchased for the public facility or facilities

included in the public-private project are purchased at a reasonable price. For public-private partnerships using the design-build project delivery method, the provisions of G.S. 143-128.1A shall apply.

(e) A private developer and its contractors shall make a good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.

(f) A private developer may perform a portion of the construction or design work only if both of the following criteria apply:

(1) A previously engaged contractor defaults, and a qualified replacement cannot be obtained after a good-faith effort has been made in a timely manner.

(2) The governmental entity approves the private developer to perform the work.

(g) The following bonding provisions apply to any development contract entered into under this section:

(1) A payment bond shall be required for any development contract as follows: A payment bond in the amount of one hundred percent (100%) of the total anticipated amount of the construction contracts to be entered into between the private developer and the contractors to design or construct the improvements required by the development contract. The payment bond shall be conditioned upon the prompt payment for all labor or materials for which the private developer or one or more of its contractors or those contractors' subcontractors are liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor or services for which the private developer or its contractors or subcontractors are liable. The total anticipated amount of the construction contracts shall be stated in the development contract and certified by the private developer as being a good-faith projection of its total costs for designing and constructing the improvements required by the development contract. The payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the development contract. The development contract may provide for the requirement of a performance bond.

(2) a. Subject to the provisions of this subsection, any claimant who has performed labor or furnished materials in the prosecution of the work required by any contract for which a payment bond has been given pursuant to the provisions of this subsection, and who has not been paid in full therefor before the expiration of 90 days after the day on which the claimant performed the last labor or furnished the last materials for which that claimant claims payment, may bring an action on the payment bond in that claimant's own name to recover any amount due to that claimant for the labor or

materials and may prosecute the action to final judgment and have execution on the judgment.

b. Any claimant who has a direct contractual relationship with any contractor or any subcontractor but has no contractual relationship, express or implied, with the private developer may bring an action on the payment bond only if that claimant has given written notice of claim on the payment bond to the private developer within 120 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which that claimant claims payment, in which that claimant states with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished.

c. The notice required by sub-subdivision b. of this subdivision shall be served by certified mail or by signature confirmation as provided by the United States Postal Service, postage prepaid, in an envelope addressed to the private developer at any place where that private developer's office is regularly maintained for the transaction of business or in any manner provided by law for the service of summons. The claimants' service of a claim of lien on real property or a claim of lien on funds as funds as allowed by Article 2 of Chapter 44A of the General Statutes on the private developer shall be deemed, nonexclusively, as adequate notice under this section.

(3) Every action on a payment bond as provided in this subsection shall be brought in a court of appropriate jurisdiction in a county where the development contract or any part thereof is to be or has been performed. Except as provided in G.S. 44A-16(c), no action on a payment bond shall be commenced after one year from the day on which the last of the labor was performed or material was furnished by the claimant.

(4) No surety shall be liable under a payment bond for a total amount greater than the face amount of the payment bond. A judgment against any surety may be reduced or set aside upon motion by the surety and a showing that the total amount of claims paid and judgments previously rendered under the payment bond, together with the amount of the judgment to be reduced or set aside, exceeds the face amount of the bond.

(5) No act of or agreement between the governmental entity, a private developer, or a surety shall reduce the period of time for giving notice under sub-subdivision (2)b. of this subsection or commencing action under subdivision (3) of this subsection or otherwise reduce or limit the liability of the private developer or surety as prescribed in this subsection. Every bond given by a private developer pursuant to this subsection shall be conclusively presumed to have been given in accordance with the provisions of this subsection, whether or not the bond is drawn as to

conform to this subsection. The provisions of this subsection shall be conclusively presumed to have been written into every bond given pursuant to this subsection.

(6) Any person entitled to bring an action or any defendant in an action on a payment bond shall have a right to require the governmental entity or the private developer to certify and furnish a copy of the payment bond, the development contract, and any construction contracts covered by the bond. It shall be the duty of the private developer or the governmental entity to give any such person a certified copy of the payment bond and the construction contract upon not less than 10 days' notice and request. The governmental entity or private developer may require a reasonable payment for the actual cost of furnishing the certified copy. A copy of any payment bond, development contract, and any construction contracts covered by the bond certified by the governmental entity or private developer shall constitute prima facie evidence of the contents, execution, and delivery of the bond, development contract, and construction contracts.

(7) A payment bond form containing the following provisions shall comply with this subsection:

a. The date the bond is executed.

b. The name of the principal.

c. The name of the surety.

d. The governmental entity.

e. The development contract number.

f. All of the following:

1. "KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above named [governmental entity], hereinafter called [governmental entity], in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents."

2. "THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain development contract with [governmental entity], numbered as shown above and hereto attached."

3. "NOW THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the construction or design work provided for in the development contract, and any and all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue."

4. "IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body." Appropriate places for execution by the surety and principal shall be provided.

(8) In any suit brought or defended under the provisions of this subsection, the presiding judge may allow reasonable attorneys' fees to the attorney representing the prevailing party. Attorneys' fees under this subdivision are to be taxed as part of the court costs and shall be payable by the losing party upon a finding that there was an unreasonable refusal by the losing party to fully resolve the matter which constituted the basis of the suit or the basis of the defense. For purposes of this subdivision, the term "prevailing party" means a party plaintiff or third-party plaintiff who obtains a judgment of at least fifty percent (50%) of the monetary amount sought in a claim or a party defendant or third-party defendant against whom a claim is asserted which results in a judgment of less than fifty percent (50%) of the amount sought in the claim defended. Notwithstanding the provisions of this subdivision, if an offer of judgment is served in accordance with G.S. 1A-1, Rule 68, a "prevailing party" is an offeree who obtains judgment in an amount more favorable than the last offer or is an offeror against whom judgment is rendered in an amount less favorable than the last offer.

(9) The obligations and lien rights set forth in Article 2 of Chapter 44A of the General Statutes shall apply to a project awarded under this section to the extent of any property interests held by the private developer in the project. For purposes of applying the provisions of Article 2 of Chapter 44A of the General Statutes, the private developer shall be deemed the owner to the extent of that private developer's ownership interest. This subdivision shall not be construed as making the provisions of Article 2 of Chapter 44A of the General Statutes apply to governmental entities or public buildings to the extent of any property interest held by the governmental entity in the building.

(h) The governmental entity shall determine its programming requirements for facilities to be constructed under this section and shall determine the form in which private developers may submit their qualifications. The governmental entity shall advertise a notice for interested private developers to submit qualifications in a newspaper having general circulation within the county in which the governmental entity is located. Prior to the submission of qualifications, the governmental entity shall make available, in whatever form it deems appropriate, the programming requirements for facilities included in the public-private project. Any private developer submitting qualifications shall include the following:

(1) Evidence of financial stability. However, "trade secrets" as that term is defined in G.S. 66-152(3) shall be exempt from disclosure under Chapter 132 of the General Statutes.
(2) Experience with similar projects.
(3) Explanation of project team selection by either listing of licensed contractors, licensed subcontractors, and licensed design professionals whom the private developer proposes to use for the project's design and construction or a statement outlining a strategy for open contractor and subcontractor selection based upon the provisions of this Article.
(4) Statement of availability to undertake the public-private project and projected time line for project completion.
(5) Any other information required by the governmental entity.

(i) Based upon the qualifications package submitted by the private developers and any other information required by the governmental entity, the governmental entity may select one or more private developers with whom to negotiate the terms and conditions of a contract to perform the public-private project. The governmental entity shall advertise the terms of the proposed contract to be entered into by the governmental entity in a newspaper having general circulation within the county in which the governmental entity is located at least 30 days prior to entering into the development contract. If the governmental entity is a public body under Article 33C of this Chapter, the development contract shall be considered in an open meeting of that public body following a public hearing on the proposed development contract. Notice of the public hearing shall be published in the same notice as the advertisement of the terms under this subsection.

(j) The governmental entity shall make available a summary of the development contract terms which shall include a statement of how to obtain a copy of the complete development contract.

(k) Leases and other agreements entered into under this section are subject to approval as follows:

(1) If a capital lease or operating lease is entered into by a unit of local government as defined in G.S. 159-7, that capital lease or operating lease is subject to approval by the local government commission under Article 8 of Chapter 159 of the General Statutes if it meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), 159-148(a)(4) or 159-153. For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five hundred thousand dollar ($500,000) threshold applies.
(2) If a capital lease or other agreement entered into by a State entity constitutes a State-supported financing arrangement and requires payments thereunder that are payable, whether directly or indirectly, and whether or not subject to the appropriation of funds for such payment, by payments from the General Fund of the State or other funds and accounts of the State that are funded from the general revenues and other taxes and fees of the State or State entities, not including taxes and fees that are

required to be deposited to the Highway Fund or Highway Trust Fund to be used to make payments under capital leases or other agreements for projects covered under Article 14B of Chapter 136 of the General Statutes, that capital lease or other agreement shall be subject to the approval procedures required for special indebtedness by G.S. 142-83 and G.S. 142-84. This requirement shall not apply to any arrangement where bonds or other obligations are issued or incurred by a State entity to carry out a financing program authorized by the General Assembly under which such bonds or other obligations are payable from monies derived from specified, limited, nontax sources, so long as the payments under that arrangement by a State entity are limited to the sources authorized by the General Assembly.

(l) A capital lease or operating lease entered into under this section may not contain any provision with respect to the assignment of specific students or students from a specific area to any specific school.

(m) This section shall not apply to any contract or other agreement between or among The University of North Carolina or one of its constituent institutions, a private, nonprofit corporation established under Part 2B of Article 1 of Chapter 116 of the General Statutes, or any private foundation, private association, or private club created for the primary purpose of financial support to The University of North Carolina or one of its constituent institutions. (2013-401, s. 4; 2015-241, s. 31.11(a).)

§ 143-128.2. Minority business participation goals.

(a) The State shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each State building project, including building projects done by a private entity on a facility to be leased or purchased by the State. A local government unit or other public or private entity that receives State appropriations for a building project or other State grant funds for a building project, including a building project done by a private entity on a facility to be leased or purchased by the local government unit, where the project cost is one hundred thousand dollars ($100,000) or more, shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of the work; provided, however, a local government unit may apply a different verifiable goal that was adopted prior to December 1, 2001, if the local government unit had and continues to have a sufficiently strong basis in evidence to justify the use of that goal. On State building projects and building projects subject to the State goal requirement, the Secretary shall identify the appropriate percentage goal, based on adequate data, for each category of minority business as defined in G.S. 143-128.2(g)(1) based on the specific contract type.

Except as otherwise provided for in this subsection, each city, county, or other local public entity shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for building projects.

Each entity required to have verifiable percentage goals under this subsection shall make a good faith effort to recruit minority participation in accordance with this section or G.S. 143-131(b), as applicable.

(b) A public entity shall establish prior to solicitation of bids the good faith efforts that it will take to make it feasible for minority businesses to submit successful bids or proposals for the contracts for building projects. Public entities shall make good faith efforts as set forth in subsection (e) of this section. Public entities shall require contractors to make good faith efforts pursuant to subsection (f) of this section. Each first-tier subcontractor on a construction management at risk project shall comply with the requirements applicable to contractors under this subsection.

(c) Each bidder, which shall mean first-tier subcontractor for construction manager at risk projects for purposes of this subsection, on a project bid under any of the methods authorized under G.S. 143-128(a1) shall identify on its bid the minority businesses that it will use on the project and an affidavit listing the good faith efforts it has made pursuant to subsection (f) of this section and the total dollar value of the bid that will be performed by the minority businesses. A contractor, including a first-tier subcontractor on a construction manager at risk project, that performs all of the work under a contract with its own workforce may submit an affidavit to that effect in lieu of the affidavit otherwise required under this subsection. The apparent lowest responsible, responsive bidder shall also file the following:

(1) Within the time specified in the bid documents, either:

a. An affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal. An affidavit under this sub-subdivision shall give rise to a presumption that the bidder has made the required good faith or effort; or

b. Documentation of its good faith effort to meet the goal. The documentation must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.

(2) Within 30 days after award of the contract, a list of all identified subcontractors that the contractor will use on the project.

Failure to file a required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the bid.

(d) No subcontractor who is identified and listed pursuant to subsection (c) of this section may be replaced with a different subcontractor except:

(1) If the subcontractor's bid is later determined by the contractor or construction manager at risk to be nonresponsible or nonresponsive, or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or

(2) With the approval of the public entity for good cause.

Good faith efforts as set forth in G.S. 143-131(b) shall apply to the selection of a substitute subcontractor. Prior to substituting a subcontractor, the contractor shall identify the substitute subcontractor and inform the public entity of its good faith efforts pursuant to G.S. 143-131(b).

(e) Before awarding a contract, a public entity shall do the following:

(1) Develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and nonminority businesses.

(2) Attend the scheduled prebid conference.

(3) At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:

a. A description of the work for which the bid is being solicited.

b. The date, time, and location where bids are to be submitted.

c. The name of the individual within the public entity who will be available to answer questions about the project.

d. Where bid documents may be reviewed.

e. Any special requirements that may exist.

(4) Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.

(f) A public entity shall require bidders to undertake the following good faith efforts to the extent required by the Secretary on projects subject to this section. The Secretary shall adopt rules establishing points to be awarded for taking each effort and the minimum number of points required, depending on project size, cost, type, and other factors considered relevant by the Secretary. In establishing the point system, the Secretary may not require a contractor to earn more than fifty (50) points, and the Secretary must assign each of the efforts listed in subdivisions (1) through (10) of this subsection at least 10 points. The public entity may require that additional good faith efforts be taken, as indicated in its bid specifications. Good faith efforts include:

(1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed.

(2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due.

(3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation.

(4) Working with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.

(5) Attending any prebid meetings scheduled by the public owner.

(6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.

(7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.

(8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.

(9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.

(10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

(g) As used in this section:

(1) The term "minority business" means a business:

a. In which at least fifty-one percent (51%) is owned by one or more minority persons or socially and economically disadvantaged individuals, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and

b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.

(2) The term "minority person" means a person who is a citizen or lawful permanent resident of the United States and who is:

a. Black, that is, a person having origins in any of the black racial groups in Africa;

b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;

c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands;

d. American Indian, that is, a person having origins in any of the original Indian peoples of North America; or

e. Female.

(3) The term "socially and economically disadvantaged individual" means the same as defined in 15 U.S.C. 637.

(h) The State, counties, municipalities, and all other public bodies shall award public building contracts, including those awarded under G.S. 143-128.1, 143-129, and 143-131, without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

(i) Notwithstanding G.S. 132-3 and G.S. 121-5, all public records created pursuant to this section shall be maintained by the public entity for a period of not less than three years from the date of the completion of the building project.

(j) Except as provided in subsections (a), (g), (h) and (i) of this section, this section shall only apply to building projects costing three hundred thousand dollars ($300,000) or more. This section shall not apply to the purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site. (2001-496, s. 3.1.)

§ 143-128.3. Minority business participation administration.

(a) All public entities subject to G.S. 143-128.2 shall report to the Department of Administration, Office of Historically Underutilized Business, the following with respect to each building project:

(1) The verifiable percentage goal.

(2) The type and total dollar value of the project, minority business utilization by minority business category, trade, total dollar value of contracts awarded to each minority group for each project, the applicable good faith effort guidelines or rules used to recruit minority business participation, and good faith documentation accepted by the public entity from the successful bidder.

(3) The utilization of minority businesses under the various construction methods under G.S. 143-128(a1).

The reports shall be in the format and contain the data prescribed by the Secretary of Administration. The University of North Carolina and the State Board of Community

Colleges shall report quarterly and all other public entities shall report semiannually. The Secretary of the Department of Administration shall make reports every six months to the Joint Legislative Committee on Governmental Operations on information reported pursuant to this subsection.

(b) A public entity that has been notified by the Secretary of its failure to comply with G.S. 143-128.2 on a project shall develop a plan of compliance that addresses the deficiencies identified by the Secretary. The corrective plan shall apply to the current project or to subsequent projects under G.S. 143-128, as appropriate, provided that the plan must be implemented, at a minimum, on the current project to the extent feasible. If the public entity, after notification from the Secretary, fails to file a corrective plan, or if the public entity does not implement the corrective plan in accordance with its terms, the Secretary shall require one or both of the following:

(1) That the public entity consult with the Department of Administration, Office of Historically Underutilized Businesses on the development of a new corrective plan, subject to the approval of the Department and the Attorney General. The public entity may designate a representative to appear on its behalf, provided that the representative has managerial responsibility for the construction project.

(2) That the public entity not bid another contract under G.S. 143-128 without prior review by the Department and the Attorney General of a good faith compliance plan developed pursuant to subdivision (1) of this subsection. The public entity shall be subject to the review and approval of its good faith compliance plan under this subdivision with respect to any projects bid pursuant to G.S. 143-128 during a period of time determined by the Secretary, not to exceed one year.

A public entity aggrieved by the decision of the Secretary may file a contested case proceeding under Chapter 150B of the General Statutes.

(c) The Secretary shall study and recommend to the General Assembly and other State agencies ways to improve the effectiveness and efficiency of the State capital facilities development, minority business participation program and good faith efforts in utilizing minority businesses as set forth in G.S. 143-128.2, and other appropriate good faith efforts that may result in the increased utilization of minority businesses.

(d) The Secretary shall appoint an advisory board to develop recommendations to improve the recruitment and utilization of minority businesses. The Secretary, with the input of its advisory board, shall review the State's programs for promoting the recruitment and utilization of minority businesses involved in State capital projects and shall recommend to the General Assembly, the State Construction Office, The University of North Carolina, and the community colleges system changes in the terms and conditions of State laws, rules, and policies that will enhance opportunities for utilization of minority businesses on these projects. The Secretary shall provide guidance to these agencies on identifying types of projects likely to attract increased participation by minority businesses and breaking down or combining elements of work into economically feasible units to facilitate minority business participation.

(e) The Secretary shall adopt rules for State entities, The University of North Carolina, and community colleges and shall adopt guidelines for local government units to implement the provisions of G.S. 143-128.2.

(e1) Repealed by Session Laws 2007-392, s. 3, effective October 1, 2007.

(f) The Secretary shall provide the following information to the Attorney General:

(1) Failure by a public entity to report data to the Secretary in accordance with this section.

(2) Upon the request of the Attorney General, any data or other information collected under this section.

(3) False statements knowingly provided in any affidavit or documentation under G.S. 143-128.2 to the State or other public entity. Public entities shall provide to the Secretary information concerning any false information knowingly provided to the public entity pursuant to G.S. 143-128.2.

(g) The Secretary shall report findings and recommendations as required under this section to the Joint Legislative Committee on Governmental Operations annually on or before June 1, beginning June 1, 2002. (2001-496, s. 3.6; 2005-270, s. 2; 2007-392, s. 3.)

§ 143-128.4. Historically underutilized business defined; statewide uniform certification.

(a) As used in this Chapter, the term "historically underutilized business" means a business that meets all of the following conditions:

(1) At least fifty-one percent (51%) of the business is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section, or in the case of a corporation, at least fifty-one percent (51%) of the stock is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section.

(2) The management and daily business operations are controlled by one or more owners of the business who are members of at least one of the groups set forth in subsection (b) of this section.

(a1) As used in this Chapter, the term "minority business" means a historically underutilized business.

(b) To qualify as a historically underutilized business under this section, a business must be owned and controlled as set forth in subsection (a) of this section by one or more citizens or lawful permanent residents of the United States who are members of one or more of the following groups:

(1) Black. – A person having origins in any of the black racial groups of Africa.

(2) Hispanic. – A person of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race.

(3) Asian American. – A person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands.
(4) American Indian. – A person having origins in any of the original Indian peoples of North America.
(5) Female.
(6) Disabled. – A person with a disability as defined in G.S. 168-1 or G.S. 168A-3.
(7) Disadvantaged. – A person who is socially and economically disadvantaged as defined in 15 U.S.C. § 637.

(c) In addition to the powers and duties provided in G.S. 143-49, the Secretary of Administration shall have the power, authority, and duty to:

(1) Develop and administer a statewide uniform program for: (i) the certification of a historically underutilized business, as defined in this section, for use by State departments, agencies, and institutions, and political subdivisions of the State; and (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses.
(2) Adopt rules and procedures for the statewide uniform certification of historically underutilized businesses.
(3) Provide for the certification of all businesses designated as historically underutilized businesses to be used by State departments, agencies, and institutions, and political subdivisions of the State.

(d) The Secretary of Administration shall seek input from State departments, agencies, and institutions, political subdivisions of the State, and any other entity deemed appropriate to determine the qualifications and criteria for statewide uniform certification of historically underutilized businesses.

(e) Only businesses certified in accordance with this section shall be considered by State departments, agencies, and institutions, and political subdivisions of the State as historically underutilized businesses for minority business participation purposes under this Chapter. (2005-270, s. 3; 2007-392, s. 4; 2009-243, s. 3.)

§ 143-129. Procedure for letting of public contracts.

(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than five hundred thousand dollars ($500,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars ($90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with; provided that The University of North Carolina and its constituent institutions may award contracts for construction or repair work that requires an estimated expenditure of less than five hundred thousand dollars ($500,000) without complying with the provisions of this section.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager, school superintendent, chief purchasing official, or other employee the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

(b) Advertisement and Letting of Contracts. – Where the contract is to be let by a board or governing body of the State government or of a State institution, proposals shall be invited by advertisement in a newspaper having general circulation in the State of North Carolina. Where the contract is to be let by a political subdivision of the State, proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board.

The advertisements for bidders required by this section shall appear at a time where at least seven full days shall lapse between the date on which the notice appears and the date of the opening of bids. The advertisement shall: (i) state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials, or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii) reserve to the board or governing body the right to reject any or all proposals.

Proposals may be rejected for any reason determined by the board or governing body to be in the best interest of the unit. However, the proposal shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or political subdivision thereof may assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and the board or governing body shall award the contract to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

In the event the lowest responsible bids are in excess of the funds available for the project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work or provide the apparatus, supplies, materials, or equipment at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made

such changes in plans and specifications as may be necessary to bring the cost of the project or purchase within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal for construction or repair work may be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor.

(c) Contract Execution and Security. – All contracts to which this section applies shall be executed in writing. The board or governing body shall require the person to whom the award of a contract for construction or repair work is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and the contract shall not be altered except by written agreement of the contractor and the board or governing body. The surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, the board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

(d) Use of Unemployment Relief Labor. – Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

(e) Exceptions. – The requirements of this Article do not apply to:

(1) The purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment from: (i) the United States of America or any agency thereof; or (ii) any other government unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may designate any officer or employee of the State or political subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment, or other property owned by: (i) the United States of America or any agency thereof; or (ii) any other governmental unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may authorize the officer or employee to make any partial or down payment or payment in full that may be required by regulations of the governmental unit or agency disposing of the property.

(2) Cases of special emergency involving the health and safety of the people or their property.

(3) Purchases made through a competitive bidding group purchasing program, which is a formally organized program that offers competitively obtained purchasing services at discount prices to two or more public agencies.

(4) Construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section.

(5) Purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or natural gas. These purchases are subject to G.S. 143-131.

(6) Purchases of apparatus, supplies, materials, or equipment when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract.

In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when: (i) a particular medical item or prosthetic appliance is needed; (ii) a particular product is ordered by an attending physician for his patients; (iii) additional products are needed to complete an ongoing job or task; (iv) products are purchased for "over-the-counter" resale; (v) a particular product is needed or desired for experimental, developmental, or research work; or (vi) equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body

of a hospital shall keep a record of all purchases made pursuant to this subdivision. These records are subject to public inspection.

(7) Purchases of information technology through contracts established by the Department of Information Technology as provided in Article 15 of Chapter 143B of the General Statutes.

(8) Guaranteed energy savings contracts, which are governed by Article 3B of Chapter 143 of the General Statutes.

(9) Purchases from contracts established by the State or any agency of the State, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the State contract.

(9a) Purchases of apparatus, supplies, materials, or equipment from contracts established by the United States of America or any federal agency, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the federal contract.

(10) Purchase of used apparatus, supplies, materials, or equipment. For purposes of this subdivision, remanufactured, refabricated or demo apparatus, supplies, materials, or equipment are not included in the exception. A demo item is one that is used for demonstration and is sold by the manufacturer or retailer at a discount.

(11) Contracts by a public entity with a construction manager at risk executed pursuant to G.S. 143-128.1.

(12) Repealed by Session Laws 2006-232, s. 2, effective July 1, 2015.

(f) Repealed by Session Laws 2001-328, s. 1, effective August 2, 2001.

(g) Waiver of Bidding for Previously Bid Contracts. – When the governing board of any political subdivision of the State, or the person to whom authority has been delegated under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:

(1) The United States of America or any federal agency;

(2) The State of North Carolina or any agency or political subdivision of the State; or

(3) Any other state or any agency or political subdivision of that state, if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice that a waiver of

the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts.

(h) Transportation Authority Purchases. – Notwithstanding any other provision of this section, any board or governing body of any regional public transportation authority, hereafter referred to as a "RPTA," created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority, hereafter referred to as a "RTA," created pursuant to Article 27 of Chapter 160A of the General Statutes, may approve the entering into of any contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without competitive bidding and without meeting the requirements of subsection (b) of this section if the following procurement by competitive proposal (Request for Proposal) method is followed.

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, all of the following requirements apply:

(1) Requests for proposals shall be publicized. All evaluation factors shall be identified along with their relative importance.

(2) Proposals shall be solicited from an adequate number of qualified sources.

(3) RPTAs or RTAs shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and competition without requiring strict adherence to specifications or price in determining the most advantageous proposal.

(4) The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators, discussions or negotiations may be conducted either with all offerors or with those offerors determined to be within the competitive range, and one or more revised proposals or a best and final offer may be requested of all remaining offerors. The details and deficiencies of an offeror's proposal may not be disclosed to other offerors during any period of negotiation or discussion.

(5) The award shall be made to the responsible firm whose proposal is most advantageous to the RPTA's or the RTA's program with price and other factors considered.

The contents of the proposals shall not be public records until 14 days before the award of the contract.

The board or governing body of the RPTA or the RTA shall, at the regularly scheduled meeting, by formal motion make findings of fact that the procurement by competitive proposal (Request for Proposals) method of procuring the particular apparatus, supplies, materials, or equipment is the most appropriate acquisition method prior to the issuance of the requests for proposals and shall by formal motion certify that the requirements of this subsection have been followed before approving the contract.

Nothing in this subsection subjects a procurement by competitive proposal under this subsection to G.S. 143-49, 143-52, or 143-53.

RPTAs and RTAs may adopt regulations to implement this subsection.

(i) Procedure for Letting of Public Contracts. – The Department of Transportation ("DOT"), The University of North Carolina and its constituent institutions ("UNC"), and the Department of Administration ("DOA") shall monitor all projects in those agencies and institutions that are let without a performance or payment bond to determine the number of defaults on those projects, the cost to complete each defaulted project, and each project's contract price. Beginning March 1, 2011, and annually thereafter, DOT, UNC, and DOA shall report this information to the Joint Legislative Committee on Governmental Operations.

(j) [Use of E-Verify Required. –] No contract subject to this section may be awarded by any board or governing body of the State, institution of State government, or any political subdivision of the State unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1; 1979, 2nd Sess., c. 1081; 1981, c. 346, s. 1; c. 754, s. 1; 1985, c. 145, ss. 1, 2; 1987, c. 590; 1987 (Reg. Sess., 1988), c. 1108, ss. 7, 8; 1989, c. 350; 1993, c. 539, s. 1007; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 367, s. 6; 1997-174, ss. 1-4; 1998-185, s. 1; 1998-217, s. 16; 2001-328, s. 1; 2001-487, s. 88; 2001-496, ss. 4, 5; 2005-227, s. 1; 2006-232, s. 2; 2007-94, s. 1; 2007-322, s. 4; 2007-446, s. 6; 2010-148, s. 1.2; 2011-234, s. 1; 2013-418, s. 2(c); 2015-241, s. 7A.4(s).)

§ 143-129.1. Withdrawal of bid.

A public agency may allow a bidder submitting a bid pursuant to G.S. 143-129 for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment to withdraw his bid from consideration after the bid opening without forfeiture of his bid security if the price bid was based upon a mistake, which constituted a substantial error, provided the bid was submitted in good faith, and the bidder submits credible evidence that the mistake was clerical in nature as opposed to a judgment error, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, apparatus, supplies, materials, equipment, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from

inspection of the original work papers, documents or materials used in the preparation of the bid sought to be withdrawn. A request to withdraw a bid must be made in writing to the public agency which invited the proposals for the work prior to the award of the contract, but not later than 72 hours after the opening of bids, or for a longer period as may be specified in the instructions to bidders provided prior to the opening of bids.

If a request to withdraw a bid has been made in accordance with the provisions of this section, action on the remaining bids shall be considered, in accordance with North Carolina G.S. 143-129, as though said bid had not been received. Notwithstanding the foregoing, such bid shall be deemed to have been received for the purpose of complying with the requirements of G.S. 143-132. If the work or purchase is relet for bids, under no circumstances may the bidder who has filed a request to withdraw be permitted to rebid the work or purchase.

If a bidder files a request to withdraw his bid, the agency shall promptly hold a hearing thereon. The agency shall give to the withdrawing bidder reasonable notice of the time and place of any such hearing. The bidder, either in person or through counsel, may appear at the hearing and present any additional facts and arguments in support of his request to withdraw his bid. The agency shall issue a written ruling allowing or denying the request to withdraw within five days after the hearing. If the agency finds that the price bid was based upon a mistake of the type described in the first paragraph of this section, then the agency shall issue a ruling permitting the bidder to withdraw without forfeiture of the bidder's security. If the agency finds that the price bid was based upon a mistake not of the type described in the first paragraph of this section, then the agency shall issue a ruling denying the request to withdraw and requiring the forfeiture of the bidder's security. A denial by the agency of the request to withdraw a bid shall have the same effect as if an award had been made to the bidder and a refusal by the bidder to accept had been made, or as if there had been a refusal to enter into the contract, and the bidder's bid deposit or bid bond shall be forfeited.

In the event said ruling denies the request to withdraw the bid, the bidder shall have the right, within 20 days after receipt of said ruling, to contest the matter by the filing of a civil action in any court of competent jurisdiction of the State of North Carolina. The procedure shall be the same as in all civil actions except all issues of law and fact and every other issue shall be tried de novo by the judge without jury; provided that the matter may be referred in the instances and in the manner provided for by North Carolina G.S. 1A-1, Rule 53, as amended. Notwithstanding the foregoing, if the public agency involved is the Department of Administration, it may follow its normal rules and regulations with respect to contested matters, as opposed to following the administrative procedures set forth herein. If it is finally determined that the bidder did not have the right to withdraw his bid pursuant to the provisions of this section, the bidder's security shall be forfeited. Every bid bond or bid deposit given by a bidder to a public agency pursuant to G.S. 143-129 shall be conclusively presumed to have been given in accordance with this section, whether or not it be so drawn as to conform to this section. This section shall be conclusively presumed to have been written into every bid bond given pursuant to G.S. 143-129.

Neither the agency nor any elected or appointed official, employee, representative or agent of such agency shall incur any liability or surcharge, in the absence of fraud or collusion, by permitting the withdrawal of a bid pursuant to the provisions of this section.

No withdrawal of the bid which would result in the award of the contract on another bid of the same bidder, his partner, or to a corporation or business venture owned by or in which he has an interest shall be permitted. No bidder who is permitted to withdraw a bid shall supply any material or labor to, or perform any subcontract or work agreement for, any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted, without the prior written approval of the agency. Whoever violates the provisions of the foregoing sentence shall be guilty of a Class 1 misdemeanor. (1977, c. 617, s. 1; 1993, c. 539, s. 1008; 1994, Ex. Sess., c. 24, s. 14(c); 2001-328, s. 2.)

§ 143-129.2. Construction, design, and operation of solid waste management and sludge management facilities.

(a) All terms relating to solid waste management and disposal as used in this section shall be defined as set forth in G.S. 130A-290, except that the term "unit of local government" also includes a sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes, an authority created under Article 1 of Chapter 162A of the General Statutes, a metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes, and a county water and sewer district created under Article 6 of Chapter 162A of the General Statutes. As used in this section, the term "sludge management facility" means a facility that processes sludge that has been generated by a municipal wastewater treatment plant for final end use or disposal but does not include any component of a wastewater treatment process or facility that generates sludge.

(b) To acknowledge the highly complex and innovative nature of solid waste and sludge management technologies for processing mixed solid waste and sludge generated by water and wastewater treatment facilities, the relatively limited availability of existing and proven proprietary technology involving solid waste and sludge management facilities, the desirability of a single point of responsibility for the development of facilities and the economic and technical utility of contracts for solid waste and sludge management which include in their scope combinations of design, construction, operation, management and maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to a unit of local government to award a contract on the basis of factors other than cost alone, including but not limited to facility design, operational experience, system reliability, energy production efficiency, long-term operational costs, compatibility with source separation and other recycling systems, environmental impact and operational guarantees. Accordingly, and notwithstanding other provisions of this Article or any local law, a contract entered into between a unit of local government and any person pursuant to this section may be awarded in accordance with the following provisions for the award of a contract based upon an evaluation of proposals submitted in response to a request for proposals prepared by or for a unit of local government.

(c) The unit of local government shall require in its request for proposals that each proposal to be submitted shall include all of the following:

(1) Information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract; the ability of the proposer to secure adequate financing; and proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed contract.

(2) A proposal clearly identifying and specifying all elements of cost which would become charges to the unit of local government, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to, the cost of planning, design, construction, operation, management and/or maintenance of any facility; provided, that the unit of local government may prescribe the form and content of the proposal and that, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation of the proposal.

(3) Any other information as the unit of local government may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section.

(d) Proposals received in response to a request for proposals may be evaluated on the basis of a technical analysis of facility design, operational experience of the technology to be utilized in the proposed facility, system reliability and availability, energy production balance and efficiency, environmental impact and protection, recovery of materials, required staffing level during operation, projection of anticipated revenues from the sale of energy and materials recovered by the facility, net cost to the unit of local government for operation and maintenance of the facility for the duration of time to be established in the request for proposals and upon any other factors and information that the unit of local government determined to have a material bearing on its ability to evaluate any proposal, which factors were set forth in said request for proposal.

(e) The unit of local government may make a contract award to any responsible proposer selected pursuant to this section based upon a determination that the selected proposal is more responsive to the request for proposals and may thereupon negotiate a contract with said proposer for the performance of the services set forth in the request for proposals and the response thereto, the determination shall be deemed to be conclusive. Notwithstanding other provisions of this Article or any local law, a contract may be negotiated and entered into between a unit of local government and any person selected as a responsible proposer hereunder which may provide for, but not be limited to, the following:

(1) A contract, lease, rental, license, permit or other authorization to design, construct, operate and maintain a solid waste or sludge management facility upon such terms and conditions, for such consideration, and for

such duration, not to exceed 40 years, as may be agreed upon by the unit of local government and the person.

(2) Payment by the unit of local government of a fee or other charge to the person for acceptance, processing, recycling, management and disposal of solid waste or sludge.

(3) An obligation on the part of a unit of local government to deliver or cause to be delivered to a solid waste or sludge management facility guaranteed quantities of solid wastes or sludge.

(4) The sale, utilization or disposal of any form of energy, recovered material or residue resulting from the operation of any solid waste or sludge management facility.

(f) Except for authorities created pursuant to Article 22 of Chapter 153A of the General Statutes, the construction work for any facility or structure that is ancillary to a solid waste or sludge management facility and that does not involve storage and processing of solid waste or sludge or the separation, extraction, and recovery of useful or marketable forms of energy and materials from solid waste at a solid waste management facility shall be procured through competitive bidding procedures described by G.S. 143-128 through 143-129.1. Ancillary facilities include but are not limited to roads, water and sewer lines to the facility limits, transfer stations, scale houses, administration buildings, and residue and bypass disposal sites. (1983, c. 795, ss. 4, 8.1; 2005-176, s. 1; 2007-131, s. 3.)

§ 143-129.3. Exemption of General Assembly from certain purchasing requirements.

(a) The Legislative Services Commission may provide that the provisions of G.S. 143-129 and Article 3 of this Chapter do not apply to purchases by the General Assembly of data processing and data communications equipment, supplies, and services. Such exemption may vary according to the type or amount of purchase, and may vary as to whether the exemption is from some or all of those statutory provisions.

(b) The Legislative Services Commission must give specific approval to any purchase in excess of five thousand dollars ($5,000) made under an exemption provided by subsection (a) of this section. (1989, c. 82.)

§ 143-129.4. Guaranteed energy savings contracts.

The solicitation and evaluation of proposals for guaranteed energy savings contracts, as defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these proposals are not governed by this Article but instead are governed by the provisions of that Part; except that guaranteed energy savings contracts are subject to the requirements of G.S. 143-128.2 and G.S. 143-135.3. (1993 (Reg. Sess., 1994), c. 775, s. 4; 1995, c. 509, s. 135.2(k); 2001-496, s. 3.3; 2002-161, s. 11.)

§ 143-129.5. Purchases from nonprofit work centers for the blind and severely disabled.

Notwithstanding G.S. 143-129, a city, county, or other governmental entity subject to this Article may purchase goods and services directly from a nonprofit work center for the blind and severely disabled, as defined in G.S. 143-48.

The Department of Administration shall report annually to the Joint Legislative Commission on Governmental Operations on its administration of this program. (1995, c. 265, s. 4; 1999-20, s. 1.)

§ 143-129.6. Exemption for certain training projects of the North Carolina National Guard.

Expenditures, excluding design fees, for a capital project, construction, or repair work (i) that is for training purposes and for a single exercise or undertaking at a National Guard facility; (ii) that has a total cost that does not exceed applicable federal limits; and (iii) that will be funded entirely with federal funds, shall not be subject to this Article. (2014-100, s. 36.8(c).)

§ 143-129.7. Purchase with trade-in of apparatus, supplies, materials, and equipment.

Notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes, municipalities, counties, and other political subdivisions of the State may include in specifications for the purchase of apparatus, supplies, materials, or equipment an opportunity for bidders to purchase as "trade-in" specified personal property owned by the municipality, county, or other political subdivision, and the awarding authority may award a contract for both the purchase of the apparatus, supplies, materials, or equipment and the sale of trade-in property, taking into consideration the amount offered on the trade-in when applying the criteria for award established in this Article. (1997-174, s. 7.)

§ 143-129.8. Purchase of information technology goods and services.

(a) In recognition of the complex and innovative nature of information technology goods and services and of the desirability of a single point of responsibility for contracts that include combinations of purchase of goods, design, installation, training, operation, maintenance, and related services, a political subdivision of the State may contract for information technology, as defined in G.S. 143B-1320, using the procedure set forth in this section, in addition to or instead of any other procedure available under North Carolina law.

(b) Contracts for information technology may be entered into under a request for proposals procedure that satisfies the following minimum requirements:

(1) Notice of the request for proposals shall be given in accordance with G.S. 143-129(b).

(2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals.

(c) The awarding authority may use procurement methods set forth in G.S. 143-135.9 in developing and evaluating requests for proposals under this section. The

awarding authority may negotiate with any proposer in order to obtain a final contract that best meets the needs of the awarding authority. Negotiations allowed under this section shall not alter the contract beyond the scope of the original request for proposals in a manner that: (i) deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and (ii) would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.

(d) Proposals submitted under this section shall not be subject to public inspection until a contract is awarded. (2001-328, s. 3; 2004-199, s. 36(b); 2004-203, s. 10; 2015-241, s. 7A.4(t).)

§ 143-129.8A. Purchase of certain goods and services for the North Carolina Zoological Park.

(a) Exemption. – The North Carolina Zoological Park is a State entity whose primary purpose is the attraction of, interaction with, and education of the public regarding issues of global conservation, ecological preservation, and scientific exploration, and that purpose presents unique challenges requiring greater flexibility and faster responsiveness in meeting the needs of and creating the attractions for the Park. Accordingly, the Department of Natural and Cultural Resources may use the procedure set forth in this section, in addition to or instead of any other procedure available under North Carolina law, to contract with a non-State entity on behalf of the Park for the acquisition of goods and services where: (i) the contract directly results in the generation of revenue for the State of North Carolina or (ii) the use of the acquired goods and services by the Park results in increased revenue or decreased expenditures for the State of North Carolina.

(b) Limitation. – Contracts executed pursuant to the exemption of subsection (a) of this section may be entered into under a request for proposals procedure that satisfies the following minimum requirements:

(1) Notice of the request for proposals shall be given in accordance with G.S. 143-129(b).

(2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals.

(c) Procurement Methods. – The Department may use procurement methods set forth in G.S. 143-135.9 in developing and evaluating requests for proposals under this section. The Department may negotiate with any proposer in order to obtain a final contract that best meets the needs of the awarding authority. Negotiations allowed under this section shall not alter the contract beyond the scope of the original request for proposals in a manner that: (i) deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and (ii) would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.

(d) Promotional Rights. – Subject to the approval of the Department, a non-State entity awarded a contract that results in increased revenue or decreased expenditures for

the Park may advertise, announce, or otherwise publicize the provision of services pursuant to award of the contract. (2009-329, s. 1.1; 2015-241, s. 14.30(yy).)

§ 143-129.9. Alternative competitive bidding methods.

(a) A political subdivision of the State may use any of the following methods to obtain competitive bids for the purchase of apparatus, supplies, materials, or equipment as an alternative to the otherwise applicable requirements in this Article:

(1) Reverse auction. – For purposes of this section, "reverse auction" means a real-time purchasing process in which bidders compete to provide goods at the lowest selling price in an open and interactive environment. The bidders' prices may be revealed during the reverse auction. A reverse auction may be conducted by the political subdivision or by a third party under contract with the political subdivision. A political subdivision may also conduct a reverse auction through the State electronic procurement system, and compliance with the procedures and requirements of the State's reverse auction process satisfies the political subdivision's obligations under this Article.

(2) Electronic bidding. – A political subdivision may receive bids electronically in addition to or instead of paper bids. Procedures for receipt of electronic bids for contracts that are subject to the requirements of G.S. 143-129 shall be designed to ensure the security, authenticity, and confidentiality of the bids to at least the same extent as is provided for with sealed paper bids.

(b) The requirements for advertisement of bidding opportunities, timeliness of the receipt of bids, the standard for the award of contracts, and all other requirements in this Article that are not inconsistent with the methods authorized in this section shall apply to contracts awarded under this section.

(c) Reverse auctions shall not be utilized for the purchase or acquisition of construction aggregates, including, but not limited to, crushed stone, sand, and gravel. (2002-107, s. 1.)

§ 143-130. Allowance for convict labor must be specified.

In cases where the board or governing body of a State agency or of any political subdivision of the State may furnish convict or other labor to the contractor, manufacturer, or others entering into contracts for the performance of construction work, installation of apparatus, supplies, materials or equipment, the specifications covering such projects shall carry full information as to what wages shall be paid for such labor or the amount of allowance for same. (1933, c. 400, s. 2; 1967, c. 860.)

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

(a) All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount

of thirty thousand dollars ($30,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, local school administrative unit, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, local school administrative unit, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection until the contract has been awarded.

(b) All public entities shall solicit minority participation in contracts for the erection, construction, alteration or repair of any building awarded pursuant to this section. The public entity shall maintain a record of contractors solicited and shall document efforts to recruit minority business participation in those contracts. Nothing in this section shall be construed to require formal advertisement of bids. All data, including the type of project, total dollar value of the project, dollar value of minority business participation on each project, and documentation of efforts to recruit minority participation shall be reported to the Department of Administration, Office for Historically Underutilized Business, upon the completion of the project. (1931, c. 338, s. 2; 1957, c. 862, s. 5; 1959, c. 406; 1963, c. 172; 1967, c. 860; 1971, c. 593; 1981, c. 719, s. 1; 1987 (Reg. Sess., 1988), c. 1108, s. 6; 1997-174, s. 5; 2001-496, s. 5.1; 2005-227, s. 2.)

§ 143-131.1. Exception for contracts for the purchase of food and supplies for county detention facilities by the sheriffs of certain counties.

(a) A county sheriff's office may contract for the purchase of food and food services supplies for that county's detention facility without being subject to the requirements of G.S. 143-129 and G.S. 143-131(a).

(b) This section applies only to the following counties: Alamance, Anson, Beaufort, Caswell, Catawba, Cherokee, Chowan, Cleveland, Craven, Cumberland, Currituck, Dare, Davidson, Duplin, Gaston, Granville, Guilford, Haywood, Henderson, Iredell, Jones, Lincoln, Madison, Onslow, Orange, Pamlico, Pasquotank, Randolph, Rockingham, Sampson, Stanly, Transylvania, Wake, Washington, and Yancey. (2015-156, ss. 1, 2; 2015-157, ss. 1, 2; 2015-158, ss. 1, 2; 2016-20, s. 1; 2016-37, s. 1.)

§ 143-132. Minimum number of bids for public contracts.

(a) No contract to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as

a result of such second advertisement, not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received.

(b) For purposes of contracts bid in the alternative between the separate-prime and single-prime contracts, pursuant to G.S. 143-128(d1) each single-prime bid shall constitute a competitive bid in each of the four subdivisions or branches of work listed in G.S. 143-128(a), and each full set of separate-prime bids shall constitute a competitive single-prime bid in meeting the requirements of subsection (a) of this section. If there are at least three single-prime bids but there is not at least one full set of separate-prime bids, no separate-prime bids shall be opened.

(c) The State Building Commission shall develop guidelines no later than January 1, 1991, governing the opening of bids pursuant to this Article. These guidelines shall be distributed to all public bodies subject to this Article. The guidelines shall not be subject to the provisions of Chapter 150B of the General Statutes. (1931, c. 291, s. 3; 1951, c. 1104, s. 3; 1959, c. 392, s. 2; 1963, c. 289; 1967, c. 860; 1977, c. 644; 1979, c. 182, s. 2; 1989, c. 480, s. 2; 1989 (Reg. Sess., 1990), c. 1051, s. 4; 1991 (Reg. Sess., 1992), c. 985, s. 1; 1995, c. 358, s. 4; c. 367, ss. 1, 7; 2001-496, s. 9.)

§ 143-133. No evasion permitted.

No bill or contract shall be divided for the purpose of evading the provisions of this Article. (1933, c. 400, s. 3; 1967, c. 860.)

§ 143-133.1. Reporting.

(a) Governmental entities that contract with a construction manager at risk, design-builder, or private developer under a public-private partnership shall report to the Secretary of Administration the following information on all projects where a construction manager at risk, design-builder, or private developer under a public-private partnership is utilized:

(1) A detailed explanation of the reason why the particular construction manager at risk, design-builder, or private developer was selected.
(2) The terms of the contract with the construction manager at risk, design-builder, or private developer.
(3) A list of all other firms considered but not selected as the construction manager at risk, design-builder, or private developer.
(4) A report on the form of bidding utilized by the construction manager at risk, design-builder, or private developer on the project.
(5) A detailed explanation of why the particular delivery method was used in lieu of the delivery methods identified in G.S. 143-128(a1) subdivisions (1) through (3) and the anticipated benefits to the public entity from using the particular delivery method.

(b) The Secretary of Administration shall adopt rules to implement the provisions of this section, including the format and frequency of reporting.

(c) A governmental entity letting a contract pursuant to any of the delivery methods identified in subdivisions (a1)(4), (a1)(6), (a1)(7), or (a1)(8) of G.S. 143-128 shall submit the report required by this section no later than 12 months from the date the governmental entity takes beneficial occupancy of the project. In the event that the governmental entity fails to do so, the governmental entity shall be prohibited from utilizing subdivisions (a1)(4), (a1)(6), (a1)(7), or (a1)(8) of G.S. 143-128 until such time as the governmental entity completes the reporting requirement under this this section. Contracts entered into in violation of this prohibition shall not be deemed ultra vires and shall remain valid and fully enforceable. Any person, corporation or entity, however, which has submitted a bid or response to a request for proposals on any construction project previously advertised by the governmental entity shall be entitled to obtain an injunction against the governmental entity compelling the governmental entity to comply with the reporting requirements of this section and from commencing or continuing a project let in violation of this subdivision until such time as the governmental entity has complied with the reporting requirements of this section. The plaintiff in such cases shall not be entitled to recover monetary damages caused by the governmental entity's failure to comply with this reporting requirements section, and neither the plaintiff nor the defendant shall be allowed to recover attorneys fees except as otherwise allowed by G.S. 1A-11 or G.S. 6-21.5. An action seeking the injunctive relief allowed by this subdivision must be filed within four years from the date that the governmental entity took beneficial occupancy of the project for which the report remains due.

(d) For purposes of this section, the term "governmental entity" shall have the same meaning as in G.S. 143-128.1B(a)(6). (2014-42, ss. 3, 5.)

§ 143-133.2: Reserved for future codification purposes.

§ 143-133.3. E-verify compliance.

(a) No board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, may enter into a contract unless the contractor, and the contractor's subcontractors under the contract, comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

(b) A board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, shall be deemed in compliance with this section if the contract includes a term requiring the contractor, and the contractor's subcontractors, to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

(c) This section shall not apply to any of the following:

(1) Expenses related to travel, including transportation and lodging, for employees, officers, agents, or members of State or local boards, commissions, committees, or councils.

(2) Contracts solely for the purchase of goods, apparatus, supplies, materials, or equipment.

(3) Contracts let under G.S. 143-129(e)(1), (9), or (9a).

(4) Contracts let under G.S. 143-129(g). (2015-294, s. 1(a).)

§ 143-133.4: Reserved for future codification purposes.

§ 143-133.5. Public contracts; labor organizations.

(a) It is the intent of the General Assembly that the provisions of this section will provide for more economical, nondiscriminatory, neutral, and efficient procurement of construction-related services by the State and political subdivisions of the State as market participants. The General Assembly finds that providing for fair and open competition best effectuates this intent.

(b) Every officer, board, department, commission, or commissions charged with the responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration, or repair of any buildings for the State, or for any county, municipality, or other public body subject to this Article shall not in any bid specifications, project agreements, or other controlling documents:

(1) Require or prohibit a bidder, offeror, contractor, or subcontractor from adhering to an agreement with one or more labor organizations in regard to that project or a related construction project.

(2) Otherwise discriminate against a bidder, offeror, contractor, or subcontractor for becoming, remaining, refusing to become or remain a signatory to, or for adhering or refusing to adhere to an agreement with one or more labor organizations in regard to that project or a related construction project.

(c) No officer, board, department, commission, or commissions charged with the responsibility of awarding grants or tax incentives, or any county, municipality, or other public body in the award of grants or tax incentives, may award a grant or tax incentive that is conditioned upon a requirement that the awardee include a term described in subsection (b) of this section in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant or tax incentive.

(d) This section does not prohibit any officer, board, department, commission, or commissions or any county, municipality, or other public body from awarding a contract, grant, or tax incentive to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a labor organization if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, or tax incentive, and if the State agent, employee, or board or the political subdivision does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that contract, grant, or tax incentive based upon the person's status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.

(e) This section does not prohibit a contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract with the State or a political subdivision of the State or

funded in whole or in part from a grant or tax incentive from the State or political subdivision.

(f) The State or the governing body of a political subdivision may exempt a particular project, contract, subcontract, grant, or tax incentive from the requirements of any or all of the provisions of subsection (b) or (c) of this section if the State or governing body of the political subdivision finds, after public notice and a hearing, that special circumstances require an exemption to avert a significant, documentable threat to public health or safety. A finding of special circumstances under this section shall not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

(g) This section does not do either of the following:

(1) Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act, 29 U.S.C. §§ 151 to 169.

(2) Interfere with labor relations of parties that are left unregulated under the National Labor Relations Act, 29 U.S.C. §§ 151 to 169. (2013-267, s. 1.)

§ 143-134. Applicable to Department of Transportation and Department of Public Safety; exceptions; all contracts subject to review by Attorney General and State Auditor.

(a) This Article applies to the Department of Transportation and the Department of Public Safety except in the construction of roads, bridges and their approaches; provided however, that whenever the Director of the Budget determines that the repair or construction of a building by the Department of Transportation or by the Department of Public Safety can be done more economically through use of employees of the Department of Transportation and/or prison inmates than by letting the repair or building construction to contract, the provisions of this Article shall not apply to the repair or construction.

(b) Notwithstanding subsection (a) of this section, the Department of Transportation and the Department of Public Safety shall: (i) submit all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be awarded by the Department of Transportation or the Department of Public Safety a standard clause providing that the State Auditor and internal auditors of the Department of Transportation or the Department of Public Safety may audit the records of the contractor during and after the term of the contract to verify accounts and data affecting fees and performance. Neither the Department of Transportation nor the Department of Public Safety shall award a cost plus percentage of cost agreement or contract for any purpose. (1933, c. 400, s. 3-A; 1955, c. 572; 1957, c. 65, s. 11; 1967, c. 860; c. 996, s. 13; 1973, c. 507, s. 5; 1977, c. 464, s. 34; 2010-194, s. 24; 2011-145, s. 19.1(h); 2011-326, s. 15(y); 2012-83, s. 45; 2013-289, s. 1.)

§ 143-134.1. Interest on final payments due to prime contractors; payments to subcontractors.

(a) On all public construction contracts which are let by a board or governing body of the State government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to G.S. 136-28.1, the balance due prime contractors shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was constructed, whichever occurs first. However, when the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit.

No payment shall be delayed because of the failure of another prime contractor on the project to complete his contract. Should final payment to any prime contractor beyond the date the contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, the prime contractor shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on the unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due a prime contractor during construction shall be paid in accordance with the provisions of this section and the payment provisions of the contract documents that do not conflict with this section, or the prime contractor shall be paid interest on any unpaid amount at the rate stipulated above for delayed final payments. The interest shall begin on the date the payment is due and continue until the date on which payment is made. The due date may be established by the terms of the contract. Funds for payment of the interest on state-owned projects shall be obtained from the current budget of the owning department, institution, or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of the conditions, interest on the reasonable sum shall not apply.

(b) Within seven days of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on work completed or service provided under the subcontract. If any periodic or final payment to the subcontractor is delayed by more than seven days after receipt of periodic or final payment by the prime contractor, the prime contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on the unpaid balance as may be due.

(b1) No retainage on periodic or final payments made by the owner or prime contractor shall be allowed on public construction contracts in which the total project costs are less than one hundred thousand dollars ($100,000). Retainage on periodic or final payments on public construction contracts in which the total project costs are equal to or greater than one hundred thousand dollars ($100,000) is allowed as follows:

(1) The owner shall not retain more than five percent (5%) of any periodic payment due a prime contractor.

(2) When the project is fifty percent (50%) complete, the owner, with written consent of the surety, shall not retain any further retainage from periodic payments due the contractor if the contractor continues to perform satisfactorily and any nonconforming work identified in writing prior to that time by the architect, engineer, or owner has been corrected by the contractor and accepted by the architect, engineer, or owner. If the owner determines the contractor's performance is unsatisfactory, the owner may reinstate retainage for each subsequent periodic payment application as authorized in this subsection up to the maximum amount of five percent (5%). The project shall be deemed fifty percent (50%) complete when the contractor's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the contract, except the value of materials stored on-site shall not exceed twenty percent (20%) of the contractor's gross project invoices for the purpose of determining whether the project is fifty percent (50%) complete.

(3) A subcontract on a contract governed by this section may include a provision for the retainage on periodic payments made by the prime contractor to the subcontractor. However, the percentage of the payment retained: (i) shall be paid to the subcontractor under the same terms and conditions as provided in subdivision (2) of this subsection and (ii) subject to subsection (b3) of this section, shall not exceed the percentage of retainage on payments made by the owner to the prime contractor. Subject to subsection (b3) of this section, any percentage of retainage on payments made by the prime contractor to the subcontractor that exceeds the percentage of retainage on payments made by the owner to the prime contractor shall be subject to interest to be paid by the prime contractor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.

(4) Within 60 days after the submission of a pay request and one of the following occurs, as specified in the contract documents, the owner with written consent of the surety shall release to the contractor all retainage on payments held by the owner: (i) the owner receives a certificate of substantial completion from the architect, engineer, or designer in charge of the project; or (ii) the owner receives beneficial occupancy or use of the project. However, the owner may retain sufficient funds to secure completion of the project or corrections on any work. If the owner retains funds, the amount retained shall not exceed two and one-half times the estimated value of the work to be completed or corrected. Any reduction in the amount of the retainage on payments shall be with the consent of the contractor's surety.

(5) The existence of any third-party claims against the contractor or any additive change orders to the construction contract shall not be a basis for delaying the release of any retainage on payments.

(b2) Full payment, less authorized deductions, shall also be made for those trades that have reached one hundred percent (100%) completion of their contract by or before the project is fifty percent (50%) complete if the contractor has performed satisfactorily. However, payment to the early finishing trades is contingent upon the owner's receipt of an approval or certification from the architect of record or applicable engineer that the work performed by the subcontractor is acceptable and in accordance with the contract documents. At that time, the owner shall reduce the retainage for such trades to five-tenths percent (0.5%) of the contract. Payments under this subsection shall be made no later than 60 days following receipt of the subcontractor's request or immediately upon receipt of the surety's consent, whichever occurs later. Early finishing trades under this subsection shall include structural steel, piling, caisson, and demolition. The early finishing trades for which line-item release of retained funds is required shall not be construed to prevent an owner or an owner's representative from identifying any other trades not listed in this subsection that are also allowed line-item release of retained funds. Should the owner or owner's representative identify any other trades to be afforded line-item release of retainage, the trade shall be listed in the original bid documents. Each bid document shall list the inspections required by the owner before accepting the work, and any financial information required by the owner to release payment to the trades, except the failure of the bid documents to contain this information shall not obligate the owner to release the retainage if it has not received the required certification from the architect of record or applicable engineer.

(b3) Notwithstanding subdivisions (2) and (3) of subsection (b1) of this section, and subsection (b2) of this section, following fifty percent (50%) completion of the project, the owner shall be authorized to withhold additional retainage from a subsequent periodic payment, not to exceed five percent (5%) as set forth in subdivision (1) of subsection (b1) of this section, in order to allow the owner to retain two and one-half percent (2.5%) total retainage through the completion of the project. In the event that the owner elects to withhold additional retainage on any periodic payment subsequent to release of retainage pursuant to subsection (b2) of this section, the general contractor may also withhold from the subcontractors remaining on the project sufficient retainage to offset the additional retainage held by the owner, notwithstanding the actual percentage of retainage withheld by the owner of the project as a whole.

(b4) Neither the owner's nor contractor's release of retainage on payments as part of a payment in full on a line-item of work under subsection (b2) of this section shall affect any applicable warranties on work done by the contractor or subcontractor, and the warranties shall not begin to run any earlier than either the owner's receipt of a certificate of substantial completion from the architect, engineer, or designer in charge of the project or the owner receives beneficial occupancy.

(b5) The State or any political subdivision of the State may allow contractors to bid on bonded projects with and without retainage on payments.

(b6) Nothing in subsections (b1), (b2), (b3), and (b4) of this section shall operate to prevent any agency or any political subdivision of the State from complying with the requirements of a federal contract or grant when the requirements of the federal contract or grant conflict with subsections (b1), (b2), (b3), or (b4) of this section. Each bid document must specify when federal preemption of this section shall apply.

(c) Repealed by Session Laws 2007-365, s. 1, effective January 1, 2008.

(d) Nothing in this section shall prevent the prime contractor at the time of application and certification to the owner from withholding application and certification to the owner for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment, and materials; damage to prime contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by the owner.

(e) Nothing in this section shall prevent the owner from withholding payment to the contractor in addition to the amounts authorized by this section for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the owner or reasonable evidence that a third-party claim will be filed. (1959, c. 1328; 1967, c. 860; 1979, c. 778; 1983, c. 804, ss. 1, 2; 2007-365, s. 1.)

§ 143-134.2. Actions by contractor on behalf of subcontractor.

(a) A contractor may, on behalf of a subcontractor of any tier under the contractor, file an action against an owner regarding a claim arising out of or relating to labor, materials, or services furnished by the subcontractor to the contractor pursuant to a contract between the subcontractor and the contractor for the same project that is the subject of the contract between the contractor and the owner.

(b) In any action filed by a contractor against an owner under subsection (a) of this section, it shall not be a defense that the costs and damages at issue were incurred by a subcontractor and that subcontractor has not been paid for these costs and damages. The owner shall not be required to pay the contractor for the costs and damages incurred by a subcontractor, unless the subcontractor submits proof to the court that the contractor has paid these costs and damages to the subcontractor. (1997-489, s. 1.)

§ 143-134.3. No damage for delay clause.

No contractual language forbidding or limiting compensable damages for delays caused solely by the owner or its agent may be enforced in any construction contract let by any board or governing body of the State, or of any institution of State government, or of any county, city, town, or other political subdivision thereof. For purposes of this section, the phrase "owner or its agent" does not include prime contractors or their subcontractors. (1997-489, s. 1.)

§ 143-135. Limitation of application of Article.

(a) Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to any of the following:

(1) Construction or repair work undertaken by the State (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed one hundred twenty-five thousand dollars ($125,000) or the total cost of labor on the project does not exceed fifty thousand dollars ($50,000).

(2) Construction or repair work undertaken by a subdivision of the State (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed five hundred thousand dollars ($500,000) or the total cost of labor on the project does not exceed two hundred thousand dollars ($200,000).

(3) Construction or repair work undertaken by The University of North Carolina and its constituent institutions (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the university and (ii) when either the total cost of the project, including, without limitation, all direct and indirect costs of labor, services, materials, supplies, and equipment, does not exceed two hundred thousand dollars ($200,000) or the total cost of labor on the project does not exceed one hundred thousand dollars ($100,000).

(b) The force account work undertaken pursuant to this section shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article. (1933, c. 552, ss. 1, 2; 1949, c. 1137, s. 2; 1951, c. 1104, s. 6; 1967, c. 860; 1975, c. 292, ss. 1, 2; c. 879, s. 46; 1979, 2nd Sess., c. 1248; 1981, c. 860, s. 13; 1995, c. 274, s. 1; 2007-322, s. 5; 2015-276, s. 6.)

§ 143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities.

(a) Buildings constructed by the State of North Carolina or by any agency or institution of the State in accordance with plans and specifications approved by the Department of Administration or by The University of North Carolina or one of its affiliated or constituent institutions pursuant to G.S. 116-31.11 shall not be subject to inspection by any county or municipal authorities and shall not be subject to county or municipal building codes and requirements.

(b) Inspection fees fixed by counties and municipalities shall not be applicable to such construction by the State of North Carolina. County and municipal authorities may inspect any plans or specifications upon their request to the Department of Administration or, with respect to projects under G.S. 116-31.11, The University of North Carolina, and any and all recommendations made by them shall be given consideration. Requests by county and municipal authorities to inspect plans and specifications for State projects shall be on the basis of a specific project. Should any agency or institution of the State require the services of county or municipal authorities, notice shall be given for the need of such services, and appropriate fees for such services shall be paid to the county or municipality; provided, however, that the application for such services to be rendered by any county or municipality shall have prior written approval of the Department of Administration, or with respect to projects under G.S. 116-31.11, The University of North Carolina.

(c) Notwithstanding any law to the contrary, including any local act, no county or municipality may impose requirements that exceed the North Carolina State Building Code regarding the design or construction of buildings constructed by the State of North Carolina. (1951, c. 1104, s. 4; 1967, c. 860; 1971, c. 563; 1985, c. 757, s. 170(a); 1997-412, s. 10; 2001-496, s. 8(c); 2005-300, s. 1.)

§ 143-135.2. Contracts for restoration of historic buildings with private donations.

This Article shall not apply to building contracts let by a State agency for restoration of a historic building or structure where the funds for the restoration of such building or structure are provided entirely by funds donated from private sources. (1955, c. 27; 1967, c. 860.)

§ 143-135.3. Adjustment and resolution of State board construction contract claim.

(a) The word "board" as used in this section shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State. "A contract for construction or repair work," as used in this section, is defined as any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting, and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration or The University of North Carolina enters into contracts.

"Contractor" as used in this section includes any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work.

(b) A contractor who has not completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The Director may deny, allow, or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under Chapter 150B of the General Statutes.

(c) A contractor who has completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives a final statement of the board's disposition of his claim and shall state the factual basis for the claim.

The Director shall investigate a submitted claim within 90 days of receiving the claim, or within any longer time period upon which the Director and the contractor agree. The contractor may appear before the Director, either in person or through counsel, to present facts and arguments in support of his claim. The Director may allow, deny, or compromise the claim, in whole or in part. The Director shall give the contractor a written statement of the Director's decision on the contractor's claim.

A contractor who is dissatisfied with the Director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(c1) A contractor who is dissatisfied with the Director's decision on a claim submitted under subsection (c) of this section may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(d) As to any portion of a claim that is denied by the Director, the contractor may, in lieu of the procedures set forth in the preceding subsection of this section, within six months of receipt of the Director's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(e) The provisions of this section are part of every contract for construction or repair work made by a board and a contractor. A provision in a contract that conflicts with this section is invalid. (1965, c. 1022; 1967, c. 860; 1969, c. 950, s. 1; 1973, c. 1423; 1975, c. 879, s. 46; 1981, c. 577; 1983, c. 761, s. 190; 1985, c. 746, s. 18; 1987, c. 847, s. 4; 1989, c. 40, s. 1; 1991, c. 103, s. 1; 1997-412, s. 7; 2001-496, s. 8(c); 2005-300, s. 1.)

§ 143-135.4. Authority of Department of Administration not repealed.

Nothing contained in this Article shall be construed as contravening or repealing any authorities given by statute to the Department of Administration. (1967, c. 860; 1975, c. 879, s. 46.)

§ 143-135.5. State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors; purpose.

(a) It is the policy of this State to encourage and promote the use of small, minority, physically handicapped and women contractors in State construction projects. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage and promote the use of small, minority, physically handicapped and women contractors in achieving the purpose of this Article, which is the effective and economical construction of public buildings.

(b) It is the policy of this State not to accept bids or proposals from, nor to engage in business with, any business that, within the last two years, has been finally found by a court or an administrative agency of competent jurisdiction to have unlawfully discriminated on the basis of race, gender, religion, national origin, age, physical disability, or any other unlawful basis in its solicitation, selection, hiring, or treatment of another business. (1983, c. 692, s. 1; 2001-496, s. 5.2.)

§ 143-135.6. Adjustment and resolution of community college board construction contract claim.

(a) A contractor who has not completed a contract with a board of a community college for construction or repair work and who has not received the amount he claims is due under the contract may follow the claims procedure in G.S. 143-135.3(b) that is available to a contractor who has contracted with a State board.

(b) A contractor who has completed a contract with a board of a community college for construction or repair work and who has not received the amount he claims is due under the contract may follow the same claims procedure in G.S. 143-135.3(c) that is available to a contractor who has contracted with a State board.

(c) A contractor who is dissatisfied with the Director's decision on any portion of a claim submitted pursuant to subsection (b) of this section may, within six months of receipt of the Director's final decision, institute a civil action for the sum he claims to be entitled to under the contract in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury. A contractor may not commence an action under Chapter 150B of the General Statutes.

(d) The provisions of this section are part of every contract for construction or repair work made by a board of a community college and a contractor. A provision in a contract that conflicts with this section is invalid.

(e) For the purposes of this section, the following definitions shall apply, unless the context indicates otherwise:

(1) "Community college" has the same meaning as in G.S. 115D-2(2).
(2) "Contract for construction or repair work" has the same meaning as in G.S. 143-135.3(a).
(3) "Contractor" means any person, firm, association, or corporation which has contracted for architectural, engineering, or other professional services in connection with construction or repair work, as well as those persons who have contracted to perform the construction or repair work.

(f) The provisions of this section are applicable only to community college buildings subject to G.S. 143-341(3). (1989, c. 40, s. 2.)

§ 143-135.7. Safety officers.

Each contract for a State capital improvement project, as defined in Article 8B of this Chapter, shall require the contractor to designate a responsible person as safety officer to inspect the project site for unsafe health and safety hazards, to report these hazards to the contractor for correction, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract. (1991 (Reg. Sess., 1992), c. 893, s. 3.)

§ 143-135.8. Prequalification.

(a) Except as provided in this section, bidders may not be prequalified for any construction or repair work project.

(b) A governmental entity may prequalify bidders for a particular construction or repair work project when all of the following apply:
(1) The governmental entity is using one of the construction methods authorized in G.S. 143-128(a1)(1) through G.S. 143-128(a1)(3).
(2) The board or governing body of the governmental entity adopts an objective prequalification policy applicable to all construction or repair work prior to the advertisement of the contract for which the governmental entity intends to prequalify bidders.
(3) The governmental entity has adopted the assessment tool and criteria for that specific project, which must include the prequalification scoring values and minimum required score for prequalification on that project.

(c) The objective prequalification policy adopted by a governmental entity pursuant to subdivision (2) of subsection (b) of this section shall meet all of the following criteria:
(1) Must be uniform, consistent, and transparent in its application to all bidders.
(2) Must allow all bidders who meet the prequalification criteria to be prequalified to bid on the construction or repair work project.
(3) Clearly state the prequalification criteria, which must comply with all of the following:
a. Be rationally related to construction or repair work.
b. Not require that the bidder has previously been awarded a construction or repair project by the governmental entity.

c. Permit bidders to submit history or experience with projects of similar size, scope, or complexity.

(4) Clearly state the assessment process of the criteria to be used.

(5) Establish a process for a denied bidder to protest to the governmental entity denial of prequalification, which process shall be completed prior to the opening of bids under G.S. 143-129(b) and which allows sufficient time for a bidder subsequently prequalified pursuant to a protest to submit a bid on the contract for which the bidder is subsequently prequalified.

(6) Outline a process by which the basis for denial of prequalification will be communicated in writing, upon request, to a bidder who is denied prequalification.

(d) If the governmental entity opts to prequalify bidders, bids submitted by any bidder not prequalified shall be deemed nonresponsive. This subsection shall not apply to bidders initially denied prequalification that are subsequently prequalified pursuant to a protest under the governmental entity's prequalification policy.

(e) Prequalification may not be used for the selection of any qualification-based services under Article 3D of this Chapter, G.S. 143-128.1A, G.S. 143-128.1B, G.S. 143-128.1C, or the selection of the construction manager at risk under G.S. 143-128.1.

(f) For purposes of this section, the following definitions shall apply:

(1) Governmental entity. – As defined in G.S. 143-128.1B(a)(6).

(2) Prequalification. – A process of evaluating and determining whether potential bidders have the skill, judgment, integrity, sufficient financial resources, and ability necessary to the faithful performance of a contract for construction or repair work. (1995, c. 367, s. 8; 2014-42, s. 1.)

§ 143-135.9. Best Value procurements.

(a) Definitions. – The following definitions apply in this section:

(1) Best Value procurement. – The selection of a contractor based on a determination of which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.

(2) Government-Vendor partnership. – A mutually beneficial contractual relationship between State government and a contractor, wherein the two share risk and reward, and value is added to the procurement of needed goods or services.

(3) Repealed by Session Laws 2013-188, s. 1, effective June 26, 2013.

(4) Solution-Based solicitation. – A solicitation in which the requirements are stated in terms of how the product or service being purchased should accomplish the business objectives, rather than in terms of the technical design of the product or service.

(b) Intent. – The intent of Best Value procurement is to enable contractors to offer and the agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement.

(c) Information Technology. – The acquisition of information technology by the State of North Carolina shall be conducted using the Best Value procurement method. For purposes of this section, business process reengineering, system design, and technology implementation may be combined into a single solicitation. For acquisitions which the procuring agency and the Division of Purchase and Contracts or the Department of Information Technology, as applicable, deem to be highly complex or determine that the optimal solution to the business problem at hand is not known, the use of Solution-Based Solicitation and Government-Vendor Partnership is authorized and encouraged. Any county, city, town, or subdivision of the State may acquire information technology pursuant to this section.

(d) Repealed by Session Laws 2009-320, s. 1, effective July 24, 2009.

(e) North Carolina Zoological Park. – The acquisition of goods and services under a contract entered pursuant to the exemption of G.S. 143-129.8A(a) by the Department of Natural and Cultural Resources on behalf of the North Carolina Zoological Park may be conducted using the Best Value procurement method. For acquisitions which the procuring agency deems to be highly complex, the use of Government-Vendor partnership is authorized. (1998-189, s. 1; 1999-434, s. 15; 1999-456, s. 39; 2009-329, s. 1.2; 2013-188, s. 1; 2015-241, ss. 7A.4(u), 14.30(zz).)

Article 8A.

Board of State Contract Appeals.

§§ 143-135.10 through 143-135.24: Repealed by Session Laws 1987, c. 847, s. 5.

Article 8B.

State Building Commission.

§ 143-135.25. State Building Commission – Creation; staff; membership; appointments; terms; vacancies; chairman; compensation.

(a) A State Building Commission is created within the Department of Administration to develop procedures to direct and guide the State's capital facilities development and management program and to perform the duties created under this Article.

(b) The State Construction Office of the Department of Administration shall provide staff to the State Building Commission. The chairman of the Commission shall provide direction to the State Construction Office on its work for the Commission.

The director of the State Construction Office shall be a registered engineer or licensed architect and shall be technically qualified by educational background and professional experience in building design, construction, or facilities management. The administrative head shall be appointed by the Secretary of the Department of Administration.

(c) The Commission shall consist of nine members qualified and appointed as follows:

(1) A licensed architect whose primary practice is or was in the design of buildings, chosen from among not more than three persons nominated by the North Carolina Chapter of the American Institute of Architects, appointed by the Governor.

(2) A registered engineer whose primary practice is or was in the design of engineering systems for buildings, chosen from among not more than three persons nominated by the Consulting Engineers Council and the Professional Engineers of North Carolina, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(3) A licensed building contractor whose primary business is or was in the construction of buildings, or an employee of a company holding a general contractor's license, chosen from among not more than three persons nominated by the Carolinas AGC (Associated General Contractors), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(4) A licensed electrical contractor whose primary business is or was in the installation of electrical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Electrical Contractors, and the Carolinas Electrical Contractors' Association, appointed by the Governor.

(5) A public member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) A licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Plumbing, Heating, Cooling Contractors, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(7) An employee of the university system currently involved in the capital facilities development process, chosen from among not more than three persons nominated by the Board of Governors of The University of North Carolina, appointed by the Governor.

(8) A public member who is knowledgeable in the building construction or building maintenance area, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(9) A representative of local government, chosen from among not more than two persons nominated by the North Carolina Association of County Commissioners and two persons nominated by the North Carolina League of

Municipalities, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

The members shall be appointed for staggered three-year terms: The initial appointments to the Commission shall be made within 15 days of the effective date of this act [April 14, 1987]. The initial terms of members appointed pursuant to subdivisions (1), (2), and (3) shall expire June 30, 1990; the initial terms of members appointed pursuant to (4), (5), and (6) shall expire June 30, 1989; and the initial terms of members appointed pursuant to (7), (8), and (9) shall expire June 30, 1988. Members may serve no more than six consecutive years. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Commission.

Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of the unexpired terms. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

The chairman of the Commission shall be elected by the Commission. The Secretary of State shall serve as chairman until a chairman is elected.

(d) The Commission shall meet at least four times a year on or about January 15, April 15, July 15, and October 15. The Commission shall also meet upon the call of the chairman, or upon call of at least five members. The Secretary of State shall call the first meeting within 30 days of the effective date of this act; the first order of business at the first meeting shall be the election of a chairman by the Commission.

(e) Members of the Commission who are not State officers or employees shall receive per diem of one hundred dollars ($100.00) a day when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. Members who are State officers or employees shall be reimbursed for travel and subsistence as provided in G.S. 138-6. (1987, c. 71, s. 1; 1989, c. 42; 1991, c. 314, s. 1; 1991 (Reg. Sess., 1992), c. 893, s. 2; 1995, c. 367, s. 9; c. 490, s. 52; 1997-495, s. 85.1.)

§ 143-135.26. Powers and duties of the Commission.

The State Building Commission shall have the following powers and duties with regard to the State's capital facilities development and management program:

(1) To adopt rules establishing standard procedures and criteria to assure that the designer selected for each State capital improvement project, the consultant selected for planning and studies of an architectural and engineering nature associated with a capital improvement project or a future capital improvement project and a construction manager at risk selected for each capital improvement project has the qualifications and experience necessary for that capital improvement project or the proposed planning or study project. The rules shall provide that the State Building Commission, after consulting with the funded agency, is responsible and accountable for the final selection of the designer, consultant or construction manager at risk except when the General Assembly or The University of North Carolina is the funded agency. When the General Assembly is the funded agency, the Legislative Services Commission is responsible and accountable for the final selection of the designer, consultant, or the construction manager at risk and when the University is the funded agency, it shall be subject to the rules adopted hereunder, except it is responsible

and accountable for the final selection of the designer, consultant, or construction manager at risk. All designers and consultants shall be selected within 60 days of the date funds are appropriated for a project by the General Assembly or the date of project authorization by the Director of the Budget; provided, however, the State Building Commission may grant an exception to this requirement upon written request of the funded agency if (i) no site was selected for the project before the funds were appropriated or (ii) funds were appropriated for advance planning only; provided, further, the Director of the Budget, after consultation with the State Construction Office, may waive the 60-day requirement for the purpose of minimizing project costs through increased competition and improvements in the market availability of qualified contractors to bid on State capital improvement projects. The Director of the Budget also may, after consultation with the State Construction Office, schedule the availability of design and construction funds for capital improvement projects for the purpose of minimizing project costs through increased competition and improvements in the market availability of qualified contractors to bid on State capital improvement projects.

The State Building Commission shall submit a written report to the Joint Legislative Commission on Governmental Operations on the Commission's selection of a designer for a project within 30 days of selecting the designer.

(2) To adopt rules for coordinating the plan review, approval, and permit process for State capital improvement and community college buildings, as defined in subdivision (4) of this section. The rules shall provide for a specific time frame for plan review and approval and permit issuance by each agency, consistent with applicable laws. The time frames shall be established to provide for expeditious review, approval, and permitting of State capital improvement projects and community college buildings. To further expedite the plan review, approval, and permit process, the State Building Commission shall develop a standard memorandum of understanding to be executed by the funded agency and all reviewing agencies for each State capital improvement project. The memorandum of understanding, at minimum, shall include provisions for establishing:

a. The type and frequency of plan reviews.
b. The submittal dates for each plan review.
c. The estimated plan review time for each review and reviewing agency.
d. A schedule of meeting dates.

(2a) To adopt rules exempting specified types of State capital improvement projects, including community college buildings as defined in subdivision (4) of this section, from plan review.

(3) To adopt rules for establishing a post-occupancy evaluation, annual inspection and preventive maintenance program for all State buildings.

(4) To develop procedures for evaluating the work performed by designers and contractors on State capital improvement projects and those community college buildings, as defined in G.S. 143-336, requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129, and for use of the evaluations as a factor affecting designer selections

and determining qualification of contractors to bid on State capital improvement projects and community college buildings.

(5) To continuously study and recommend ways to improve the effectiveness and efficiency of the State's capital facilities development and management program.

(6) To request designers selected prior to April 14, 1987, whose plans for the projects have not been approved to report to the Commission on their progress on the projects. The Department of Administration shall provide the Commission with a list of all such projects.

(7) To appoint an advisory board, if the Commission deems it necessary, to assist the Commission in its work. No one other than the Commission may appoint an advisory board to assist or advise it in its work.

(8) To review the State's provisions for ensuring the safety and health of employees involved with State capital improvement projects, and to recommend to the appropriate agencies and to the General Assembly, after consultation with the Commissioner of Labor, changes in the terms and conditions of construction contracts, State regulations, or State laws that will enhance employee safety and health on these projects.

(9) To authorize a State agency, a local governmental unit, or any other entity subject to the provisions of G.S. 143-129 to use a method of contracting not authorized under G.S. 143-128. An authorization under this subdivision for an alternative contracting method shall be granted only under the following conditions:

a. An authorization shall apply only to a single project.

b. The entity seeking authorization must demonstrate to the Commission that the alternative contracting method is necessary because the project cannot be reasonably completed under the methods authorized under G.S. 143-128 or for such other reasons as the Commission, pursuant to its rules and criteria, deems appropriate and in the public's interest.

b1. The entity includes in its bid or proposal requirements that the contractor will file a plan for making a good faith effort to reach the minority participation goal set out in G.S. 143-128.2.

c. The authorization must be approved by a majority of the members of the Commission present and voting.

The Commission shall not waive the requirements of G.S. 143-129 or G.S. 143-132 for public contracts unless otherwise authorized by law.

(10) To adopt rules governing review and final approval of plans that are submitted to the State Construction Office pursuant to G.S. 58-31-40. The rules shall provide for the manner of submission of the plan by the owner, the type of structural work that may be completed by the owner pursuant to G.S. 58-31-40(c), and the expeditious review or completion of review of the plan in a manner that ensures that the building will meet the fire safety requirements of G.S. 58-31-40(b).

(11) To develop dispute resolution procedures, including mediation, for subcontractors under any of the construction methods authorized under G.S. 143-128(a1) on State capital improvement projects, including building projects

of The University of North Carolina, and community college buildings as defined in subdivision (4) of this section, for use by any public entity that has not developed its own dispute resolution process.

(12) To adopt rules governing the use of open-end design agreements for State capital improvement projects and community college buildings as defined in subdivision (4) of this section, where the expenditure of public money does not exceed the amount specified in G.S. 143-64.34(b) or (c).

(13) To submit an annual report of its activities to the Governor and the Joint Legislative Commission on Governmental Operations. (1987, c. 71, s. 1; c. 721, s. 2; c. 830, s. 79(a); 1989, c. 50; 1989 (Reg. Sess., 1990), c. 889; 1991 (Reg. Sess., 1992), c. 893, s. 1; 1993, c. 561, s. 29; 1995, c. 367, s. 10; 1996, 2nd Ex. Sess., c. 18, s. 10.1; 2001-496, s. 11; 2005-370, s. 2; 2007-446, s. 4.)

§ 143-135.27. Definition of capital improvement project.

As used in this Article, "State capital improvement project" means the construction of and any alteration, renovation, or addition to State buildings, as defined in G.S. 143-336, for which State funds, as defined in G.S. 143C-1-1, are used and which is required by G.S. 143-129 to be publicly advertised. (1987, c. 71, s. 1; 2001-442, s. 4; 2006-203, s. 87; 2008-195, s. 11.)

§ 143-135.28. Conflict of interest.

If any member of the Commission shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly, in any contract authorized by the Commission, that interest shall be disclosed to the Commission and set forth in the minutes of the Commission, and the member having the interest may not participate on behalf of the Commission in the authorization of that contract. (1987, c. 71, s. 1.)

§ 143-135.29. Review of Military Lands Protection Act proposals.

The State Construction Office shall maintain, and make available to the public, accurate maps of areas surrounding major military installations, including Military Training Routes and Military Operating Areas, as defined in G.S. 143-151.71, that are subject to the provisions of Article 9G of Chapter 143 of the General Statutes. (2014-79, s. 1.)

§ 143-135.30. Reserved for future codification purposes.

§ 143-135.31. Reserved for future codification purposes.

§ 143-135.32. Reserved for future codification purposes.

§ 143-135.33. Reserved for future codification purposes.

§ 143-135.34. Reserved for future codification purposes.

Article 8C.

Performance Standards for Sustainable, Energy-Efficient Public Buildings.

§ 143-135.35. Findings; legislative intent.

The General Assembly finds that public buildings can be built and renovated using sustainable, energy-efficient methods that save money, reduce negative environmental impacts, improve employee and student performance, and make employees and students more productive. The main objectives of sustainable, energy-efficient design are to avoid resource depletion of energy, water, and raw materials; prevent environmental degradation caused by facilities and infrastructure throughout their life cycle; and create buildings that are livable, comfortable, safe, and productive. It is the intent of the General Assembly that State-owned buildings and buildings of The University of North Carolina and the North Carolina Community College System be improved by establishing specific performance standards for sustainable, energy-efficient public buildings. These performance standards should be based upon recognized, consensus standards that are supported by science and have a demonstrated performance record. The General Assembly also intends, in order to ensure that the economic and environmental objectives of this Article are achieved, that State agencies, The University of North Carolina, and the North Carolina Community College System determine whether the performance standards are met for major facility construction and renovation projects, measure utility and maintenance costs, and verify whether these standards result in savings. Also, it is the intent of the General Assembly to establish a priority to use North Carolina-based resources, building materials, products, industries, manufacturers, and businesses to provide economic development to North Carolina and to meet the objectives of this Article. (2008-203, s. 1.)

§ 143-135.36. Definitions.

As used in this section, the following definitions apply unless the context requires otherwise:

(1) "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

(2) "Commission" means to document and to verify throughout the construction process whether the performance of a building, a component of a building, a system of a building, or a component of a building system meets specified objectives, criteria, and agency project requirements.

(3) "Department" means the Department of Administration.

(4) "Institutions of higher education" means the constituent institutions of The University of North Carolina, the regional institutions as defined in G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.

(5) "Major facility construction project" means a project to construct a building larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code adopted under Article 9 of Chapter 143 of the General Statutes. "Major facility construction project" does not include a project to construct a transmitter building or a pumping station.

(6) "Major facility renovation project" means a project to renovate a building when the cost of the project is greater than fifty percent (50%) of the insurance value of the building prior to the renovation and the renovated

portion of the building is larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code. "Major facility renovation project" does not include a project to renovate a transmitter building or a pumping station. "Major facility renovation project" does not include a project to renovate a building having historic, architectural, or cultural significance under Part 4 of Article 2 of Chapter 143B of the General Statutes.

(7) "Public agency" means every State office, officer, board, department, and commission and institutions of higher education.

(8) "Weather-based irrigation controller" means an irrigation control device that utilizes local weather and landscape conditions to tailor irrigation system schedules to irrigation needs specific to site conditions. (2008-203, s. 1; 2011-394, s. 8(a).)

§ 143-135.37. Energy and water use standards for public major facility construction and renovation projects; verification and reporting of energy and water use.

(a) Program Established. – The Sustainable Energy-Efficient Buildings Program is established within the Department to be administered by the Department. This program applies to any major facility construction or renovation project of a public agency that is funded in whole or in part from an appropriation in the State capital budget or through a financing contract as defined in G.S. 142-82.

(a1) Net Savings Required. – The requirements of this section apply to a major facility construction or renovation project only if the Department determines that the application of the requirements to the project will result in an anticipated net savings. There is an anticipated net savings if the cost of construction or renovation in accordance with the requirements of this section plus the estimated operating costs for the first 10 years post-construction would be less than the cost of construction or renovation if the project were not subject to the requirements of this section plus the estimated operating costs for the first 10 years post-construction. All third-party certification costs before and after construction or renovation shall be included in determining construction and operating costs. Renovation projects that will include guaranteed energy savings contracts, as defined by G.S. 143-64.17, and executed in accordance with the provisions of Part 2 of Article 3B of Chapter 143 of the General Statutes, are exempt from the requirements of this subsection.

(b) Energy-Efficiency Standard. – For every major facility construction project of a public agency, the building shall be designed and constructed so that the calculated energy consumption is at least thirty percent (30%) less than the energy consumption for the same building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every major facility renovation project of a public agency, the renovated building shall be designed and constructed so that the calculated energy consumption is at least twenty percent (20%) less than the energy consumption for the same renovated building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For the purposes

of this subsection, any exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is included in the ASHRAE 90.1-2004 standard.

(c) Indoor Potable Water Use Standard. – For every major facility construction or renovation project of a public agency, the water system shall be designed and constructed so that the calculated indoor potable water use is at least twenty percent (20%) less than the indoor potable water use for the same building as calculated using the fixture performance requirements related to plumbing under the 2006 North Carolina State Building Code.

(c1) Outdoor Potable Water Use Standard. – For every major facility construction project of a public agency, the water system shall be designed and constructed so that the calculated sum of the outdoor potable water use and the harvested stormwater use is at least fifty percent (50%) less than the sum of the outdoor potable water use and the harvested stormwater use for the same building as calculated using the performance requirements related to plumbing under the 2006 North Carolina State Building Code. Weather-based irrigation controllers shall be used for irrigation systems for major facility construction projects. For every major facility renovation project of a public agency, the Department shall determine on a project-by-project basis what reduced level of outdoor potable use or harvested stormwater use, if any, is a feasible requirement for the project. The Department shall not require a greater reduction than is required under this subsection for a major facility construction project. To reduce the potable outdoor water as required under this subsection, weather-based irrigation controllers, landscape materials that are water use efficient, and irrigation strategies that include reuse and recycling of the water may be used.

(d) Performance Verification. – In order to be able to verify performance of a building component or an energy or water system component, the construction contract shall include provisions that require each building component and each energy and water system component to be commissioned, and these provisions shall be included at the earliest phase of the construction process as possible and in no case later than the schematic design phase of the project. Such commissioning shall continue through the initial operation of the building. The project design and construction teams and the public agency shall jointly determine what level of commissioning is appropriate for the size and complexity of the building or its energy and water system components.

(e) Separate Utility Meters. – In order to be able to monitor the initial cost and the continuing costs of the energy and water systems, a separate meter for each electricity, natural gas, fuel oil, and water utility shall be installed at each building undergoing a major facility construction or renovation project. Each meter shall be installed in accordance with the United States Department of Energy guidelines issued under section 103 of the Energy Policy Act of 2005 (Pub. L. 109-58, 119 Stat. 594 (2005)). Starting with the first month of facility operation, the public agency shall compare data obtained from each of these meters by month and by year with the applicable energy-efficiency standard under subsection (b) of this section and the applicable water use standard for the project under subsection (c) of this section and report annually no later than August 1 of each year to the Office of State Construction within the Department. If the average energy use or the average water use over the initial 12-month period of facility operation exceeds the applicable

energy-efficiency standard under subsection (b) of this section or exceeds the applicable water use standard under subsection (c) of this section by fifteen percent (15%) or more, the public agency shall investigate the actual energy or water use, determine the cause of the discrepancy, and recommend corrections or modifications to meet the applicable standard.

(f) Locally Sourced Materials. – To achieve sustainable building standards as required by this section, a major facility construction or renovation project may utilize a building rating system so long as the rating system (i) provides certification credits for, (ii) provides a preference to be given to, (iii) does not disadvantage, and (iv) promotes building materials or furnishings, including masonry, concrete, steel, textiles, or wood that are manufactured or produced within the State. (2008-203, s. 1; 2011-394, s. 8(b); 2013-242, s. 1.)

§ 143-135.38. Use of other standard when standard not practicable.

When the Department, public agency, and the design team determine that the energy-efficiency standard or the water use standard required under G.S. 143-135.37 is not practicable for a major facility construction or renovation project, then it must be determined by the State Building Commission if the standard is not practicable for the major facility construction or renovation project. If the State Building Commission determines the standard is not practicable for that project, the State Building Commission shall determine which standard is practicable for the design and construction for that major facility construction or renovation project. If a standard required under G.S. 143-135.37 is not followed for that project, the State Building Commission shall report this information and the reasons to the Department within 90 days of its determination. (2008-203, s. 1.)

§ 143-135.39. Guidelines for administering the Sustainable Energy-Efficient Buildings Program.

(a) Policies and Technical Guidelines. – The Department, in consultation with public agencies, shall develop and issue policies and technical guidelines to implement this Article for public agencies. The purpose of these policies and guidelines is to establish procedures and methods for complying with the energy-efficiency standard or the water use standard for major facility construction and renovation projects under G.S. 143-135.37.

(b) Preproposal Conference. – As provided in the request for proposals for construction services, the public agency may hold a preproposal conference for prospective bidders to discuss compliance with, and achievement of, the energy-efficiency standard or the water use standard required under G.S. 143-135.37 for prospective respondents.

(c) Advisory Committee. – The Department shall create a sustainable, energy-efficient buildings advisory committee comprised of representatives from the design and construction industry involved in public works contracting, personnel from the public agencies responsible for overseeing public works projects, and others at the Department's discretion to provide advice on implementing this Article. Among other duties, the advisory committee shall make recommendations regarding the education and training requirements under subsection (d) of this section, make recommendations regarding specific education and training criteria that are appropriate for the various roles

with respect to, and levels of involvement in, a major facility construction or renovation project subject to this Article or the roles regarding the operation and maintenance of the facility, and make recommendations regarding developing a process whereby the Department receives ongoing evaluations and feedback to assist the Department in implementing this Article so as to effectuate the purpose of this Article. Further, the advisory committee may make recommendations to the Department regarding whether it is advisable to strengthen standards for energy efficiency or water use under this Article, whether it is advisable and feasible to add additional criteria to achieve greater sustainability in the construction and renovation of public buildings, or whether it is advisable and feasible to expand the scope of this Article to apply to additional types of publicly financed buildings or to smaller facility projects.

(d) Education and Training Requirements. – The Department shall review the advisory committee's recommendations under subsection (c) of this section regarding education and training. For each of the following, the Department shall develop education and training requirements that are consistent with the purpose of this Article and that are appropriate for the various roles with respect to, and level of involvement in, a major facility construction or renovation project or the roles regarding the operation and maintenance of the facility:

(1) The chief financial officers of public agencies.
(2) For each public agency that is responsible for the payment of the agency's utilities, the facility managers of these public agencies.
(3) The capital project coordinators of public agencies.
(4) Architects.
(5) Mechanical design engineers.

(e) Performance Review. – Annually the Department shall conduct a performance review of the Sustainable Energy-Efficient Buildings Program. The performance review shall include at least all of the following:

(1) Identification of the costs of implementing energy-efficiency and water use standards in the design and construction of major facility construction and renovation projects subject to this Article.
(2) Identification of operating savings attributable to the implementation of energy-efficiency and water use standards, including, but not limited to, savings in utility and maintenance costs.
(3) Identification of any impacts on employee productivity from using energy-efficiency and water use standards.
(4) Evaluation of the effectiveness of the energy-efficiency and water use standards established by this Article.
(5) Whether stricter standards or additional criteria for sustainable buildings should be used other than the standards under G.S. 143-135.37.
(6) Whether the Sustainable Energy-Efficient Buildings Program should be expanded to include additional public agencies, to include additional types of projects, or to include smaller major facility construction or renovation projects.

(7) Any recommendations for any other changes regarding sustainable, energy-efficient building standards that may be supported by the Department's findings.

(f), (g) Repealed by Session Laws 2017-10, s. 4.2(a), effective May 4, 2017.

(h) Authority to Adopt Rules or Architectural or Engineering Standards. – The Department may adopt rules to implement this Article. The Department may adopt architectural or engineering standards as needed to implement this Article. (2008-203, s. 1; 2017-10, s. 4.2(a).)

§ 143-135.40. Monitor construction standards and sustainable building standards.

(a) The Department shall monitor the development of construction standards and sustainable building standards to determine whether there is any standard that the Department determines would better fulfill the intent of the Sustainable Energy-Efficient Buildings Program to achieve sustainable, energy-efficient public buildings than the standards under G.S. 143-135.37, and, if so, whether this Article should be amended to provide for the use of any different standards or the use of any additional standards to address additional aspects of sustainable, energy-efficient buildings. Additional standards monitored shall address consideration of site development, material and resource selection, and indoor environmental quality to enhance the health or productivity of building occupants. Also, the Department shall monitor the development of improved energy-efficiency standards developed by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, the ASHRAE standards, shall monitor whether the State Building Code Council adopts any other energy-efficiency standards for inclusion in the State Building Code that result in greater energy efficiency and increased energy savings in major facility construction and renovation projects under this Article, and shall monitor other standards for sustainable, energy-efficient buildings that are based upon recognized, consensus standards based on science and demonstrated performance.

(b) Repealed by Session Laws 2017-10, s. 4.2(b), effective May 4, 2017. (2008-203, s. 1; 2017-10, s. 4.2(b).)

Article 9.

Building Code Council and Building Code.

§ 143-136. Building Code Council created; membership, committees.

(a) Creation; Membership; Terms. – There is hereby created a Building Code Council, which shall be composed of 17 members appointed by the Governor, consisting of the following:

(1) Two licensed architects.
(2) One licensed general contractor.
(3) One licensed general contractor specializing in residential construction.
(4) One licensed general contractor specializing in coastal residential construction.

(5) One licensed engineer practicing structural engineering.
(6) One licensed engineer practicing mechanical engineering.
(7) One licensed engineer practicing electrical engineering.
(8) One licensed plumbing and heating contractor.
(9) One municipal or county building inspector.
(10) One licensed liquid petroleum gas dealer/contractor involved in the design of natural and liquid petroleum gas systems who has expertise and experience in natural and liquid petroleum gas piping, venting and appliances.
(11) One representative of the public who is not a member of the building construction industry.
(12) One licensed electrical contractor.
(13) One licensed engineer on the engineering staff of a State agency charged with approval of plans of State-owned buildings.
(14) One municipal elected official or city manager.
(15) One county commissioner or county manager.
(16) One active member of the North Carolina fire service with expertise in fire safety, as recommended by the North Carolina State Firefighters' Association.

In selecting the municipal and county members, preference should be given to members who qualify as either a licensed architect, licensed engineer, or licensed general contractor. Of the members initially appointed by the Governor, three shall serve for terms of two years each, three shall serve for terms of four years each, and three shall serve for terms of six years each. Thereafter, all appointments shall be for terms of six years. The Governor may remove appointive members at any time. Neither the architect nor any of the above named engineers shall be engaged in the manufacture, promotion or sale of any building material, and any member who shall, during his term, cease to meet the qualifications for original appointment (through ceasing to be a practicing member of the profession indicated or otherwise) shall thereby forfeit his membership on the Council. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Council.

The Governor may make appointments to fill the unexpired portions of any terms vacated by reason of death, resignation, or removal from office. In making such appointment, he shall preserve the composition of the Council required above.

(b) Compensation. – Members of the Building Code Council other than any who are employees of the State shall receive seven dollars ($7.00) per day, including necessary time spent in traveling to and from their place of residence within the State to any place of meeting or while traveling on official business of the Council. In addition, all members shall receive mileage and subsistence according to State practice while going to and from any place of meeting, or when on official business of the Council.

(c) Residential Code Committee Created; Duties. – Within the Building Code Council, there is hereby created a Residential Code for One- and Two-Family Dwellings Committee composed of seven members of the Building Code Council, specifically the

licensed general contractor specializing in residential construction who shall serve as chairman of this committee; the licensed general contractor specializing in coastal residential construction; the licensed engineer practicing structural engineering; the licensed plumbing and heating contractor; the fire service representative; the municipal or county building inspector; and the licensed electrical contractor. This committee shall meet upon the call of its chairman to review any proposal for revision or amendment to the North Carolina State Building Code: Residential Code for One- and Two-Family Dwellings, including provisions applicable to One- and Two-Family Dwellings from the NC Energy Code, NC Electrical Code, NC Fuel Gas Code, NC Plumbing Code, the NC Mechanical Code, the NC Existing Building Code, and any other code applicable to residential construction, and no revision or amendment to any of these codes applicable to residential construction may be considered by the Building Code Council unless recommended by this committee. This committee shall also oversee the process by which the Council conducts its revision pursuant to G.S. 143-138(d). This committee shall also consider any appeal or interpretation arising under G.S. 143-141 pertaining to North Carolina State Building Code: Residential Code for One- and Two-Family Dwellings and make a recommendation to the Building Code Council for disposition of the appeal or interpretation. In considering the recommendations of the committee related to revisions and amendments of the Building Code, nothing in this subsection shall prevent the Building Code Council from accepting, rejecting, or amending the recommendation, provided that any amendment to the recommendation must be germane.

(d) Building Code Committee Created; Duties. – Within the Building Code Council, there is hereby created a Building Code Committee for all structures except those subject to the North Carolina State Building Code: Residential Code for One- and Two-Family Dwellings. The committee shall be composed of the following nine members of the Building Code Council:

(1) One of the licensed architects appointed by the chairman of the Building Code Council.
(2) The licensed engineer practicing mechanical engineering.
(3) The licensed engineer practicing electrical engineering.
(4) The licensed engineer practicing structural engineering.
(5) The municipal elected official.
(6) The fire service representative.
(7) The municipal or county building inspector.
(8) The State agency engineer.
(9) The licensed general contractor.

The chairman of the Building Code Council shall call the first meeting of the Committee, at which meeting the Committee shall elect a chairman from among the members of the Committee as the first order of business. Thereafter, the Committee shall meet upon the call of the chairman to review any proposal for revision or amendment to the North Carolina State Building Code, including provisions applicable to the North Carolina Energy Code, the North Carolina Electrical Code, the North Carolina Fuel Gas Code, the North Carolina Plumbing Code, the North Carolina Mechanical Code, the North

Carolina Existing Building Code, and any other code applicable to commercial or multi-family construction, and no revision or amendment to any of these codes applicable to commercial or multi-family construction may be considered by the Building Code Council unless recommended by this committee. This committee shall also oversee the process by which the Council conducts its revision of the codes applicable to commercial or multi-family construction pursuant to G.S. 143-138(d). This committee shall also consider any appeal or interpretation arising under G.S. 143-141 pertaining to codes applicable to commercial or multi-family construction and make a recommendation to the Building Code Council for disposition of the appeal or interpretation. In considering the recommendations of the committee related to revisions and amendments of the Building Code, nothing in this subsection shall prevent the Building Code Council from accepting, rejecting, or amending the recommendation, provided that any amendment to the recommendation must be germane. (1957, c. 1138; 1965, c. 1145; 1969, c. 1229, s. 1; 1971, c. 323; 1979, c. 863; 1989, c. 25, s. 3; 1991 (Reg. Sess., 1992), c. 895, s. 2; 1998-57, s. 1; 2015-145, s. 5.1; 2016-51, s. 6; 2017-130, s. 5.)

§ 143-137. Organization of Council; rules; meetings; staff; fiscal affairs.

(a) First Meeting; Organization; Rules. – Within 30 days after its appointment, the Building Code Council shall meet on call of the Commissioner of Insurance. The Council shall elect from its appointive members a chairman and such other officers as it may choose, for such terms as it may designate in its rules. The Council shall adopt such rules not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman may appoint members to such committees as the work of the Council may require. In addition, the chairman shall establish and appoint ad hoc code revision committees to consider and prepare revisions and amendments to the Code volumes. Each ad hoc committee shall consist of members of the Council, licensed contractors, and design professionals most affected by the Code volume for which the ad hoc committee is responsible, and members of the public. The subcommittees shall meet upon the call of their respective chairs and shall report their recommendations to the Council.

(b) Meetings. – The Council shall meet regularly, at least once every six months, at places and dates to be determined by the Council. Special meetings may be called by the chairman on his own initiative and must be called by him at the request of two or more members of the Council. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Seven members shall constitute a quorum. All meetings shall be open to the public.

(c) Staff. – Personnel of the Division of Engineering of the Department of Insurance shall serve as a staff for the Council. Such staff shall have the duties of

(1) Keeping an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, and technical work performed by or for the Council, and making these records available for public inspection at all reasonable times;

(2) Handling correspondence for the Council.

(d) Fiscal Affairs of the Council. – All funds for the operations of the Council and its staff shall be appropriated to the Department of Insurance for the use of the Council. All such funds shall be held in a separate or special account on the books of the Department of Insurance, with a separate financial designation or code number to be assigned by the Department of Administration or its agent. Expenditures for staff salaries and operating expenses shall be made in the same manner as the expenditure of any other Department of Insurance funds. The Department of Insurance may hire such additional personnel as may be necessary to handle the work of the Building Code Council, within the limits of funds appropriated for the Council and with the approval of the Council. (1957, c. 269, s. 1; c. 1138; 1987, c. 827, s. 219; 1987 (Reg. Sess., 1988), c. 975, s. 7; 1997-26, s. 4.)

§ 143-138. North Carolina State Building Code.

(a) Preparation and Adoption. – The Building Code Council may prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Before the adoption of the Code, or any part of the Code, the Council shall hold at least one public hearing. A notice of the public hearing shall be published in the North Carolina Register at least 15 days before the date of the hearing. Notwithstanding G.S. 150B-2(8a)h., the North Carolina State Building Code as adopted by the Building Code Council is a rule within the meaning of G.S. 150B-2(8a) and shall be adopted in accordance with the procedural requirements of Article 2A of Chapter 150B of the General Statutes.

The Council shall request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), or that increases the cost of residential housing by eighty dollars ($80.00) or more per housing unit. The change can become effective only in accordance with G.S. 143-138(d). Neither the Department of Insurance nor the Council shall be required to expend any monies to pay for the preparation of any fiscal note under this section by any person outside of the Department or Council unless the Department or Council contracts with a third-party vendor to prepare the fiscal note.

(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

(b1) Fire Protection; Smoke Detectors. – The Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

(b2) Carbon Monoxide Alarms. – The Code (i) may contain provisions requiring the installation of either battery-operated or electrical carbon monoxide alarms in every dwelling unit having a combustion heater, appliance, or fireplace, and in any dwelling unit having an attached garage and (ii) shall contain provisions requiring the installation of electrical carbon monoxide alarms at a lodging establishment. Violations of this subsection and rules adopted pursuant to this subsection shall be punishable in accordance with subsection (h) of this section and G.S. 143-139. In particular, the rules shall provide:

(1) For dwelling units, carbon monoxide alarms shall be those listed by a nationally recognized testing laboratory that is approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance. A carbon monoxide alarm may be combined with smoke detectors if the combined alarm does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.

(2) For lodging establishments, including tourist homes that provide accommodations for seven or more continuous days (extended-stay establishments), and bed and breakfast inns and bed and breakfast homes as defined in G.S. 130A-247, carbon monoxide alarms shall be installed in every dwelling unit or sleeping unit having a combustion heater, appliance, or fireplace and in every dwelling unit or sleeping unit that shares a common wall, floor, or ceiling with a room having a combustion heater, appliance, or fireplace. Carbon monoxide alarms shall be (i) listed by a nationally recognized testing laboratory that is approved to test and certify to American National Standards Institute/Underwriters

Laboratories (ANSI/UL) Standards ANSI/UL2034 or ANSI/UL2075, (ii) installed in accordance with either the standard of the National Fire Protection Association (NFPA) or the minimum protection designated in the manufacturer's instructions, which the lodging establishment shall retain or provide as proof of compliance, (iii) receive primary power from the building's wiring, where such wiring is served from a commercial source, and (iv) receive power from a battery when primary power is interrupted. A carbon monoxide alarm may be combined with smoke detectors if the combined alarm complies with the requirements of this subdivision for carbon monoxide alarms and ANSI/UL217 for smoke alarms. In lieu of the carbon monoxide alarms required by this subsection, a carbon monoxide detection system, which includes carbon monoxide detectors and audible notification appliances installed and maintained in accordance with NFPA 720, shall be permitted. The carbon monoxide detectors shall be listed as complying with ANSI/UL2075. For purposes of this subsection, "lodging establishment" means any hotel, motel, tourist home, or other establishment permitted under authority of G.S. 130A-248 to provide lodging accommodations for pay to the public, and "combustion heater, appliance, or fireplace" means any heater, appliance, or fireplace that burns combustion fuels, including, but not limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal for heating, cooking, drying, or decorative purposes, including, but not limited to, space heaters, wall and ceiling heaters, ranges, ovens, stoves, furnaces, fireplaces, water heaters, and clothes dryers. For purposes of this subsection, candles and canned fuels are not considered to be combustion appliances.

(3) The Building Code Council shall modify the NC State Building Code (Fire Prevention) to regulate the provisions of this subsection in new and existing lodging establishments, including hotels, motels, tourist homes that provide accommodations for seven or more continuous days (extended-stay establishments), and bed and breakfast inns and bed and breakfast homes as defined in G.S. 130A-247; provided nothing in this subsection shall prevent the Building Code Council from establishing more stringent rules regulating carbon monoxide alarms or detectors for new lodging establishments, including hotels, motels, tourist homes that provide accommodations for seven or more continuous days (extended-stay establishments), and bed and breakfast inns and bed and breakfast homes as defined in G.S. 130A-247. The Building Code Council shall modify the NC State Building Code (Fire Prevention) minimum inspection schedule to include annual inspections of new and existing lodging establishments, including hotels, motels, and tourist homes that provide accommodations for seven or more continuous days (extended-stay establishments), and bed and breakfast inns and bed and

breakfast homes as defined in G.S. 130A-247 for the purpose of compliance with this subsection.

(4) Upon discovery of a violation of this subsection that poses an imminent hazard and that is not corrected during an inspection of a lodging establishment subject to the provisions of G.S. 130A-248, the code official responsible for enforcing the NC State Building Code (Fire Prevention) shall immediately notify the local health director for the county in which the violation was discovered, or the local health director's designee, by verbal contact and shall also submit a written report documenting the violation of this subsection to the local health director for the county in which the violation was discovered, or the local health director's designee, on the next working day following the discovery of the violation. Within one working day of receipt of the written report documenting a violation of this subsection, the local health director for the county in which the violation was discovered, or the local health director's designee, shall investigate and take appropriate action regarding the permit for the lodging establishment, as provided in G.S. 130A-248. Lodging establishments having five or more rooms that are exempted from the requirements of G.S. 130A-248 by G.S. 130A-250 shall be subject to the penalties set forth in the NC State Building Code (Fire Prevention).

(5) Upon discovery of a violation of this subsection that does not pose an imminent hazard and that is not corrected during an inspection of a lodging establishment subject to the provisions of G.S. 130A-248, the owner or operator of the lodging establishment shall have a correction period of three working days following the discovery of the violation to notify the code official responsible for enforcing the NC State Building Code (Fire Prevention) verbally or in writing that the violation has been corrected. If the code official receives such notification, the code official may reinspect the portions of the lodging establishment that contained violations, but any fees for reinspection shall not exceed the fee charged for the initial inspection. If the code official receives no such notification, or if a reinspection discovers that previous violations were not corrected, the code official shall submit a written report documenting the violation of this subsection to the local health director for the county in which the violation was discovered, or the local health director's designee, within three working days following the termination of the correction period or the reinspection, whichever is later. The local health director shall investigate and may take appropriate action regarding the permit for the lodging establishment, as provided in G.S. 130A-248. Lodging establishments having five or more rooms that are exempted from the requirements of G.S. 130A-248 by G.S. 130A-250 shall be subject to the penalties set forth in the NC State Building Code (Fire Prevention).

(6) The requirements of subdivisions (2) through (5) of this subsection shall not apply to properties subject to the provisions of either G.S. 42-42 or G.S. 42A-31.

(b3) Applicability of the Code. – Except as provided by subsections (b4) and (c1) of this section, the Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

(b4) Exclusion for Certain Farm Buildings. – Building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses or therapeutic equine facilities, (iii) a primitive camp, or (iv) a primitive farm building. For the purposes of this subsection:

(1) For the purposes of this subdivision, a "farm building" means any nonresidential building or structure that is used for a bona fide farm purpose as provided in G.S. 153A-340. A "farm building" shall include:

a. Any structure used or associated with equine activities, including, but not limited to, the care, management, boarding, or training of horses and the instruction and training of riders. Structures that are associated with equine activities include, but are not limited to, free standing or attached sheds, barns, or other structures that are utilized to store any equipment, tools, commodities, or other items that are maintained or used in conjunction with equine activities. The specific types of equine activities, structures, and uses set forth in this subdivision are for illustrative purposes, and should not be construed to limit, in any manner, the types of activities, structures, or uses that may be considered under this subsection as exempted from building rules. A farm building that might otherwise qualify for exemption from building rules shall remain subject only to an annual safety inspection by the applicable city or county building inspection department of any grandstand, bleachers, or other spectator-seating structures in the farm building. An annual safety inspection shall include an evaluation of the overall safety of spectator-seating structures as well as ensuring the spectator-seating structure's compliance with any building codes related to the construction of spectator-seating structures in effect at the time of the construction of the spectator-seating.

b. Any structure used for the display and sale of produce, no more than 1,000 square feet in size, open to the public for no more than 180 days per year, and certified by the Department of Agriculture and Consumer Services as a Certified Roadside Farm Market.

c. Any unoccupied structure built upon land owned by the State of North Carolina and administratively allocated to the North Carolina Department of Agriculture and Consumer Services or

North Carolina State University which is used primarily for forestry production and research or agriculture production and research. The term "agriculture" has the same meaning as in G.S. 106-581.1. The term "unoccupied" does not exclude the keeping of livestock.

(1a) A "farm building" shall not lose its status as a farm building because it is used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.

(2) A "greenhouse" is a structure that has a glass or plastic roof, has one or more glass or plastic walls, has an area over ninety-five percent (95%) of which is used to grow or cultivate plants, is built in accordance with the National Greenhouse Manufacturers Association Structural Design manual, and is not used for retail sales. Additional provisions addressing distinct life safety hazards shall be approved by the local building-rules jurisdiction.

(2a) A "therapeutic equine facility" is an equine facility as described in sub-subdivision (1)a. of this subsection operated by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code that provides therapeutic equine-related activities for persons who are physically, intellectually, or emotionally challenged.

(3) Repealed by Session Laws 2015-263, s. 34, effective September 30, 2015.

(4) A "primitive camp" shall include any structure primarily used or associated with outdoor camping activities, including structures used for educational, instructional, or recreational purposes for campers and for management training, that are (i) not greater than 4,000 square feet in size and (ii) are not intended to be occupied for more than 24 hours consecutively. "Structures primarily used or associated with outdoor camping activities" include, but are not limited to, shelters, tree stands, outhouses, sheds, rustic cabins, campfire shelters, picnic shelters, tents, tepees or other indigenous huts, support buildings used only for administrative functions and not for activities involving campers or program participants, and any other structures that are utilized to store any equipment, tools, commodities, or other items that are maintained or used in conjunction with outdoor camping activities such as hiking, fishing, hunting, or nature appreciation, regardless of material used for construction. The specific types of primitive camping activities, structures, and uses set forth in this subdivision are for illustrative purposes and should not be construed to limit, in any manner, the types of activities, structures, or uses that are exempted from building rules.

(5) A "primitive farm building" shall include any structure used for activities, instruction, training, or reenactment of traditional or heritage farming

practices. "Primitive farm buildings" include, but are not limited to, sheds, barns, outhouses, doghouses, or other structures that are utilized to store any equipment, tools, commodities, livestock, or other items supporting farm management. These specific types of farming activities, structures, and uses set forth by this subdivision are for illustrative purposes and should not be construed to limit in any manner the types of activities, structures, or uses that are exempted from building rules.

(6) Repealed by Session Laws 2015-263, s. 34, effective September 30, 2015.

(b5) Exclusion for Certain Minor Activities in Residential and Farm Structures. – No permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration performed in accordance with the current edition of the North Carolina State Building Code and costing fifteen thousand dollars ($15,000) or less in any single family residence or farm building unless the work involves any of the following:

(1) The addition, repair, or replacement of load bearing structures. However, no permit is required for replacements of windows, doors, exterior siding, or the pickets, railings, stair treads, and decking of porches and exterior decks that otherwise meet the requirements of this subsection.

(2) The addition or change in the design of plumbing. However, no permit is required for replacements otherwise meeting the requirements of this subsection that do not change size or capacity.

(3) The addition, replacement or change in the design of heating, air conditioning, or electrical wiring, appliances, or equipment.

(4) The use of materials not permitted by the North Carolina Residential Code for One- and Two-Family Dwellings.

(5) The addition (excluding replacement) of roofing.

(b6) No State Agency Permit. – No permit shall be required under the Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

(b7) Appendices. – For the information of users thereof, the Code shall include as appendices the following:

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Public Health which the Building Code Council believes pertinent.

The Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

(b8) Exclusion for Certain Utilities. – Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, a cable television company, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric, cable television, or communication lines.

(b9) Exclusion for Industrial Machinery. – Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of industrial machinery. However, if during the building code inspection process, an electrical inspector has any concerns about the electrical safety of a piece of industrial machinery, the electrical inspector may refer that concern to the Occupational Safety and Health Division in the North Carolina Department of Labor but shall not withhold the certificate of occupancy nor mandate third-party testing of the industrial machinery based solely on this concern. For the purposes of this paragraph, "industrial machinery" means equipment and machinery used in a system of operations for the explicit purpose of producing a product or acquired by a State-supported center providing testing, research, and development services to manufacturing clients. The term does not include equipment that is permanently attached to or a component part of a building and related to general building services such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and general electrical transmission.

(b10) Replacement Water Heaters. –

(1) Exclusion. – No permit shall be required under the Code or any local variant approved under subsection (e) of this section for replacement of water heaters in one- or two-family dwellings, provided (i) the energy use rate or thermal input is not greater than that of the water heater which is being replaced, and there is no change in fuel, energy source, location, or routing or sizing of venting and piping, (ii) the work is performed by a person or employee of a company licensed under G.S. 87-21 or pursuant to G.S. 87-21(i), and (iii) the replacement is installed in accordance with the current edition of the North Carolina State Building Code.

(2) Energy efficiency. – The Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements and may contain rules concerning energy efficiency that require all hot water plumbing pipes that are larger than one-fourth of an inch to be insulated.

(b11) School Seclusion Rooms. – No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking

mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily.

(b12) Cisterns. – The Code may include rules pertaining to the construction or renovation of residential or commercial buildings and structures that permit the use of cisterns to provide water for flushing toilets and for outdoor irrigation. No State, county, or local building code or regulation shall prohibit the use of cisterns to provide water for flushing toilets and for outdoor irrigation. As used in this subsection, "cistern" means a storage tank that is watertight; has smooth interior surfaces and enclosed lids; is fabricated from nonreactive materials such as reinforced concrete, galvanized steel, or plastic; is designed to collect rainfall from a catchment area; may be installed indoors or outdoors; and is located underground, at ground level, or on elevated stands.

(b13) Migrant Housing. – The Council shall provide for an exemption from any requirements in the fire prevention code for installation of an automatic sprinkler system applicable to buildings meeting all of the following:

(1) Has one floor.
(2) Meets all requirements of 29 C.F.R. § 1910.142, as amended.
(3) Meets all requirements of Article 19 of Chapter 95 of the General Statutes and rules implementing that Article.

For purposes of this subsection, "migrant housing" and "migrant" shall be defined as in G.S. 95-223.

(b14) Exclusion for Routine Maintenance of Pumps and Dispensers. – No permit shall be required under the Code or any local variant approved under subsection (e) of this section for routine maintenance on fuel dispensing pumps and other dispensing devices. For purposes of this subsection, "routine maintenance" includes repair or replacement of hoses, O-rings, nozzles, or emergency breakaways.

(b15) Exclusion from Energy Code Requirements for Existing Commercial Buildings. – The alteration of commercial buildings and structures that received a certificate of occupancy prior to January 1, 2012, may be subject to the rules pertaining to energy efficiency and energy conservation that were in effect on December 31, 2011. The addition to commercial buildings and structures that received a certificate of occupancy prior to January 1, 2012, may be subject to the rules pertaining to energy efficiency and energy conservation that were in effect on December 31, 2011, so long as the addition does not increase the building area of the existing commercial building or structure to more than one hundred fifty percent (150%) of the building area of the commercial building or structure as it was in existence on December 31, 2011. For the purpose of this subsection, the term "commercial buildings and structures" shall include all structures and buildings that are not classified as a Group R occupancy by the Building Code Council.

(b16) Exclusion for Electrical Devices and Lighting Fixtures. – No permit shall be required under the Code or any local variant approved under subsection (e) of this section for the repair or replacement of dishwashers, disposals, water heaters, electrical devices, or

lighting fixtures in residential or commercial structures, provided that all of the following apply:

(1) The repair or replacement does not require the addition or relocation of electrical wiring.

(2) The work is performed by a person or employee of a company licensed under G.S. 87-43.

(3) The repair or replacement is performed in accordance with the current edition of the North Carolina State Building Code.

(b17) Exclusion for Private Drinking Water Well Installation, Construction, Maintenance, and Repair. – No permit shall be required under the Code or any local variant approved under subsection (e) of this section for the electrical and plumbing activities associated with the installation, construction, maintenance, or repair of a private drinking water well when all of the following apply:

(1) The work is performed by a contractor certified under Article 7A of Chapter 87 of the General Statutes under the terms of a permit issued by the local health department pursuant to G.S. 87-97.

(2) The scope of work includes only the connection or disconnection of a well system to either the plumbing served by the well system or the electrical service that serves the well system. For purposes of this subsection, a well system includes the well, the pressure tank, the pressure switch, and all plumbing and electrical equipment in the well and between the well, pressure tank, and pressure switch.

(b18) Exclusion From Energy Efficiency Code Requirements for Certain Use and Occupancy Classifications. – The Council shall provide for an exemption from any requirements in the energy efficiency standards pursuant to Chapter 13 of the 2012 North Carolina Building Code and the 2012 Energy Conservation Code, and any subsequent amendments to the Building Code and Energy Conservation Code, for the following use and occupancy classifications pursuant to Chapter 3 of the 2012 North Carolina Building Code: Section 306, Factory Group F; Section 311, Storage Group S; and Section 312, Utility and Miscellaneous Group U. This exclusion shall apply to the entire floor area of any structure for which the primary use or occupancy is listed herein.

(b19) Exclusion From Energy Efficiency Code Requirements for Residential Garages. – The Council shall provide for an exemption for detached and attached garages located on the same lot as a dwelling from any requirements in the energy efficiency standards pursuant to Chapter 11 of the North Carolina Residential Code for One- and Two-Family Dwellings and Chapter 4 of the North Carolina Energy Conservation Code.

(c) Standards to Be Followed in Adopting the Code. – All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed reasonably to those ends. Requirements of the Code shall conform to good engineering practice. The Council may use as guidance, but is not required to adopt, the requirements of the International Building Code of the International Code Council, the Standard Building Code of the Southern Building Code Congress International, Inc., the

Uniform Building Code of the International Conference of Building Officials, the National Building Code of the Building Officials and Code Administrators, Inc., the National Electric Code, the Life Safety Code, the National Fuel Gas Code, the Fire Prevention Code of the National Fire Protection Association, the Safety Code for Elevators and Escalators, and the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers, and standards promulgated by the American National Standards Institute, Standards Underwriters' Laboratories, Inc., and similar national or international agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety.

(c1) Exemptions for Private Clubs and Religious Organizations. – The North Carolina State Building Code and the standards for the installation and maintenance of limited-use or limited-access hydraulic elevators under this Article shall not apply to private clubs or establishments exempted from coverage under Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, et seq., or to religious organizations or entities controlled by religious organizations, including places of worship. A nonreligious organization or entity that leases space from a religious organization or entity is not exempt under this subsection.

(d) Amendments of the Code. – Subject to the procedures set forth in G.S. 143-136(c) and (d), the Building Code Council may periodically revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In addition to the periodic revisions or amendments made by the Council, the Council shall, following the procedure set forth in G.S. 143-136(c), revise the North Carolina State Building Code: Residential Code for One- and Two-Family Dwellings, including provisions applicable to One- and Two-Family Dwellings from the NC Energy Code, NC Electrical Code, NC Fuel Gas Code, NC Plumbing Code, and NC Mechanical Code only every six years, to become effective the first day of January of the following year, with at least six months between adoption and effective date. The first six-year revision under this subsection shall be adopted to become effective January 1, 2019, and every six years thereafter. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code. The Council, through the Department of Insurance, shall publish in the North Carolina Register all appeal decisions made by the Council and all formal opinions at least semiannually. The Council, through the Department of Insurance, shall also publish at least semiannually in the North Carolina Register a statement providing the accurate Web site address and information on how to find additional commentary and interpretation of the Code.

(e) Effect upon Local Codes. – Except as otherwise provided in this section, the North Carolina State Building Code shall apply throughout the State, from the time of its adoption. Approved rules shall become effective in accordance with G.S. 150B-21.3. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the

corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434.

A local government may not adopt any ordinance in conflict with the exemption provided by subsection (c1) of this section. No local ordinance or regulation shall be construed to limit the exemption provided by subsection (c1) of this section.

(f) Repealed by Session Laws 1989, c. 681, s. 3.

(g) Publication and Distribution of Code. – The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1

Superintendent of Public Instruction 1
Attorney General (Library) 1
Commissioner of Agriculture 1
Commissioner of Labor 1
Commissioner of Insurance 1
Department of Environmental Quality..... 1
Department of Health and Human Services..... 1
Division of Adult Correction and Juvenile Justice of the
Department of Public Safety 1
Board of Transportation..... 1
Utilities Commission 1
Department of Administration 1
Clerk of the Supreme Court 1
Clerk of the Court of Appeals..... 1
Department of Natural and Cultural Resources [State Library] 1
Supreme Court Library 1
Legislative Library..... 1
Office of Administrative Hearings..... 1
Rules Review Commission 1

Schools

All state-supported colleges and universities
in the State of North Carolina..... *1 each

Local Officials

Clerks of the Superior Courts ..... 1 each
Chief Building Inspector of each incorporated
municipality or county..... 1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public. The proceeds from sales of the Building Code shall be credited to the Insurance Regulatory Fund under G.S. 58-6-25.

(h) Violations. – Any person who shall be adjudged to have violated this Article or the North Carolina State Building Code, except for violations of occupancy limits established by either, shall be guilty of a Class 3 misdemeanor and shall upon conviction only be liable to a fine, not to exceed fifty dollars ($50.00), for each offense. Each 30 days that such violation continues shall constitute a separate and distinct offense. Violation of occupancy limits established pursuant to the North Carolina State Building Code shall be a Class 3 misdemeanor. Any violation incurred more than one year after another conviction for violation of the occupancy limits shall be treated as a first offense for purposes of establishing and imposing penalties.

(i) Section 1008 of Chapter X of Volume 1 of the North Carolina State Building Code, Title "Special Safety to Life Requirements Applicable to Existing High-Rise Buildings" as adopted by the North Carolina State Building Code Council on March 9, 1976, as ratified and adopted as follows:

SECTION 1008-SPECIAL SAFETY TO LIFE REQUIREMENTS APPLICABLE TO EXISTING HIGH-RISE BUILDINGS

1008 – GENERAL.

(a) Applicability. – Within a reasonable time, as fixed by "written order" of the building official, and except as otherwise provided in subsection (j) of this section every building the [then] existing, that qualifies for classification under Table 1008.1 shall be considered to be a high-rise building and shall be provided with safety to life facilities as hereinafter specified. All other buildings shall be considered as low-rise. NOTE: The requirements of Section 1008 shall be considered as minimum requirements to provide for reasonable safety to life requirements for existing buildings and where possible, the owner and designer should consider the provisions of Section 506 applicable to new high-rise buildings.

(b) Notification of Building Owner. – The Department of Insurance will send copies of amendments adopted to all local building officials with the suggestion that all local building officials transmit to applicable building owners in their jurisdiction copies of adopted amendments, within six months from the date the amendments are adopted, with the request that each building owner respond to the local building official how he plans to comply with these requirements within a reasonable time.

NOTE: Suggested reasonable time and procedures for owners to respond to the building official's request is as follows:

(1) The building owner shall, upon receipt of written request from the building official on compliance procedures within a reasonable time, submit an overall plan required by 1008(c) below within one year and within the time period specified in the approved overall plan, but not to exceed five years after the overall plan is approved, accomplish compliance with this section, as evidenced by completion of the work in accordance with approved working drawings and specifications and by issuance of a new Certificate of Compliance by the building official covering the work. Upon approval of building owner's overall plan, the building official shall issue a "written order", as per 1008(a) above, to comply with Section 1008 in accordance with the approved overall plan.

(2) The building official may permit time extensions beyond five years to accomplish compliance in accordance with the overall plan when the owner can show just cause for such extension of time at the time the overall plan is approved.

(3) The local building official shall send second request notices as per 1008(b) to building owners who have made no response to the request at the end of six months and a third request notice to no response building owners at the end of nine months.

(4) If the building owner makes no response to any of the three requests for information on how the owner plans to comply with Section 1008 within 12 months from the first request, the building official shall issue a "written order" to the building owner to provide his building with the safety to life facilities as required by this section and to submit an overall

plan specified by (1) above within six months with the five-year time period starting on the date of the "written order".

(5) For purposes of this section, the Construction Section of the Division of Health Service Regulation, Department of Health and Human Services, will notify all non-State owned I-Institutional buildings requiring licensure by the Division of Health Service Regulation and coordinate compliance requirements with the Department of Insurance and the local building official.

(c) Submission of Plans and Time Schedule for Completing Work. – Plans and specifications, but not necessarily working drawings covering the work necessary to bring the building into compliance with this section shall be submitted to the building official within a reasonable time. (See suggested time in NOTE of Section 1008(b) above). A time schedule for accomplishing the work, including the preparation of working drawings and specifications shall be included. Some of the work may require longer periods of time to accomplish than others, and this shall be reflected in the plan and schedule.

NOTE: Suggested Time Period For Compliance:

SUGGESTED TIME PERIOD FOR COMPLIANCE

ITEM	CLASS I (SECTION)	CLASS II (SECTION)	CLASS III (SECTION)	TIME FOR COMPLETION
Signs in Elevator Lobbies and Elevator Cabs	1008.2(h)	1008.3(h)	1008.4(h)	180 days
Emergency Evacuation Plan	1008(b)	NOTE:		180 days
Corridor Smoke Detectors (Includes alternative door closers)	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Manual Fire Alarm	1008.2(a)	1008.3(a)	1008.4(a)	1 year
Voice Communication System Required	1008.2(b)	1008.3(b)	1008.4(b)	2 years
Smoke Detectors Required	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Protection and Fire Stopping for Vertical Shafts	1008.2(f)	1008.3(f)	1008.4(f)	3 years
Special Exit Requirements-Number, Location and Illum-ination to be in accordance with Section 1007	1008.2(e)	1008.3(e)	1008.4(e)	3 years
Emergency Electrical Power Supply	1008.2(d)	1008.3(d)	1008.4(d)	4 years
Special Exit Facilities Required	1008.2(e)	1008.3(e)	1008.4(e)	5 years

Compartmentation for Institutional Buildings	1008.2(f)	1008.3(f)	1008.4(f)	5 years
Emergency Elevator Requirements	1008.2(h)	1008.3(h)	1008.4(h)	5 years
Central Alarm Facility Required		1008.3(i)	1008.4(i)	5 years
Areas of Refuge Required on Every Eighth Floor			1008.4(j)	5 years
Smoke Venting			1008.4(k)	5 years
Fire Protection of Electrical Conductors			1008.4(*l*)	5 years
Sprinkler System Required			1008.4(m)	5 years

(d) Building Official Notification of Department of Insurance. – The building official shall send copies of written notices he sends to building owners to the Engineering and Building Codes Division for their files and also shall file an annual report by August 15th of each year covering the past fiscal year setting forth the work accomplished under the provisions of this section.

(e) Construction Changes and Design of Life Safety Equipment. – Plans and specifications which contain construction changes and design of life safety equipment requirements to comply with provisions of this section shall be prepared by a registered architect in accordance with provisions of Chapter 83A of the General Statutes or by a registered engineer in accordance with provisions of Chapter 89C of the General Statutes or by both an architect and engineer particularly qualified by training and experience for the type of work involved. Such plans and specifications shall be submitted to the Engineering and Building Codes Division of the Department of Insurance for approval. Plans and specifications for I-Institutional buildings licensed by the Division of Health Service Regulation as noted in (b) above shall be submitted to the Construction Section of that Division for review and approval.

(f) Filing of Test Reports and Maintenance on Life Safety Equipment. – The engineer performing the design for the electrical and mechanical equipment, including sprinkler systems, must file the test results with the Engineering and Building Codes Division of the Department of Insurance, or to the agency designated by the Department of Insurance, that such systems have been tested to indicate that they function in accordance with the standards specified in this section and according to design criteria. These test results shall be a prerequisite for the Certificate of Compliance required by (b) above. Test results for I-Institutional shall be filed with the Construction Section, Division of Health Service Regulation. It shall be the duty and responsibility of the owners of Class I, II and III buildings to maintain smoke detection, fire detection, fire control, smoke removal and venting as required by this section and similar emergency systems in proper operating condition at all times. Certification of full tests and inspections of all emergency systems shall be provided by the owner annually to the fire department.

(g) Applicability of Chapter X and Conflicts with Other Sections. – The requirements of this section shall be in addition to those of Sections 1001 through 1007; and in case of conflict, the requirements affording the higher degree of safety to life shall apply, as determined by the building official.

(h) Classes of Buildings and Occupancy Classifications. – Buildings shall be classified as Class I, II or III according to Table 1008.1. In the case of mixed occupancies, for this purpose, the classification shall be the most restrictive one resulting from the application of the most prevalent occupancies to Table 1008.1.

FOOTNOTE: Emergency Plan. – Owners, operators, tenants, administrators or managers of high-rise buildings should consult with the fire authority having jurisdiction and establish procedures which shall include but not necessarily be limited to the following:

(1) Assignment of a responsible person to work with the fire authority in the establishment, implementation and maintenance of the emergency pre-fire plan.

(2) Emergency plan procedures shall be supplied to all tenants and shall be posted conspicuously in each hotel guest room, each office area, and each schoolroom.

(3) Submission to the local fire authority of an annual renewal or amended emergency plan.

(4) Plan should be completed as soon as possible.

1008.1 – ALL EXISTING BUILDINGS SHALL BE CLASSIFIED AS CLASS I, II AND III ACCORDING TO TABLE 1008.1.

TABLE 1008.1
Scope
Scope

CLASS (1)	OCCUPANCY GROUP (3)(4)	OCCUPIED FLOOR ABOVE AVERAGE GRADE EXCEEDING HEIGHT (2)
CLASS I	Group R-Residential Group B-Business Group E-Educational Group A-Assembly Group H-Hazardous average grade. Group I-Institutional-Restrained 1	60' but less than 120' above average grade or 6 but less than 12 stories above
	Group I-Institutional-Unrestrained	36' but less than 60' above average grade or 3 but less than 6 stories above average grade.
CLASS II	Group R-Residential Group B-Business Group E-Educational Group A-Assembly Group H-Hazardous Group I-Institutional-Restrained	120' but less than 250' above average grade or 12 but less than 25 stories above average grade.

	Group I-Institutional-Unrestrained	60' but less than 250' above average grade or 6 but less than 25 stories above average grade.
CLASS III	Group R-Residential Group B-Business Group E-Educational Group I-Institutional Group A-Assembly Group H-Hazardous	250' or 25 stories above average grade.

NOTE 1: The entire building shall comply with this section when the building has an occupied floor above the height specified, except that portions of the buildings which do not exceed the height specified are exempt from this section, subject to the following provisions:

(a) Low-rise portions of Class I buildings must be separated from high-rise portions by one-hour construction.

(b) Low-rise portions of Class II and III buildings must be separated from high-rise portions by two-hour construction.

(c) Any required exit from the high-rise portion which passes through the low-rise portions must be separated from the low-rise portion by the two-hour construction.

NOTE 2: The height described in Table 1008.1 shall be measured between the average grade outside the building and the finished floor of the top occupied story.

NOTE 3: Public parking decks meeting the requirements of Section 412.7 and less than 75 feet in height are exempt from the requirements of this section when there is no other occupancy above or below such deck.

NOTE 4: Special purpose equipment buildings, such as telephone equipment buildings housing the equipment only, with personnel occupant load limited to persons required to maintain the equipment may be exempt from any or all of these requirements at the discretion of the Engineering and Building Codes Division provided such special purpose equipment building is separated from other portions of the building by two-hour fire rated construction.

1008.2-REQUIREMENTS FOR EXISTING CLASS I BUILDINGS.

All Class I buildings shall be provided with the following:

(a) An approved manual fire alarm system, meeting the requirements of Section 1125 and applicable portions of NFPA 71, 72A, 72B, 72C or 72D, shall be provided unless the building is fully sprinklered or equipped with an approved automatic fire detection system connected to the fire department.

(b) All Class I buildings shall meet the requirements of Sections 1001-1007.

(c) Smoke Detectors Required. – At least one approved listed smoke detector tested in accordance with UL-167, capable of detecting visible and invisible particles of combustion shall be installed as follows:

(1) All buildings classified as institutional, residential and assembly occupancies shall be provided with listed smoke detectors in all required exit corridors spaced no further than 60' on center or more than 15' from

any wall. Exterior corridors open to the outside are not required to comply with this requirement. If the corridor walls have one-hour fire resistance rating with all openings protected with 1-3/4 inch solid wood core or hollow metal door or equivalent and all corridor doors are equipped with approved self-closing devices, the smoke detectors in the corridor may be omitted. Detectors in corridors may be omitted when each dwelling unit is equipped with smoke detectors which activate the alarm system.

(2) In every mechanical equipment, boiler, electrical equipment, elevator equipment or similar room unless the room is sprinklered or the room is separated from other areas by two-hour fire resistance construction with all openings therein protected with approved fire dampers and Class B fire doors. (Approved listed fire (heat) detectors may be submitted for these rooms.)

(3) In the return air portion of every air conditioning and mechanical ventilation system that serves more than one floor.

(4) The activation of any detector shall activate the alarm system, and shall cause such other operations as required by this Code.

(5) The annunciator shall be located near the main entrance or in a central alarm and control facility.

NOTE 1: Limited area sprinklers may be supplied from the domestic water system provided the domestic water system is designed to support the design flow of the largest number of sprinklers in any one of the enclosed areas. When supplied by the domestic water system, the maximum number of sprinklers in any one enclosed room or area shall not exceed 20 sprinklers which must totally protect the room or area.

(d) Emergency Electrical Power Supply. – An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above.

(1) Emergency, exit and elevator cab lighting.

(2) Emergency illumination for corridors, stairs, etc.

(3) Emergency Alarms and Detection Systems. – Power supply for fire alarm and fire detection. Emergency power does not need to be connected to fire alarm or detection systems when they are equipped with their own emergency power supply from float or trickle charge battery in accordance with NFPA standards.

(e) Special Exit Requirements. – Exits and exitways shall meet the following requirements:

(1) Protection of Stairways Required. – All required exit stairways shall be enclosed with noncombustible one-hour fire rated construction with a minimum of 1 3/4 inch solid core wood door or hollow metal door or 20 minute UL listed doors as entrance thereto. (See Section 1007.5).

(2) Number and Location of Exits. – All required exit stairways shall meet the requirements of Section 1007 to provide for proper number and location and proper fire rated enclosures and illumination of and designation for means of egress.

(3) Exit Outlets. – Each required exit stair shall exit directly outside or through a separate one-hour fire rated corridor with no openings except the necessary openings to exit into the fire rated corridor and from the fire rated corridor and such openings shall be protected with 1 3/4 inch solid wood core or hollow metal door or equivalent unless the exit floor level and all floors below are equipped with an approved automatic sprinkler system meeting the requirements of NFPA No. 13.

(f) Smoke Compartments Required for I-Institutional Buildings. – Each occupied floor shall be divided into at least two compartments with each compartment containing not more than 30 institutional occupants. Such compartments shall be subdivided with one-half hour fire rated partitions which shall extend from outside wall to outside wall and from floor to and through any concealed space to the floor slab or roof above and meet the following requirements:

(1) Maximum area of any smoke compartment shall be not more than 22,500 square feet in area with both length and width limited to 150 feet.

(2) At least one smoke partition per floor regardless of building size forming two smoke zones of approximately equal size.

(3) All doors located in smoke partitions shall be properly gasketed to insure a substantial barrier to the passage of smoke and gases.

(4) All doors located in smoke partitions shall be no less than 1¾ inch thick solid core wood doors with UL, 1/4 inch wire glass panel in metal frames. This glass panel shall be a minimum of 100 square inches and a maximum of 720 square inches.

(5) Every door located in a smoke partition shall be equipped with an automatic closer. Doors that are normally held in the open position shall be equipped with an electrical device that shall, upon actuation of the fire alarm or smoke detection system in an adjacent zone, close the doors in that smoke partition.

(6) Glass in all corridor walls shall be 1/4", UL approved, wire glass in metal frames in pieces not to exceed 1296 square inches.

(7) Doors to all patient rooms and treatment areas shall be a minimum of 1 3/4 inch solid core wood doors except in fully sprinklered buildings.

(g) Publication and Distribution of Code. – The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES

State Departments and Officials

Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1
Division of Adult Correction and Juvenile Justice of the Department of Public Safety	1
Board of Transportation	1
Utilities Commission	1
Department of Administration	1
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Department of Natural and Cultural Resources [State Library]	1
Supreme Court Library	1
Legislative Library	1
Office of Administrative Hearings	1
Rules Review Commission	1

Schools

All state-supported colleges and universities in the State of North Carolina	*1 each

Local Officials

Clerks of the Superior Courts	1 each
Chief Building Inspector of each incorporated municipality or county	1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public. The proceeds from sales of the Building Code shall be credited to the Insurance Regulatory Fund under G.S. 58-6-25.

(h) Signs in Elevator Lobbies and Elevator Cabs. – Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. The required emergency sign shall be readable at all times and shall be a minimum of 1/2" high block letters with the words: "IN CASE OF FIRE DO NOT USE ELEVATOR – USE THE EXIT STAIRS" or other words to this effect.

1008.3 – REQUIREMENTS FOR EXISTING CLASS II BUILDINGS.

All Class II buildings must meet the following requirements:

(a) Manual Fire Alarm. – Provide manual fire alarm system in accordance with Section 1008.2(a). In addition, buildings so equipped with sprinkler alarm system or automatic fire detection system must have at least one manual fire alarm station near an exit on each floor as a part of such sprinkler or automatic fire detection and alarm system. Such manual fire alarm systems shall report a fire by floor.

(b) Voice Communication System Required. – An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. – A one-way voice communication system shall be established on a selective basis which can be heard clearly by all occupants in all exit stairways, elevators, elevator lobbies, corridors, assembly rooms and tenant spaces.

NOTE 1: This system shall function so that in the event of one circuit or speaker being damaged or out of service, the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(c) Smoke Detectors Required. – Smoke detectors are required as per Section 1008.2(c). The following are additional requirements:

(1) Storage rooms larger than 24 square feet or having a maximum dimension of over eight feet shall be provided with approved fire detectors or smoke detectors installed in an approved manner unless the room is sprinklered.

(2) The actuation of any detectors shall activate the fire alarm system.

(d) Emergency Electrical Power Supply. – An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above. Power supply shall furnish power for items listed in Section 1008.2(d) and the following:

(1) Pressurization Fans. – Fans to provide required pressurization, smoke venting or smoke control for stairways.

(2) Elevators. – The designated emergency elevator.

(e) Special Exit Facilities Required. – The following exit facilities are required:

(1) The special exit facilities required in 1008.2(e) are required. All required exit stairways shall be enclosed with noncombustible two-hour fire rated construction with a minimum of 1 1/2 hour Class B-labeled doors as entrance thereto: (See Section 1007.5).

(2) Smoke-Free Stairways Required. – At least one stairway shall be a smoke free stairway in accordance with Section 1104.2 or at least one stairway shall be pressurized to between 0.15 inch and 0.35 inch water column pressure with all doors closed. Smoke-free stairs and pressurized stairs shall be identified with signs containing letters a minimum of ½ inch high containing the words "PRIMARY EXIT STAIRS" unless all stairs are

smoke free or pressurized. Approved exterior stairways meeting the requirements of Chapter XI or approved existing fire escapes meeting the requirements of Chapter X with all openings within 10 feet protected with wire glass or other properly designed stairs protected to assure similar smoke-free vertical egress may be permitted. All required exit stairways shall also meet the requirements of Section 1008.2(e).

(3) If stairway doors are locked from the stairway side, keys shall be provided to unlock all stairway doors on every eighth floor leading into the remainder of the building and the key shall be located in a glass enclosure adjacent to the door at each floor level (which may sound an alarm when the glass is broken). When the key unlocks the door, the hardware shall be of the type that remains unlocked after the key is removed. Other means, approved by the building official may be approved to enable occupants and fire fighters to readily unlock stairway doors on every eighth floor that may be locked from the stairwell side. The requirements of this section may be eliminated in smoke-free stairs and pressurized stairs provided fire department access keys are provided in locations acceptable to the local fire authority.

(f) Compartmentation for I-Institutional Buildings Required. – See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. – All vertical shafts extending more than one floor including elevator shafts, plumbing shafts, electrical shafts and other vertical openings shall be protected with noncombustible two-hour fire rated construction with Class B-labeled door except for elevator doors which shall be hollow metal or equivalent. All vertical shafts which are not so enclosed must be fire stopped at each floor slab with noncombustible materials having a fire resistance rating of not less than two hours to provide an effective barrier to the passage of smoke, heat and gases from floor to floor through such shaft.

EXCEPTION: Shaft wall openings protected in accordance with NFPA No. 90A and openings connected to metal ducts equipped with approved fire dampers within the shaft wall opening do not need any additional protection.

(h) Emergency Elevator Requirements.

(1) Elevator Recall. – Each elevator shall be provided with an approved manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby, or to a smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.

NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(2) Identification of Emergency Elevator. – At least one elevator shall be identified as the emergency elevator and shall serve all floor levels. NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(3) Signs in Elevator Lobbies and Elevator Cabs. – Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and shall be a minimum of 1/2 inch high block letters with the words: "IN CASE OF FIRE DO NOT USE ELEVATOR – USE THE EXIT STAIRS" or other words to this effect.

(i) Central Alarm Facility Required. – A central alarm facility accessible at all times to fire department personnel or attended 24 hours a day, shall be provided and shall contain the following:

(1) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.

(2) Public service telephone.

(3) Fire detection and alarm systems annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received. These signals shall be both audible and visual with a silence switch for the audible.

NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(4) Master keys for access from all stairways to all floors.

(5) One-way voice emergency communications system controls.

1008.4 – REQUIREMENTS FOR EXISTING CLASS III BUILDINGS.

All Class III Buildings shall be provided with the following:

(a) Manual Fire Alarm System. – A manual fire alarm system meeting the requirements of Section 1008.3(a).

(b) Voice Communication System Required. – An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. – A one-way voice communication system shall be established on a selective or general basis which can be heard clearly by all occupants in all elevators, elevator lobbies, corridors, and rooms or tenant spaces exceeding 1,000 sq. ft. in area.

NOTE 1: This system shall be designed so that in the event of one circuit or speaker being damaged or out of service the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(2) Two-way system for use by both fire fighters and occupants at every fifth level in stairways and in all elevators.

(3) Within the stairs at levels not equipped with two-way voice communications, signs indicating the location of the nearest two-way device shall be provided.

NOTE: The one-way and two-way voice communication systems may be combined.

(c) Smoke Detectors Required. – Approved listed smoke detectors shall be installed in accordance with Section 1008.3(c) and in addition, such detectors shall terminate at the central alarm and control facility and be so designed that it will indicate the fire floor or the zone on the fire floor.

(d) Amendments of the Code. – Subject to the procedures set forth in G.S. 143-136(c) and (d), the Building Code Council may periodically revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In addition to the periodic revisions or amendments made by the Council, the Council shall, following the procedure set forth in G.S. 143-136(c), revise the North Carolina State Building Code: Residential Code for One- and Two-Family Dwellings, including provisions applicable to One- and Two-Family Dwellings from the NC Energy Code, NC Electrical Code, NC Fuel Gas Code, NC Plumbing Code, and NC Mechanical Code only every six years, to become effective the first day of January of the following year, with at least six months between adoption and effective date. The first six-year revision under this subsection shall be adopted to become effective January 1, 2019, and every six years thereafter. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code. The Council, through the Department of Insurance, shall publish in the North Carolina Register all appeal decisions made by the Council and all formal opinions at least semiannually. The Council, through the Department of Insurance, shall also publish at least semiannually in the North Carolina Register a statement providing the accurate Web site address and information on how to find additional commentary and interpretation of the Code.

(e) Special Exit Requirements. – All exits and exitways shall meet the requirements of Section 1008.3(e).

(f) Compartmentation of Institutional Buildings Required. – See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. – Same as Class II buildings. See Section 1008.3(g).

(h) Emergency Elevator Requirements.

(1) Primary Emergency Elevator. – At least one elevator serving all floors shall be identified as the emergency elevator with identification signs both outside and inside the elevator and shall be provided with emergency power to meet the requirements of Section 1008.3(c).

NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(2) Elevator Recall. – Each elevator shall be provided with an approved manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby or to a smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.

NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(3) Signs in Elevator Lobbies and Elevator Cabs. – Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and have a minimum of ½" high block letters with the words: "IN CASE OF FIRE, UNLESS OTHERWISE INSTRUCTED, DO NOT USE THE ELEVATOR – USE THE EXIT STAIRS" or other words to this effect.

(4) Machine Room Protection. – When elevator equipment located above the hoistway is subject to damage from smoke particulate matter, cable slots entering the machine room shall be sleeved beneath the machine room floor to inhibit the passage of smoke into the machine room.

(5) Secondary Emergency Elevator. – At least one elevator located in separate shaft from the Primary Emergency Elevator shall be identified as the "Secondary Emergency Elevator" with identification signs both outside and inside the elevator. It will serve all occupied floors above 250 feet and shall have all the same facilities as the primary elevator and will be capable of being transferred to the emergency power system.

NOTE: Emergency power supply can be sized for nonsimultaneous use of the primary and secondary emergency elevators.

(i) Central Alarm and Control Facilities Required.

(1) A central alarm facility accessible at all times to Fire Department personnel or attended 24 hours a day, shall be provided. The facility shall be located on a completely sprinklered floor or shall be enclosed in two-hour fire resistive construction. Openings are permitted if protected by listed 1 1/2 hour Class B-labeled closures or water curtain devices capable of a minimum discharge of three gpm per lineal foot of opening. The facility shall contain the following:

(i) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.

(ii) Public service telephone.

(iii) Direct communication to the control facility.

(iv) Controls for the voice communication systems.

(v) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received, those signals, shall be both audible and visual with a silence switch for the audible.

NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(2) A control facility (fire department command station) shall be provided at or near the fire department response point and shall contain the following:

(i) Elevator status indicator.

NOTE: Not required in buildings where there is a status indicator at the main elevator lobby.

(ii) Master keys for access from all stairways to all floors.

(iii) Controls for the two-way communication system.

(iv) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received.

(v) Direct communication to the central alarm facility.

(3) The central alarm and control facilities may be combined in a single approved location. If combined, the duplication of facilities and the direct communication system between the two may be deleted.

(j) Areas of Refuge Required. – Class III buildings shall be provided with a designated "area of refuge" at the 250 ft. level and on at least every eighth floor or fraction thereof above that level to be designed so that occupants above the 250 ft. level can enter at all times and be safely accommodated in floor areas meeting the following requirements unless the building is completely sprinklered:

(1) Identification and Size. – These areas of refuge shall be identified on the plans and in the building as necessary. The area of refuge shall provide not less than 3 sq. ft. per occupant for the total number of occupants served by the area based on the occupancy content calculated by Section 1105. A minimum of two percent (2%) of the number of occupants on each floor shall be assumed to be handicapped and no less than 16 sq. ft. per handicapped occupant shall be provided. Smoke proof stairways meeting the requirements of Section 1104.2 and pressurized stairways meeting the requirements of Section 1108.3(e)(2) may be used for ambulatory occupants at the rate of 3 sq. ft. of area of treads and landings per person, but in no case shall the stairs count for more than one-third of the total occupants. Doors leading to designated areas of refuge from stairways or other areas of the building shall not have locking hardware or shall be automatically unlocked upon receipt of any manual or automatic fire alarm signal.

(2) Pressurized. – The area of refuge shall be pressurized with 100% fresh air utilizing the maximum capacity of existing mechanical building air conditioning system without recirculation from other areas or other acceptable means of providing fresh air into the area.

(3) Fire Resistive Separation. – Walls, partitions, floor assemblies and roof assemblies separating the area of refuge from the remainder of the building shall be noncombustible and have a fire resistance rating of not less than one hour. Duct penetrations shall be protected as required for penetrations of shafts. Metallic piping and metallic conduit may penetrate or pass through the separation only if the openings around the piping or conduit are sealed on each side of the penetrations with impervious noncombustible materials to prevent the transfer of smoke or combustion gases from one side of the separation to the other. The fire door serving as a horizontal exit between compartments shall be so installed, fitted and gasketed to provide a barrier to the passage of smoke.

(4) Access Corridors. – Any corridor leading to each designated area of refuge shall be protected as required by Sections 1104 and 702. The capacity of an access corridor leading to an area of refuge shall be based on 150 persons per unit width as defined in Section 1105.2. An access corridor may not be less than 44 inches in width. The width shall be determined by the occupant content of the most densely populated floor served. Corridors with one-hour fire resistive separation may be utilized for area of refuge at the rate of three sq. ft. per ambulatory occupant provided a minimum of one cubic ft. per minute of outside air per square foot of floor area is introduced by the air conditioning system.

(5) Penetrations. – The continuity of the fire resistance at the juncture of exterior walls and floors must be maintained.

(k) Smoke Venting. – Smoke venting shall be accomplished by one of the following methods in nonsprinklered buildings:

(1) In a nonsprinklered building, the heating, ventilating and air conditioning system shall be arranged to exhaust the floor of alarm origin at its maximum exhausting capacity without recirculating air from the floor of alarm origin to any other floor. The system may be arranged to accomplish this either automatically or manually. If the air conditioning system is also used to pressurize the areas of refuge, this function shall not be compromised by using the system for smoke removal.

(2) Venting facilities shall be provided at the rate of 20 square feet per 100 lineal feet or 10 square feet per 50 lineal feet of exterior wall in each story and distributed around the perimeter at not more than 50 or 100 foot intervals openable from within the fire floor. Such panels and their controls shall be clearly identified.

(3) Any combination of the above two methods or other approved designs which will produce equivalent results and which is acceptable to the building official.

(*l*) Fire Protection of Electrical Conductors. – New electrical conductors furnishing power for pressurization fans for stairways, power for emergency elevators and fire pumps required by Section 1008.4(d) shall be protected by a two-hour fire rated horizontal or vertical enclosure or structural element which does not contain any combustible materials. Such protection shall begin at the source of the electrical power and extend to the floor level on which the emergency equipment is located. It shall also extend to the emergency equipment to the extent that the construction of the building components on that floor permits. New electrical conductors in metal raceways located within a two-hour fire rated assembly without any combustible therein are exempt from this requirement.

(m) Automatic Sprinkler Systems Required.

(1) All areas which are classified as Group M-mercantile and Group H-hazardous shall be completely protected with an automatic sprinkler system.

(2) All areas used for commercial or institutional food preparation and storage facilities adjacent thereto shall be provided with an automatic sprinkler system.

(3) An area used for storage or handling of hazardous substances shall be provided with an automatic sprinkler system.

(4) All laboratories and vocational shops in Group E, Educational shall be provided with an automatic sprinkler system.

(5) Sprinkler systems shall be in strict accordance with NFPA No. 13 and the following requirements:

The sprinkler system must be equipped with a water flow and supervisory signal system that will transmit automatically a water flow signal directly to the fire department or to an independent signal monitoring service satisfactory to the fire department.

(j) Subsection (i) of this section does not apply to business occupancy buildings as defined in the North Carolina State Building Code except that evacuation plans as required on page 8, lines 2 through 16 [Section 1008, footnote following subsection (h)], and smoke detectors as required for Class I Buildings as required by Section 1008.2, page 11, lines 5 through 21 [Section 1008.2, subdivision (c)(1)]; Class II Buildings as required by Section 1008.3, page 17, lines 17 through 28 and page 18, lines 1 through 10 [Section 1008.3, subsections (c) and (d)]; and Class III Buildings, as required by Section 1008.4, lines 21 through 25 [Section 1008.4, subsection (c)] shall not be exempted from operation of this act as applied to business occupancy buildings, except that the Council shall adopt rules that allow a business occupancy building built prior to 1953 to have a single exit to remain if the building complies with the Building Code on or before December 31, 2006.

(j1) A nonbusiness occupancy building built prior to the adoption of the 1953 Building Code that is not in compliance with Section 402.1.3.5 of Volume IX of the

Building Code or Section 3407.2.2 of Volume I of the Building Code must comply with the applicable sections by December 31, 2006.

(j2) Repealed by Session Laws 2014-79, s. 5, effective July 22, 2014.

(k) For purposes of use in the Code, the term "Family Care Home" shall mean an adult care home having two to six residents.

(*l*) When any question arises as to any provision of the Code, judicial notice shall be taken of that provision of the Code. (1957, c. 1138; 1969, c. 567; c. 1229, ss. 2-6; 1971, c. 1100, ss. 1, 2; 1973, c. 476, ss. 84, 128, 138, 152; c. 507, s. 5; 1981, c. 677, s. 3; c. 713, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1282, s. 20.2D; c. 1348, s. 1; 1983, c. 614, s. 3; 1985, c. 576, s. 1; c. 622, s. 2; c. 666, s. 39; 1989, c. 25, s. 2; c. 681, ss. 2, 3, 9, 10, 18, 19; c. 727, ss. 157, 158; 1991 (Reg. Sess., 1992), c. 895, s. 1; 1993, c. 329, ss. 1, 3; c. 539, s. 1009; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 111, s. 1; c. 242, s. 1; c. 507, s. 27.8(r); c. 535, s. 30; 1997-26, ss. 1-3, 5; 1997-443, ss. 11A.93, 11A.94, 11A.118(a), 11A.119(a); 1998-57, s. 2; 1998-172, s. 1; 1998-202, s. 4(u); 1999-456, s. 40; 2000-137, s. 4(x); 2000-140, s. 93.1(a); 2001-141, ss. 1, 2, 3, 4; 2001-421, ss. 1.1, 1.2, 1.5; 2001-424, s. 12.2(b); 2002-144, s. 5; 2003-221, s. 6; 2003-284, s. 22.2; 2004-124, ss. 21.1, 21.2; 2005-205, s. 6; 2007-182, ss. 1, 2; 2007-529, s. 1; 2007-542, s. 1; 2008-176, s. 2; 2008-219, s. 1; 2009-79, s. 1(a)-(c); 2009-243, s. 1; 2009-532, s. 1; 2009-570, s. 18; 2010-97, s. 6(b); 2011-145, s. 19.1(mm); 2011-364, s. 1; 2012-34, s. 1; 2012-187, s. 16.1; 2013-75, s. 1; 2013-118, ss. 2, 3; 2013-206, s. 2; 2013-265, s. 18; 2013-413, ss. 19(a), 41; 2014-79, s. 5; 2014-90, s. 1; 2014-115, s. 17; 2014-120, s. 22(c); 2015-145, ss. 4.1, 5.2; 2015-241, s. 14.30(s), (u); 2015-263, s. 34; 2016-113, s. 13(a); 2017-10, s. 1.3(b); 2017-108, s. 8(b); 2017-130, s. 8(a); 2017-212, s. 8.11; 2017-186, s. 2(aaaaaa); 2018-65, s. 2(a).)

§ 143-138.1. Introduction and instruction of the North Carolina Building Code; posting of written commentaries and interpretations on Department of Insurance Web site.

(a) Prior to the effective date of Code changes pursuant to G.S. 143-138, the State Building Code Council and Department of Insurance shall provide for instructional classes for the various trades affected by the Code. The Department of Insurance shall develop the curriculum for each class but shall consult the affected licensing boards and trade organizations. The curriculum shall include explanations of the rationale and need for each Code amendment or revision. Classes may also be conducted by, on behalf of, or in cooperation with licensing boards, trade associations, and professional societies. The Department of Insurance may charge fees sufficient to recover the costs it incurs under this section. The Council shall ensure that courses are accessible to persons throughout the State.

(b) The Department of Insurance shall post and maintain on that portion of its Web site devoted to the Building Code Council written commentaries and written interpretations made and given by staff to the Council and the Department for each section of the North Carolina Building Code within 10 business days of issuance. (1997-26, s. 6; 2013-118, s. 3.5; 2015-145, s. 6.2.)

§ 143-139. Enforcement of Building Code.

(a) Procedural Requirements. – Subject to the provisions set forth herein, the Building Code Council shall adopt such procedural requirements in the North Carolina State Building Code as shall appear reasonably necessary for adequate enforcement of the Code while safeguarding the rights of persons subject to the Code.

(b) General Building Regulations. – The Insurance Commissioner shall have general authority, through the Division of Engineering of the Department of Insurance, to supervise, administer, and enforce all sections of the North Carolina State Building Code pertaining to plumbing, electrical systems, general building restrictions and regulations, heating and air conditioning, fire protection, and the construction of buildings generally, except those sections of the Code, the enforcement of which is specifically allocated to other agencies by subsections (c) through (e) below. In the exercise of the duty to supervise, administer, and enforce the North Carolina State Building Code (including local building codes which have superseded the State Building Code in a particular political subdivision pursuant to G.S. 143-138(e)), the Commissioner, through the Division of Engineering, shall:

(1) Cooperate with local officials and local inspectors duly appointed by the governing body of any municipality or board of county commissioners pursuant to Part 5 of Article 19 of Chapter 160A of the General Statutes or Part 4 of Article 18 of Chapter 153A of the General Statutes, or any other applicable statutory authority.

(2) In accordance with G.S. 143-139.4, timely assign a Code-enforcement official from the marketplace pool established under G.S. 143-151.12(9)a. to conduct any plumbing, electrical systems, general building restrictions and regulations, heating and air-conditioning, or general construction inspection required by the North Carolina State Building Code.

(b1) Remedies. – In case any building or structure is maintained, erected, constructed, or reconstructed or its purpose altered, so that it becomes in violation of this Article or of the North Carolina State Building Code, either the local enforcement officer or the State Commissioner of Insurance or other State official with responsibility under this section may, in addition to other remedies, institute any appropriate action or proceeding to: (i) prevent the unlawful maintenance, erection, construction, or reconstruction or alteration of purpose, or overcrowding, (ii) restrain, correct, or abate the violation, or (iii) prevent the occupancy or use of the building, structure, or land until the violation is corrected. In addition to the civil remedies set out in G.S. 160A-175 and G.S. 153A-123, a county, city, or other political subdivision authorized to enforce the North Carolina State Building Code within its jurisdiction may, for the purposes stated in (i) through (iii) of this subsection, levy a civil penalty for violation of the fire prevention code of the North Carolina State Building Code, which penalty may be recovered in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after the offender has been cited for the violation. If the Commissioner or other State official institutes an action or proceeding under this section, a county, city, or other political subdivision may not

institute a civil action under this section based upon the same violation. Appeals from the imposition of any remedy set forth herein, including the imposition of a civil penalty by a county, city, or other political subdivision, shall be as provided in G.S. 160A-434.

(c) Boilers. – The Bureau of Boiler Inspection of the Department of Labor shall have general supervision of the administration and enforcement of those sections of the North Carolina State Building Code which pertain to boilers of the types enumerated in Article 7 of Chapter 95 of the General Statutes.

(d) Elevators. – The Department of Labor shall have general supervision of the administration and enforcement of those sections of the North Carolina State Building Code which pertain to elevators, moving stairways, and amusement devices such as merry-go-rounds, roller coasters, Ferris wheels, etc.

(e) State Buildings. – With respect to State buildings, the Department of Administration shall have general supervision, through the Office of State Construction, of the administration and enforcement of all sections of the North Carolina State Building Code pertaining to plumbing, electrical systems, general building restrictions and regulations, heating and air conditioning, fire protection, and the construction of buildings generally, except those sections of the Code the enforcement of which is specifically allocated to other agencies by subsections (c) and (d) of this section, and shall also exercise all remedies as provided in subsection (b1) of this section. The Department of Administration shall be the only agency with the authority to seek remedies pursuant to this section with respect to State buildings. Except as provided herein, nothing in this subsection shall be construed to abrogate the authority of the Commissioner of Insurance under G.S. 58-31-40 or any other provision of law. (1957, c. 1138; 1963, c. 811; 1989, c. 681, s. 11; 1993, c. 329, s. 2; 2009-474, ss. 3, 4; 2018-29, s. 2(b).)

§ 143-139.1. Certification of manufactured buildings, structures or components by recognized independent testing laboratory; minimum standards for modular homes.

(a) Certification. – The State Building Code may provide, in circumstances deemed appropriate by the Building Code Council, for testing, evaluation, inspection, and certification of buildings, structures or components manufactured off the site on which they are to be erected, by a recognized independent testing laboratory having follow-up inspection services approved by the Building Code Council. Approval of such buildings, structures or components shall be evidenced by labels or seals acceptable to the Council. All building units, structures or components bearing such labels or seals shall be deemed to meet the requirements of the State Building Code and this Article without further inspection or payment of fees, except as may be required for the enforcement of the Code relative to the connection of units and components and enforcement of local ordinances governing zoning, utility connections, and foundations permits. The Building Code Council shall adopt and may amend from time to time such reasonable and appropriate rules and regulations as it deems necessary for approval of agencies offering such testing, evaluation, inspection, and certification services and for overseeing their operations. Such rules and regulations shall include provisions to insure that such agencies are independent

and free of any potential conflicts of interest which might influence their judgment in exercising their functions under the Code. Such rules and regulations may include a schedule of reasonable fees to cover administrative expenses in approving and overseeing operations of such agencies and may require the posting of a bond or other security satisfactory to the Council guaranteeing faithful performance of duties under the Code.

The Building Code Council may also adopt rules to insure that any person that is not licensed, in accordance with G.S. 87-1, and that undertakes to erect a North Carolina labeled manufactured modular building, meets the manufacturer's installation instructions and applicable provisions of the State Building Code. Any such person, before securing a permit to erect a modular building, shall provide the code enforcement official proof that he has in force for each modular building to be erected a $5,000 surety bond insuring compliance with the regulations of the State Building Code governing installation of modular buildings.

(b) Minimum Standards for Modular Homes. – To qualify for a label or seal under subsection (a) of this section, a single-family modular home must meet or exceed the following construction and design standards:

(1) Roof pitch. – For homes with a single predominant roofline, the pitch of the roof shall be no less than five feet rise for every 12 feet of run.

(2) Eave projection. – The eave projections of the roof shall be no less than 10 inches, which may not include a gutter around the perimeter of the home, unless the roof pitch is 8/12 or greater.

(3) Exterior wall. – The minimum height of the exterior wall shall be at least seven feet six inches for the first story.

(4) Siding and roofing materials. – The materials and texture for the exterior materials shall be compatible in composition, appearance, and durability to the exterior materials commonly used in standard residential construction.

(5) Foundations. – The home shall be designed to require foundation supports around the perimeter. The supports may be in the form of piers, pier and curtain wall, piling foundations, a perimeter wall, or other approved perimeter supports. (1971, c. 1099; 1989, c. 653, s. 2; 2003-400, s. 17.)

§ 143-139.2. Enforcement of insulation requirements; certificate for occupancy; no electric service without compliance.

(a) In addition to other enforcement provisions set forth in this Chapter, no single family or multi-unit residential building on which construction is begun in North Carolina on or after January 1, 1978, shall be occupied until it has been certified as being in compliance with the minimum insulation standards for residential construction, as prescribed in the North Carolina State Building Code or as approved by the Building Code Council as provided in G.S. 143-138(e).

(b) No public supplier of electric service, including regulated public utilities, municipal electric service and electric membership corporations, shall connect for electric service to an occupant any residential building on which construction is begun on or after

January 1, 1978, unless said building complies with the insulation requirements of the North Carolina State Building Code or of local building codes approved by the Building Codes Council as provided in G.S. 143-138(e), and has been certified for occupancy in compliance with the minimum insulation standards of the North Carolina State Building Code or of any local modification approved as provided in G.S. 143-138(e), by a person designated as an inspector pursuant to subsection (a) of this section.

(c) This section shall apply only in any county or city that elects to enforce the insulation and energy utilization standards of the State Building Code pursuant to G.S. 143-151.27. (1977, c. 792, s. 7; 1983, c. 377, s. 1.)

§ 143-139.3. Inspection of liquified petroleum gas piping systems for residential structures.

If the test required under the North Carolina State Building Code for a liquified petroleum gas piping system serving a one or two-family residential dwelling is not performed by a qualified code enforcement official, as defined in G.S. 143-151.8(a)(5), the contractor who installed the system shall verify that the system complies with the test requirements and shall certify the results, in writing, to the code official. (1993, c. 356, s. 3.)

§ 143-139.4. Certain building inspections by State.

(a) When a permit holder has been informed by a local inspection department that any inspection has not been, or will not be, conducted within two business days after first requested, the permit holder may request in writing that the Commissioner assign personnel to conduct the inspection.

(b) Any written request by a permit holder to the Commissioner to assign personnel to conduct an inspection shall be submitted to the Commissioner, and such submission may be made electronically or by facsimile. The submission shall be on a form adopted by the Commissioner, which shall at a minimum contain all of the following:

(1) The permit holder's name and contact information and, if the requestor is someone other than the permit holder, the name and contact information of the requestor.
(2) A copy of the building permit for the property to be inspected.
(3) Documentation of the date and time of the initial request to the local inspection department. Documentation shall include the type of inspection requested, the address of the property to be inspected, and the individual or individuals to whom this information and inspection request was directed, and the name of the requestor.
(4) Documentation as to whether the local inspection department informed the requestor that the local inspection department would be unable to conduct the inspection within two business days, if applicable.
(5) Documentation as to whether the local inspection department has failed to conduct the requested inspection within two business days of the initial request to the local inspection department.

(c) Local inspection departments shall maintain a record of each inspection request. The record shall include the date and time the request is received, the type of inspection requested, the address of the property to be inspected, the person to whom the request was directed, and the name of the requestor if the requestor is someone other than the permit holder. A local inspection department may, upon receipt of an inspection request, inform the requestor that it will be unable to conduct the inspection within the next two business days and such information shall be noted in the record.

(d) Inspection requests received after 12:00 noon shall be deemed to have been received on the next business day.

(e) Prior to making any assignment of Code-enforcement officials from the marketplace pool established under G.S. 143-151.12(9)a., the Commissioner shall verify all of the following to the Commissioner's satisfaction:

(1) That the permit holder desires the inspection to be completed.

(2) That the local inspection department received an inspection request for the property.

(3) That the inspection has not yet been conducted and the reasons for the failure to conduct the inspection.

(4) Any other information the Commissioner deems relevant to determining whether to assign personnel to conduct the requested inspection.

(f) If the Commissioner assigns a Code-enforcement official from the marketplace pool established under G.S. 143-151.12(9)a. to conduct the requested inspection, the Commissioner shall notify the local inspection department and the local inspection department shall, prior to the inspection, provide the Commissioner with information regarding any outstanding building permits and previously conducted inspections on those outstanding building permits for that property. The local inspection department may also provide the Commissioner with information regarding other properties with outstanding building permits and inspections by the same permit holder or requestor.

(g) Not later than one business day after the receipt of the report, the Commissioner shall provide an electronic copy of the report of any inspection conducted by a marketplace pool Code-enforcement official under G.S. 143-151.12(9)a. to all of the following:

(1) The local inspection department.

(2) The permit holder.

(3) The requestor, if not the permit holder.

(h) For the requested services performed by a Code-enforcement official under this section, the Commissioner shall charge the permit holder a fee as set by the Commissioner under G.S. 58-2-40(1a). The fee shall be paid to the Commissioner no later than 30 days after completion of the requested inspection.

(i) Any claim alleging negligence by a Code-enforcement official from the marketplace pool established under G.S. 143-151.12(9)a. arising out of and in the course of the duty to conduct an inspection under this section shall constitute a claim against this State and shall be brought under and adjudicated according to and in compliance with the terms of Article 31 of Chapter 143 of the General Statutes.

(j) Notwithstanding its issuance of a certificate of occupancy, a city or county, its inspection department, and its inspectors shall be discharged and released from any liabilities, duties, and responsibilities imposed under the General Statutes or in common law from any claim arising out of or attributed to any inspection performed pursuant to this section by a marketplace pool Code-enforcement official under G.S. 143-151.12(9)a.

(k) As used in this section, the following terms mean:

(1) Inspection. – An inspection required by the North Carolina State Building Code in any of the following categories:

a. Plumbing.

b. Electrical systems.

c. General building restrictions and regulations.

d. Heating and air-conditioning.

e. General construction inspection.

(2) Local inspection department. – Any county, city, or joint agency performing State Building Code inspections under Article 18 of Chapter 153A of the General Statutes or Article 19 of Chapter 160A of the General Statutes.

(3) Requestor. – The permit holder, or an individual acting on behalf of the permit holder, who made an initial request for an inspection to a local inspection department. (2018-29, s. 2(c).)

§ 143-140. Hearings before enforcement agencies as to questions under Building Code.

(a) Any person desiring to raise any question under this Article or under the North Carolina State Building Code shall be entitled to a technical interpretation from the appropriate enforcement agency, as designated in the preceding section. Upon request in writing by any such person, the enforcement agency through an appropriate official shall within a reasonable time provide a written interpretation, setting forth the facts found, the decision reached, and the reasons therefor. In the event of dissatisfaction with such decision, the person affected shall have the options of:

(1) Appealing to the Building Code Council or

(2) Appealing directly to the Superior Court, as provided in G.S. 143-141.

(b) If an interpretation under this section or under G.S. 143-141(b) changes after a building permit is issued, the permit applicant may choose which version of the interpretation will apply to the permit, unless such a choice would cause harm to life or property. (1957, c. 1138; 1989, c. 681, s. 4; 2017-130, s. 6.)

§ 143-140.1. Appeals of alternative design construction and methods.

Alternative designs and construction shall follow the State Building Code. In the event of a dispute between a local authority having jurisdiction and the designer or owner-representative regarding alternative designs and construction, and notwithstanding any other section within this Article, appeals by the designer or owner-representative on matters pertaining to alternative design construction or methods shall be heard by the

Department of Insurance Engineering Division. The Department of Insurance Engineering Division shall issue its decision regarding an appeal filed under this section within 10 business days. The Commissioner of Insurance shall adopt rules in furtherance of this section. (2007-507, s. 18.)

§ 143-141. Appeals to Building Code Council.

(a) Method of Appeal. – Whenever any person desires to take an appeal to the Building Code Council from the decision of a State enforcement agency relating to any matter under this Article or under the North Carolina State Building Code, he shall within 30 days after such decision give written notice to the Building Code Council through the Division of Engineering of the Department of Insurance that he desires to take an appeal. A copy of such notice shall be filed at the same time with the enforcement agency from which the appeal is taken. The chairman of the Building Code Council shall fix a reasonable time and place for a hearing, giving reasonable notice to the appellant and to the enforcement agency. Such hearing shall be not later than the next regular meeting of the Council. The Building Code Council shall thereupon conduct a full and complete hearing as to the matters in controversy, after which it shall within a reasonable time give a written decision setting forth its findings of fact and its conclusions.

(b) Interpretations of the Code. – The Building Code Council shall have the duty, in hearing appeals, to give interpretations of such provisions of the Building Code as shall be pertinent to the matter at issue. Where the Council finds that an enforcement agency was in error in its interpretation of the Code, it shall remand the case to the agency with instructions to take such action as it directs. Interpretations by the Council and local enforcement officials shall be based on a reasonable construction of the Code provisions.

(c) Variations of the Code. – Where the Building Code Council finds on appeal that materials or methods of construction proposed to be used are as good as those required by the Code, it shall remand the case to the enforcement agency with instructions to permit the use of such materials or methods of construction. The Council shall thereupon immediately initiate procedures for amending the Code as necessary to permit the use of such materials or methods of construction.

(c1) Posting on Department Web Site. – The Department of Insurance shall post and maintain on that portion of its Web site devoted to the Building Code Council all appeal decisions, interpretations, and variations of the Code issued by the Council within 10 business days of issuance.

(d) Further Appeals to the Courts. – Whenever any person desires to take an appeal from a decision of the Building Code Council or from the decision of an enforcement agency (with or without an appeal to the Building Code Council), he may take an appeal either to the Wake County Superior Court or to the superior court of the county in which the proposed building is to be situated, in accordance with the provisions of Chapter 150B of the General Statutes. (1957, c. 1138; 1973, c. 1331, s. 3; 1987, c. 827, s. 1; 1997-26, s. 7; 2015-145, s. 6.1.)

§ 143-142. Further duties of the Building Code Council.

(a) Recommended Statutory Changes. – It shall be the duty of the Building Code Council to make a thorough study of the building laws of the State, including both the statutes enacted by the General Assembly and the rules and regulations adopted by State and local agencies. On the basis of such study, the Council shall recommend to the 1959 and subsequent General Assemblies desirable statutory changes to simplify and improve such laws.

(b) Recommend Changes in Enforcement Procedures. – It shall be the duty of the Building Code Council to make a thorough and continuing study of the manner in which the building laws of the State are enforced by State, local, and private agencies. On the basis of such studies, the Council may recommend to the General Assembly any statutory changes necessary to improve and simplify the enforcement machinery. The Council may also advise State agencies as to any changes in administrative practices which could be made to improve the enforcement of building laws without statutory changes. (1957, c. 1138.)

§ 143-143. Effect on certain existing laws.

Nothing in this Article shall be construed as abrogating or otherwise affecting the power of any State department or agency to promulgate regulations, make inspections, or approve plans in accordance with any other applicable provisions of law not in conflict with the provisions herein. (1957, c. 1138.)

§ 143-143.1. Repealed by Session Laws 1971, c. 882, s. 1.

§ 143-143.2. Electric wiring of houses, buildings, and structures.

The electric wiring of houses or buildings for lighting or for other purposes shall conform to the requirements of the State Building Code, which includes the National Electric Code and any amendments and supplements thereto as adopted and approved by the State Building Code Council, and any other applicable State and local laws. In order to protect the property of citizens from the dangers incident to defective electric wiring of buildings, it shall be unlawful for any firm or corporation to allow any electric current for use in any newly erected building to be turned on without first having had an inspection made of the wiring by the appropriate official electrical inspector or inspection department and having received from that inspector or department a certificate approving the wiring of such building. It shall be unlawful for any person, firm, or corporation engaged in the business of selling electricity to furnish initially any electric current for use in any building, unless said building shall have first been inspected by the appropriate official electrical inspector or inspection department and a certificate given as above provided. In the event that there is no legally appointed inspector or inspection department with jurisdiction over the property involved, the two preceding sentences shall have no force or effect. As used in this section, "building" includes any structure. (1905, c. 506, s. 23; Rev., s. 3001; C.S., s. 2763; 1969, c. 1229, s. 7; 1989, c. 681, s. 20.)

§ 143-143.3. Temporary toilet facilities at construction sites.

(a) Suitable toilet facilities shall be provided and maintained in a sanitary condition during construction. An adequate number of facilities must be provided for the number of employees at the construction site. There shall be at least one facility for every two contiguous construction sites. Such facilities may be portable, enclosed, chemically treated, tank-tight units. Portable toilets shall be enclosed, screened, and weatherproofed with internal latches. Temporary toilet facilities need not be provided on-site for crews on a job site for no more than one working day and having transportation readily available to nearby toilet facilities.

(b) It shall be the duty of the Building Code Council to establish standards to carry out the provisions of subsection (a) of this section not inconsistent with the requirements for toilet facilities at construction sites established pursuant to federal occupational safety and health rules. (1993, c. 528.)

§ 143-143.4. Door lock exemption for certain businesses.

(a) Notwithstanding this Article or any other law to the contrary, any business entity licensed to sell automatic weapons as a federal firearms dealer that is in the business of selling firearms or ammunition and that operates a firing range which rents firearms and sells ammunition shall be exempt from the door lock requirements of Chapter 10 of Volume 1 of the North Carolina State Building Code when issued a permit to that effect by the Department of Insurance in accordance with this section.

(b) The Department of Insurance shall issue a permit to a business entity specified in subsection (a) of this section for an exemption from the door lock requirements of Chapter 10 of Volume 1 of the North Carolina State Building Code if all of the following conditions are met:

(1) The building or facility in which business is conducted has a sales floor and customer occupancy space that is contained on one floor and is no larger than 15,000 square feet of retail sales space. Retail sales space is that area where firearms or ammunition are displayed and merchandised for sale to the public.

(2) The building or facility in which business is conducted is equipped with an approved smoke, fire, and break-in alarm system installed and operated in accordance with rules adopted by the Department of Insurance. An approved smoke, fire, or break-in alarm system does not have to include an automatic door unlocking mechanism triggered when the smoke, fire, or break-in alarm system is triggered.

(3) The owner or operator of the business will provide to all applicable employees within 10 days of the issuance of the permit under this section or at the time the employee is hired, whichever time is later, a written facility locking plan applicable for the close of business each day.

(4) Each entrance to the building or facility in which business is conducted is posted with a sign conspicuously located that warns that the building is exempt from the door lock requirements of the State Building Code, and

that after business hours the building or facility's doors will remain locked from the inside even in the case of fire.

(5) Payment of a permit fee of five hundred dollars ($500.00) to the Department of Insurance.

(c) The Department of Insurance shall file a copy of the permit issued in accordance with subsection (b) of this section with all local law enforcement and fire protection agencies that provide protection for the business entity.

(d) The Department of Insurance shall be responsible for any inspections necessary for the issuance of permits under this section and, in conjunction with local inspection departments, shall be responsible for periodic inspections to ensure compliance with the requirements of this section. The Department of Insurance may contract with local inspection departments to conduct inspections under this subsection.

(e) The Department of Insurance shall revoke a permit issued under this section upon a finding that the requirements for the original issuance of the permit are not being complied with.

(f) Appeals of decisions of the Department of Insurance regarding the issuance or revocation of permits under this section shall be in accordance with Chapter 150B of the General Statutes.

(g) For the purposes of this section, "business entity" has the same meaning as in G.S. 59-102.

(h) In addition to the provisions of G.S. 143-138(h), the owner or operator of any business entity who is issued a permit as a door lock exempt business in accordance with subsection (b) of this section who fails to comply with the permit requirements of subsection (b) of this section shall be subject to a civil penalty of five hundred dollars ($500.00) for the first offense, one thousand dollars ($1,000) for the second offense, and five thousand dollars ($5,000) for the third and subsequent offenses, except when the building or facility in which business is conducted is in compliance with the door lock requirements of Chapter 10 of Volume 1 of the North Carolina State Building Code. Penalties authorized in this subsection shall be imposed by the city or county in which the violation occurs. Each day the building or facility in which business is conducted is not in compliance with the provisions of this subsection constitutes a separate offense.

(i) The Department of Insurance shall adopt rules to implement this section. (2001-324, s. 1.)

§ 143-143.5. Access to toilets in shopping malls.

Notwithstanding any other law or rule, a horizontal travel distance of 300 feet for access to public use toilets in covered mall buildings shall be allowed. (2004-199, s. 37(a); 2005-289, s. 2.)

§ 143-143.6. Expired pursuant to Session Laws 2007-82, s. 2, effective July 1, 2009.

§ 143-143.7: Reserved for future codification purposes.

Article 9A.

North Carolina Manufactured Housing Board – Manufactured Home Warranties.

Part 1. Duties, Warranties, Purchase Transaction.

§ 143-143.8. Purpose.

The General Assembly finds that manufactured homes have become a primary housing resource for many of the citizens of North Carolina. The General Assembly finds further that it is the responsibility of the manufactured home industry to provide homes which are of reasonable quality and safety and to offer warranties to buyers that provide a means of remedying quality and safety defects in manufactured homes. The General Assembly also finds that it is in the public interest to provide a means for enforcing such warranties.

Consistent with these findings and with the legislative intent to promote the general welfare and safety of manufactured home residents in North Carolina, the General Assembly finds that the most efficient and economical way to assure safety, quality and responsibility is to require the licensing and bonding of all segments of the manufactured home industry. The General Assembly also finds that it is reasonable and proper for the manufactured home industry to cooperate with the Commissioner of Insurance, through the establishment of the North Carolina Manufactured Housing Board, to provide for a comprehensive framework for industry regulations. (1981, c. 952, s. 2; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.9. Definitions.

The following definitions apply in this Part:

(1) Bank. – A federally insured financial institution including institutions defined under G.S. 53C-1-4(4), savings and loan associations, credit unions, savings banks and other financial institutions chartered under this or any other state law or chartered under federal law.

(1a) Board. – The North Carolina Manufactured Housing Board.

(2) Buyer. – A person for whom a dealer performs, or is engaged to perform, any services or provides any products including the purchase and setup of a manufactured home for use as a residence or other related use.

(3) Code. – Engineering standards adopted by the Commissioner.

(4) Commissioner. – The Commissioner of Insurance of the State of North Carolina.

(5) Department. – The Department of Insurance of the State of North Carolina.

(5a) Deposit. – Any and all funds received by a dealer from a buyer or someone on behalf of a buyer for the performance of services or the provision of goods.

(5b) Escrow or trust account. – An account with a bank that is designated as an escrow account or as a trust account and that is maintained by a dealer for the deposit of buyers' funds.

(5c) Escrow or trust account funds. – Funds belonging to a person other than the dealer that are received by or placed under the control of the dealer in

connection with the performance of services or the provision of products by a dealer for a buyer.

(5d) Funds. – Any form of money, including cash, payment instruments such as checks, money orders, or sales drafts, and receipts from electronic fund transfers. The term does not include letters of credit or promissory notes.

(5e) License. – A license issued under this Part.

(5f) Licensee. – A person who has been issued a license under this Part by the North Carolina Manufactured Housing Board.

(6) Manufactured home. – A structure, transportable in one or more sections, which, in the traveling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

(7) Manufactured home dealer or dealer. – Any person engaged in the business of buying or selling manufactured homes or offering or displaying manufactured homes for sale in North Carolina. Any person who buys or sells three or more manufactured homes in any 12-month period, or who offers or displays for sale three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

(8) Manufactured home manufacturer or manufacturer. – Any person, resident or nonresident, who manufactures or assembles manufactured homes for sale to dealers in North Carolina.

(9) Manufactured home salesperson or salesperson. – Any person employed by a manufactured home dealer to sell manufactured homes to buyers. Manufactured home salesperson or salesperson also includes sales managers, lot managers, general managers, or others who manage or supervise salespersons.

(10) Person. – Any individual, natural persons, firm, partnership, association, corporation, legal representative or other recognized legal entity.

(11) Responsible party. – A manufacturer, dealer, supplier, or set-up contractor.

(12) Setup. – The operations performed at the occupancy site which render a manufactured home fit for habitation.

(13) Set-up contractor. – A person who engages in the business of performing setups for compensation in North Carolina.

(14) Substantial defect. – Any substantial deficiency in or damage to materials or workmanship occurring in a manufactured home which has been

reasonably maintained and cared for in normal use. The term also means any structural element, utility system or component part of the manufactured home which fails to comply with the Code.

(15) Supplier. – The original producer of completed components, including refrigerators, stoves, hot water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, paneling, siding, trusses, and similar materials, which are furnished to a manufacturer or dealer for installation in the manufactured home prior to sale to a buyer. (1981, c. 952, s. 2; 1987, c. 429, ss. 4, 5, 19; 1999-393, s. 1; 2001-421, s. 2.1.; 2005-451, ss. 1, 2; 2012-56, s. 48.)

§ 143-143.10. Manufactured Housing Board created; membership; terms; meetings.

(a) There is created the North Carolina Manufactured Housing Board within the Department. The Board shall be composed of 11 members as follows:

(1) The Commissioner of Insurance or the Commissioner's designee.
(2) A manufactured home manufacturer.
(3) A manufactured home dealer.
(4) A representative of the banking and finance industry.
(5) A representative of the insurance industry.
(6) A manufactured home supplier.
(7) A set-up contractor.
(8) Two representatives of the general public.
(9) A person who is employed with a HUD-approved housing counseling agency in the State.
(10) An accountant.

The Commissioner or the Commissioner's designee shall chair the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint to the Board the representative of the banking and finance industry, the employee of a HUD-approved housing counseling agency, and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint to the Board the manufactured home supplier, the accountant, and the set-up contractor. The Commissioner shall appoint two representatives of the general public. Except for the representatives from the general public and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured and Modular Homebuilders Association. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three years. In the event of any vacancy of a position appointed by the Governor or Commissioner, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The members of the Board designated in subdivisions (8), (9), and (10) of this subsection shall have no current or previous financial interest connected with the manufactured housing industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. Fees collected by the Board under this Article shall be credited to the Insurance Regulatory Fund created under G.S. 58-6-25.

(b) In accordance with the provisions of this Part, the Board shall have the following powers and duties:

(1) To issue licenses to manufacturers, dealers, salespersons, and set-up contractors.

(2) To require that an adequate bond or other security be posted by all licensees, except manufactured housing salespersons.

(3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry, in connection with the warranty, warranty service, licensing requirements or any other provision under this Part.

(4) To adopt rules in accordance with Chapter 150B of the General Statutes as are necessary to carry out the provisions of this Part.

(5) To file against the bond posted by a licensee for warranty repairs and service on behalf of a buyer.

(6) To request that the Department of Public Safety conduct criminal history checks of applicants for licensure pursuant to G.S. 143B-944.

(7) To conduct random audits of dealer escrow or trust accounts. (1981, c. 952, s. 2; 1983, c. 717, ss. 107-109, 114; 1987, c. 429, ss. 6, 7, 19, c. 827, s. 1; 1999-393, s. 1; 2002-144, s. 4; 2003-221, s. 1; 2003-400, s. 9; 2005-451, ss. 1, 3; 2011-330, s. 47(b); 2014-100, s. 17.1(jjj); 2018-120, s. 4.8.)

§ 143-143.10A. Criminal history checks of applicants for licensure.

(a) Definitions. – The following definitions shall apply in this section:

(1) Applicant. – A person applying for initial licensure as a manufactured home salesperson or set-up contractor.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure under this Part. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) All applicants for initial licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. Applicants shall obtain criminal record reports from one or more reporting services designated by the Board to provide criminal record reports. Each applicant is required to pay the designated service for the cost of the criminal record report. In the alternative, the Board may provide to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Public Safety. The Board shall keep all information obtained pursuant to this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant's criminal history disqualifies the applicant for licensure, the Board may deny licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record check. (2003-400, s. 8; 2005-451, s. 1; 2007-416, s. 1; 2012-12, s. 2(vv); 2014-100, s. 17.1(o); 2015-181, s. 47; 2015-286, s. 2.2.)

§ 143-143.11. License required; application for license.

(a) It shall be unlawful for any manufactured home manufacturer, dealer, salesperson, or set-up contractor to engage in business as such in this State without first obtaining a license from the Board for each place of business operated by the licensee, as provided in this Part. The fact that a person is licensed by the Board as a set-up contractor or a dealer does not preempt any other licensing boards' applicable requirements for that person.

(b) Application for the license shall be made to the Board at such time, in such form, and contain information the Board requires, and shall be accompanied by the fee established by the Board. The fee shall not exceed three hundred fifty dollars ($350.00) for each license issued. In addition to the license fee, the Board may also charge an applicant a fee to cover the cost of the criminal history record check required by G.S. 143-143.10A.

(c) In the application, the Board shall require information relating to the matters set forth in G.S. 143-143.13 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All of this information shall be considered by the Board in determining the fitness of the applicant. Once the Board has determined that an applicant is fit, the Board must provide the applicant a license for each place of business operated by the applicant.

(d) All licenses shall expire, unless revoked or suspended, on June 30 of each year following the date of issue.

(e) Every licensee shall, on or before the first day of July of each year, obtain a renewal of a license for the next year by applying to the Board, completing the necessary hours of continuing education required under G.S. 143-143.11B, and paying the required renewal fee for each place of

business operated by the licensee. The renewal fee shall not exceed three hundred fifty dollars ($350.00) for each license issued. Upon failure to renew by the first day of July, a license automatically expires. The license may be renewed at any time within one year after its lapse upon payment of the renewal fee and a late filing fee. The late filing fee shall not exceed three hundred fifty dollars ($350.00).

(f) Repealed by Session Laws 2005-297, s. 1, effective August 22, 2005.

(g) Notwithstanding the provisions of subsection (a), the Board may provide by rule that a manufactured home salesperson will be allowed to engage in business during the time period after making application for a license but before such license is granted.

(h) As a prerequisite to obtaining a license under this Part, a person may be required to pass an examination prescribed by the Board that is based on the Code, this Part, and any other subject matter considered relevant by the Board. (1981, c. 952, s. 2; 1985, c. 487, s. 1; 1987, c. 429, s. 19; 1987 (Reg. Sess., 1988), c. 1039, ss. 2, 3; 1989, c. 485, s. 44; 1991, c. 644, s. 35; 1999-393, s. 1; 2003-400, s. 10; 2005-297, s. 1.; 2005-451, s. 1; 2009-451, s. 21.4.)

§ 143-143.11A. Notification of change of address, control of ownership, and bankruptcy.

(a) Every applicant for a license shall inform the Board of the applicant's business address. Every licensee shall give written notification to the Board of any change in the licensee's business address, for whatever reason, within 10 business days after the licensee moves to a new address or a change in the address takes place. A violation of this subsection shall not constitute grounds for revocation, suspension, or non-renewal of a license or for the imposition of any other penalty by the Board.

(b) Notwithstanding any other provision of law, whenever the Board is authorized or required to give notice to a licensee under this Part, the notice may be delivered personally to the licensee or sent by first-class mail to the licensee at the address provided to the Board under subsection (a) of this section. Notice shall be deemed given four days after mailing, and any Department employee may certify that notice has been given.

(c) Every person licensed under this Part, except for a person licensed as a manufactured home salesperson, shall give written notification to the Board of any change in ownership or control of the licensee's business within 30 business days after the change. A "change in ownership or control" means the sale or conveyance of the capital stock of the business or of an owner's interest in the business, which operates to place a person or group of persons, not previously in control of the business, in effective control of the business. A violation of this subsection shall not constitute grounds for revocation, suspension, or nonrenewal of a license or for the imposition of any other penalty by the Board.

(d) Upon the filing for protection under the United States Bankruptcy Code by any licensee, or by any business in which the licensee holds a position of employment, management or ownership, the licensee shall notify the Board of the filing of protection within three business days after the filing. Upon the appointment of a receiver by a court of this State for any licensee, or for any business in which the licensee holds a position of employment, management, or ownership the licensee shall notify the Board of the appointment within three business days after the appointment. (1999-393, s. 1; 2000-122, s. 9; 2005-451, s. 1.)

§ 143-143.11B. Continuing education.

(a) The Board may establish programs and requirements of continuing education for licensees, but shall not require licensees to complete more than eight credit hours of continuing

education. Before the renewal of a license, a licensee shall present evidence to the Board that the licensee has completed the required number of continuing education hours in courses approved by the Board during the two months immediately preceding the expiration of the licensee's license. No member of the Board shall provide or sponsor a continuing education course under this section while that person is serving on the Board.

(b) The Board may establish nonrefundable fees for the purpose of providing staff and resources to administer continuing education programs, and may establish nonrefundable course application fees, not to exceed one hundred fifty dollars ($150.00), for the Board's review and approval of proposed continuing education courses. The Board may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars ($75.00) for the annual renewal of course approval. The Board may also require a course sponsor to pay a fee, not to exceed five dollars ($5.00) per credit hour per licensee, for each licensee completing an approved continuing education course conducted by the sponsor. The Board may award continuing education credit for a course that has not been approved by the Board or for related educational activity and may prescribe the procedures for a licensee to submit information on the course or related educational activity for continuing education credit. The Board may charge the licensee a fee not to exceed fifty dollars ($50.00) for each course or activity submitted.

(c) The Board may adopt any reasonable rules not inconsistent with this Part to give purpose and effect to the continuing education requirement, including rules that govern:

(1) The content and subject matter of continuing education courses.
(2) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
(3) The methods of instruction.
(4) The computation of course credit.
(5) The ability to carry forward course credit from one year to another.
(6) The waiver of or variance from the continuing education requirement for hardship or other reasons.
(7) The procedures for compliance and sanctions for noncompliance.

(d) The license of any person who fails to comply with the continuing education requirements under this section shall lapse. The Board may, for good cause shown, grant extensions of time to licensees to comply with these requirements. Any licensee who, after obtaining an extension, offers evidence satisfactory to the Board that he or she has satisfactorily completed the required continuing education courses shall be deemed in compliance with this section.

(e) A manufactured home manufacturer or manufacturer is exempt from the requirements of this section. (1999-393, s. 1; 2001-421, s. 2.2; 2005-451, s. 1.)

§ 143-143.12. Bond required.

(a) A person licensed as a manufactured home salesperson shall not be required to furnish a bond, but each applicant approved by the Board for license as a manufacturer, dealer, or set-up contractor shall furnish a corporate surety bond, cash bond or fixed value equivalent in the following amounts:

(1) For a manufacturer, two thousand dollars ($2,000) per manufactured home manufactured in the prior license year, up to a maximum of one hundred thousand dollars ($100,000). When no manufactured homes

were produced in the prior year, the amount required shall be based on the estimated number of manufactured homes to be produced during the current year.

(2) For a dealer who has one place of business, the amount shall be thirty-five thousand dollars ($35,000).

(3) For a dealer who has more than one place of business, the amount shall be twenty-five thousand dollars ($25,000) for each additional place of business.

(4) For a set-up contractor, the amount shall be ten thousand dollars ($10,000).

(b) A corporate surety bond shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Part. A cash bond or fixed value equivalent shall be approved by the Board as to form and terms of deposits in order to secure the ultimate beneficiaries of the bond. A corporate surety bond shall be for a one-year period, and a new bond or a proper continuation certificate shall be delivered to the Board at the beginning of each subsequent one-year period.

(c) Any buyer of a manufactured home who suffers any loss or damage by any act of a licensee that constitutes a violation of this Part may institute an action to recover against the licensee and the surety.

(d) The Board may adopt rules to assure satisfaction of claims. (1981, c. 952, s. 2; 1985, c. 487, s. 2; 1987, c. 429, s. 19; c. 827, s. 223; 1999-393, s. 1; 2000-122, s. 8; 2005-451, s. 1.)

§ 143-143.13. Grounds for denying, suspending, or revoking licenses; civil penalties.

(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

(1) Making a material misstatement in application for license.

(2) Failing to post an adequate corporate surety bond, cash bond or fixed value equivalent.

(3) Engaging in the business of manufactured home manufacturer, dealer, salesperson, or set-up contractor without first obtaining a license from the Board.

(4) Failing to comply with the warranty service obligations and claims procedure established by this Part.

(5) Failing to comply with the set-up requirements established by this Part.

(6) Failing or refusing to account for or to pay over moneys or other valuables belonging to others that have come into licensee's possession arising out of the sale of manufactured homes.

(6a) Failing to comply with the escrow or trust account provisions of Part 2 of this Article.

(7) Using unfair methods of competition or committing unfair or deceptive acts or practices.

(8) Failing to comply with any provision of this Part.

(9) Failing to appear for a hearing before the Board or for a prehearing conference with a person or persons designated by the Board after proper

notice or failing to comply with orders of the Board issued pursuant to this Part.

(10) Employing unlicensed salespersons.

(11) Offering for sale manufactured homes manufactured or assembled by unlicensed manufacturers or selling manufactured homes to unlicensed dealers for sale to buyers in this State.

(12) Conviction of any crime listed in G.S. 143-143.10A.

(13) Having had a license revoked, suspended or denied by the Board; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this Part.

(14) Employing or contracting with any person to perform setups who is not licensed by the Board as a set-up contractor.

(15) Failure to comply with the provisions of Chapters 47G and 47H of the General Statutes.

(b) Repealed by Session Laws 1985, c. 666, s. 38.

(c) In addition to the authority to deny, suspend, or revoke a license under this Part the Board may impose a civil penalty upon any person violating the provisions of this Part. Upon a finding by the Board of a violation of this Part, the Board shall order the payment of a penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. Each day during which a violation occurs shall constitute a separate offense. The penalty shall be payable to the Board. The Board shall remit the clear proceeds of penalties provided for in this subsection to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State. Nothing in this subsection shall prevent the Board from negotiating a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty. (1981, c. 952, s. 2; 1985, c. 487, ss. 3 to 5; c. 666, s. 38; 1985 (Reg. Sess., 1986), c. 1027, s. 51; 1987, c. 429, s. 19; 1989, c. 485, s. 45; 1991, c. 644, s. 34; 1998-215, s. 92; 1999-393, s. 1; 2003-400, s. 11; 2005-451, ss. 1, 4; 2010-164, s. 5.)

§ 143-143.14. Hearings; rules.

(a) License suspensions, revocations, and renewal refusals are subject to the provisions of Chapter 150B of the General Statutes.

(b) If the Board finds that an applicant has not met the requirements for licensure, the Board shall refuse to issue the applicant a license and shall notify the applicant in writing of the denial and the grounds for the denial. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 143-143.13. Within 30 days after receipt of a notification that an application for a license has been denied, the applicant may make

a written request for a review by a member of the Department staff designated by the chair of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written request for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.

(c) The Board may adopt rules for hearings and prehearing conferences under this Part, and the rules may include provisions for prefiled evidence, the use of evidence, testimony of parties, prehearing statements, prehearing conference procedures, settlement conference procedures, discovery, subpoenas, sanctions, motions, intervention, consolidation of cases, continuances, and the rights and responsibilities of parties and witnesses. (1981, c. 952, s. 2; 1987, c. 429, s. 19; 1993, c. 504, s. 34; 1993 (Reg. Sess., 1994), c. 678, s. 34; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.15. Set-up requirements.

(a) Manufactured homes shall be set up in accordance with the standards adopted by the Commissioner.

(b) If a manufactured home is insured against damage caused by windstorm and subsequently sustains windstorm damage that indicates the manufactured home was not set up in the manner required by this section, the insurer issuing the insurance policy on the manufactured home shall not be relieved from meeting the obligations specified in the insurance policy with respect to such damage on the basis that the manufactured home was not properly set up. (1981, c. 952, s. 2; 1987, c. 429, s. 8; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.16. Warranties.

Each manufacturer, dealer and supplier of manufactured homes shall warrant each new manufactured home sold in this State in accordance with the warranty requirements prescribed by this section for a period of at least 12 months, measured from the date of delivery of the manufactured home to the buyer. The warranty requirements for each manufacturer, dealer, supplier and set-up contractor of manufactured homes are as follows:

(1) The manufacturer warrants that all structural elements, plumbing systems, heating, cooling and fuel burning systems, electrical systems, and any other components included by the manufacturer are manufactured and installed free from substantial defects.

(2) The dealer warrants:

a. That any modifications or alterations made to the manufactured home by the dealer or authorized by the dealer are free from substantial defects. Alterations or modifications made by a dealer shall relieve the manufacturer of warranty responsibility as to the item altered or modified and any resulting damage.

b. That a setup performed by the dealer on the manufactured home is performed in compliance with the Code.

c. That the setup and transportation of the manufactured home by the dealer did not result in substantial defects.

(3) The supplier warrants that any warranties generally offered in the ordinary sale of his product to consumers shall be extended to buyers of

manufactured homes. The manufacturer's warranty shall remain in effect notwithstanding the existence of a supplier's warranty.

(4) The set-up contractor warrants that the manufactured home is set up in compliance with the Code and that the setup did not result in any substantial defects. (1981, c. 952, s. 2; 1987, c. 429, s. 9; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.17. Presenting claims for warranties and substantial defects.

(a) Whenever a claim for warranty service or about a substantial defect is made to a licensee, it shall be handled as provided in this Part. The licensee shall make a record of the name and address of each claimant and the date, substance, and disposition of each claim about a substantial defect. The licensee may request that a claim be in writing, but must nevertheless record it as provided above, and may not delay service pending receipt of the written claim.

(b) When the licensee notified is not the responsible party, he shall in writing immediately notify the claimant and the responsible party of the claim. When a responsible party is asked to remedy defects, it may not fail to remedy those defects because another party may also be responsible. Nothing in this section prevents a party from obtaining compensation by way of contribution or subrogation from another responsible party in accordance with any other provision of law or contract.

(c) Within the time limits provided in this Part, the licensee shall either resolve the claim or determine that it is not justified. At any time a licensee determines that a claim for warranty service is not justified in whole or in part he shall immediately notify the claimant in writing that the claim or part of the claim is rejected and why, and shall inform the claimant that he is entitled to complain to the Board, for which a complete mailing address shall be provided. (1981, c. 952, s. 2; 1987, c. 429, s. 19; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.18. Warranty service.

(a) When a service agreement exists between or among a manufacturer, dealer and supplier to provide warranty service, the agreement shall specify which party is to remedy warranty defects. Every service agreement shall be in writing. Nothing contained in such an agreement shall relieve the responsible party, as provided by this Part, of responsibility to perform warranty service. However, any licensee undertaking by such agreement to perform the warranty service obligations of another shall thereby himself become responsible both to that other licensee and to the buyer for his failure adequately to perform as agreed.

(b) When no service agreement exists for warranty service, the responsible party as designated by this Part is responsible for remedying the warranty defect.

(c) A substantial defect shall be remedied within 45 days after the receipt of written notification from the claimant. If no written notification is given, the defect shall be remedied within 45 days after the mailing of notification by the Board, unless the claim is unreasonable or bona fide reasons exist for not remedying the defect within the 45-day period. The responsible party shall respond to the claimant in writing with a copy to the Board stating its reasons for not promptly remedying the defect and stating what further action is contemplated by the responsible party. Notwithstanding the foregoing provisions of this subsection, defects, which constitute an imminent safety hazard to life and health shall be remedied within five working days of receipt of the written notification of the warranty claim. An imminent safety hazard to life and health shall include but not be limited to (i) inadequate heating in freezing weather; (ii) failure of sanitary

facilities; (iii) electrical shock, leaking gas; or (iv) major structural failure. The Board may suspend this five-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural catastrophes.

(d) When the person remedying the defect is not the responsible party as designated by the provisions of this Part, he shall be entitled to reasonable compensation paid to him by the responsible party. Conduct that coerces or requires a nonresponsible party to perform warranty service is a violation of this Part.

(e) Warranty service shall be performed at the site at which the manufactured home is initially delivered to the buyer, except for components which can be removed for service without substantial expense or inconvenience to the buyer.

(f) Any dealer, manufacturer or supplier may complain to the Board when warranty service obligations under this Part are not being enforced. (1981, c. 952, s. 2; 1987, c. 429, ss. 17, 19; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.19. Dealer alterations.

(a) No alteration or modification shall be made to a manufactured home by a dealer after shipment from the manufacturer's plant, unless such alteration or modification is authorized by this Part or the manufacturer. The dealer shall ensure that all authorized alterations and modifications are performed, if so required, by qualified persons as defined in subsection (d). An unauthorized alteration or modification performed by a dealer or his agent or employee shall place primary warranty responsibility for the altered or modified item upon the dealer. If the manufacturer fulfills or is required to fulfill the warranty on the altered or modified item, he shall be entitled to recover damages in the amount of his cost and attorney's fee from the dealer.

(b) An unauthorized alteration or modification of a manufactured home by the owner or his agent shall relieve the manufacturer of responsibility to remedy defects caused by such alteration or modification. A statement to this effect, together with a warning specifying those alterations or modifications which should be performed only by qualified personnel in order to preserve warranty protection, shall be displayed clearly and conspicuously on the face of the warranty. Failure to display such statement shall result in warranty responsibility on the manufacturer.

(c) The Board is authorized to adopt rules in accordance with Chapter 150B of the General Statutes that define the alterations or modifications which must be made by qualified personnel. The Board may require qualified personnel only for those alterations and modifications which could substantially impair the structural integrity or safety of the manufactured home.

(d) In order to be designated as a person qualified to alter or modify a manufactured home, a person must comply with State licensing or competency requirements in skills relevant to performing alterations or modifications on manufactured homes. (1981, c. 952, s. 2; 1987, c. 429, s. 19; c. 827, s. 1; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.20. Disclosure of manner used in determining length of manufactured homes.

In any advertisement or other communication regarding the length of a manufactured home, a manufacturer or dealer shall not include the coupling mechanism in describing the length of the home. (1981, c. 952, s. 2; 2005-451, s. 1.)

§ 143-143.20A. Display of pricing on manufactured homes.

(a) If the manufacturer of a manufactured home publishes a manufacturer's suggested retail price, that price shall be displayed near the front entrance of the manufactured home.

(b) Each manufactured home dealer shall prominently display a sign and provide to each buyer a notice, developed by the North Carolina Manufactured Housing Board, containing information about the Board, including how to file a consumer complaint with the Board and the warranties and protections provided for each new manufactured home under federal and State law. (2003-400, s. 6; 2005-451, s. 1.)

§ 143-143.21: Repealed by Session Laws 1993, c. 409, s. 6.

§ 143-143.21A. Purchase agreements; buyer cancellations.

(a) A purchase agreement for a manufactured home shall include all of the following:

(1) A description of the manufactured home and all accessories included in the purchase.

(2) The purchase price for the home and all accessories.

(3) The amount of deposit or other payment toward or payment of the purchase price of the manufactured home and accessories that is made by the buyer.

(4) The date the retail purchase agreement is signed.

(5) The estimated terms of financing the purchase, if any, including the estimated interest rate, number of years financed, and monthly payment.

(6) The buyer's signature.

(7) The dealer's signature.

(b) The purchase agreement shall contain, in immediate proximity to the space reserved for the signature of the buyer and in at least ten point, all upper-case Gothic type, the following statement:

"I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT I HAVE SIGNED THIS AGREEMENT. I UNDERSTAND THAT THIS CANCELLATION MUST BE IN WRITING. IF I CANCEL THE PURCHASE AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER MAY NOT HAVE ANY OBLIGATION TO GIVE ME BACK ALL OF THE MONEY THAT I PAID THE DEALER. I UNDERSTAND ANY CHANGE TO THE TERMS OF THE PURCHASE AGREEMENT BY THE DEALER WILL CANCEL THIS AGREEMENT."

(c) At the time the deposit or other payment toward or payment for the purchase price is received by the dealer, the dealer shall give the buyer a copy of the purchase agreement and a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the purchase agreement, be easily detachable, and explain the buyer's right to cancel the purchase and how that right can be exercised.

(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within seven business days, or 15 business days when payment is by personal check, after receipt of the notice of

cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing terms, unless the financing terms are more favorable to the buyer, the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired.

(e) If the buyer cancels the purchase after the three-day cancellation period, but before the sale is completed, and if:

(1) The manufactured home is in the dealer's inventory, the dealer may retain from the deposit or other payment received from the buyer actual damages up to a maximum of ten percent (10%) of the purchase price; or

(2) The manufactured home is specially ordered from the manufacturer for the buyer, the dealer may retain actual damages up to the full amount of the buyer's deposit or other payment received from the buyer.

(f) Repealed by Session Laws 2005-451, s. 5, effective April 1, 2006. (1993, c. 409, s. 7; 1999-393, s. 1; 2003-400, s. 7; 2005-451, ss. 1, 5; 2006-259, s. 24.5.)

§ 143-143.21B. Dealer cancellation; deposit refund.

A dealer shall refund to a buyer the full amount of a deposit on the purchase of a manufactured home if the buyer has fulfilled his obligations under the purchase agreement and the dealer cancels the purchase at any time. (1998-211, s. 37; 2005-451, s. 1.)

§ 143-143.22. Inspection of service records.

The Board may inspect the service records of a manufacturer, dealer, supplier or set-up contractor relating to a written warranty claim or complaint made to the Board against the manufacturer, dealer, supplier, or set-up contractor. Every licensee shall send to the Board upon request within 10 days a copy of every document or record pertinent to any complaint or claim for service. (1981, c. 952, s. 2; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.23. Other remedies not excluded.

Nothing in this Part, rules adopted by the Board, or any action of the Board shall limit any right or remedy available to the buyer or any power or duty of the Attorney General. (1981, c. 952, s. 2; 1987, c. 429, s. 19; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.24. Engaging in business without license a Class 1 misdemeanor.

If any person shall unlawfully act as a manufactured home manufacturer, dealer, salesperson, or set-up contractor without first obtaining a license from the Board, as provided in this Part, he shall be guilty of a Class 1 misdemeanor. (1985, c. 487, s. 6; 1987, c. 429, s. 19; 1993, c. 539, s. 1010; 1994, Ex. Sess., c. 24, s. 14(c); 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.25. Staff support for Board.

The Manufactured Building Division of the Department shall provide clerical and other staff services required by the Board; and shall administer and enforce all provisions of this Part and all rules adopted under this Part, subject to the direction of the Board; except for powers and duties delegated by this Part to local units of government, other State agencies, or to any persons. (1991, c. 644, s. 36; 1999-393, s. 1; 2005-451, s. 1.)

§§ 143-143.26 through 143-143.49: Reserved for future codification purposes.

Part 2. Buyer Deposit, Escrow or Trust Accounts.

§ 143-143.50. Escrow or trust account required.

(a) Dealers shall maintain buyers' deposits in an escrow or trust account with a bank. A dealer shall not commingle any other funds with buyers' deposits in the escrow or trust account.

(b) Dealers shall notify the Board in writing when the escrow or trust account is established. The notification shall include the name and number of the account and the name and location of the bank holding the account.

(c) All buyer funds shall be placed in the escrow or trust account no later than the close of the third banking business day after receipt.

(d) Dealers shall provide buyers with a receipt for all buyer deposits received by the dealer. The receipt shall include the amount of the buyer deposit, the date the deposit was provided to the dealer, and the name and address of the bank where the buyer's funds will be deposited. (2005-451, s. 6.)

§ 143-143.51. Use of escrow or trust funds; penalty for violations.

(a) Buyer funds in the dealer's escrow or trust account shall be held for the benefit of the buyer and may only be used for purposes authorized under the contractual obligations of the dealer to the buyer. No buyer funds in the dealer's escrow or trust account may be used by the dealer until after all the terms set forth in G.S. 143-143.21A are finalized and after the three-day right of cancellation period as set forth in G.S. 143-143.21A has expired. The dealer may use buyer funds to complete the steps necessary for site preparation of property, when approved in writing in advance by the buyer. Buyer funds in the dealer's escrow or trust account shall be promptly returned to the buyers when the buyer is entitled to return of the funds in accordance with G.S. 143-143.21A.

(b) Notwithstanding any other provision of law and in addition to any other sanction the Board may impose under this Article, if the Board finds that a dealer has used a buyer's funds for a purpose that is not authorized under subsection (a) of this section or if the Board finds that a dealer has failed to place deposits in the dealer's escrow or trust account, the Board may fine the dealer or order restitution to the buyer in an amount up to the amount that the dealer misappropriated or failed to place in the account. (2005-451, s. 6.)

§ 143-143.52. Minimum requirements for dealer records for escrow or trust accounts at banks.

The records required for escrow or trust accounts maintained at a bank shall consist of the following and be maintained for a period of five years from the date of purchase:

(1) All bank receipts or deposit slips listing the source and date of receipt of all funds deposited in the account and the name of the buyer to whom the funds belong.

(2) All cancelled checks or other instruments drawn on the account, or printed digital images thereof furnished by the bank, showing the amount, date, and recipient of the disbursement.

(3) All instructions or authorizations to transfer, disburse, or withdraw funds from the escrow or trust account.

(4) All bank statements and other documents received from the bank with respect to the escrow or trust account, including notices of return or dishonor of any instrument drawn on the account against insufficient funds.

(5) A ledger containing a record of receipts and disbursements for each buyer from whom and for whom funds are received and showing the current balance of funds held in the escrow or trust account for each buyer. (2005-451, s. 6.)

§ 143-143.53. Accountings for escrow or trust funds.

Upon the request of the buyer, the dealer shall provide to the buyer a written accounting of the receipts and disbursements of all escrow or trust funds upon the complete disbursement of the escrow or trust accounts. (2005-451, s. 6.)

§ 143-143.54. Audits and record inspection.

All financial records required by this Part shall be subject to audit for cause and to random audit at the discretion of and by the Board, the Commissioner, or the Attorney General. The Board may inspect these records periodically, without prior notice and may also inspect these records whenever the Board determines that the records are pertinent to an investigation of any complaint against a licensee. The dealer shall provide written authorization to the bank that holds the escrow or trust account to release any and all requested information relative to the account to the parties authorized under this section to inspect those records. (2005-451, s. 6.)

Article 9B.

Uniform Standards Code For Manufactured Homes.

§ 143-144. Short title.

This Article shall be known and may be cited as "The Uniform Standards for Manufactured Homes Act." (1969, c. 961, s. 1; 1985, c. 487, s. 7; 1987, c. 429, s. 19; 1999-393, s. 2.)

§ 143-145. Definitions.

The following definitions apply in this Article:

(1) Act. – The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401, et seq., federal regulations adopted under the Act, and any laws enacted by the United States Congress that supersede or supplement the Act.

(2) Commissioner. – The Commissioner of Insurance of the State of North Carolina or an authorized designee of the Commissioner.

(3) Repealed by Session Laws 1999-393, s. 2.

(4) HUD. – The United States Department of Housing and Urban Development or any successor agency.

(5) Inspection department. – A North Carolina city or county building inspection department authorized by Chapter 160A or Chapter 153A of the General Statutes.

(6) Label. – The form of certification required by HUD to be permanently affixed to each transportable section of each manufactured home manufactured for sale to a purchaser in the United States to indicate that the manufactured home conforms to all applicable federal construction and safety standards.

(7) Manufactured home. – A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the Act.

For manufactured homes built before June 15, 1976, "manufactured home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. "Manufactured home" also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width.

(8) Repealed by Session Laws 1999-393, s. 2. (1969, c. 961, s. 2; 1971, c. 1172, s. 1; 1985, c. 487, s. 7; 1987, c. 429, ss. 10, 19; 1999-393, s. 2.)

§ 143-146. Statement of policy; rule-making power.

(a) Manufactured homes, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems) like other finished products having concealed vital parts may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. In the sale of manufactured homes, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this State to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of new manufactured homes, which are not so constructed as to provide reasonable safety and protection to their owners and users. This Article provides to the Commissioner all necessary authority to enable the State to obtain approval as a State Administrative Agency under the provisions of the Act.

(b) through (d) Repealed by Session Laws 1999-393, s. 2.

(e) The Commissioner may adopt rules to carry out the provisions of the Act and this Article, including rules for consumer complaint procedures and rules for the enforcement of the standards and regulations established and adopted by HUD under the Act. (1969, c. 961, s. 3; 1971,

c. 1172, s. 2; 1979, c. 558, ss. 5, 6; 1985, c. 487, s. 7; 1987, c. 429, ss. 11, 12, 18, 19; 1999-393, s. 2.)

§ 143-147. Structures built under previous standards.

The legal status of any structure built before the effective date of the Act shall not be affected by any changes made in this Article by the General Assembly. (1969, c. 961, s. 4; 1971, c. 1172, s. 3; 1985, c. 487, s. 7; 1987, c. 429, s. 19; 1999-393, s. 2.)

§ 143-148. Certain structures excluded from coverage.

The Commissioner may by rule provide for the exclusion of certain structures by certification in accordance with the Act. (1969, c. 961, s. 5; 1971, c. 1172, s. 4; 1979, c. 558, s. 3; 1987, c. 429, s. 13; 1999-393, s. 2.)

§ 143-149. Necessity for obtaining label for purposes of sale.

No person shall sell or offer for sale any manufactured home in this State that does not have a label. It is a defense to any prosecution for a violation of this section if a person shows that a certificate of title for the manufactured home as required by G.S. 20-52 was obtained before June 15, 1976, or produces other satisfactory evidence on file with the North Carolina Division of Motor Vehicles that the manufactured home was manufactured before June 15, 1976. (1971, c. 1172, s. 5; 1985, c. 487, s. 7; 1999-393, s. 2.)

§ 143-150. No electricity to be furnished units not in compliance.

It is unlawful for any person to furnish electricity for use in any manufactured home without first ascertaining that the manufactured home and its electrical supply has been inspected pursuant to G.S. 143-139 by the inspection authority having jurisdiction and found to comply with the requirements of the State Electrical Code. The certificate of compliance issued by the inspection jurisdiction shall be accepted as evidence of compliance. (1971, c. 1172, s. 6; 1985, c. 487, s. 7; 1993, c. 504, s. 35; 1999-393, s. 2.)

§ 143-151. Penalties.

(a) Any person who is found by the Commissioner to have violated the provisions of the Act, this Article, or any rules adopted under this Article, shall be liable for a civil penalty not to exceed one thousand dollars ($1,000) for each violation. Each violation shall constitute a separate violation for each manufactured home or for each failure or refusal to allow or perform an act required by the Act, this Article, or any rules adopted under this Article. The maximum civil penalty may not exceed one million dollars ($1,000,000) for any related series of violations occurring within one year after the date of the first violation. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was willful, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Any individual, or a director, officer or agent of a corporation who knowingly and willfully violates the Act, this Article, or any rules adopted under this Article in a manner that threatens the health or safety of any purchaser is guilty of a Class I felony. (1971, c. 1172, s. 7;

1979, c. 558, s. 1; 1985, c. 487, s. 7; 1987, c. 429, s. 19; 1993, c. 539, s. 1011; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 93; 1999-393, s. 2.)

§ 143-151.1. Enforcement.

The Commissioner may initiate any appropriate action or proceeding to prevent, restrain, or correct any violation of the Act, this Article, or any rules adopted under this Article. The Commissioner, or any of his deputies or employees, upon showing proper credentials and in the discharge of their duties under this Article, or the Act, is authorized at reasonable hours and without advance notice to enter and inspect all factories, warehouses, or establishments in this State in which manufactured homes are manufactured, stored or held for sale. (1971, c. 1172, s. 8; 1979, c. 558, s. 2; 1985, c. 487, s. 7; 1987, c. 429, ss. 15, 18, 19; 1999-393, s. 2.)

§ 143-151.2. Fees.

(a) The Commissioner shall establish a monitoring inspection fee in an amount required by the Secretary of HUD. This monitoring inspection fee shall be an amount paid by each manufactured home manufacturer in this State for each manufactured home produced by the manufacturer in this State.

(b) The monitoring inspection fee shall be paid by the manufacturer to the Secretary of HUD or the Secretary's agent. (1979, c. 558, s. 4; 1985, c. 487, s. 7; 1987, c. 429, s. 18; 1999-393, s. 2.)

§ 143-151.3. Reports.

Each manufacturer, distributor, and dealer of manufactured homes shall establish and maintain such records, make such reports, and provide such information as the Commissioner or the Secretary of HUD may reasonably require to be able to determine whether the manufacturer, distributor, or dealer has acted or is acting in compliance with this Article, or the Act and shall, upon request of a person designated by the Commissioner or the Secretary of HUD, permit the person to inspect appropriate books, papers, records and documents relevant to determining whether the manufacturer, distributor, or dealer has acted or is acting in compliance with this Article or the Act, and any rules adopted by the Commissioner under this Article. (1979, c. 558, s. 4; 1985, c. 487, s. 7; 1987, c. 429, ss. 18, 19; 1999-393, s. 2.)

§ 143-151.4. Notification of defects and correction procedures.

Every manufacturer of manufactured homes shall provide for notification and correction procedures in any manufactured home produced by the manufacturer in accordance with the Act, this Article, and any rules adopted by the Commissioner. (1979, c. 558, s. 4; 1985, c. 487, s. 7; 1987, c. 429, s. 14; 1999-393, s. 2.)

§ 143-151.5. Prohibited acts.

(a) No person shall:

(1) Manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into the United States, any manufactured home that is manufactured on or after the effective date of any applicable manufactured home construction and safety standard under the Act or this Article and that does not comply with the standard, except as provided in subsections (b), (c), and (d) of this section.

(2) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under the Act or this Article.

(3) Fail to furnish notification of any defect as required by the Act or this Article.

(4) Fail to issue a label or issue a label if the person in the exercise of due care has reason to know that the label is false or misleading in a material respect.

(5) Fail to comply with a rule adopted or an order issued by the Commissioner under this Article.

(6) Issue a certification pursuant to G.S. 143-148 if the person in the exercise of due care has reason to know that the certification is false or misleading in a material respect.

(b) (1) Subdivision (a)(1) of this section does not apply to the sale, the offer for sale, or the introduction or delivery of any manufactured home after the first purchase of it in good faith for purposes other than resale.

(2) Subdivision (a)(1) of this section does not apply to any person who establishes that he did not have reason to know in the exercise of due care that the manufactured home was not in conformity with applicable manufactured home construction and safety standards.

(c) Subdivision (a)(1) of this section shall not apply to any person who, before the first purchase, holds a certificate of compliance issued by the manufacturer or importer of the manufactured home to the effect that the manufactured home conforms to all applicable manufactured home construction and safety standards, unless the person knows that the manufactured home does not so conform. (1979, c. 558, s. 4; 1985, c. 487, s. 7; 1987, c. 429, ss. 16, 19; 1999-393, s. 2.)

§ 143-151.6. Reserved for future codification purposes.

§ 143-151.7. Reserved for future codification purposes.

Article 9C.

North Carolina Code Officials Qualification Board.

§ 143-151.8. Definitions.

(a) As used in this Article, unless the context otherwise requires:

(1) "Board" means the North Carolina Code Officials Qualification Board.

(2) "Code" means the North Carolina State Building Code and related local building rules approved by the Building Code Council enacted, adopted or approved under G.S. 143-138, any resolution adopted by a federally recognized Indian Tribe under G.S. 153A-350.1 in which the Tribe adopts the North Carolina State Building Code and related local building rules, and the standards adopted by the Commissioner of Insurance under G.S. 143-143.15(a).

(3) "Code enforcement" means the examination and approval of plans and specifications, or the inspection of the manner of construction,

workmanship, and materials for construction of buildings and structures and components thereof, or the enforcement of fire code regulations as an employee of the State or local government or as an employee of a federally recognized Indian Tribe employed to perform inspections on tribal lands under G.S. 153A-350.1, as an individual contracting with the State or a local government or a federally recognized Indian Tribe who performs inspections on tribal lands under G.S. 153A-350.1 to conduct inspections, or as an individual who is employed by a company contracting with a county or a city to conduct inspections, except an employee of the State Department of Labor engaged in the administration and enforcement of those sections of the Code which pertain to boilers and elevators, to assure compliance with the State Building Code and related local building rules.

(4) "Local inspection department" means the agency or agencies of local government, or any government agency of a federally recognized Indian Tribe under G.S. 153A-350.1, with authority to make inspections of buildings and to enforce the Code and other laws, ordinances, and rules enacted by the State and the local government or a federally recognized Indian Tribe under G.S. 153A-350.1, which establish standards and requirements applicable to the construction, alteration, repair, or demolition of buildings, and conditions that may create hazards of fire, explosion, or related hazards.

(5) "Qualified Code-enforcement official" means a person qualified under this Article to engage in the practice of Code enforcement.

(b) For purposes of this Article, the population of a city or county shall be determined according to the most current federal census, unless otherwise specified.

(c) For purposes of this Article, "willful misconduct, gross negligence, or gross incompetence" in addition to the meaning of those terms under other provisions of the General Statutes or at common law, shall include any of the following:

(1) The enforcement of a Code requirement applicable to a certain area or set of circumstances in other areas or circumstances not specified in the requirement.

(2) For an alternative design or construction method that has been appealed under G.S. 143-140.1 and found by the Department of Insurance to comply with the Code, to refuse to accept the decision by the Department to allow that alternative design or construction method under the conditions or circumstances set forth in the Department's decision for that appeal.

(3) For an alternative construction method currently included in the Building Code, to refuse to allow the alternative method under the conditions or circumstances set forth in the Code for that alternative method.

(4) The enforcement of a requirement that is more stringent than or otherwise exceeds the Code requirement.

(5) To refuse to implement or adhere to an interpretation of the Building Code issued by the Building Code Council or the Department of Insurance.
(6) The habitual failure to provide requested inspections in a timely manner.
(7) Enforcement of a Code official's preference in the method or manner of installation of heating ventilation and air-conditioning units, appliances, or equipment that is not required by the State Building Code and is in contradiction of a manufacturer's installation instructions or specifications. (1977, c. 531, s. 1; 1987, c. 827, ss. 224, 225; 1989, c. 681, s. 15; 1993, c. 232, s. 4.1; 1999-78, s. 2; 1999-372, s. 5; 2001-421, s. 2.4; 2015-145, s. 3(a); 2018-29, s. 9.)

§ 143-151.9. North Carolina Code Officials Qualification Board established; members; terms; vacancies.

(a) There is hereby established the North Carolina Code Officials Qualification Board in the Department of Insurance. The Board shall be composed of 20 members appointed as follows:

(1) One member who is a city or county manager;
(2) Two members, one of whom is an elected official representing a city over 5,000 population and one of whom is an elected official representing a city under 5,000 population;
(3) Two members, one of whom is an elected official representing a county over 40,000 population and one of whom is an elected official representing a county under 40,000 population;
(4) Two members serving as building officials with the responsibility for administering building, plumbing, electrical and heating codes, one of whom serves a county and one of whom serves a city;
(5) One member who is a registered architect;
(6) One member who is a registered engineer;
(7) Two members who are licensed general contractors, at least one of whom specializes in residential construction;
(8) One member who is a licensed electrical contractor;
(9) One member who is a licensed plumbing or heating contractor;
(10) One member selected from the faculty of the North Carolina State University School of Engineering and one member selected from the faculty of the School of Engineering of the North Carolina Agricultural and Technical State University;
(11) One member selected from the faculty of the School of Government at the University of North Carolina at Chapel Hill;
(12) One member selected from the Community Colleges System Office;
(13) One member selected from the Division of Engineering and Building Codes in the Department of Insurance; and,

(14) One member who is a local government fire prevention inspector and one member who is a citizen of the State.

The various categories shall be appointed as follows: (1), (2), (3), and (14) by the Governor; (4), (5), and (6) by the General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121; (7), (8), and (9) by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; (10) by the deans of the respective schools of engineering of the named universities; (11) by the Dean of the School of Government at the University of North Carolina at Chapel Hill; (12) by the President of the Community Colleges System; and (13) by the Commissioner of Insurance.

(b) The members shall be appointed for staggered terms and the initial appointments shall be made prior to September 1, 1977, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: the members from subdivisions (1), (6) and (10) of subsection (a), and one member from subdivision (3).

For the terms of two years: the member from subdivision (11) of subsection (a), one member from subdivision (2), one member from subdivision (4), one member from subdivision (7), and one member from subdivision (14).

For the terms of three years: the members from subdivisions (8) and (12) of subsection (a), one member from subdivision (2), one member from subdivision (4), and one member from subdivision (14).

For the terms of four years: the members from subdivision (5), (9) and (13) of subsection (a), one member from subdivision (3), and one member from subdivision (7).

Thereafter, as the term of each member expires, his successor shall be appointed for a term of four years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the Governor.

Members of the Board who are public officers shall serve ex officio and shall perform their duties on the Board in addition to the duties of their office.

(c) Vacancies in the Board occurring for any reason shall be filled for the unexpired term by the person making the appointment. (1977, c. 531, s. 1; 1987, c. 564, s. 28; 1989, c. 681, s. 16; 1995, c. 490, s. 12(a); 1999-84, s. 22; 2006-264, s. 29(m).)

§ 143-151.10. Compensation.

Members of the Board who are State officers or employees shall receive no salary for serving on the Board, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Board who are full-time salaried public officers or employees other than State officers or employees shall receive no salary for serving on the Board, but shall be reimbursed for subsistence and travel expenses in accordance with G.S. 138-5(a)(2) and (3). All other members of the Board shall receive compensation and reimbursement for expenses in accordance with G.S. 138-5(a). (1977, c. 531, s. 1.)

§ 143-151.11. Chairman; vice-chairman; other officers; meetings; reports.

(a) The members of the Board shall select one of their members as chairman upon its creation, and shall select the chairman each July 1 thereafter.

(b) The Board shall select a vice-chairman and such other officers and committee chairmen from among its members, as it deems desirable, at the first regular meeting of the Board after its creation and at the first regular meeting after July 1 of each year thereafter. Provided, nothing in this subsection shall prevent the creation or abolition of committees or offices of the Board, other than the office of vice-chairman, as the need may arise at any time during the year.

(c) The Board shall hold at least four regular meetings per year upon the call of the chairman. Special meetings shall be held upon the call of the chairman or the vice-chairman, or upon the written request of four members of the Board.

(d) The activities and recommendations of the Board with respect to standards for Code officials training and certification shall be set forth in regular and special reports made by the Board. Additionally, the Board shall present special reports and recommendations to the Governor or the General Assembly, or both, as the need may arise or as the Governor or the General Assembly may request. (1977, c. 531, s. 1.)

§ 143-151.12. Powers.

In addition to powers conferred upon the Board elsewhere in this Article, the Board shall have the power to:

(1) Adopt rules necessary to administer this Article;

(1a) Require State agencies, local inspection departments, and local governing bodies to submit reports and information about the employment, education, and training of Code-enforcement officials;

(2) Establish minimum standards for employment as a Code-enforcement official: (i) in probationary or temporary status, and (ii) in permanent positions;

(3) Certify persons as being qualified under the provisions of this Article to be Code-enforcement officials, including persons employed by a federally recognized Indian Tribe to perform inspections on tribal lands under G.S. 153A-350.1;

(4) Consult and cooperate with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, junior colleges, community colleges and other institutions concerning the development of Code-enforcement training schools and programs or courses of instruction;

(5) Establish minimum standards and levels of education or equivalent experience for all Code-enforcement instructors, teachers or professors;

(6) Conduct and encourage research by public and private agencies which shall be designed to improve education and training in the administration of Code enforcement;

(7) Adopt and amend bylaws, consistent with law, for its internal management and control; appoint such advisory committees as it may

deem necessary; and enter into contracts and do such other things as may be necessary and incidental to the exercise of its authority pursuant to this Article; and,

(8) Make recommendations concerning any matters within its purview pursuant to this Article; [and]

(9) Establish within the Department of Insurance a marketplace pool of qualified Code-enforcement officials available for the following purposes:

a. When requested by the Insurance Commissioner, to assist in the discharge of the Commissioner's duty under G.S. 143-139 to supervise, administer, and enforce the North Carolina State Building Code.

b. When requested by local inspection departments, to assist in Code enforcement. (1977, c. 531, s. 1; 1987, c. 564, s. 15; c. 827, s. 226; 1999-78, s. 3; 2018-29, s. 2(a).)

§ 143-151.13. Required standards and certificates for Code-enforcement officials.

(a) No person shall engage in Code enforcement under this Article unless that person possesses one of the following types of certificates, currently valid, issued by the Board attesting to that person's qualifications to engage in Code enforcement: (i) a standard certificate; (ii) a limited certificate provided for in subsection (c) of this section; or (iii) a probationary certificate provided for in subsection (d) of this section. To obtain a standard certificate, a person must pass an examination, as prescribed by the Board or by a contracting party under G.S. 143-151.16(d), that is based on the North Carolina State Building Code and administrative procedures required for Code enforcement. The Board may issue a standard certificate of qualification to each person who successfully completes the examination. The certificate authorizes that person to engage in Code enforcement and to practice as a qualified Code-enforcement official in North Carolina. The certificate of qualification shall bear the signatures of the chairman and secretary of the Board.

(b) The Board shall issue one or more standard certificates to each Code-enforcement official demonstrating the qualifications set forth in subsection (b1) of this section. Standard certificates are available for each of the following types of qualified Code-enforcement officials:

(1) Building inspector.

(2) Electrical inspector.

(3) Mechanical inspector.

(4) Plumbing inspector.

(5) Fire inspector.

(b1) The holder of a standard certificate may practice Code enforcement only within the inspection area and level described upon the certificate issued by the Board. A Code-enforcement official may qualify and hold one or more certificates. These certificates may be for different levels in different types of positions as defined in this section and in rules adopted by the Board.

(b2) A Code-enforcement official holding a certificate indicating a specified level of proficiency in a particular type of position may hold a position calling for that type of qualification anywhere in the State. With respect to all types of Code-enforcement officials, those with Level I, Level II, or Level III certificates shall be qualified to inspect and approve only those types and sizes of buildings as specified in rules adopted by the Board.

(c) A Code-enforcement official holding office as of the date specified in this subsection for the county or municipality by which he is employed, shall not be required to possess a standard certificate as a condition of tenure or continued employment but shall be required to complete such in-service training as may be prescribed by the Board. At the earliest practicable date, such official shall receive from the Board a limited certificate qualifying him to engage in Code enforcement at the level, in the particular type of position, and within the governmental jurisdiction in which he is employed. The limited certificate shall be valid only as an authorization for the official to continue in the position he held on the applicable date and shall become invalid if he does not complete in-service training within two years following the applicable date in the schedule below, according to the governmental jurisdiction's population as published in the 1970 U.S. Census:

Counties and Municipalities over 75,000 population – July 1, 1979
Counties and Municipalities between 50,001 and 75,000 – July 1, 1981
Counties and Municipalities between 25,001 and 50,000 – July 1, 1983
Counties and Municipalities 25,000 and under – July 1, 1985
All fire prevention inspectors holding office – July 1, 1989. Fire prevention inspectors have until July 1, 1993, to complete in-service training.

An official holding a limited certificate can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position.

(d) The Board may provide for the issuance of probationary or temporary certificates valid for such period (not less than one year nor more than three years) as specified by the Board's rules, or until June 30, 1983, whichever is later, to any Code-enforcement official newly employed or newly promoted who lacks the qualifications prescribed by the Board as prerequisite to applying for a standard certificate under subsection (a). No official may have a probationary or temporary certificate extended beyond the specified period by renewal or otherwise. The Board may provide for appropriate levels of probationary or temporary certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, his supervision on a consulting or advisory basis, or other matters as the Board may deem necessary to protect the public safety and health.

(e) The Board shall, without requiring an examination, issue a standard certificate to any person who is currently certified as a county electrical inspector pursuant to G.S. 153A-351. The certificate issued by the Board shall authorize the person to serve at the electrical inspector level approved by the Commissioner of Insurance in G.S. 153A-351.

(f) The Board shall issue a standard certificate to any person who is currently licensed to practice as a(n):

(1) Architect, registered pursuant to Chapter 83A;

(2) General contractor, licensed pursuant to Article 1 of Chapter 87;
(3) Plumbing or heating contractor, licensed pursuant to Article 2 of Chapter 87;
(4) Electrical contractor, licensed pursuant to Article 4 of Chapter 87; or,
(5) Professional engineer, registered pursuant to Chapter 89C;

provided the person successfully completes a short course, as prescribed by the Board, relating to the State Building Code regulations and Code-enforcement administration. The standard certificate shall authorize the person to practice as a qualified Code-enforcement official in a particular type of position at the level determined by the Board, based on the type of license or registration held in any profession specified above. (1977, c. 531, s. 1; 1979, cc. 521, 829; 1983, c. 90; 1987, c. 827, ss. 225, 227; 1989, c. 681, s. 17; 1989 (Reg. Sess., 1990), c. 1021, s. 5; 1991, c. 133, s. 1; 2007-120, s. 1; 2008-124, s. 8.1.)

§ 143-151.13A. Professional development program for officials.

(a) As used in this section, "official" means a qualified Code-enforcement official as that term is defined in G.S. 143-151.8.

(b) The Board may establish professional development requirements for officials as a condition of the renewal or reactivation of their certificates. The purposes of these professional development requirements are to assist officials in maintaining professional competence in their enforcement of the Code and to assure the health, safety, and welfare of the citizens of North Carolina. An official subject to this section shall present evidence to the Board at each certificate renewal after initial certification, that during the 12 months before the certificate expiration date, the official has completed the required number of credit hours in courses approved by the Board. Annual continuing education hour requirements shall be determined by the Board but shall not be more than six credit hours.

(c) The Board may require an individual who earns a certificate under programs established in G.S. 143-151.13 to complete professional development courses, not to exceed six hours in each technical area of certification, within one year after that individual is first employed by a city or county inspection department.

(d) As a condition of reactivating a standard or limited certificate, the Board may require the completion of professional development courses within one year after reemployment as an official as follows:

(1) An individual who has been on inactive status for more than two years and who has not been continuously employed by a city or county inspection department during the period of inactive status shall complete professional development courses not to exceed six hours for each technical area in which the individual is certified.
(2) An individual who has been on inactive status for more than two years and who has been continuously employed by a city or county inspection department during the period of inactive status shall complete professional development courses not to exceed three hours for each technical area in which the individual is certified.

(3) An individual who has been on inactive status for two years or less shall complete professional development courses not to exceed two hours for each technical area in which the individual is certified.

(e) The Board may, for good cause shown, grant extensions of time to officials to comply with these requirements. An official who, after obtaining an extension under this subsection, offers evidence satisfactory to the Board that the official has satisfactorily completed the required professional development courses, is in compliance with this section.

(f) The Board may adopt rules to implement this section, including rules that govern:

(1) The content and subject matter of professional development courses.
(2) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
(3) The methods of instruction.
(4) The computation of course credit.
(5) The ability to carry-forward course credit from one year to another.
(6) The waiver of or variance from the professional development required for hardship or other reasons.
(7) The procedures for compliance and sanctions for noncompliance. (2005-102, s. 1; 2018-29, s. 8.)

§ 143-151.14. Comity.

(a) The Board may, without requiring an examination, grant a standard certificate as a qualified Code-enforcement official for a particular type of position and level to any person who, at the time of application, is certified as a qualified Code-enforcement official in good standing by a similar board of another state, district or territory where standards are acceptable to the Board and not lower than those required by this Article for a similar type of position and level in this State.

(b) The Board may, without requiring an examination, grant a standard certificate as a qualified Code-enforcement official for a particular type of position and level to any person who, at the time of application, is certified as a qualified Code-enforcement official in good standing by the International Code Council where standards and examination are acceptable to the Board and not lower than those required by this Article for a type of position and level in this State.

(c) The certificates granted under subsections (a) and (b) of this section shall expire after three years unless within that time period the holder completes a short course, as prescribed by the Board, relating to the State Building Code regulations and Code-enforcement administration.

(d) A fee of not more than twenty dollars ($20.00), as determined by the Board, must be paid by any applicant to the Board for the issuance of a certificate under this section. The provisions of G.S. 143-151.16(b) relating to renewal fees and late renewals shall apply to every person granted a standard certificate in accordance with this section. (1977, c. 531, s. 1; 2007-120, s. 2; 2018-29, s. 7.)

§ 143-151.15. Return of certificate to Board; reissuance by Board.

A certificate issued by the Board under this Article is valid as long as the person certified is employed by the State of North Carolina or any political subdivision thereof as a Code-enforcement official, or is employed by a federally recognized Indian Tribe to perform inspections on tribal lands under G.S. 153A-350.1 as a Code-enforcement official. When the person certified leaves that employment for any reason, he shall return the certificate to the Board. If the person subsequently obtains employment as a Code-enforcement official in any governmental jurisdiction described above, the Board may reissue the certificate to him. The provisions of G.S. 143-151.16(b) relating to renewal fees and late renewals shall apply, if appropriate. The provisions of G.S. 143-151.16(c) shall not apply. This section does not affect the Board's powers under G.S. 143-151.17. (1977, c. 531, s. 1; 1993 (Reg. Sess., 1994), c. 678, s. 35; 1999-78, s. 4.)

§ 143-151.16. Certification fees; renewal of certificates; examination fees.

(a) The Board shall establish a schedule of fees to be paid by each applicant for certification as a qualified Code-enforcement official. Such fee shall not exceed twenty dollars ($20.00) for each applicant.

(b) A certificate, other than a probationary certificate, as a qualified Code-enforcement official issued pursuant to the provisions of this Article must be renewed annually on or before the first day of July. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed ten dollars ($10.00). The Board is authorized to charge an extra four dollar ($4.00) late renewal fee for renewals made after the first day of July each year.

(c) Any person who fails to renew his certificate for a period of two consecutive years may be required by the Board to take and pass the same examination as unlicensed applicants before allowing such person to renew his certificate.

(d) The Board may contract with persons for the development and administration of the examinations required by G.S. 143-151.13(a), for course development related to the examinations, for review of a particular applicant's examination, and for other related services. The person with whom the Board contracts may charge applicants a reasonable fee for the costs associated with the development and administration of the examinations, for course development related to the examinations, for review of the applicant's examinations, and for other related services. The fee shall be agreed to by the Board and the other contracting party. The amount of the fee under this subsection shall not exceed one hundred seventy-five dollars ($175.00). Contracts for the development and administration of the examinations, for course development related to the examinations, and for review of examinations shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 15 of Chapter 143B of the General Statutes. However, the Board shall: (i) submit all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all proposed contracts to be

awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Board may audit the records of the contractor during and after the term of the contract to verify accounts and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose.

(d) The Board may contract with persons for the development and administration of the examinations required by G.S. 143-151.13(a), for course development related to the examinations, for review of a particular applicant's examination, and for other related services. The person with whom the Board contracts may charge applicants a reasonable fee for the costs associated with the development and administration of the examinations, for course development related to the examinations, for review of the applicant's examinations, and for other related services. The fee shall be agreed to by the Board and the other contracting party. The amount of the fee under this subsection shall not exceed one hundred seventy-five dollars ($175.00). Contracts for the development and administration of the examinations, for course development related to the examinations, and for review of examinations shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 14 of Chapter 143B of the General Statutes. However, the Board shall: (i) submit all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all proposed contracts to be awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Board may audit the records of the contractor during and after the term of the contract to verify accounts and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose. (1977, c. 531, s. 1; 2005-289, s. 1; 2008-124, s. 8.2; 2009-451, s. 21.3; 2010-194, s. 25; 2011-326, s. 15(z); 2015-241, s. 7A.4(v).)

§ 143-151.17. Grounds for disciplinary actions; investigation; administrative procedures.

(a) The Board shall have the power to suspend any or all certificates, revoke any or all certificates, demote any or all certificates to a lower level, or refuse to grant any certificate issued under the provisions of this Article to any person who:

(1) Has been convicted of a felony against this State or the United States, or convicted of a felony in another state that would also be a felony if it had been committed in this State;

(2) Has obtained certification through fraud, deceit, or perjury;

(3) Has knowingly aided or abetted any person practicing contrary to the provisions of this Article or the State Building Code or any building codes adopted by a federally recognized Indian Tribe under G.S. 153A-350.1;

(4) Has defrauded the public or attempted to do so;

(5) Has affixed his signature to a report of inspection or other instrument of service if no inspection has been made by him or under his immediate and responsible direction; or,

(6) Has been guilty of willful misconduct, gross negligence or gross incompetence.

(b) The Board may investigate the actions of any qualified Code-enforcement official or applicant upon the verified complaint in writing of any person alleging a violation of subsection (a) of this section. The Board may suspend, revoke, or demote to a lower level any certificate of any qualified Code-enforcement official and refuse to grant a certificate to any applicant, whom it finds to have been guilty of one or more of the actions set out in subsection (a) as grounds for disciplinary action.

(c) A denial, suspension, revocation, or demotion to a lower level of a certificate issued under this Article shall be made in accordance with Chapter 150B of the General Statutes.

(d) The Board may deny an application for a certificate for any of the grounds that are described in subsection (a) of this section. Within 30 days after receipt of a notification that an application for a certificate has been denied, the applicant may make a written request for a review by a committee designated by the chairman of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written request for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.

(e) The provisions of this section shall apply to Code-enforcement officials and applicants who are employed or seek to be employed by a federally recognized Indian Tribe to perform inspections on tribal lands under G.S. 153A-350.1. (1977, c. 531, s. 1; 1987, c. 827, s. 228; 1993, c. 504, s. 36; 1993 (Reg. Sess., 1994), c. 678, s. 36; 1999-78, s. 5; 2007-120, s. 3.)

§ 143-151.18. Violations; penalty; injunction.

On and after July 1, 1979, it shall be unlawful for any person to represent himself as a qualified Code-enforcement official who does not hold a currently valid certificate of qualification issued by the Board. Further, it shall be unlawful for any person to practice Code enforcement except as allowed by any currently valid certificate issued to that person by the Board. Any person violating any of the provisions of this Article shall be guilty of a Class 1 misdemeanor. The Board is authorized to apply to any judge of the superior court for an injunction in order to prevent any violation or threatened violation of the provisions of this Article. (1977, c. 531, s. 1; 1993, c. 539, s. 1012; 1994, Ex. Sess., c. 24, s. 14(c); 2007-120, s. 4.)

§ 143-151.19. Administration.

(a) The Division of Engineering and Building Codes in the Department of Insurance shall provide clerical and other staff services required by the Board, and shall administer

and enforce all provisions of this Article and all rules promulgated pursuant to this Article, subject to the direction of the Board, except as delegated by this Article to local units of government, other State agencies, corporations, or individuals.

(b) The Board shall make copies of this Article and the rules adopted under this Article available to the public at a price determined by the Board.

(c) The Board shall keep current a record of the names and addresses of all qualified Code-enforcement officials and additional personal data as the Board deems necessary. The Board annually shall publish a list of all currently certified Code-enforcement officials.

(d) Each certificate issued by the Board shall contain such identifying information as the Board requires.

(e) The Board shall issue a duplicate certificate to practice as a qualified Code-enforcement official in place of one which has been lost, destroyed, or mutilated upon proper application and payment of a fee to be determined by the Board. (1977, c. 531, s. 1; 1987, c. 827, ss. 224, 229.)

§ 143-151.20. Donations and appropriations.

(a) In addition to appropriations made by the General Assembly, the Board may accept for any of its purposes and functions under this Article any and all donations, both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize, disburse and transfer the same, subject to the approval of the Council of State. Any arrangements pursuant to this section shall be detailed in the next regular report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received by the Board pursuant to this section shall be deposited in the State treasury to the account of the Board.

(b) The Board may provide grants as a reimbursement for actual expenses incurred by the State or political subdivision thereof for the provisions of training programs of officials from other jurisdictions within the State. The Board, by rules, shall provide for the administration of the grant program authorized herein. In promulgating such rules, the Board shall promote the most efficient and economical program of Code-enforcement training, including the maximum utilization of existing facilities and programs for the purpose of avoiding duplication. (1977, c. 531, s. 1; 1987, c. 827, s. 224.)

§ 143-151.21. Disposition of fees.

Fees collected by the Commissioner under this Article shall be credited to the Insurance Regulatory Fund created under G.S. 58-6-25. (1991, c. 689, s. 295; 2003-221, s. 10.)

§§ 143-151.22 through 143-151.25. Reserved for future codification purposes.

Article 9D.

Enforcement of Building Code Insulation and Energy Utilization Standards.

§§ 143-151.26 through 143-151.41. Repealed by Session Laws 1999-393, s. 3, effective August 4, 1999.

Article 9E.

Master Electrical and Natural Gas Meters Prohibited.

§ 143-151.42. Prohibition of master meters for electric and natural gas service.

(a) From and after September 1, 1977, in order that each occupant of an apartment or other individual dwelling unit may be responsible for his own conservation of electricity and gas, it shall be unlawful for any new residential building, as hereinafter defined, to be served by a master meter for electric service or natural gas service. Each individual dwelling unit shall have individual electric service with a separate electric meter and, if it has natural gas, individual natural gas service with a separate natural gas meter, which service and meters shall be in the name of the tenant or other occupant of said apartment or other dwelling unit. No electric supplier or natural gas supplier, whether regulated public utility or municipal corporation or electric membership corporation supplying said utility service, shall connect any residential building for electric service or natural gas service through a master meter, and said electric or natural gas supplier shall serve each said apartment or dwelling unit by separate service and separate meter and shall bill and charge each individual occupant of said separate apartment or dwelling unit for said electric or natural gas service. A new residential building is hereby defined for the purposes of this section as any building for which a building permit is issued on or after September 1, 1977, which includes two or more apartments or other family dwelling units. Provided, however, that any owner or builder of a multi-unit residential building who desires to provide central heat or air conditioning or central hot water from a central furnace, air conditioner or hot water heater which incorporates solar assistance or other designs which accomplish greater energy conservation than separate heat, hot water, or air conditioning for each dwelling unit, may apply to the North Carolina Utilities Commission for approval of said central heat, air conditioning or hot water system, which may include a central meter for electricity or gas used in said central system, and the Utilities Commission shall promptly consider said application and approve it for such central meters if energy is conserved by said design. This section shall apply to any dwelling unit normally rented or leased for a minimum period of one month or longer, including apartments, condominiums and townhouses, but shall not apply to hotels, motels, hotels or motels that have been converted into condominiums, dormitories, rooming houses or nursing homes, or homes for the elderly.

(b) The provisions of this section requiring that service and meters for each individual dwelling unit be in the name of the tenant or other occupant of the apartment or other dwelling unit shall not apply in either of the following circumstances:

(1) The Utilities Commission has approved an application under G.S. 62-110(h).

(2) The tenant and landlord have agreed in the lease that the cost of the electric service or natural gas service or both shall be included in the

rental payments and the service shall be in the name of the landlord. (1977, c. 792, s. 9; 2007-98, s. 1; 2011-252, s. 5; 2013-168, s. 1.)

Article 9F.

North Carolina Home Inspector Licensure Board.

§ 143-151.43. Short title.

This Article is the Home Inspector Licensure Act and may be cited by that name. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.44. Purpose.

This Article safeguards the public health, safety, and welfare and protects the public from being harmed by unqualified persons by regulating the use of the title "Licensed Home Inspector" and by providing for the licensure and regulation of those who perform home inspections for compensation. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.45. Definitions.

The following definitions apply in this Article:

(1) Repealed by Session Laws 2009-509, s. 3.3, effective October 1, 2013. See note.

(2) Board. – The North Carolina Home Inspector Licensure Board.

(3) Compensation. – A fee or anything else of value.

(4) Home inspection. – A written evaluation of two or more of the following components of a residential building: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior and interior components, or any other related residential housing component.

(5) Home inspector. – An individual who engages in the business of performing home inspections for compensation.

(6) Residential building. – A structure intended to be, or that is in fact, used as a residence by one or more individuals. (1993 (Reg. Sess., 1994), c. 724, s. 1; 1998-211, s. 33; 2009-509, s. 3.3.)

§ 143-151.46. North Carolina Home Inspector Licensure Board established; members; terms; vacancies.

(a) Membership. — The North Carolina Home Inspector Licensure Board is established in the Department of Insurance. The Board shall be composed of the Commissioner of Insurance or the Commissioner's designee and seven additional members appointed as follows:

(1) A public member who is not actively engaged in one of the professional categories in subdivisions (2) through (4) of this subsection, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(2) Four home inspectors, two of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and one of whom shall be appointed by the Governor.

(3) A licensed general contractor appointed by the Governor upon the recommendation of the North Carolina Home Builders Association.

(4) A licensed real estate broker appointed by the Governor upon the recommendation of the North Carolina Association of Realtors.

All members of the Board must be citizens of the State. Appointments by the General Assembly must be made in accordance with G.S. 120-121.

(b) Terms. — The members shall be appointed for staggered terms and the initial appointments shall be made prior to August 1, 1995. The appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified.

Of the members initially appointed, the home inspector appointed by the Governor shall serve a one-year term. The home inspector appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives and the licensed real estate broker shall serve two-year terms. One home inspector appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate and the licensed contractor shall serve three-year terms. The remaining home inspector appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate and the citizen of the State shall serve four-year terms.

Thereafter, as the term of each member expires, a successor shall be appointed for a term of four years.

(c) Vacancies. — Vacancies in the Board occurring for any reason shall be filled for the unexpired term by the appointing official making the original appointment. Vacancies in positions appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate or the Speaker of the House of Representatives shall be filled in accordance with G.S. 120-122. (1993 (Reg. Sess., 1994), c. 724, s. 1; 2011-412, s. 6.)

§ 143-151.47. Compensation of Board members.

Members of the Board shall receive no salary for serving on the Board. Members may be reimbursed for their travel and other expenses in accordance with G.S. 93B-5 but may not receive the per diem authorized by that statute. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.48. Election of officers; meetings of Board.

(a) Officers. – Within 30 days after making appointments to the Board, the Governor shall call the first meeting of the Board. The Board shall elect a chair and a vice-chair who shall hold office according to rules adopted by the Board.

(b) Meetings. – The Board shall hold at least two regular meetings each year as provided by rules adopted by the Board. The Board may hold additional meetings upon the call of the chair or any two Board members. A majority of the Board membership constitutes a quorum. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.49. Powers and responsibilities of Board.

(a) General. – The Board has the power to do all of the following:

(1) Examine and determine the qualifications and fitness of applicants for a new or renewed license.

(2) Adopt and publish a code of ethics and standard of practice for persons licensed under this Article.

(3) Issue, renew, deny, revoke, and suspend licenses under this Article.

(4) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(5) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article.

(6) Purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Article.

(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Establish fees as allowed by this Article.

(10) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.

(11) Request and receive the assistance of State educational institutions or other State agencies.

(11a) Establish education requirements for licensure.

(12) Establish continuing education requirements for persons licensed under this Article.

(13) Adopt rules necessary to implement this Article.

(b) Education Requirements. – The education program adopted by the Board may not consist of more than 200 hours of instruction. The instruction may include field training, classroom instruction, distance learning, peer review, and any other educational format approved by the Board. (1993 (Reg. Sess., 1994), c. 724, s. 1; 2009-509, s. 2.1.)

§ 143-151.50. License required to perform home inspections for compensation or to claim to be a "licensed home inspector".

(a) Requirement. – To perform a home inspection for compensation or to claim to be a licensed home inspector, an individual must be licensed by the Board. An individual who is not licensed by the Board may perform a home inspection without compensation.

(b) Form of License. – The Board may issue a license only to an individual and may not issue a license to a partnership, an association, a corporation, a firm, or another group. A licensed home inspector, however, may perform home inspections for or on behalf of a partnership, an association, a corporation, a firm, or another group, may conduct business as one of these entities, and may enter into and enforce contracts as one of these entities. (1993 (Reg. Sess., 1994), c. 724, s. 1; 2009-509, s. 3.4.)

§ 143-151.51. Requirements to be licensed as a home inspector.

(a) Licensure Eligibility. – To be eligible to be licensed as a home inspector, an applicant must do all of the following:

(1) Submit a completed application to the Board upon a form provided by the Board.

(2) Pass a licensing examination prescribed by the Board.

(3) Repealed by Session Laws 2009-509, s. 2.2, effective October 1, 2011.

(4) Pay the applicable fees.

(5) Meet one of the following three conditions:

a. Have a high school diploma or its equivalent and satisfactorily complete an education program approved by the Board. The program must be completed within three years of the date the applicant submits an application for licensure under this section.

b. Have education and experience the Board considers to be equivalent to that required by sub-subdivision a. of this subdivision.

c. Be licensed for at least six months as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes. A person qualifying under this sub-subdivision on or after October 1, 2011, must remain in good standing with the person's respective licensing board.

(b) License. – Upon compliance with the conditions of licensure under subsection (a) of this section, to be eligible to be licensed as a home inspector, an applicant must meet all of the insurance requirements of this subsection.

(1) General liability insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board.

(2) One of the following:

a. Minimum net assets in an amount determined by the Board, which amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).

b. A bond in an amount determined by the Board, which amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).

c. Errors and omissions insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board. (1993 (Reg. Sess., 1994), c. 724, s. 1; 2009-509, s. 2.2.)

§ 143-151.52: Repealed by Session Laws 2009-509, s. 3.3, effective October 1, 2013.

§ 143-151.53. Notification to applicant following evaluation of application.

If the Board finds that the applicant has not met fully the requirements for licensing, the Board shall refuse to issue the license and shall notify in writing the applicant of the denial, stating the grounds of the denial. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 143-151.56. Within 30 days after service of the notification, the applicant may make a written demand upon the Board for a review to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written demand upon the Board for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome. (1993 (Reg. Sess., 1994), c. 724, s. 1; 1998-211, s. 35.)

§ 143-151.54. Miscellaneous license provisions.

(a) License as Property of the Board and Display of License. – A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by it, the individual to whom it is issued must give it to the Board upon demand. An individual who is licensed by the Board must display the license certificate in the manner prescribed by the Board. A license holder whose address changes must report the change to the Board.

(b) Report Criminal Convictions and Disciplinary Actions. – A license holder who is convicted of any felony or misdemeanor or is disciplined by any governmental agency in connection with any other occupational or professional license shall file with the Board a written report of the conviction or disciplinary action within 60 days of the final judgment, order, or disposition of the case. (1993 (Reg. Sess., 1994), c. 724, s. 1; 2009-509, s. 5.1.)

§ 143-151.55. Renewal of license; inactive licenses; lapsed licenses.

(a) Renewal. – A license expires on September 30 of each year. A license may be renewed by filing an application for renewal with the Board and paying the required renewal fee. The Board must notify license holders at least 30 days before their licenses expire. The Board must renew the license of a person who files an application for renewal, pays the required renewal fee, has fulfilled the continuing education requirements set by the Board, and is not in violation of this Article when the application is filed. If the Board imposes a continuing education requirement as a condition of renewing a license, the Board must ensure that the courses needed to fulfill the requirement are available in all geographic areas of the State.

(b) Late Renewal. – The Board may provide for the late renewal of a license upon the payment of a late fee, but no late renewal of a license may be granted more than one year after the license expires.

(c) Inactive License. – A license holder may apply to the Board to be placed on inactive status. An applicant for inactive status must follow the procedure set by the Board. A license holder who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status.

A license holder whose application is granted and is placed on inactive status may apply to the Board to be reinstated to active status at any time. To change a license from inactive status to active status, the license holder must complete the same number of continuing education credit hours that

would have been required of the license holder had the license holder maintained an active license. The number of continuing education credit hours required to return an inactive license to active status shall not exceed 24 credit hours. The Board may set conditions for reinstatement to active status. An individual who is on inactive status and applies to be reinstated to active status must comply with the conditions set by the Board.

(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain the [insurance] requirements provided in G.S. 143-151.58(b). (1993 (Reg. Sess., 1994), c. 724, s. 1; 1999-149, s. 1; 2009-509, ss. 2.3, 3.5, 5.2.)

§ 143-151.56. Suspension, revocation, and refusal to renew license.

(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

(1) Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain or renew a license.
(2) Committed an act of malpractice, gross negligence, or incompetence in the practice of home inspections.
(3) Without having a current license, either performed home inspections for compensation or claimed to be licensed.
(4) Engaged in conduct that could result in harm or injury to the public.
(5) Been convicted of or pled guilty or nolo contendere to any misdemeanor involving moral turpitude or to any felony.
(6) Been adjudicated incompetent.
(7) Engaged in any act or practice that violates any of the provisions of this Article or any rule issued by the Board, or aided, abetted, or assisted any person in a violation of any of the provisions of this Article.
(8) Failed to maintain the requirements provided in G.S. 143-151.58(b).

(b) A denial of licensure, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license holder may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted by the Board. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year. (1993 (Reg. Sess., 1994), c. 724, s. 1; 1998-211, s. 36; 2009-509, s. 2.4.)

§ 143-151.57. Fees.

(a) Maximum Fees. – The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

Item	Maximum Fee
Application for home inspector license	$35.00
Home inspector examination	80.00
Issuance or renewal of home inspector license	160.00
Late renewal of home inspector license	30.00
Application for course approval	150.00
Renewal of course approval	75.00
Course fee, per credit hour per licensee	5.00
Credit for unapproved continuing education course	50.00

Copies of Board rules or licensure standards	Cost of printing and mailing.

(b) Subsequent Application. – An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector. The individual must pay the examination fee, however, to be eligible to take the examination again. An individual may take the examination only once every 180 days. (1993 (Reg. Sess., 1994), c. 724, s. 1; 1999-149, s. 2; 2000-140, s. 32; 2009-451, s. 21.8; 2009-509, ss. 3.6, 5.3; 2014-115, s. 12.)

§ 143-151.58. Duties of licensed home inspector.

(a) Home Inspection Report. – A licensed home inspector must give to each person for whom the inspector performs a home inspection for compensation a written report of the home inspection. The inspector must give the person the report by the date set in a written agreement by the parties to the home inspection. If the parties to the home inspection did not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection was performed.

(a1) Summary Page. – A written report provided under subsection (a) of this section for a prepurchase home inspection of three or more systems must include a summary page that contains the information required by this subsection. All other subject matters pertaining to the home inspection must appear in the body of the report. The summary page must contain the following statement: "This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney."

The summary page must describe any system or component of the home that does not function as intended, allowing for normal wear and tear that does not prevent the system or component from functioning as intended. The summary page must also describe any system or component that appears not to function as intended, based upon documented tangible evidence, and that requires either subsequent examination or further investigation by a specialist. The summary page may describe any system or component that poses a safety concern.

(a2) State Building Code. – If a licensee includes a deficiency in the written report of a home inspection that is stated as a violation of the North Carolina State Residential Building Code, the licensee must do all of the following:

(1) Determine the date of construction, renovation, and any subsequent installation or replacement of any system or component of the home.

(2) Determine the State Building Code in effect at the time of construction, renovation, and any subsequent installation or replacement of any system or component of the home.

(3) Conduct the home inspection using the building codes in effect at the time of the construction, renovation, and any subsequent installation or replacement of any system or component of the home.

In order to fully inform the client, if the licensee describes a deficiency as a violation of the State Building Code in the written report, then the report shall include the information described in subdivision (1) of this subsection and photocopies of the relevant provisions of the State Building Code used pursuant to subdivision (2) of this subsection to determine any violation stated

in the report. The Board may adopt rules that are more restrictive on the use of the State Building Code by home inspectors.

(b) Insurance, Net Assets, and Bond Requirements. – A licensed home inspector must continuously maintain general liability insurance and minimum net assets, a bond, or errors and omissions insurance as required in G.S. 143-151.51(b).

(c) Repealed by Session Laws 2009-509, s. 3.3, effective October 1, 2013.

(d) Record Keeping. – All licensees under this Article shall make and keep full and accurate records of business done under their licenses. Records shall include the written, signed contract and the written report required by subsection (a) of this section and the standards of practice referred to in G.S. 143-151.49(a)(2) and any other information the Board requires by rule. Records shall be retained by licensees for not less than three years. Licensees shall furnish their records to the Board on demand. (1993 (Reg. Sess., 1994), c. 724, s. 1; 1999-149, s. 3; 2009-509, ss. 2.5, 3.3, 3.7, 4.1, 4.2.)

§ 143-151.59. Violation is a misdemeanor.

A person who violates a provision of this Article is guilty of a Class 2 misdemeanor. Each unlawful act or practice constitutes a distinct and separate offense. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.60. Injunctions.

The Board may make application to any appropriate court for an order enjoining violations of this Article. Upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction or a restraining order or take other appropriate action. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.61: Repealed by Session Laws 2009-509, s. 3.3, effective October 1, 2013.

§ 143-151.62. Persons and practices not affected.

This Article does not apply to any of the following:

(1) A person who is employed as a code enforcement official by the State or a political subdivision of the State and is certified pursuant to Article 9C of Chapter 143 of the General Statutes, when acting within the scope of that employment.

(2) A plumbing or heating contractor who does not claim to be a home inspector and is licensed under Article 2 of Chapter 87 of the General Statutes, when acting pursuant to that Article.

(3) An electrical contractor who does not claim to be a home inspector and is licensed under Article 4 of Chapter 87 of the General Statutes, when acting pursuant to that Article.

(4) A real estate broker or a real estate sales representative who does not claim to be a home inspector and is licensed under Article 1 of Chapter 93A of the General Statutes, when acting pursuant to that Article.

(5) A structural pest control licensee licensed under the provisions of Article 4C of Chapter 106 of the General Statutes, an employee of the licensee, or a certified applicator licensed under the provisions of Article 4C of Chapter 106 of the General Statutes who does not claim to be a home inspector, while performing

structural pest control activities pursuant to that Article. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.63. Administration.

(a) The Division of Engineering and Building Code in the Department of Insurance shall provide clerical and other staff services required by the Board, and shall administer and enforce all provisions of this Article and all rules adopted under this Article, subject to the direction of the Board. The Board shall reimburse the Division for its services to the Board.

(b) Any monies received by the Board pursuant to this Article shall be deposited in the State treasury to the account of the Board and shall be used to administer this Article.

(c) The books and records of the Board are subject to the oversight of the State Auditor, as provided in G.S. 93B-4. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.64. Continuing education requirements.

(a) Requirements. – The Board may establish programs of continuing education for licensees under this Article. A licensee subject to a program under this section shall present evidence to the Board upon the license renewal following initial licensure, and every renewal thereafter, that during the 12 months preceding the annual license expiration date the licensee has completed the required number of classroom hours of instruction in courses approved by the Board. Annual continuing education hour requirements shall be determined by the Board, but shall not be less than 12 credit hours and no more than 20 hours. No member of the Board shall provide or sponsor a continuing education course under this section while that person is serving on the Board.

(b) Fees. – The Board may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. Approval of a continuing education course must be renewed annually. The Board may also require a course sponsor to pay a fee for each licensee completing an approved continuing education course conducted by the sponsor.

(c) Credit for Unapproved Course. – The Board may award continuing education credit for an unapproved course or related educational activity. The Board may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Board may charge a fee to the licensee for each course or activity submitted.

(d) Extension of Time. – The Board may, for good cause shown, grant extensions of time to licensees to comply with these requirements. Any licensee who, after obtaining an extension under this subsection, offers evidence satisfactory to the Board that the licensee has satisfactorily completed the required continuing education courses, is in compliance with this section.

(e) Rules. – The Board may adopt rules governing continuing education requirements, including rules that govern:

(1) The content and subject matter of continuing education courses.
(2) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
(3) The methods of instruction.
(4) The computation of course credit.
(5) The ability to carry forward course credit from one year to another.

(6) The waiver of or variance from the continuing education requirement for hardship or other reasons.
(7) The procedures for compliance and sanctions for noncompliance. (1999-149, s. 4; 2001-421, s. 2.5; 2009-509, s. 1.1.)

§ 143-151.65: Reserved for future codification purposes.

§ 143-151.66: Reserved for future codification purposes.

§ 143-151.67: Reserved for future codification purposes.

§ 143-151.68: Reserved for future codification purposes.

§ 143-151.69: Reserved for future codification purposes.

Article 9G.

Military Lands Protection.

§ 143-151.70. Short title.

This Article shall be known as the Military Lands Protection Act of 2013. (2013-206, s. 1.)

§ 143-151.71. Definitions.

Within the meaning of this Article:

(1) "Area surrounding major military installations" is the area that extends five miles beyond the boundary of a major military installation and may include incorporated and unincorporated areas of counties and municipalities.
(2) Repealed by Session Laws 2014-79, s. 2, effective July 22, 2014.
(3) "Commissioner" means the Commissioner of Insurance.
(4) "Construction" includes reconstruction, alteration, or expansion.
(5) "Major military installation" means Fort Bragg, Pope Army Airfield, Camp Lejeune Marine Corps Air Base, New River Marine Corps Air Station, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the United States Coast Guard Air Station at Elizabeth City, Naval Support Activity Northwest, Air Route Surveillance Radar (ARSR-4) at Fort Fisher, and Seymour Johnson Air Force Base, in its own right and as the responsible entity for the Dare County Bombing Range, and any facility located within the State that is subject to the installations' oversight and control.
(6) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State

of North Carolina and its agencies and political subdivisions, or other legal entity.

(6a) "State Construction Office" means the State Construction Office of the Department of Administration.

(7) "Tall buildings or structures" means any building, structure, or unit within a multiunit building with a vertical height of more than 200 feet measured from the top of the foundation of the building, structure, or unit and the uppermost point of the building, structure, or unit. "Tall buildings or structures" do not include buildings and structures listed individually or as contributing resources within a district listed in the National Register of Historic Places. (2013-206, s. 1; 2014-79, s. 2.)

§ 143-151.72. Legislative findings.

North Carolina has a vested economic interest in preserving, maintaining, and sustaining land uses that are compatible with military activities at major installations. Development located proximate to military installations has been identified as a critical issue impacting the long-term viability of the military in this State. Additional concerns associated with development include loss of access to air space and coastal and marine areas and radio frequency encroachment. The construction of tall buildings or structures in areas surrounding major military installations is of utmost concern to the State as those buildings and structures may interfere with or impede the military's ability to carry out activities that are vital to its function and future presence in North Carolina. (2013-206, s. 1.)

§ 143-151.73. Certain buildings and structures prohibited without endorsement.

(a) No county or city may authorize the construction of and no person may construct a tall building or structure in any area surrounding a major military installation in this State, unless the county or city is in receipt of either a letter of endorsement issued to the person by the State Construction Office pursuant to G.S. 143-151.75 or proof of the State Construction Office's failure to act within the time allowed pursuant to G.S. 143-151.75.

(b) No county or city may authorize the provision of the following utility services to any building or structure constructed in violation of subsection (a) of this section: electricity, telephone, gas, water, sewer, or septic system. (2013-206, s. 1; 2014-79, s. 3.)

§ 143-151.74. Exemptions from applicability.

(a) Wind energy facilities and wind energy facility expansions, as those terms are defined in Chapter 143 of the General Statutes, that are subject to the applicable permit requirements of that Chapter shall be exempt from obtaining the endorsement required by this Article.

(b) Cellular, radio, and television towers erected to temporarily replace cellular, radio, and television towers that are damaged or destroyed due to a natural disaster shall be exempt from obtaining the endorsement required by this Article provided all of the following conditions are met:

(1) The height of the cellular, radio, or television tower that is erected to temporarily replace the cellular, radio, or television tower that is damaged or destroyed does not exceed the height of the original cellular, radio, or television tower.

(2) A disaster has been declared pursuant to Chapter 166A of the General Statutes for the area in which the damaged or destroyed cellular, radio, or television tower is located.

(3) The temporary cellular, radio, or television tower shall only remain in place until the expiration of the declared disaster.

(c) The modification, replacement, removal, or addition of antennas on cellular, radio, or television towers in an area surrounding a major military installation shall be exempt from obtaining the endorsement required by this Article provided the modification, replacement, removal, or addition does not increase the vertical height of the structure. (2013-206, s. 1; 2013-413, s. 47.)

§ 143-151.75. Endorsement for proposed tall buildings or structures required.

(a) No person shall undertake construction of a tall building or structure in any area surrounding a major military installation in this State without either first obtaining the endorsement from the State Construction Office or proof of the State Construction Office's failure to act within the time allowed.

(b) A person seeking endorsement for a proposed tall building or structure in any area surrounding a major military installation in this State shall provide written notice of the intent to seek endorsement to the base commander of the major military installation that is located within five miles of the proposed tall building or structure and shall provide all of the following to the State Construction Office:

(1) Identification of the major military installation and the base commander of the installation that is located within five miles of the proposed tall building or structure.

(2) A copy of the written notice sent to the base commander of the installation identified in subdivision (1) of this subsection that is located within five miles of the proposed tall building or structure.

(3) A written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012, Edition) for the proposed tall building or structure.

(c) After receipt of the information provided by the applicant pursuant to subsection (b) of this section, the State Construction Office shall, in writing, request a written statement concerning the proposed tall building or structure from the base commander of the major military installation identified in subdivision (1) of subsection (b) of this section. The State Construction Office shall request that the following information be included in the written statement from the base commander:

(1) A determination whether the location of the proposed tall building or structure is within a protected area that surrounds the installation.

(2) A determination whether any activities of the installation may be adversely affected by the proposed tall building or structure. A detailed description of the potential adverse effects, including frequency disturbances and physical obstructions, shall accompany the determination required by this subdivision.

(d) The State Construction Office shall not endorse a tall building or structure if the State Construction Office finds any one or more of the following:

(1) The proposed tall building or structure would encroach upon or otherwise interfere with the mission, training, or operations of any major military installation in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the State Construction Office may consider whether the proposed tall building or structure would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on the written statement received from a base commander as provided in subsection (c) of this section and written comments received by members of affected communities. Provided, however, if the State Construction Office does not receive a written statement requested pursuant to subsection (c) of this section within 45 days of issuance of the request to the base commander, the State Construction Office shall deem the tall building or structure as endorsed by the base commander.

(2) The State Construction Office is not in receipt of the written "Determination of No Hazard to Air Navigation" issued to the person by the Federal Aviation Administration required pursuant to subdivision (3) of subsection (b) of this section.

(e) The State Construction Office shall make a final decision on the request for endorsement of a tall building or structure within 90 days from the date on which the State Construction Office requested the written statement from the base commander of the major military installation identified in subdivision (1) of subsection (b) of this section. If the State Construction Office determines that a request for a tall building or structure fails to meet the requirements for endorsement under this section, the State Construction Office shall deny the request. The State Construction Office shall notify the person of the denial, and the notice shall include a written statement of the reasons for the denial. If the State Construction Office fails to act within any time period set forth in this section, the person may treat the failure to act as a decision to endorse the tall building or structure.

(f) The State Construction Office may meet by telephone, video, or Internet conference, so long as consistent with applicable law regarding public meetings, to make a decision on a request for endorsement for a tall building or structure pursuant to subsection (e) of this section. (2013-206, s. 1; 2014-79, s. 4.)

§ 143-151.76. Application to existing tall buildings and structures.

G.S. 143-151.73 applies to tall buildings or structures that existed in an area surrounding major military installations upon the effective date of this Article as follows:

(1) No reconstruction, alteration, or expansion may aggravate or intensify a violation by an existing building or structure that did not comply with G.S. 143-151.73 upon its effective date.

(2) No reconstruction, alteration, or expansion may cause or create a violation by an existing building or structure that did comply with G.S. 143-151.73 upon its effective date. (2013-206, s. 1.)

§ 143-151.77. Enforcement and penalties.

(a) In addition to injunctive relief, the Commissioner may assess and collect a civil penalty against any person who violates any of the provisions of this Article or rules adopted pursuant to this Article, as provided in this section. The maximum civil penalty for a violation is five thousand dollars ($5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation may constitute a separate violation.

(b) The Commissioner shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under Rule 4 of G.S. 1A-1 and shall direct the violator to either pay the assessment or contest the assessment within 30 calendar days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Commissioner within 30 calendar days after it is due, the Commissioner shall request that the Attorney General institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred. A civil action must be filed within one year of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(c) In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, the prior record of the violator in complying or failing to comply with this Article, and the action of the person to remedy the violation.

(d) The clear proceeds of civil penalties collected by the Commissioner under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (2013-206, s. 1; 2014-115, s. 13.)

Article 10.

Various Powers and Regulations.

§ 143-152. Injury to water supply misdemeanor.

If any person shall in any way intentionally or maliciously damage or obstruct any waterline of any public institution, or in any way contaminate or render the water impure or injurious, he shall be guilty of a Class 1 misdemeanor. (1893, c. 63, s. 3; Rev., s. 3458; C.S., s. 7526; 1993, c. 539, s. 1014; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 143-153. Keeping swine near State institutions; penalty.

On the petition of a majority of the legal voters living within a radius of one quarter of a mile of the administrative building of any State educational or charitable institution, it shall be unlawful for any person to keep swine or swine pens within such radius of one quarter of a mile. Any person violating this section shall be guilty of a Class 3 misdemeanor and shall be subject to only a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00). (1909, c. 706; C.S., s. 7527; 1993, c. 539, s. 1015; 1994, Ex. Sess., c. 14, s. 62, c. 24, s. 14(c).)

§ 143-154. Expenditures for departments and institutions; accounting and warrants.

All expenditures of any character allowed by the General Assembly in making appropriations and not covered in the appropriations named shall be charged against the department or institution for which the expense is incurred, and the warrant shall be made to show clearly for what purpose the expenditure is made. The warrant shall be charged against the department or institution, thereby showing the total amount expended for the maintenance and expenses of such department or institution. (1917, c. 289; C.S., s. 7528; 1983, c. 913, s. 35.)

§ 143-155. Repealed by Session Laws 1983, c. 913, s. 36, effective July 22, 1983.

§ 143-156. Certain institutions to report to Governor and General Assembly.

It shall be the duty of the boards of directors, managers, or trustees of the several State institutions for the insane, or the several institutions for the deaf, dumb, and blind, and of the State Prison to submit their respective reports to the Governor, to be transmitted by him with his message to the General Assembly. (1883, c. 60, ss. 2, 4; Rev., s. 5373; C.S., s. 7530.)

§ 143-157. Reports of departments and institutions; investigations and audits.

All State departments and State institutions shall make reports to the Governor from time to time as may be required by him, and the Governor is empowered to have all departments of the State government and State institutions examined and audited from time to time, and shall employ such experts to make audits and examinations and to analyze the reports of such institutions and departments as he may deem to be necessary. (1917, c. 58, s. 7; C.S., s. 7531.)

§ 143-157.1. Reports on gender-proportionate appointments to statutorily created decision-making regulatory bodies.

(a) Appointments. – In appointing members to public bodies set forth in subsections (c) and (d) of this section, the appointing authority should select, from among the most qualified persons, those persons whose appointment would promote membership on the body that accurately reflects the proportion that each gender represents in the population of the State as a whole or, in the case of a local body, in the population of the area represented by the or body, as determined pursuant to the most recent federal decennial census, unless the law regulating such appointment requires otherwise. If there are multiple appointing authorities for the body, they may consult with each other to accomplish the purposes of this section.

(b) Reports Generally. – Each appointing authority described in subsection (a) shall submit a report to the Secretary of State annually which discloses the number of appointments made during the preceding year and the number of appointments of each gender made, expressed both in numerical terms and as a percentage of the total membership of the body. In addition, each

appointing authority shall designate a person responsible for retaining all applications for appointment, who shall ensure that information describing each applicant's gender and qualifications is available for public inspection during reasonable hours. Nothing in this section requires disclosure of an applicant's identity or of any other information made confidential by law. The Secretary of State shall prescribe the form used to report these appointments and may accept these reports by electronic means. Reports by appointing authorities shall be due in the Department of the Secretary of State on or before September 1. From these reports, the Secretary of State shall generate an annual composite report that shall be published by December 1. Copies of the report shall be submitted to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

(c) State Reporting. – Each State appointing authority that makes appointments to a statutorily created public body, however denominated, except those having only advisory authority, shall file a report with the Secretary of State as prescribed in subsection (b) of this section. The Secretary shall submit to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore by July 1 of each year the names of all State bodies that an appointing authority must report on pursuant to this section.

(d) Reporting by Local Units of Government. – In those cases where a county or a city is the appointing authority, the reporting required by subsection (b) of this section shall be submitted to the Secretary of State by the clerk of that appointing authority. Appointments to the following local, municipal, or county public bodies, or to public bodies however denominated that have the functions of the following public bodies, must be reported:

(1) City or county ABC board, or local board created pursuant to G.S. 18B-703.
(2) Adult Care Home Community Advisory Committee.
(3) Airport Authority.
(4) Community Child Protection Team or a Child Fatality Prevention Team.
(5) Civil Service Board or similarly named board established by local act.
(6) Community Relations Committee.
(7) Council of Governments.
(8) Criminal Justice Partnership Task Force.
(9) Emergency Planning Committee.
(10) Board of Equalization and Review.
(11) Local Board of Health.
(12) Hospital Authority.
(13) Housing Authority.
(14) Human Relations Commission.
(15) County Industrial Facilities and Pollution Control Financing Authority.
(16) Juvenile Crime Prevention Council.
(17) Library Board of Trustees.
(18) Community College Board of Trustees.
(19) Economic development commission.
(20) Area mental health, developmental disabilities, and substance abuse board.
(21) Adult care home community advisory committee.
(22) Local partnership for children.
(23) Planning Board.
(24) Recreation Board.
(25) County board of social services.

(26) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes, a regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
(27) Local tourism development authority.
(28) Water and sewer authority.
(29) Workforce Development Board.
(30) Zoning Board of Adjustment.
(31) Planning and Zoning Board.
(32) Board of Adjustment.
(33) Historic Preservation Commission.
(34) Redevelopment Commission.
(35) City board of education (if appointive).
(36) Metropolitan Planning Organization.
(37) Rural Planning Organization. (1999, c. 457, s. 1(b), (c); 2007-167, s. 1.)

§ 143-158. Special investigations.

At any time, upon complaint made to him or upon his own motion, the Governor may appoint a special commission to investigate any State department or State institution, which commission shall have power to subpoena witnesses, require the production of books and papers, and to do all things necessary to a full and thorough investigation, and shall submit its findings to the Governor. The members of such special commission shall, while engaged in the performance of their duties, receive their actual expenses and a per diem of four dollars ($4.00). (1917, c. 58, s. 8; C.S., s. 7532.)

§ 143-159. Governor given authority to direct investigation.

The Governor is hereby authorized and empowered to call upon and direct the Attorney General to investigate the management of or condition within any department, agency, bureau, division or institution of the State, or any other matters pertaining to the administration of the Executive Department, when the Governor shall determine that such an investigation shall be necessary. (1927, c. 234, s. 1.)

§ 143-160. Conduct of investigation.

Whenever called upon and requested by the Governor as set out in G.S. 143-159, the Attorney General shall conduct such investigation at such reasonable time and place as may be determined by him. He shall have power to issue subpoenas, administer oaths, compel the attendance of witnesses and the production of papers necessary and material in such investigation. All subpoenas issued by him shall be served by the sheriff or other officer of any county to which they may be directed. Parties interested in such investigation may appear at the hearing and be represented by counsel, who shall have the right to examine or cross-examine witnesses.

All persons subpoenaed to attend any hearing before the Attorney General shall, for a failure so to attend and testify, be subject to the same penalties as prescribed by law for such failure in the superior court. (1927, c. 234, s. 2.)

§ 143-161. Stenographic record of proceedings.

A stenographic record of the proceedings had in such investigation shall be taken and copy thereof forwarded by the Attorney General to the Governor with his report. (1927, c. 234, s. 3.)

§ 143-162: Repealed by Session Laws 1955, c. 984.

§ 143-162.1. First menu operator access.

(a) The General Assembly finds that:

(1) Some telephone systems operated by State government agencies require callers to proceed through several menus to finally reach an individual extension, an arrangement that can be intimidating to the caller;

(2) Many State telephone systems also make it difficult to reach an attendant or operator at the agency; and

(3) While automated telephone systems and voice mail are intended to improve the efficiency of government, the first duty of government is to serve the people, and efficiency should not impede the average citizen in attempting to contact a State agency for service or information.

(b) State agency telephone systems routing calls to multiple extensions shall be reprogrammed by September 1, 1997, to minimize the number of menus that a caller must go through to reach the desired extension, and to allow the caller to reach an attendant or operator after accessing not more than two menus from the first menu when calling during normal business hours. As used in this section, the term "menu" refers to the first point in the call at which the caller is asked to choose from two or more options, regardless of whether that choice is referred to as a menu, router, or other term within the telephone industry itself.

This act shall be implemented by State agencies with existing personnel at no additional cost to the State.

(c) All State agencies shall include the agency's telephone number or numbers in a prominent place on all agency letterhead.

(d) The provisions of subsection (b) of this section shall not apply to any "511" traveler information system operated by the Department of Transportation. (1997-351, ss. 1, 2; 1999-429, ss. 1, 2; 2003-184, s. 4.)

§ 143-162.2. Use of public property by production companies.

If a State agency makes real property available to a production company for a production, it shall not charge any fee other than reimbursement of actual costs incurred and actual revenues lost by the agency. As used in this section, the term "production company" has the meaning provided in G.S. 105-164.3. This section does not require a State agency to make real property available to a production company for a production. (2000-153, s. 3.)

Article 11.

Revenue Bonds and Governmental Aid.

§ 143-163. State agencies may issue bonds to finance certain public undertakings.

The several departments, institutions, agencies and commissions of the State of North Carolina, acting at the suggestion of the Governor of North Carolina, with the approval of the Council of State, are hereby authorized to issue bonds of the several departments, agencies or commissions of the State, in such sum or sums, not to exceed in the aggregate two million dollars ($2,000,000),

at such time or times, in such denominations as may be determined, and at such rate of interest as may be most advantageous to the several departments, institutions, agencies and commissions of the State, the said bonds to run for a period not exceeding 30 years from date, which bonds may be sold and delivered as other like bonds of the State of North Carolina: Provided, however, that the credit of the State of North Carolina, or any of its departments, institutions, agencies or commissions, shall not be pledged further in the payment of such bonds, except with respect to the rentals, profits and proceeds received in connection with the undertaking, for which said bonds are issued, and said bonds and interest so issued shall be payable solely out of the receipts from the undertaking for which they were issued, without further obligation on the part of the State of North Carolina, or any of its departments, institutions, agencies or commissions, provided that no State department or institution issuing any of said bonds shall be allowed to pledge any of its appropriations received from the State as security for these bonds; provided, further, that no State department, institution, agency or commission of the State shall make application for or issue any bonds, as provided in this section, after June 1, 1941. (1935, c. 479, s. 1; Ex. Sess. 1936, c. 2, s. 1; 1937, c. 323; 1939, c. 391.)

§ 143-164. Acceptance of federal loans and grants permitted.

The State of North Carolina, and its several departments, institutions, agencies and commissions, are hereby authorized to accept and receive loans, grants, and other assistance from the United States government, departments and/or agencies thereof, for its use, and to receive like financial and other aid from other agencies in carrying out any undertaking which has been authorized by the Governor of North Carolina, with the approval of the Council of State. (1935, c. 479, s. 2.)

§ 143-165. Approval by Governor and Council of State necessary; covenants in resolutions authorizing bonds.

The several departments, institutions, agencies and commissions of the State of North Carolina, before issuing any revenue bonds as herein provided for any undertaking, shall first receive the approval of the undertaking from the Governor of North Carolina, which action shall be approved by the Council of State before such undertaking shall be entered into and revenue bonds issued in payment therefor in whole or in part.

Any resolution or resolutions heretofore or hereafter adopted authorizing the issuance of bonds under this Article may contain covenants which shall have the force of contract so long as any of said bonds and interest thereon remain outstanding and unpaid as to

(1) The use and disposition of revenue of the undertaking for which the said bonds are to be issued,

(2) The pledging of all the gross receipts or any part thereof derived from the operation of the undertaking to the payment of the principal and interest of said bonds including reserves therefor,

(3) The operation and maintenance of such undertaking,

(4) The insurance to be carried thereon and the use and disposition of the insurance moneys,

(5) The fixing and collection of rates, fees and charges for the services, facilities and commodities furnished by such undertaking sufficient to pay said bonds and interest as the same shall become due, and for the creation and maintenance of reasonable reserve therefor,

(6) Provisions that the undertaking shall not be conveyed, leased or mortgaged so long as any of the bonds and interest thereon remain outstanding and unpaid.

Provided, however, that the credit of the State of North Carolina or any of its departments, institutions, agencies or commissions shall not be pledged to the payment of such bonds except with respect to the rentals, profits and proceeds received in connection with the undertaking for which the said bonds are issued, and that none of the appropriations received from the State shall be pledged as security for said bonds. (1935, c. 479, s. 3; Ex. Sess. 1936, c. 2, s. 2.)

Article 12.

Law-Enforcement Officers' Retirement System.

§§ 143-166 through 143-166.04: Repealed by Session Laws 1985, c. 479, s. 196(t).

Article 12A.

Public Safety Employees' Death Benefits Act.

§ 143-166.1. Purpose.

In consideration of hazardous public service rendered to the people of this State, there is hereby provided a system of benefits for dependents of law-enforcement officers, firefighters, rescue squad workers, and senior Civil Air Patrol members killed in the discharge of their official duties, and for dependents of noncustodial employees of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety killed by an individual or individuals in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety. (1959, c. 1323, s. 1; 1965, c. 937; 1973, c. 634, s. 2; 1975, c. 284, s. 6; 1977, c. 797; 1983, c. 761, s. 236; 2018-5, s. 35.29(a).)

§ 143-166.2. Definitions.

The following definitions apply in this Article:

(1) Covered person. – This term shall apply to all of the following individuals:
   a. Firefighters.
   b. Law enforcement officers.
   c. Noncustodial employees of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.
   d. Rescue squad workers.
   e. Senior Civil Air Patrol members.

(2) Custodial employee. – An employee of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety who is a detention officer or a correctional officer or who otherwise has direct care and control over individuals in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.

(3) Dependent child. – Any unmarried child of the deceased covered person, whether natural, adopted, posthumously born or whether a child born out of wedlock as entitled to inherit under the Intestate Succession Act, who is under 18 years of age and dependent upon and receiving his or her chief support from the covered person at the time of the covered person's death; provided, however, that if a dependent child is entitled to receive benefits at the time of the covered person's death as hereinafter provided, the child shall continue to be eligible to receive such benefits regardless of his or her age thereafter. This term also includes any child over 18 years of age who is physically or mentally incapable of earning a living. Any child over 18 years of age who was enrolled as a full-time student at the time of the covered person's death shall, so long as the child remains a full-time student as defined in the Social Security Act, be regarded as a dependent child and eligible to receive benefits under the provisions of this Article.

(4) Dependent parent. – The parent of the deceased covered person, whether natural or adoptive, who was dependent upon and receiving his or her total and entire support from the covered person at the time of the injury that resulted in that covered person's death.

(5) Firefighter. – This term shall apply to all of the following individuals:

a. Firefighters as defined in G.S. 58-84-5.

b. Eligible firefighters as defined in G.S. 58-86-2, notwithstanding any age requirements set out in Article 86 of Chapter 58 of the General Statutes.

c. Full-time, permanent part-time, and temporary employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services during the time they are actively engaged in firefighting activities or emergency response activities pursuant to G.S. 166A-19.77.

d. Full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in firefighting activities and during the time they are training firefighters.

e. County fire marshals when engaged in the performance of their county duties.

f. All otherwise eligible individuals who, while actively engaged as firefighters, are acting in the capacity of a fire instructor outside their own department or squad.

(6) Killed in the line of duty. – This term shall apply to all of the following deaths:

a. The death of any law-enforcement officer, firefighter, or rescue squad worker who is killed or dies as a result of bodily injuries sustained or extreme exercise or extreme activity experienced in the course and scope of his or her official duties while in the discharge of his or her official duty or duties.

b. The death of a senior Civil Air Patrol member who is killed or dies as a result of bodily injuries sustained or extreme exercise or extreme activity experienced in the course and scope of his or her official duties while engaged in a State requested and approved mission pursuant to Article 13 of Chapter 143B of the General Statutes.

c. The death of a noncustodial employee who, while performing his or her official duties, is killed in a manner reasonably determined by the Industrial Commission to be directly caused by an individual or individuals in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.

d. When the death of a law enforcement officer, firefighter, rescue squad worker, or senior Civil Air Patrol member occurs as the direct and proximate result of a myocardial infarction suffered while on duty or within 24 hours after participating in a training exercise or responding to an emergency situation, the law enforcement officer, firefighter, rescue squad worker, or senior Civil Air Patrol member is presumed to have been killed in the line of duty.

e. When the death of a firefighter occurs as a direct and proximate result of any of the following cancers that are occupationally related to firefighting, that firefighter is presumed to have been killed in the line of duty:

1. Mesothelioma.
2. Testicular cancer.
3. Intestinal cancer.
4. Esophageal cancer.

(7) Law enforcement officer or officer. – This term shall apply to all of the following individuals:

a. Sheriffs and all law-enforcement officers employed full-time, permanent part-time, or temporarily by a sheriff, the State of North Carolina, or any county or municipality thereof, whether paid or unpaid.

b. Full-time custodial employees and probation and parole officers of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.

c. Full-time institutional and full-time, permanent part-time, and temporary detention employees of the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.

d. Full-time, permanent part-time, and temporary detention officers employed by any sheriff, county or municipality, whether paid or unpaid.

(8) Noncustodial employee. – An employee of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety who is not a custodial employee.

(9) Official duties. – All duties to which an individual is assigned as part of the individual's job function. This term shall also include those duties performed by an individual while (i) en route to, engaged in, or returning from training; (ii) in the course of responding to, engaged in, or returning from a call by the department of which the individual is a member; or (iii) in the course of responding to, engaged in, or returning from a call for assistance from any department or organization within the State of North Carolina or within a service area contiguous to the borders of the State of North Carolina when served or aided by a department from within the State of North Carolina. While within the State of North Carolina, any covered person who renders service or assistance, of his or her own volition, at the scene of an emergency, is performing his or her official duties when both of the following apply:

a. Reasonably apparent circumstances require prompt decisions and actions to protect persons and property.

b. The necessity of immediate action is so reasonably apparent that any delay in acting would seriously worsen the property damage or endanger any individual's life.

(10) Rescue squad worker. – This term shall apply to all of the following individuals:

a. Individuals who are dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, these individuals must belong to an organized rescue squad that is eligible for membership in the North Carolina Association of Rescue and Emergency Medical Services, Inc., and must have attended a minimum of 36 hours of training in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue and Emergency Medical Services, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 31 of each year, and this roster must be certified to by the secretary of said association.

b. Members of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human

Services shall furnish a list of ambulance service members to the State Treasurer on or about January 31 of each year.

c. County emergency services coordinators when engaged in the performance of their county duties.

d. Full-time employees of the North Carolina Department of Insurance during the time they are training rescue squad workers and during the time they are engaged in activities as members of the State Emergency Response Team when the State Emergency Response Team has been activated.

e. All otherwise eligible individuals who, while actively engaged as rescue squad workers, are acting in the capacity of a rescue instructor outside their own department or squad.

(11) Senior Civil Air Patrol members. – Senior members of the North Carolina Wing-Civil Air Patrol who are 18 years of age or older and currently certified pursuant to G.S. 143B-1031.

(12) Spouse. – The wife or husband of the deceased covered person who survives him or her and who was residing with the covered person at the time of and during the six months next preceding the date of injury to the covered person that resulted in his or her death and who also resided with the covered person from that date of injury up to and at the time of his or her death and provided, however, the six-month residency requirement shall not apply where the marriage occurred during this six-month period or where the covered person was absent during this six-month period due to service in the Armed Forces of the United States. (1959, c. 1323, s. 1; 1965, c. 937; 1969, c. 1025; 1973, c. 634, s. 2; c. 955, ss. 1, 2; 1975, c. 19, s. 49; c. 284, s. 7; 1977, c. 1048; 1979, c. 516, ss. 2, 3; c. 869; 1981, c. 944, s. 1; 1983, c. 761, s. 237; 1987, c. 812; 1987 (Reg. Sess., 1988), c. 1050, s. 1; 1989, c. 727, s. 218(97); 1989 (Reg. Sess., 1990), c. 1024, s. 32; 1991 (Reg. Sess., 1992), c. 833, s. 5; 1997-443, ss. 11A.118(a), 11A.119(a); 2000-137, s. 4(y); 2003-284, s. 30.18A(b); 2004-124, s. 31.18C(a); 2005-276, s. 29.30C; 2005-376, s. 1; 2008-163, s. 1; 2011-145, ss. 13.25(ss), 19.1(h), (l); 2011-183, s. 104; 2012-83, s. 46; 2013-155, s. 20; 2013-198, s. 27; 2013-288, s. 10; 2015-88, s. 8; 2016-94, s. 22.1(a); 2017-57, s. 21.1; 2017-186, s. 2(bbbbbb); 2018-5, s. 35.29(a).)

§ 143-166.3. Payments; determination.

(a) When any covered person is killed in the line of duty, the Industrial Commission shall award a death benefit in the amount of one hundred thousand dollars ($100,000) to be paid to one of the following:

(1) The spouse of the covered person if there is a surviving spouse.

(2) If there is no surviving spouse, then payments shall be made to any surviving dependent child of the covered person. If there is more than one

surviving dependent child, then the payment shall be made to and equally divided among all surviving dependent children.

(3) If there is no surviving spouse and no surviving dependent child or children, then payments shall be made to any surviving dependent parent of the covered person. If there is more than one surviving dependent parent, then the payments shall be made to and equally divided between the surviving dependent parents of the covered person.

(4) If there is no surviving spouse, surviving dependent child, or surviving parent, then the payment shall be made to the estate of the deceased covered person.

(b) Repealed by Session Laws 2018-5, s. 35.29(a), effective retroactively to April 1, 2017, and applicable to qualifying deaths occurring on or after that date.

(c), (d) Repealed by Session Laws 2015-88, s. 9, effective July 1, 2015. (1959, c. 1323, s. 1; 1965, c. 937; 1971, c. 960; 1973, c. 634, s. 2; 1975, c. 284, s. 8; 2003-284, s. 30.18A(a); 2015-88, s. 9; 2018-5, s. 35.29(a).)

§ 143-166.4. Funds; conclusiveness of award.

Such award of benefits as is provided for by this Article shall be paid from the Contingency and Emergency Fund and such amounts as may be required to pay benefits provided for by this Article are hereby appropriated from said fund for this special purpose.

The Industrial Commission shall have power to make necessary rules and regulations for the administration of the provisions of this Article. It shall be vested with power to make all determinations necessary for the administration of this Article and all of its decisions and determinations shall be final and conclusive and not subject to review or reversal except by the Industrial Commission itself. The Industrial Commission shall keep a record of all proceedings conducted under this Article and shall have the right to subpoena any persons and records which it may deem necessary in making its determinations, and the Industrial Commission shall further have the power to require all persons called as witnesses to testify under oath or affirmation, and any member of the Industrial Commission may administer oaths. If any person shall refuse to comply with any subpoena issued hereunder 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 Industrial Commission, may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as for contempt. (1959, c. 1323, s. 1; 1965, c. 937.)

§ 143-166.5. Other benefits not affected.

None of the other benefits now provided for law-enforcement officers, or other persons covered by this Article, or their dependents by the Workers' Compensation Act or other laws shall be affected by the provisions of this Article, and the benefits provided for herein shall not be diminished, abated or otherwise affected by such other provisions of law. (1959, c. 1323, s. 1; 1965, c. 937; 1979, c. 245; c. 714, s. 2.)

§ 143-166.6. Awards exempt from taxes.

Any award made under the provisions of this Article shall be exempt from taxation by the State or any political subdivision. The Industrial Commission shall not be responsible for any determination of the validity of any claims against said awards and shall distribute the death benefit awards directly to the dependent or dependents entitled thereto under the provisions of this Article. (1959, c. 1323, s. 1; 1965, c. 937.)

§ 143-166.7. Applicability of Article.

The provisions of this Article shall apply and be in full force and effect with respect to any law-enforcement officer, firefighter, rescue squad worker or senior Civil Air Patrol member killed in the line of duty on or after May 13, 1975. The provisions of this Article shall apply with respect to full-time, permanent part-time and temporary employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services killed in the line of duty on or after July 1, 1975. The provisions of this Article shall apply to county fire marshals and emergency services coordinators killed in the line of duty on and after July 1, 1988. The provisions of this Article shall apply to noncustodial employees of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety who are killed in the line of duty on and after April 1, 2017. (1965, c. 937; 1973, c. 634, s. 3; 1975, c. 284, s. 9; 1981, c. 944, s. 2; 1987 (Reg. Sess., 1988), c. 1050, s. 2; 1989, c. 727, s. 218(98); 1997-443, s. 11A.119(a); 2011-145, s. 13.25(tt); 2013-155, s. 21; 2018-5, s. 35.29(a).)

§§ 143-166.8 through 143-166.12. Reserved for future codification purposes.

Article 12B.

Salary Continuation Plan for Certain State Law-Enforcement Officers.

§ 143-166.13. Persons entitled to benefits under Article.

(a) The following persons who are subject to the Criminal Justice Training and Standards Act are entitled to benefits under this Article:

(1) State Government Security Officers, Department of Administration;
(2) State Correctional Officers, Division of Adult Correction and Juvenile Justice of the Department of Public Safety;
(3) State Probation and Parole Officers, Division of Adult Correction and Juvenile Justice of the Department of Public Safety;
(4) Sworn State Law-Enforcement Officers with the power of arrest, Division of Adult Correction and Juvenile Justice of the Department of Public Safety;
(5) Sworn Law Enforcement Officers in the Medicaid Fraud Unit of the Department of Justice;
(6) State Highway Patrol Officers, Department of Public Safety;
(7) General Assembly Special Police, General Assembly;

(8) Sworn State Law-Enforcement Officers with the power of arrest, Department of Health and Human Services;
(9) Juvenile Justice Officers, Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety;
(10) Insurance Investigators, Department of Insurance;
(11) State Bureau of Investigation Officers and Alcohol Law Enforcement Agents, Department of Public Safety;
(12) Director and Assistant Director, License and Theft Enforcement Section, Division of Motor Vehicles, Department of Transportation;
(13) Members of License and Theft Enforcement Section, Division of Motor Vehicles, Department of Transportation, designated by the Commissioner of Motor Vehicles as either "inspectors" or uniformed weigh station personnel;
(14) Utilities Commission Transportation Inspectors and Special Investigators;
(15) North Carolina Ports Authority Police, Department of Transportation;
(16) Sworn State Law-Enforcement Officers with the power of arrest, Department of Environmental Quality;
(17) Sworn State Law-Enforcement Officers with the power of arrest, Department of Public Safety.
(18) Sworn State Law-Enforcement Officers with the power of arrest, Department of Revenue.
(19) Sworn State Law-Enforcement Officers with the power of arrest, University System.
(20) Sworn State Law-Enforcement Officers with the power of arrest, Department of Agriculture and Consumer Services.
(21) Sworn State Law-Enforcement Officers with the power of arrest, Department of Natural and Cultural Resources.

(b) The following persons are entitled to benefits under this Article regardless of whether they are subject to the Criminal Justice Training and Standards Act:
(1) Driver License Examiners injured by accident arising out of and in the course of giving a road test, Division of Motor Vehicles, Department of Transportation;
(2) Employees of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety injured by a direct and deliberate act of an offender supervised by the Division or while performing supervisory duties over offenders which place the employees at risk of such injury.

(c) As used in this Article, the term "eligible person" or "person" shall mean any individual listed under subsection (a) or (b) of this section. (1979, 2nd Sess., c. 1272, s. 1; 1981, c. 348, s. 1; c. 964, s. 19; 1989, c. 727, s. 218(99), c. 751, s. 7(15); 1991 (Reg. Sess., 1992), c. 959, s. 34; 1996, 2nd Ex. Sess., c. 18, s. 20.7(a); 1997-443, ss. 11A.118(a), 11A.119(a); 1997-503, s. 3; 1998-212, s. 28.25(a); 2001-487, s. 89; 2005-359, s. 3;

2011-145, ss. 14.6(d), 19.1(g), (h), (l); 2014-100, ss. 17.1(kkk), 35.12(a); 2015-241, s. 14.30(u); 2015-263, s. 36(d); 2017-186, s. 2(cccccc); 2018-5, s. 35.18(a).)

§ 143-166.14. Payment of salary notwithstanding incapacity; Workers' Compensation Act applicable after two years; duration of payment.

The salary of any eligible person shall be paid as long as the person's employment in that position continues, notwithstanding the person's total or partial incapacity to perform any duties to which the person may be lawfully assigned, if that incapacity is the result of an injury or injuries resulting from or arising out of an episode of violence, resistance, or due to other special hazards that occur while the eligible person is performing official duties, except if that incapacity continues for more than two years from its inception, the person shall, during the further continuance of that incapacity, be subject to the provisions of Chapter 97 of the General Statutes pertaining to workers' compensation. The time period for which an eligible person receives benefits pursuant to this section shall be deducted from the eligible person's total eligibility for benefits pursuant to G.S. 97-29 and G.S. 97-30. For purposes of this section, the term "salary" shall be defined as the total base pay of the person reflected on the person's salary statement and shall not include overtime pay, shift differential pay, holiday pay, or other additional earnings to which the person may have been entitled prior to such incapacity. Salary paid to an eligible person pursuant to this Article shall cease upon the resumption of the person's regularly assigned duties; assignment of duties which comply with the treating physician's restrictions; or retirement, resignation, or death, whichever first occurs; provided that salary payments will be ceased or may be equitably reduced when the employee has returned to work for the same or a different employer. A temporary return to duty shall not prohibit payment of salary for a subsequent period of incapacity which can be shown to be directly related to the original injury. (1979, 2nd Sess., c. 1272, s. 1; 2014-100, s. 35.12(a); 2015-241, s. 30.18(c); 2017-57, s. 35.18B(a).)

§ 143-166.15. Application of § 97-27; how payments made.

Notwithstanding the provisions of G.S. 143-166.14 of this Article, the persons entitled to benefits shall be subject to the provisions of G.S. 97-27 during the two-year period of payment of full salary. All payments of salary shall be made at the same time and in the same manner as other salaries are paid to other persons in the same department. (1979, 2nd Sess., c. 1272, s. 1.)

§ 143-166.16. Effect on workers' compensation and other benefits; application of § 97-24.

The provisions of G.S. 143-166.14 shall be in lieu of all compensation provided for the first two years of incapacity by G.S. 97-29 and 97-30, but shall be in addition to any other benefits or compensation to which such person shall be entitled under the provisions of the Workers' Compensation Act. The provisions of G.S. 97-24 will commence at the end of the two-year period for which salary is paid pursuant to G.S. 143-166.14. (1979, 2nd Sess., c. 1272, s. 1.)

§ 143-166.17. Period of incapacity not charged against sick leave or other leave.

The period for which the salary of any person is paid pursuant to G.S. 143-166.14 while the person is incapacitated as a result of an injury or injuries proximately caused by the heightened risk and special hazards directly related to the violent nature of the eligible person's official duties, shall not be charged against any sick or other leave to which the person shall be entitled under any other provision of law. (1979, 2nd Sess., c. 1272, s. 1; 2014-100, s. 35.12(a).)

§ 143-166.18. Report of incapacity.

Any person designated in G.S. 143-166.13, who, as a result of an injury or injuries proximately caused by the heightened risk and special hazards directly related to the violent nature of the eligible person's official duties, is totally or partially incapacitated to perform any duties to which the person may be lawfully assigned, shall report the incapacity as soon as practicable in the manner required by the secretary or other head of the department to which the agency is assigned by statute. (1979, 2nd Sess., c. 1272, s. 1; 1981, c. 348, s. 2; 2014-100, s. 35.12(a).)

§ 143-166.19. Determination of cause and extent of incapacity; hearing before Industrial Commission; appeal; effect of refusal to perform duties.

Upon the filing of the report, the secretary or other head of the department or, in the case of the General Assembly, the Legislative Services Officer, shall determine the cause of the incapacity and to what extent the claimant may be assigned to other than the claimant's normal duties. The finding of the secretary or other head of the department shall determine the right of the claimant to benefits under this Article. Notice of the finding shall be filed with the North Carolina Industrial Commission. The finding of the secretary or other department head shall be final unless the claimant, within 30 days of receipt of the notice, files a request for a hearing with the North Carolina Industrial Commission using a form required by the Commission. Upon the filing of a request, the North Carolina Industrial Commission shall proceed to hear the matter in accordance with its regularly established procedure for hearing claims filed under the Worker's Compensation Act, and shall report its findings to the secretary or other head of the department. From the decision of the North Carolina Industrial Commission, an appeal shall lie as in other matters heard and determined by the Commission. Any person who refuses to perform any duties to which the person may be properly assigned as a result of the finding of the secretary, other head of the department or of the North Carolina Industrial Commission shall be entitled to no benefits pursuant to this Article as long as the refusal continues. A duty is properly assigned if the duty complies with the authorized treating physician's restrictions. Any eligible person whose salary continuation benefits are terminated by the secretary or other head of the department shall be immediately entitled to benefits under G.S. 97-29 or G.S. 97-30. Such benefits under G.S. 97-29 or G.S. 97-30 shall only be suspended or terminated by the employer pursuant to G.S. 97-18.1. (1979, 2nd Sess., c. 1272, s. 1; 1981, c. 348, s. 3; 2014-100, s. 35.12(a); 2017-57, s. 35.18B(b).)

§ 143-166.20. Subrogation.

The same rights and remedies set forth in G.S. 97-10.2 shall apply in all third party liability cases occurring under this Article, including cases involving the right of the affected State agency to recover the salary paid to an injured officer during the officer's period of disability. (1981, c. 348, s. 4; 2014-100, s. 35.12(a).)

§§ 143-166.21 through 143-166.29. Reserved for future codification purposes.

Article 12C.

Retirement Benefits for State Law-Enforcement Officers.

§ 143-166.30. Retirement benefits for State law-enforcement officers.

(a) Definitions. – The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Beneficiary" means any person in receipt of a retirement allowance or other benefit from a Retirement System.

(2) "Creditable service" means membership service plus prior service plus military service allowable with a Retirement System.

(3) "Employer" means the State of North Carolina and its departments, agencies and institutions.

(4) "Law-enforcement officer" means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State.

(5) "Member" means an officer included in the membership of a retirement system including former officers no longer employed who also elected to leave their accumulated contributions on deposit with a Retirement System.

(6) "Officer" means a "law-enforcement officer."

(7) "Participant" means an officer with an individual account with the Supplemental Retirement Income Plan.

(8) "Regular accumulated contributions" means the sum of all contributions of a member made to the Retirement System, together with regular interest thereon, pursuant to G.S. 143-166 as the same appeared prior to January 1, 1985.

(9) "Retirement allowance" means annual payments for life payable in monthly installments continuing until the death of a beneficiary.

(10) "Law-Enforcement Officers' Retirement System" means the system provided for under G.S. 143-166.

(11) "Special annuity account accumulated contributions" means the sum of all contributions of a member or an employer made to the Special Annuity Accounts for Members of the Law-Enforcement Officers' Retirement System, together with regular interest thereon, pursuant to G.S. 143-166.03 as the same appeared prior to January 1, 1985.

(12) "Special Annuity Accounts" means the supplemental defined contribution provisions of the Law-Enforcement Officers' Retirement System, provided for under G.S. 143-166.03 as the same appeared prior to January 1, 1985.

(13) "State" means the State of North Carolina.

(14) "State Retirement System" means the Teachers' and State Employees' Retirement System of North Carolina provided for under Article 1 of Chapter 135 of the General Statutes.

(15) "Supplemental Retirement Income Plan" means a plan created in conformance with Section 401(a), 401(k), or any other section of the Internal Revenue Code of 1954 as amended.

(b) Basic Retirement System. – On and after January 1, 1985, law-enforcement officers employed by the State shall be members of the Teachers' and State Employees' Retirement System and beneficiaries who were last employed as officers by the State, or who are surviving beneficiaries of officers last employed by the State, shall be beneficiaries of the State Retirement System and paid in benefit amounts then in effect. All members of the Law-Enforcement Officers' Retirement System last employed and paid by the State shall be members of the State Retirement System.

(c) Transfers of Assets and Liabilities to Other Retirement Systems. – As of January 1, 1985, certain assets and liabilities of the Law-Enforcement Officers' Retirement System shall be transferred to the Teachers' and State Employees' Retirement System and the Supplemental Retirement Income Plan in the amounts calculated and in the order of precedence enumerated as follows:

(1) The regular accumulated contributions of members of the Law-Enforcement Officers' Retirement System employed by the State or last employed by the State shall be transferred from the annuity savings fund of the Law-Enforcement Officers' Retirement System to the annuity savings fund of the State Retirement System to the credit of each individual officer.

(2) An amount equal to the present value of the liabilities on account of the retirement allowances payable to beneficiaries last employed as officers by the State and the surviving beneficiaries of officers last employed by the State, as calculated by the Retirement System's consulting actuary, shall be transferred from the pension accumulation fund of the Law-Enforcement Officers' Retirement System to the pension accumulation fund of the State Retirement System.

(3) After the transfers provided for above, additional assets in the pension accumulation fund of the Law-Enforcement Officers' Retirement System

shall be transferred to the pension accumulation fund of the State Retirement System, in an amount equal to the ratio of the accrued liabilities on account of members of the Law-Enforcement Officers' Retirement System employed by the State or last employed by the State to the total accrued liabilities on account of all members of the Law-Enforcement Officers' Retirement System.

(4) The special annuity account accumulated contributions shall be transferred from the special annuity savings fund of the Law-Enforcement Officers' Retirement System to the Supplemental Retirement Income Plan pursuant to subsection (d) of this section to the credit of individual officers.

(d) Supplemental Retirement Income Plan for State Law-Enforcement Officers. – As of January 1, 1985, there shall be created a Supplemental Retirement Income Plan, hereinafter called the "Plan," established for the benefit of all law-enforcement officers employed by the State, who shall be participants. The Board of Trustees of the State Retirement System shall administer the Plan and shall, under the terms and conditions otherwise appearing herein, provide Plan benefits either (i) by establishing a separate trust fund in conformance with Section 401(a), Section 401(k) or other sections of the Internal Revenue Code of 1954 as amended or, (ii) by causing the Plan to affiliate with some master trust fund providing the same benefits for participants. The Plan shall be separate and apart from any retirement systems.

In addition to the contributions transferred from the Law-Enforcement Officers' Retirement System and the contributions otherwise provided for in this Article, participants may make voluntary contributions to the Plan to be credited to the designated individual accounts of participants.

All contributions to the Plan shall be credited to the individual accounts of participants, and except as provided in subsection (g1) of this section, shall be fully and immediately vested in the name of the participant, and shall be invested according to each participant's election, as provided by the Board of Trustees, including but not limited to time deposits, and both fixed and variable investments. The Plan may provide for loans to participants, at reasonable rates of interest to be charged, from participants' individual accounts, and may provide for withdrawal of contributions on account of hardship.

The benefit to a participant in the Plan shall be either a lump-sum distribution or a distribution in periodic installments of the participant's account payable under retirement, disability, or termination of employment. Upon the death of a participant there shall be paid the same lump-sum distribution or periodic installments to the surviving spouse of the participant or otherwise to the participant's estate; provided, should a participant instruct the Board of Trustees in writing that he does not wish these benefits to be paid to his spouse or estate, then the benefits shall be paid to the person or persons as the participant may name for this purpose.

Upon retirement, a participant in the Plan may elect to transfer any portion of his eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, to the Teachers' and State Employees' Retirement System and receive, in

addition to his basic service, early or disability retirement allowance a special retirement allowance which shall be based on his eligible accumulated account balance at the date of the transfer of the assets.

(e) State Contributions to the Supplemental Retirement Income Plan. – Under all other restrictions as are herein provided, the State shall contribute monthly to the individual accounts of participants who are employed by the State an amount equal to five percent (5%) of the compensation of each participant. The contributions so paid shall be in addition to the contributions on account of court cost assessments as hereinafter provided.

Contributions shall be made to the individual accounts of all participants in the Plan on a per capita basis in equal shares, equal to the sum of the one-half dollar ($0.50) for each cost of court assessed and collected under G.S. 7A-304.

(e1) Rights of Participants under the Uniformed Services Employment and Reemployment Rights Act. – A participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, hereafter referred to as "USERRA", shall be entitled to all rights and benefits that the participant would have been entitled to under this section had the participant's employment not been interrupted, provided that the participant returns to service as a law enforcement officer while the participant's reemployment rights are protected under the provisions of USERRA.

(f) Administration. – The provisions of the State Retirement System pertaining to administration and management of funds under G.S. 135-6 and 7 are made applicable to the Plan.

(g) Exemption from Garnishment and Attachment. – Except as provided in subsection (g1) of this section, the right of a participant in the Supplemental Retirement Income Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and garnishment.

(g1) Forfeiture of Benefits for Certain Felonies. – Participants in the Supplemental Retirement Income Plan for State Law-Enforcement Officers whose benefits are forfeited under G.S. 135-18.10A shall also forfeit contributions paid on or after December 1, 2012, on behalf of the participant by the State to the Supplemental Retirement Income Plan. Any funds forfeited shall be deposited in the Supplemental Retirement Income Plan.

(h) Notwithstanding any other provisions of law, any pending or inchoate rights of a member of the Law-Enforcement Officers' Retirement System as of their transfer to the State Retirement System on January 1, 1985, including the rights to a vested deferred retirement allowance and to commence retirement at certain ages with required years of service as a law-enforcement officer, shall in no way be diminished; provided, however, in no event may a member commence retirement and continue membership service with the same Retirement System.

No eligible officer shall be precluded from exercising that officer's pending or inchoate rights under this section, should the officer elect to make Roth after-tax contributions to the Supplemental Retirement Income Plan, except that these Roth after-tax contributions and the earnings thereon shall not be subsequently transferred to the Teachers' and State

Employees' Retirement System. (1983 (Reg. Sess., 1984), c. 1034, s. 248; 1985, c. 479, s. 196(s); 1989, c. 792, s. 2.7; 1995, c. 361, s. 5; 2006-141, s. 1; 2007-384, s. 10.5; 2010-72, s. 11(a); 2012-193, s. 13; 2013-288, s. 1(a).)

§§ 143-166.31 through 143-166.39. Reserved for future codification purposes.

Article 12D.

Separation Allowances for Law-Enforcement Officers.

§ 143-166.40. Rules for selection and retention of law-enforcement officers; rules exempt from Administrative Procedure Act.

(a) Except as otherwise provided by State and federal law, the head of each principal State department may establish rules and procedures for the selection and retention of sworn law-enforcement officers to ensure that they are physically, emotionally, and intellectually qualified to perform their duties. These rules and procedures shall not establish any mandatory age limit for service as a law-enforcement officer that conflicts with a federal statute.

(b) These rules and procedures are exempt from the provisions of Chapter 150B of the General Statutes. (1983 (Reg. Sess., 1984), c. 1034, s. 104; 1987, c. 827, s. 1.)

§ 143-166.41. Special separation allowance.

(a) Notwithstanding any other provision of law, every sworn law-enforcement officer as defined by G.S. 135-1(11c) or G.S. 143-166.30(a)(4) employed by a State department, agency, or institution who qualifies under this section shall receive, beginning in the month in which he retires on a basic service retirement under the provisions of G.S. 135-5(a), an annual separation allowance equal to eighty-five hundredths percent (0.85%) of the annual equivalent of the base rate of compensation most recently applicable to him for each year of creditable service. The allowance shall be paid in equal installments on the payroll frequency used by the employer. To qualify for the allowance the officer shall:

(1) Have (i) completed 30 or more years of creditable service or, (ii) have attained 55 years of age and completed five or more years of creditable service; and

(2) Not have attained 62 years of age; and

(3) Have completed at least five years of continuous service as a law enforcement officer as herein defined immediately preceding a service retirement. Any break in the continuous service required by this subsection because of disability retirement or disability salary continuation benefits shall not adversely affect an officer's qualification to receive the allowance, provided the officer returns to service within 45 days after the disability benefits cease and is otherwise qualified to receive the allowance.

(a1) Repealed by Session Laws 2014-88, s. 3(j), effective July 30, 2014.

(b) As used in this section, "creditable service" means the service for which credit is allowed under the retirement system of which the officer is a member, provided that at least fifty percent (50%) of the service is as a law enforcement officer as herein defined or as a probation/parole officer as defined in G.S. 135-1(17a).

(c) Payment to a retired officer under the provisions of this section shall cease at the first of:

(1) The death of the officer;

(2) The last day of the month in which the officer attains 62 years of age; or

(3) The first day of reemployment by any State department, agency, or institution, except that this subdivision does not apply to an officer returning to State employment in a position exempt from the North Carolina Human Resources Act in an agency other than the agency from which that officer retired.

(d) This section does not affect the benefits to which an individual may be entitled from State, federal, or private retirement systems. The benefits payable under this section shall not be subject to any increases in salary or retirement allowances that may be authorized by the General Assembly for employees of the State or retired employees of the State.

(e) The head of each State department, agency, or institution shall determine the eligibility of employees for the benefits provided herein.

(f) The Director of the Budget may authorize from time to time the transfer of funds within the budgets of each State department, agency, or institution necessary to carry out the purposes of this Article. These funds shall be taken from those appropriated to the department, agency, or institution for salaries and related fringe benefits.

(g) The head of each State department, agency, or institution shall make the payments set forth in subsection (a) to those persons certified under subsection (e) from funds available under subsection (f). (1983 (Reg. Sess., 1984), c. 1034, s. 104; 1985, c. 479, s. 143; 1985 (Reg. Sess., 1986), c. 1014, ss. 51, 52; 2002-126, s. 28.14; 2007-69, s. 1; 2011-232, s. 9; 2013-382, s. 9.1(c); 2014-88, s. 3(j); 2017-57, s. 35.19B(b).)

§ 143-166.42. Special separation allowances for local officers.

(a) On and after January 1, 1987, every sworn law enforcement officer as defined by G.S. 128-21(11d) or G.S. 143-166.50(a)(3) employed by a local government employer who qualifies under this section shall receive, beginning in the month in which the officer retires on a basic service retirement under the provisions of G.S. 128-27(a), an annual separation allowance equal to eighty-five hundredths percent (0.85%) of the annual equivalent of the base rate of compensation most recently applicable to the officer for each year of creditable service. The allowance shall be paid in equal installments on the payroll frequency used by the employer. To qualify for the allowance, the officer shall:

(1) Have (i) completed 30 or more years of creditable service or (ii) have attained 55 years of age and completed five or more years of creditable service; and

(2) Not have attained 62 years of age; and

(3) Have completed at least five years of continuous service as a law enforcement officer as herein defined immediately preceding a service retirement. Any break in the continuous service required by this subsection because of disability retirement or disability salary continuation benefits shall not adversely affect an officer's qualification to receive the allowance, provided the officer returns to service within 45 days after the disability benefits cease and is otherwise qualified to receive the allowance.

(b) As used in this section, "creditable service" means the service for which credit is allowed under the retirement system of which the officer is a member, provided that at least fifty percent (50%) of the service is as a law enforcement officer as herein defined.

(c) Payment to a retired officer under the provisions of this section shall cease at the first of:

(1) The death of the officer;

(2) The last day of the month in which the officer attains 62 years of age; or

(3) The first day of reemployment by a local government employer in any capacity.

(c1) Notwithstanding the provisions of subdivision (3) of subsection (c) of this section, payments to a retired officer shall not cease when a local government employer employs a retired officer for any of the following:

(1) In a public safety position in a capacity not requiring participation in the Local Governmental Employees' Retirement System.

(2) In service to a county board of elections on an election day in a capacity that complies with G.S. 128-21(19) and does not result in cessation or suspension of the retiree's benefit from the Local Government Employees' Retirement System.

(d) This section does not affect the benefits to which an individual may be entitled from State, local, federal, or private retirement systems. The benefits payable under this section shall not be subject to any increases in salary or retirement allowances that may be authorized by local government employers or for retired employees of local governments.

(e) The governing body of each local employer shall determine the eligibility of employees for the benefits provided herein.

(f) The governing body of each local employer shall make the payments set forth in subsection (a) of this section to those persons certified under subsection (e) of this section from funds available. (1985 (Reg. Sess., 1986), c. 1019, s. 2; 2009-396, s. 1; 2018-25, s. 1.)

§ 143-166.43. Separation buyouts for law enforcement officers.

Any State department, agency, or institution, or any local government employer, may, in its discretion, offer a lump sum separation buyout to a law enforcement officer who leaves employment prior to reaching the officer's eligibility for a separation allowance under this Article. The lump sum separation buyout shall be paid from funds available and

shall not exceed the total that would otherwise be paid in separation allowance payments under G.S. 143-166.41 or G.S. 143-166.42. (2018-22, s. 1.)

§ 143-166.44: Reserved for future codification purposes.

§ 143-166.45: Reserved for future codification purposes.

§ 143-166.46: Reserved for future codification purposes.

§ 143-166.47: Reserved for future codification purposes.

§ 143-166.48: Reserved for future codification purposes.

§ 143-166.49: Reserved for future codification purposes.

Article 12E.

Retirement Benefits for Local Governmental Law-Enforcement Officers.

§ 143-166.50. Retirement benefits for local governmental law-enforcement officers.

(a) Definitions. – The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, have the following meaning:

(1) "Beneficiary" means any person in receipt of a retirement allowance or other benefit from a Retirement System.

(2) "Employer" means a county, city, town or other political subdivision of the State.

(3) "Law-enforcement officer" means a full-time paid employee of an employer, who possesses the power of arrest, who has taken the law enforcement oath administered under the authority of the State as prescribed by G.S. 11-11, and who is certified as a law enforcement officer under the provisions of Article 1 of Chapter 17C of the General Statutes or certified as a deputy sheriff under the provisions of Chapter 17E of the General Statutes. "Law enforcement officer" also means the sheriff of the county. The number of paid personnel employed as law enforcement officers by a law enforcement agency may not exceed the number of law enforcement positions approved by the applicable local governing board.

(4) "Law-Enforcement Officers' Retirement System" means the system provided for under Article 12 of Chapter 143 of the General Statutes, as it existed prior to January 1, 1986.

(5) "Local Governmental Employees' Retirement System" means the Local Governmental Employees' Retirement System of North Carolina provided for under Article 3 of Chapter 128 of the General Statutes.

(6) "Member" means an officer included in the membership of a retirement system, including former officers no longer employed who also elected to leave their accumulated contributions on deposit with a Retirement System.

(7) "Officer" means a "law-enforcement officer."

(8) "State" means the State of North Carolina.

(b) Basic Retirement System. – On and after January 1, 1986, law-enforcement officers employed by an employer shall be members of the Local Government Employees' Retirement System, and beneficiaries who were last employed as officers by an employer, or who are surviving beneficiaries of officers last employed by an employer, are beneficiaries of the Local Governmental Employees' Retirement System and paid in benefit amounts then in effect. All members of the Law-Enforcement Officers' Retirement System last employed and paid by an employer are members of the Local Retirement System.

(c) Rights. – Notwithstanding any other provisions of law, any accrued or inchoate rights of a member of the Law-Enforcement Officers' Retirement System as of his transfer to the Local Governmental Employees' Retirement System on January 1, 1986, including the rights to a vested deferred retirement allowance and to commence retirement at certain ages with required years of service as a law-enforcement officer, may in no way be diminished; provided, however, in no event may a member commence retirement and continue membership service with the same Retirement System after January 1, 1986.

No eligible officer shall be precluded from exercising that officer's pending or inchoate rights under this section, should the officer elect to make Roth after-tax contributions to the Supplemental Retirement Income Plan, except that these Roth after-tax contributions and the earnings thereon shall not be subsequently transferred to the Local Governmental Employees' Retirement System.

(d) Court Cost Receipts. – Of the sum derived from the cost of court provided for in G.S. 7A-304(a)(3), the amount designated for this Article, except for the amount designated for the provisions of G.S. 143-166.50(e), shall be paid over to the pension accumulation fund of the Local Governmental Employees' Retirement System and shall offset, to the extent of these receipts, the employers' normal contribution rate required in G.S. 128-30(d)(2) as it pertains to law enforcement officers.

(e) Supplemental Retirement Income Plan for Local Governmental Law-Enforcement Officers. – As of January 1, 1986, all law-enforcement officers employed by a local government employer, are participating members of the Supplemental Retirement Income Plan as provided by Article 5 of Chapter 135 of the General Statutes. In addition to the contributions transferred from the Law-Enforcement Officers' Retirement System, participants may make voluntary contributions to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participants. From July 1, 1987, until July 1, 1988, local government employers of law enforcement officers shall contribute an amount equal to at least two percent (2%) of participating local officers' monthly compensation to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participating local officers; and on and after July 1, 1988, local government employers of law enforcement officers shall contribute an amount equal

to five percent (5%) of participating local officers' monthly compensation to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participating local officers.

Additional contributions shall also be made to the individual accounts of all participants in the Plan, except for Sheriffs, on a per capita equal-share basis from the sum of one dollar and twenty-five cents ($1.25) for each cost of court collected under G.S. 7A-304.

Upon retirement, a participant in the Plan may elect to transfer any portion of his eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, to the Local Governmental Employees' Retirement System and receive, in addition to his basic service, early or disability retirement allowance a special retirement allowance which shall be based on his eligible accumulated account balance at the date of the transfer of the assets.

(e1) Rights of Participants under the Uniformed Services Employment and Reemployment Rights Act. – A participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, hereafter referred to as "USERRA", shall be entitled to all rights and benefits that the participant would have been entitled to under this section had the participant's employment not been interrupted, provided that the participant returns to service as a law enforcement officer while the participant's reemployment rights are protected under the provisions of USERRA.

(e2) Forfeiture of Benefits for Certain Felonies. – Participants in the Supplemental Retirement Income Plan for Local Governmental Law-Enforcement Officers whose benefits are forfeited under G.S. 128-38.4A shall also forfeit contributions paid on or after December 1, 2012, on behalf of the participant by local government employers of law enforcement officers to the Supplemental Retirement Income Plan for Local Governmental Law-Enforcement Officers. Any funds forfeited shall be deposited in the Supplemental Retirement Income Plan. (1985, c. 479, s. 196(t); c. 729, ss. 6, 7; 1985 (Reg. Sess., 1986), c. 1015, s. 2; c. 1019, s. 1; 1995, c. 361, s. 6; 1997-144, s. 2; 2006-141, s. 2; 2007-384, s. 10.6; 2010-72, s. 11(b); 2012-193, s. 14; 2013-288, s. 1(b); 2018-5, s. 17.1(a).)

§§ 143-166.51 through 143-166.59. Reserved for future codification purposes.

Article 12F.

Separate Insurance Benefits Plan for State and Local Governmental Law-Enforcement Officers.

§ 143-166.60. Separate insurance benefits plan for law-enforcement officers.

(a) A Separate Insurance Benefits Plan, hereinafter called the "Plan", is to be an employee welfare benefit plan, established for the benefit of (i) all law enforcement officers, as defined in G.S. 135-1(11c) and G.S. 128-21(11d) employed by the State and local governments and (ii) all former law-enforcement officers previously employed by the

State and local governments, who had 20 or more years of service as an officer or are in receipt of a disability retirement allowance from any State-administered retirement system or are in receipt of a benefit from the Disability Income Plan of North Carolina, who shall be participants.

(b) The Boards of Trustees of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall jointly administer the Plan and shall, under the terms and conditions otherwise appearing in this Article, provide Plan benefits either (i) by establishing a separate trust fund in conformance with Section 501(c)(9) of the Internal Revenue Code of 1954 as amended or, (ii) by causing the Plan to affiliate with a master trust, the North Carolina Teachers' and State Employees' Benefits Trust, providing the same benefits for participants. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to participants, surviving spouses, participants' estates, and persons named by the participant to receive the benefit. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and administrators, and are not subject to the claims of creditors of participants. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

(c) The initial assets of the Plan are the assets of the former Separate Benefit Plan established under G.S. 143-166.04 as it existed prior to January 1, 1986, which shall be transferred to the Plan on January 1, 1986. The Plan shall be separate and apart from any retirement systems or plans.

(d) The Boards of Trustees shall promulgate rules and regulations as are necessary to establish benefits under the Plan, within the availability of funds, to provide:

(1) An accident and sickness disability insurance benefit;

(2) A group life insurance benefit for participants employed by an employer at the time of death, not to exceed five thousand dollars ($5,000);

(3) A group life insurance benefit for participants who are eligible former officers, not to exceed four thousand dollars ($4,000); and

(4) An accidental line-of-duty insurance death benefit not to exceed two thousand one hundred dollars ($2,100) in total on account of the death of a participant caused by an accident while in the actual performance of duty as an officer.

(d1) In addition to the benefits provided under subsection (d) of this section, the assets of the Plan may be used to pay the employer health insurance contributions and contribution rates on behalf of law enforcement officers, as defined in G.S. 135-1(11c), employed by the State and former law enforcement officers receiving a retirement allowance from the Teachers' and State Employees' Retirement System.

(e) The insurance benefit of the Plan on account of the death of a participant shall be payable to the surviving spouse of the participant or otherwise to the participant's estate; provided, should a participant instruct the Board of Trustees in writing that the participant does not wish these benefits to be paid to his or her spouse or estate, then the benefits shall

be paid to the person or persons as the participant may name for this purpose. The life insurance benefits shall be payable only on account of participants in the Plan for six or more months or, if an actively employed officer, at any time after employment if death results from an accident. The accident and sickness disability insurance benefits shall be payable to a participant at any time after becoming a participant in the Plan.

(f) Should amounts in the trust fund of the Plan be insufficient at any time to enable the Boards of Trustees to pay benefits due in full, then an equitable graded percentage of the payment shall be made.

(g) The provisions of the State and Local Retirement Systems pertaining to administration and management of funds under G.S. 128-28, G.S. 128-29, G.S. 135-6 and G.S. 135-7 are made applicable to the Plan.

(h) Exemption from Garnishment and Attachment. – The right of a participant in the Separate Insurance Benefits Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and garnishment. (1985, c. 479, s. 196(t); 1987, c. 738, s. 29(p); 1989, c. 792, s. 2.8; 2003-284, s. 30.19B(b); 2013-360, s. 35.17(a); 2014-97, s. 9; 2017-129, s. 2(v).)

§§ 143-166.61 through 143-166.69. Reserved for future codification purposes.

Article 12G.

Transfers of Assets of Law-Enforcement Officers' Retirement System to Other Retirement Systems.

§ 143-166.70. Transfers of assets of Law-Enforcement Officers' Retirement System to other retirement systems.

As of January 1, 1986, assets of the Law-Enforcement Officers' Retirement System, provided for under Article 12 of Chapter 143 of the General Statutes, as it existed prior to January 1, 1986, shall be transferred to the Local Governmental Employees' Retirement System provided for under Article 3 of Chapter 128 of the General Statutes, and the Supplemental Retirement Income Plan of North Carolina, provided for under Article 5 of Chapter 135 of the General Statutes, in the amounts calculated and in the order of precedence enumerated as follows:

(1) The regular accumulated contributions of members of the Law-Enforcement Officers' Retirement System shall be transferred from the annuity savings fund of the Law-Enforcement Officers' Retirement System to the annuity savings fund of the Local Governmental Employees' Retirement System to the credit of each individual member.

(2) An amount equal to the present value of the liabilities on account of the retirement allowances payable to beneficiaries of the Law-Enforcement Officers' Retirement System, as calculated by the Retirement System's consulting actuary, shall be transferred from the pension accumulation fund of the Law-Enforcement Officers' Retirement System to the pension accumulation fund of the Local Governmental Employees' Retirement System.

(3) After the transfer provided for above, the remaining assets in the pension accumulation fund of the Law-Enforcement Officers' Retirement System shall

be transferred to the pension accumulation fund of the Local Governmental Employees' Retirement System with the amount of such assets to be taken into account by the Retirement System's consulting actuary in determining the employers' rates of contribution under G.S. 128-30(d)(9).

(4) The special annuity account accumulated contributions shall be transferred from the special annuity savings fund of the Law-Enforcement Officers' Retirement System to the Supplemental Retirement Income Plan of North Carolina, or some other employer-sponsored trust qualified under Sections 401(a) and 401(k) of the Internal Revenue Code of 1954 as amended.

(5) The separate trust fund reserves held under the death benefit plan provided for in G.S. 143-166.02, as it existed prior to January 1, 1986, shall be transferred to the separate trust fund for the death benefit plan provided for in G.S. 128-27(1) [128-27(l)]. (1985, c. 479, s. 196(u).)

§§ 143-166.71 through 143-166.79. Reserved for future codification purposes.

Article 12H.

Sheriffs' Supplemental Pension Fund Act of 1985.

§ 143-166.80. Short title and purpose.

(a) This Article shall be known and may be cited as the "Sheriffs' Supplemental Pension Fund Act of 1985".

(b) The purpose of this Article is to create a pension fund to supplement local government retirement benefits which will attract the most highly qualified talent available within the State to the position of sheriff and to fully recognize that sheriffs are constitutional officials elected by the people and are also officers of the court enforcing the laws of the State of North Carolina. (1985, c. 729, s. 1.)

§ 143-166.81. Scope.

(a) This Article provides supplemental pension benefits for all county sheriffs who are retired from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan as herein described.

(b) The North Carolina Department of Justice shall administer the provisions of this Article.

(c) The provisions of this Article shall be subject to future legislative change or revision, and no person is deemed to have acquired any vested right to a pension payment provided by this Article. (1985, c. 729, s. 1.)

§ 143-166.82. Assets.

(a) On and after July 1, 1985, each Clerk of Superior Court shall remit to the Department of Justice the monthly receipts collected pursuant to G.S. 7A-304 (a)(3a) to be deposited to the credit of the Sheriffs' Supplemental Pension Fund, hereinafter referred to as the Fund, to be used in making monthly pension payments to eligible retired sheriffs under the provisions of this Article and to pay the cost of administering the provisions of this Article.

(a1) The Department of Justice shall, at the beginning of each calendar year, calculate the amount of funds, in addition to those funds from subsection (a) of this section and from G.S. 143-166.83(f), needed for that year to pay the pension benefits under this Article and shall bill each county for that amount on a pro rata basis based on the most recent population estimates by the Office of State Budget and Management for each county. The amount so billed shall be paid by each county no later than March 1st of that year to the Department of Justice and shall be deposited into the Fund. For funding this contribution to the Fund, counties may use the portion of the civil process service fee per G.S. 7A-311(a)(1) that is not required by statute to be used to ensure the timely service of process within the county, may use other funds, or both.

(b) The State Treasurer shall be the custodian of the Sheriffs' Supplemental Pension Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. (1985, c. 729, s. 1; 2017-176, s. 6(a).)

§ 143-166.83. Disbursements.

(a) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 54, effective January 1, 1993.

(b) Immediately following January 1, 1993, and the first of January of each succeeding calendar year thereafter, the Department of Justice shall divide an amount equal to ninety percent (90%) of the assets of the Fund at the end of the preceding calendar year and shall add to that amount any assets remaining pursuant to subsection (f) of this section and the amounts pursuant to G.S. 143-166.82(a1) and disburse the same as monthly payments in accordance with the provisions of this Article.

(c) Ten percent (10%) of the Fund's assets as of January 1, 1993, and at the beginning of each calendar year thereafter, may be used by the Department of Justice in administering the provisions of this Article. This ten percent (10%) is to be derived from the Fund's assets prior to the addition of assets remaining pursuant to subsection (f) of this section.

(d) All the Fund's disbursements shall be conducted in the same manner as disbursements are conducted for other special funds of the State.

(e) If, for any reason, the Fund shall be insufficient to pay pension benefits owed under this Article or other charges, then all benefits or payments shall be reduced pro rata for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension payment shall have been reduced.

(f) Any assets remaining after reserving an amount equal to the disbursements required under subsections (b) and (c) of this section shall be accrued and included in disbursements for pensioners in succeeding years. (1985, c. 729, s. 1; 1985 (Reg. Sess., 1986), c. 1030, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 900, s. 54(a); 2017-176, s. 6(b).)

§ 143-166.84. Eligibility.

(a) Each county sheriff who has retired from the Local Governmental Employees' Retirement System, and who has attained the age of 55 years or attained 30 years of

creditable service regardless of age, and who has completed at least 10 years of eligible service as sheriff, is entitled to receive a monthly pension under this Article.

(a1) Each county sheriff who withdrew any service standing to his credit in the Local Governmental Employees' Retirement System prior to July 1, 1986, and who has attained the age of 55 or attained 30 creditable years of service regardless of age, and who has completed at least 10 years of eligible service as sheriff, is entitled to receive a monthly pension under this Article provided the sheriff is not eligible to receive any retirement benefit from any State or locally sponsored plan.

(a2) Each county sheriff who has been approved for disability benefits from the Local Governmental Employees' Retirement System is eligible to receive benefits from the Fund based on years of creditable service as sheriff, regardless of age, provided the retiree has at least 10 years of eligible service as sheriff.

(b) Each eligible retired sheriff as defined in subsections (a), (a1), and (a2) of this section relating to age and service shall be entitled to receive a monthly pension under this Article beginning with the month immediately following the effective date of retirement.

(c) **(Expires July 1, 2022)** For the purposes of this Article, the term "eligible service as sheriff" means membership service rendered since the person became sheriff and, if the person has sick leave standing to his or her credit accrued as a member of the Local Governmental Employees' Retirement System and, after notification to the Retirement Systems Division by the Department of Justice, elects to have all of that sick leave applied to service under this Article instead of service in the Local Governmental Employees' Retirement System, one month of credit for each 20 days or portion thereof, but not less than one hour, and subject to all the requirements and restrictions of G.S. 128-26(e). (1985, c. 729, s. 1; 1985 (Reg. Sess., 1986), c. 1030, ss. 3, 5(a); 1987, c. 177, s. 3; 1989 (Reg. Sess., 1990) c. 1079, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 54(b); 2017-128, s. 5(a).)

§ 143-166.85. Benefits.

(a) An eligible retired sheriff shall be entitled to and receive an annual pension benefit, payable in equal monthly installments, equal to an amount that, when added to a retired allowance at retirement from the Local Governmental Employees' Retirement System or to the amount he would have been eligible to receive if service had not been forfeited by the withdrawal of accumulated contributions, is equal to seventy-five percent (75%) of a sheriff's equivalent annual salary immediately preceding retirement computed on the latest monthly base rate, to a maximum amount that does not exceed (i) one thousand five hundred dollars ($1,500) or (ii) the sheriff's equivalent annual salary immediately preceding retirement computed on the latest monthly base rate when the benefit described in this subsection is added to the amount of the benefit the sheriff receives under G.S. 143-166.42 and the amount of the sheriff's retired allowance at retirement from the Local Governmental Employees' Retirement System or the amount the sheriff would have been eligible to receive if service had not been forfeited by the withdrawal of accumulated contributions.

(b) All monthly pensions payable under this Article shall be paid on the last business day of each month.

(c) At the death of the pensioner, benefits for the current calendar year will continue and be paid in monthly installments to the decedent's spouse or estate, in accordance with the provisions of Chapter 28A of the General Statutes. Benefits will cease upon the last payment being made in December of the current year.

(d) Monthly pensions payable under this Article will cease upon the full-time reemployment of a pensioner with an employer participating in the Local Governmental Employees' Retirement System for as long as the pensioner is so reemployed.

(e) Repealed by Session Laws 1989, c. 792, s. 2.9.

(f) Nothing contained in this Article shall preclude or in any way affect the benefits that a pensioner may be entitled to from any state, federal or private pension, retirement or other deferred compensation plan. (1985, c. 729, s. 1; 1985 (Reg. Sess., 1986), c. 1030, ss. 4, 5(b); 1987, c. 177, s. 4; 1989, c. 792, s. 2.9; 1989 (Reg. Sess., 1990), c. 1079, s. 2; 1991 (Reg. Sess., 1992), c. 900, s. 54(c); 2005-276, s. 29.30(a); 2017-176, s. 6(c).)

Article 13.

Publications.

§ 143-167. Transferred to G.S. 147-54.1 by Session Laws 1943, c. 543.

§ 143-168. Reports; conciseness.

The annual or biennial reports now authorized or required to be printed by the several State agencies and institutions shall be as compact and concise as is consistent with an intelligent understanding of the work of those agencies and institutions. The details of the work of the agencies and institutions shall not be printed when not necessary to an intelligent understanding of such work, but totals and results may be tabulated and printed in their reports. (1911, c. 211, s. 2; 1917, c. 202, s. 2; C.S., s. 7294; 1931, c. 261, s. 3; 1955, c. 983; 1961, c. 243, s. 2; 1983, c. 866, s. 1.)

§ 143-169. Limitations on publications.

(a) Repealed by Session Laws 1983, c. 866, s. 2.

(b) Repealed by Session Laws 2007-234, s. 1, effective July 18, 2007.

(c) Every publication published at State expense shall be prepared in accordance with the recycling and reuse requirements set forth in G.S. 130A-309.14(j). (1911, c. 211, s. 2; C.S., s. 7302; 1931, c. 261, s. 3; c. 312, ss. 14, 15; 1955, c. 1203; 1961, c. 243, s. 3; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1983, c. 866, s. 2; 1989, c. 727, s. 218(100); 1993, c. 448, s. 4; 1997-443, s. 11A.119(a); 2007-234, s. 1.)

§ 143-169.1. State agency public document mailing lists to be updated.

(a) On or before July 1 of each year, beginning with July 1, 1976, the head of every agency of this State shall certify to the Director of the Budget that the mailing lists for each public document issued by his agency have been carefully reviewed, updated and corrected within the previous 12 months. The above date may be extended by the Director of the Budget for 90 days for good cause shown. The reviewed, updated and corrected mailing lists shall be comprised only of those persons and organizations who, within the previous 12 months, have either requested that they be included in such a mailing list or have renewed a request that they be so included, or are

recipients contemplated for receipt of the pertinent public document by express provision of statute or judicial order, but this sentence does not apply to mailing lists of alumni of a constituent institution of The University of North Carolina, used or maintained by the constituent institution.

(b), (c) Repealed by Session Laws 1989, c. 715, s. 2. (1975, c. 362, s. 1; 1983, c. 866, ss. 3-5; 1989, c. 715, s. 2; 1993, c. 448, s. 5.)

§ 143-169.2. Definitions.

(a) For the purposes of this Article, the term "public document" shall mean any annual, biennial, regular or special report or publication of which at least 200 copies are printed, but shall not include intra-agency communications nor agency correspondence.

(b) For the purposes of this Article, the term "agency" shall mean and include, as the context may require, State department, institution, university, commission, committee, board, licensing board, division, bureau, officer or official; provided, however, the provisions of G.S. 143-169.1 shall not apply to the General Assembly, the Department of Revenue, the Department of Commerce, or to the Administrative Office of the Courts and the court system, nor shall the provisions of G.S. 143-170.2 and 143-170.3 apply to the General Assembly or to the Administrative Office of the Courts and the courts system. (1989, c. 715, s. 3; c. 751, ss. 7(16), 18; 1991 (Reg. Sess., 1992), c. 959, s. 35.)

§ 143-170. Repealed by Session Laws 1955, c. 986.

§ 143-170.1. Statement of cost of public documents; chief administrator charged with compliance.

(a) Every agency of this State publishing a public document, other than one published for the principal purpose of sale to the public, shall cause the following statement to be printed adjacent to the identification of the agency responsible for the publication:

"(Number of copies) copies of this public document were printed at a cost of $____, or $____ per copy."

For the purposes of this Article the term "cost" shall include printing costs in the form of labor and materials, and other identifiable design, typesetting, and binding costs.

(a1) Any public document without a statement of cost shall not be mailed or distributed at public expense.

(a2) Whenever a public document that is published by an agency of this State is printed on recycled paper, the document shall contain a printed statement or symbol indicating that the document was printed on recycled paper.

(a3) If an agency fails to comply with this section, then the agency's printing budget for the fiscal year following the violation shall be reduced by ten percent (10%).

(b) The chief administrator of the agency authorizing the printing is charged with agency compliance with the provisions of this Article. (1983, c. 866, ss. 6, 7; 1989, c. 34; 1993, c. 256, s. 4; 1995, c. 324, s. 6.10.)

§ 143-170.2. Publication procedure manuals.

(a) The State Librarian in consultation with the State Auditor shall administer and periodically revise guidelines to be used by all State agencies and community colleges in developing publication procedures manuals for public documents. The initial guidelines developed by the Department of Administration shall be released no later than December

1, 1989 and shall address at least the following elements of publication production for public documents:

(1) Bibliographic style, substantially in accord with a recognized style manual approved by the State Librarian; provided, however, the Department shall not develop guidelines concerning the design, layout, size or appearance of publications except as otherwise permitted herein;
(2) Procedures for the notification of the State Library for title changes in serial publications;
(3) Pricing of documents for resale;
(4) Use of publication services at State-operated printing facilities;
(5) Purchase of commercial publication services; and
(6) The distribution of publications.

The Department of Administration shall submit the initial guidelines to State agencies for review and comment for a period of 60 days; provided, however, that submission to The University of North Carolina System Office shall satisfy this requirement with respect to universities. The Department, in consultation with at least the State Librarian and the State Auditor, shall consider the comments of the State agencies before adopting final guidelines. The Department of Administration shall adopt and release the final guidelines no later than four months after the release of the initial guidelines.

(b) Upon the adoption and release of final guidelines by the Department of Administration, each State agency and community college shall within four months thereafter adopt a publication procedures manual for public documents consistent with the guidelines established pursuant to subsection (a) of this section and an administrative review and approval process to ensure appropriate review and approval of its public documents.

(c) Each State agency and community college shall submit to the State Library for review and retention a copy of its publication procedures manual and its administrative review procedure for public documents. Any revisions made by an agency shall also be submitted to the State Library within 30 days of adoption by the agency.

(d) Repealed by Session Laws 1991, c. 757.

(d1) The State Library may revise the final statewide guidelines, originally issued April 1, 1990, by the Department of Administration, at any time after July 1, 1990, provided that there be distribution of any proposed revisions to all agencies and institutions subject to these provisions, and that there be a 30-day review period for these agencies to comment. (1989, c. 715, s. 1; 1991, c. 757, s. 1; 2018-12, s. 18.)

§ 143-170.3. Reports; audits.

(a) The Department of Administration shall report to the Joint Legislative Commission on Governmental Operations each State agency and community college that fails to timely adopt and submit to the Department the information required by G.S. 143-170.2. The initial report shall be made by January 1, 1991.

(b) Upon the determination of the State Auditor that a State agency or community college has failed to substantially comply with its publications procedure manual or its administrative review and approval process for public documents, the State Auditor shall report the

noncompliance to the Joint Legislative Commission on Governmental Operations within 60 days if the General Assembly is not in session, and to the President Pro Tempore of the Senate, the Speaker of the House, and the Senate and House Appropriations Committee Chairmen within 30 days if the General Assembly is in session.

(c) The State Librarian and the University Librarian of the University of North Carolina at Chapel Hill shall identify the types of publications for which the use of acid-free paper is desirable and, with the assistance of the Department of Administration, shall study the availability of acid-free paper and the costs associated with purchasing and using acid-free paper. The State Librarian and the University Librarian of the University of North Carolina at Chapel Hill shall report to the Joint Legislative Commission on Governmental Operations no later than November 1, 1990 the information required by this subsection. (1989, c. 715, s. 1.)

§ 143-170.4. Administrative Office of the Courts; publications procedures manual; reports.

Not later than June 1, 1990, the Administrative Office of the Courts, after review of the Department of Administration's state publications procedures guidelines and after consultation with the State Librarian and State Auditor, shall adopt (i) a publications procedures manual for public documents, other than the official reports of the North Carolina Supreme Court and the North Carolina Court of Appeals and official forms published by the Administrative Office of the Courts pursuant to G.S. 7A-343, that addresses the elements of publication production described in G.S. 143-170.2 and (ii) an administrative review and approval process to ensure appropriate review and approval of its public documents. The initial guidelines and the administrative review and approval process shall be reported to the Joint Legislative Commission on Governmental Operations by January 1, 1991. (1989, c. 715, s. 1; 2001-424, s. 22.6(b).)

§ 143-170.5. Designated public documents to be printed on alkaline paper.

Each agency publishing a State document designated by the State Librarian and the University Librarian at the University of North Carolina at Chapel Hill as one that must be printed on alkaline paper shall comply with that publication requirement. (1991, c. 224, s. 2; 1993, c. 553, s. 4; 2015-184, s. 1(b).)

Article 14.

North Carolina Zoological Authority.

§§ 143-171 through 143-176.1: Repealed by Session Laws 1973, c. 1262, s. 85.

§§ 143-177 through 143-177.3: Recodified as G.S. 143B-135.210 through 143B-135.213 by Session Laws 2015-241, s. 14.30(j), effective July 1, 2015.

Article 15.

Council of State Governments.

§§ 143-178 through 143-185: Repealed by Session Laws 1975, c. 879, s. 25.

§ 143-186. Council of State Governments a joint governmental agency.

The Council of State Governments is hereby declared to be a joint governmental agency of this State and of the other states which cooperate through it. (1937, c. 374, s. 10; 1959, c. 137, s. 4.)

§ 143-187. Transferred to G.S. 143-186 by Session Laws 1959, c. 137, s. 4.

§ 143-188: Repealed by Session Laws 1959, c. 137, s. 1.

Article 16.

Spanish-American War Relief Fund.

§§ 143-189 through 143-190: Repealed by Session Laws 1961, c. 481.

Article 17.

State Post-War Reserve Fund.

§ 143-191. Appropriation for fund.

There is hereby appropriated from the general fund of the State the sum of twenty million dollars ($20,000,000), the said sum, together with the investments and income therefrom, to be hereafter known and designated as the State Post-War Reserve Fund. (1943, c. 6, s. 1.)

§ 143-192. Fund to be invested by Governor and Council of State; State Treasurer custodian.

The Governor and Council of State are hereby fully authorized and directed to invest the said fund exclusively in bonds of the United States of America, of such series as may be readily converted into money and notes or certificates of indebtedness of the United States of America, or in bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, and in bonds or notes of the State of North Carolina. The interest and revenues received from such investments, or profits realized in the sale thereof, shall become a part of the said State Post-War Reserve Fund and shall be likewise invested. Bonds of the State of North Carolina purchased for the said fund shall not be cancelled or retired but shall remain in full force and the income therefrom reinvested as hereinbefore provided. The State Treasurer shall be custodian of all securities and investments made under authority of this Article. (1943, c. 6, s. 2.)

§ 143-193. Fund to be held for such use as directed by General Assembly.

The said State Post-War Reserve Fund shall be held for such use as shall hereafter be directed by an act of the General Assembly of North Carolina, and no other use thereof whatsoever shall be made. (1943, c. 6, s. 3.)

§ 143-194. Report to General Assembly.

The Governor and Council of State shall make a report in writing to the General Assembly, not later than the tenth day of each regular or special session thereof, stating the nature and amount of all receipts and disbursements from the said fund and the amount contained in said fund, and giving an itemized statement of all investments made as herein authorized, which report shall be spread upon the journals of the Senate and House of Representatives. (1943, c. 6, s. 4.)

Article 18.

Rules and Regulations Filed with Secretary of State.

§§ 143-195 through 143-198.1. Repealed by Session Laws 1973, c. 1331, s. 2.

Article 19.

Roanoke Island Historical Association.

§ 143-199. Association under patronage and control of State.

Roanoke Island Historical Association, Incorporated is hereby permanently placed under the patronage and control of the State. (1945, c. 953, s. 1.)

§ 143-200. Members of board of directors; terms; appointment.

The governing body of the Association shall be a board of directors consisting of 25 voting members appointed as follows:

(1) The following officials, or their designees, shall serve ex officio:
  a. The Superintendent of Public Instruction.
  b. The Chair of the Dare County Board of Commissioners.
  c. The Secretary of Natural and Cultural Resources.

(2) Four persons shall be appointed as follows:
  a. Two by the Governor, initially, one for a one-year term and one for a three-year term. Successors shall be appointed for a term of three years and until their successors are appointed.
  b. One by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the President Pro Tempore of the Senate, for a three-year term. Successors shall also be appointed for a term of three years and until their successors are appointed.
  c. One by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the Speaker of the House of Representatives, initially for a one-year term. Successors shall be appointed for a term of three years and until their successors are appointed.

(3) The remaining 18 members of the board of directors shall be made by the membership of the Association in the regular annual meeting or special meeting called for such purpose. In the event the Association through its membership should fail to make such appointments, then the appointments shall be made by the Governor of the State. If a vacancy occurs between annual meetings, the board of directors may fill the vacancy until the next annual meeting. All vacancies occurring on the board of directors not filled by the board of directors within 30 days of the vacancy shall be filled by the Governor. Members appointed under this subdivision shall serve for a term of three years and until their

successors are appointed. (1945, c. 953, s. 2; 1973, c. 476, s. 48; 1996, 2nd Ex. Sess., c. 18, s. 11.1(a); 1999-32, s. 1; 1999-431, s. 3.1; 2015-241, s. 14.30(t); 2017-57, s. 14.8(a).)

§ 143-201. Bylaws; officers of board.

The board of directors when organized under the terms of this Article shall have authority to adopt bylaws for the organization and the bylaws shall thereafter be subject to change only by three-fifths vote of a quorum of the board of directors. The board of directors shall choose from its membership or from the membership of the Association a chairman, a vice-chairman, a secretary and a treasurer, which offices in the discretion of the board may be combined in one, and also a historian and a general counsel. The board also in its discretion may choose one or more honorary vice-chairmen. In addition to their other lawful duties, the duly elected officers of the Association shall also serve as an advisory committee to the Secretary of Natural and Cultural Resources concerning matters relating to "The Lost Colony" historical drama, the Roanoke Island Festival Park, and the Elizabeth II State Historic Site and Visitor Center. (1945, c. 953, s. 3; 1973, c. 476, s. 87; 2015-241, s. 14.30(t); 2017-57, s. 14.8(a).)

§ 143-202. Exempt from taxation; gifts and donations.

The Association is and shall be an educational and charitable association within the meaning of the laws of the State of North Carolina, and the property and income of such Association, real and personal, shall be exempt from all taxation. The Association is authorized and empowered to receive gifts and donations and administer the same for the charitable and educational purposes for which the Association is formed and in keeping with the will of the donors, and such gifts and donations to the extent permitted by law shall be exempted from the purpose of income taxes and gift taxes. (1945, c. 953, s. 4; 2017-57, s. 14.8(a).)

§ 143-202.1. Memorandum of Agreement for operation of Roanoke Festival Park and Elizabeth II State Historic Site and Visitor Center.

The Department of Natural and Cultural Resources shall negotiate a Memorandum of Agreement (MOA) with the Association for the management and operation of Roanoke Island Festival Park, including the Elizabeth II State Historic Site and Visitor Center. The MOA shall include, at a minimum, the following:

(1) The establishment and collection of any admission charges or user fees for properties and events operated at Roanoke Island Festival Park by the Association. Nothing in this subdivision is intended to require the charging of admission to any property or event.

(2) The adoption and enforcement of bylaws, rules, and guidelines needed for the Association to carry out the duties imposed by the MOA.

(3) Provisions for the transfer of that portion of revenues collected from operations of the Roanoke Island Festival Park and associated facilities

and enterprises from the Association to the Historic Roanoke Island Fund as the MOA may specify.

(4) The delegation of any powers and the transfer of any assets, liabilities, contracts, or agreements from the Department to the Association necessary to carry out the duties imposed by the MOA. Any delegation or transfer shall be made in accordance with applicable law. (2017-57, s. 14.8(a).)

§ 143-202.2. Friends of Elizabeth II support for Roanoke Island Festival Park.

The Department of Natural and Cultural Resources as successor in interest to the Roanoke Island Commission shall request financial support from the Friends of Elizabeth II, Inc., in the amount of three hundred twenty-five thousand dollars ($325,000) or a sum equal to the average of the last three consecutive years of the Friends' investment earnings, whichever is greater, for each fiscal year. These funds shall be deposited by the Department to a separate fund within the Historic Roanoke Island Fund and used only for the following purposes:

(1) To operate Roanoke Island Festival Park, including the Elizabeth II State Historic Site and Visitor Center and the Elizabeth II as permanent memorials commemorating the Roanoke Voyages, 1584-1587.

(2) By cooperative arrangement with other agencies, groups, individuals, and other entities, including the Association, to coordinate and schedule historical and cultural events on Roanoke Island. (2017-57, s. 14.8(b).)

§ 143-202.3. Historic Roanoke Island Fund.

(a) The Historic Roanoke Island Fund is established as a nonreverting enterprise fund and shall be administered by the Department of Natural and Cultural Resources. The fund shall be used only for the following purposes in addition to those set forth in G.S. 143-202.2:

(1) The expenses of operating and maintaining the properties managed by the Roanoke Island Historical Association pursuant to G.S. 143-202.1, including the salaries and benefits of Roanoke Island Festival Park for staff.

(2) Capital expenditures for the properties operated by the Association pursuant to G.S. 143-202.1.

(3) The restoration, preservation, and enhancement of the appearance, maintenance, and aesthetic quality of U.S. Highway 64/264 and the U.S. 64/264 Bypass travel corridor on Roanoke Island and the grounds on Roanoke Island Festival Park. However, the local government with jurisdiction over the affected portion of the travel corridor shall process the applications for and issue the certificates of appropriateness and shall be responsible for the enforcement of those certificates and any ordinances or rules adopted by the local government regarding that portion of the travel corridor within the local government's jurisdiction,

and no reimbursement shall be made from the Fund to any local government for the processing of applications or issuance of certificates of appropriateness or the enforcement of those certificates, local ordinances, or rules.

(4) To identify, preserve, and protect properties located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo consistent with applicable State laws and rules.

(b) The Department of Natural and Cultural Resources shall transfer to the Fund on a monthly basis a pro rata share of the utilities, maintenance, and operating expenses of the Outer Banks History Center, which is located in the Roanoke Island Festival Park. The funds received pursuant to this subsection shall be credited to the Historic Roanoke Island Fund.

(c) The Department of Natural and Cultural Resources shall credit to the Historic Roanoke Island Fund all rental proceeds received by the Department from the rental properties located near the Outer Banks Island Farm. (2011-145, s. 21.2(j); 2014-100, s. 19.8(a); 2015-241, s. 14.30(s); 2017-57, s. 14.8(c).)

§ 143-202.4. Roanoke Island Festival Park staff.

The Association shall serve as a search committee to seek out, interview, and recommend to the Secretary of Natural and Cultural Resources an Executive Director of Roanoke Island Festival Park. All Festival Park staff shall be considered employees of the Department of Natural and Cultural Resources and shall be paid from the Historic Roanoke Island Fund as provided in G.S. 143-202.3. Except as otherwise provided in this section, or G.S. 126-5, these employees shall retain the same designations under the North Carolina Human Resources Act, Chapter 126 of the General Statutes, as they had prior to the transfer. (1995, c. 507, s. 12.6(c); 2013-382, s. 9.1(c); 2014-100, s. 19.8(a); 2015-241, ss. 14.30(s), (x); 2017-57, s. 14.8(c).)

§ 143-203. Repealed by Session Laws 1983, c. 913, s. 39, effective July 22, 1983.

§ 143-204. Repealed by Session Laws 1977, c. 996, s. 3.

Article 19A.

Governor Richard Caswell Memorial Commission.

§§ 143-204.1 through 143-204.4. Repealed by Session Laws 1973, c. 476, s. 116.

Article 19B.

Historic Swansboro Commission.

§§ 143-204.5 through 143-204.7. Repealed by Session Laws 1973, c. 476, s. 116.

Article 19C.

Outdoor Historical Dramas.

§ 143-204.8. Allotments to outdoor historical dramas.

(a) Upon the application of an outdoor historical drama corporation or trust, approved by the Secretary of Natural and Cultural Resources, the Governor and the Council of State may order an allotment from the Contingency and Emergency Fund of the State not to exceed fifteen thousand dollars ($15,000) a year to that outdoor historical drama corporation or trust to aid in the production of an outdoor historical drama if the provisions of subsection (b) of this section are met.

(b) An allotment shall only be made under this section upon evidence submitted to the Governor and Council of State by the Secretary of Natural and Cultural Resources that during the immediately preceding season of production, the drama was operated at a deficit because of inclement weather or other circumstances beyond the control of the corporation or trust and that contributions or gifts made to the corporation or trust are deductible for income tax purposes under the Internal Revenue Code.

(c) For purposes of this section, an "outdoor historical drama corporation or trust," means only the following corporations or trusts presenting outdoor historical dramas:

Corporation or Trust	Outdoor Historical Drama
Cherokee Historical Association, Incorporated	"Unto These Hills"
The Committee for an Outdoor Drama at Bath, Incorporated	"Blackbeard – The Knight of the Black Flag"
The Duplin Outdoor Drama Society, Incorporated	"The Liberty Cart: A Duplin Story"
Eastern Stage, Inc.	"First for Freedom"
The Moore County Historical Association, Incorporated	"The House in the Horseshoe"
The Outdoor Theatre Fund Charitable Trust	"From This Day Forward"
"Revolution!", Incorporated	"Revolution!"
Roanoke Island Historical Association, Incorporated	"The Lost Colony"
Robeson Historical Drama, Incorporated	"Strike at the Wind"
Snow Camp Historical Drama Society, Incorporated	"Sword of Peace"
Southern Appalachian Historical Association, Incorporated	"Horn in the West"
The Waxhaws Historical Festival and Drama Association	"Listen and Remember"

The above listing of dramas is for informational purposes only and shall not be construed to limit the eligibility of the specified outdoor historical drama corporation or trust to receive allotments under this section.

(d) An outdoor historical drama corporation or trust which has applied for or received an allotment under this section shall permit the State Auditor to inspect and audit its financial records. (1977, c. 996, s. 1; 1987 (Reg. Sess., 1988), c. 1086, s. 44; 1989, c. 752, s. 21; 1991, c. 636, s. 16; 2015-241, s. 14.30(t).)

Article 20.

Recreation Commission.

§§ 143-205 through 143-210.1: Repealed by Session Laws 1969, c. 1145, s. 4.

Article 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

§ 143-211. Declaration of public policy.

(a) It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article and Articles 21A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare.

(b) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto.

(c) It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Environmental Quality as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy

industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. It is the intent of the General Assembly that the powers and duties of the Environmental Management Commission and the Department of Environmental Quality be construed so as to enable the Department and the Commission to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1158, s. 2; 1989, c. 135, s. 1; c. 727, s. 218(102); 1997-443, s. 11A.119(a); 1998-168, s. 1; 2006-259, ss. 31(b), 31(c); 2015-241, s. 14.30(u).)

§ 143-212. Definitions.

Unless a different meaning is required by the context, the following definitions apply to this Article and Articles 21A and 21B of this Chapter:

(1) "Area of the State" means a municipality, a county, a portion of a county or a municipality, or other substantial geographic area of the State designated by the Commission.

(2) "Commission" means the North Carolina Environmental Management Commission.

(3) "Department" means the Department of Environmental Quality.

(4) "Person" includes individuals, firms, partnerships, associations, institutions, corporations, municipalities and other political subdivisions, and governmental agencies.

(5) "Secretary" means the Secretary of Environmental Quality.

(6) "Waters" means any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway, or other body or accumulation of water, whether surface or underground, public or private, or natural or artificial, that is contained in, flows through, or borders upon any portion of this State, including any portion of the Atlantic Ocean over which the State has jurisdiction. (1987, c. 827, s. 152A; 1989, c. 727, s. 218(103); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991 (Reg. Sess., 1992), c. 1028, s. 1; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u), (v).)

§ 143-213. Definitions.

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

(1) The term "air cleaning device" means any method, process or equipment which removes, reduces, or renders less noxious air contaminants discharged into the atmosphere.

(2) The term "air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor or any combination thereof.

(3) The term "air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.

(4) The term "air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant.

(5) The term "air pollution" shall mean the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tends to be injurious to human health or welfare, to animal or plant life or to property or that interferes with the enjoyment of life or property.

(6) to (8) Repealed by Session Laws 1987, c. 827, s. 153.

(9) Whenever reference is made in this Article to "discharge" or the "discharge of waste," it shall be interpreted to include discharge, spillage, leakage, pumping, placement, emptying, or dumping into waters of the State, or into any unified sewer system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State. A reference to "discharge" or the "discharge of waste" shall not be interpreted to include "emission" as defined in subdivision (12) of this section.

(10) The term "disposal system" means a system for disposing of waste, and including sewer systems and treatment works.

(11) Repealed by Session Laws 1987, c. 827, s. 153.

(12) The term "emission" means a release into the outdoor atmosphere of air contaminants.

(13) The term "outlet" means the terminus of a sewer system, or the point of emergence of any waste or the effluent therefrom, into the waters of the State.

(14) Repealed by Session Laws 1987, c. 827, s. 153.

(15) The term "sewer system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting wastes to a point of ultimate disposal.

(16) The term "standard" or "standards" means such measure or measures of the quality of water and air as are established by the Commission pursuant to G.S. 143-214.1 and G.S. 143-215.

(16a) "Stormwater" means the flow of water which results from precipitation and which occurs immediately following rainfall or a snowmelt.

(17) The term "treatment works" means any plant, septic tank disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfill, or other works not specifically mentioned herein, installed for the purpose of treating, equalizing, neutralizing, stabilizing or disposing of waste.

(18) "Waste" shall mean and include the following:

a. "Sewage," which shall mean water-carried human waste discharged, transmitted, and collected from residences, buildings, industrial establishments, or other places into a unified sewerage

system or an arrangement for sewage disposal or a group of such sewerage arrangements or systems, together with such ground, surface, storm, or other water as may be present.

b. "Industrial waste" shall mean any liquid, solid, gaseous, or other waste substance or a combination thereof resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.

c. "Other waste" means sawdust, shavings, lime, refuse, offal, oil, tar chemicals, dissolved and suspended solids, sediment, and all other substances, except industrial waste, sewage, and toxic chemicals which may be discharged into or placed in such proximity to the water that drainage therefrom may reach the water.

d. "Toxic waste" means that waste, or combinations of wastes, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformities, in such organisms or their offspring.

(19) The term "water pollution" means the man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of the waters of the State, including, but specifically not limited to, alterations resulting from the concentration or increase of natural pollutants caused by man-related activities.

(20) Repealed by Session Laws 1987, c. 827, s. 153.

(21) The term "watershed" means a natural area of drainage, including all tributaries contributing to the supply of at least one major waterway within the State, the specific limits of each separate watershed to be designated by the Commission.

(22) The term "complex sources" means any facility which is or may be an air pollution source or which will induce or tend to induce development or activities which will or may be air pollution sources, and which shall include, but not be limited to, shopping centers; sports complexes; drive-in theaters; parking lots and garages; residential, commercial, industrial or institutional developments; amusement parks and recreation areas; highways; and any other facilities which will result in increased emissions from motor vehicles or stationary sources.

(23) The term "effluent standards or limitations" means any restrictions established pursuant to this Article on quantities, rates, characteristics and concentrations of chemical, physical, biological and other constituents of wastes which are discharged from any pretreatment facility or from any outlet or point source to the waters of the State.

(24) The term "point source" means any discernible, confined, and discrete conveyance, including, but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged to the waters of the State.

(25) The term "pretreatment facility" means any treatment works installed for the purpose of treating, equalizing, neutralizing or stabilizing waste from any source prior to discharge to any disposal system subject to effluent standards or limitations.

(26) The term "pretreatment standards" means effluent standards or limitations applicable to waste discharged from a pretreatment facility.

(27) The term "Clean Air Act" refers to the federal Clean Air Act, as amended, codified generally at 42 U.S.C. § 7401 et seq.

(28) The term "nonattainment area" refers to an area which is shown to exceed any national ambient air quality standard for such pollutant.

(29) The term "prevention of significant deterioration" refers to the statutory and regulatory requirements arising from the Clean Air Act designed to prevent the significant deterioration of air quality in areas with air quality better than required by the national ambient air quality standards.

(29a) Reserved.

(29b) "Title II" means Title II of the 1990 amendments to the federal Clean Air Act and the National Emission Standards Act (Pub. L. 101-549, 104 Stat. 2471, 42 U.S.C. § 7521 et seq.).

(29c) "Title III" means Title III of the 1990 amendments to the federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2531, 42 U.S.C. § 7412 et seq.).

(29d) "Title IV" means Title IV of the 1990 amendments to the federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2584, 42 U.S.C. § 7651 et seq.).

(29e) "Title V" means Title V of the 1990 amendments to the federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2635, 42 U.S.C. § 7661 et seq.).

(29f) through (29o) Reserved.

(29p) "Title V Account" means the Account established in G.S. 143-215.3A(b).

(30) The term "waste treatment management practice" means any method, measure or practice to control plant site runoff, spillage or leaks, sludge or waste disposal and drainage from raw material storage which are associated with, or ancillary to the industrial manufacturing or treatment process of the class or category of point sources to which the management practice is applied. Waste treatment management practices may only be imposed, supplemental to effluent limitations, for a class or category of point sources, for any specific pollutant which has been designated as toxic or hazardous pursuant to sections 307(a)(1) or 311 of the Federal Water Pollution Control Act.

(31) "Wood heater" means a fireplace, wood stove, pellet stove, wood-fired hydronic heater, wood-burning forced-air furnace, or masonry wood

heater or other similar appliance designed for heating a residence or business or for heating water for use by a residence through the combustion of wood or products substantially composed of wood. (1951, c. 606; 1957, c. 1275, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 4; 1973, c. 821, ss. 1-3; c. 1262, s. 23; 1977, c. 771, s. 4; 1979, c. 545, ss. 8-10; c. 633, s. 1; 1987, c. 827, ss. 153, 154; 1989, c. 135, s. 2; c. 447, s. 1; c. 742, s. 7; 1991, c. 287, s. 1; c. 403, s. 1; c. 552, s. 1; 1991 (Reg. Sess., 1992), c. 889, ss. 1, 2; c. 1028, s. 2; c. 1039, s. 13; 1993, c. 400, ss. 1(a)-(c); 2012-187, s. 11; 2014-120, s. 51(a); 2015-286, s. 4.3(b).)

§ 143-214. Repealed by Session Laws 1973, c. 1262, s. 23.

§ 143-214.1. Water; water quality standards and classifications; duties of Commission.

(a) Development and Adoption of Classifications and Standards. – The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article:

(1) To develop and adopt, after proper study, a series of classifications and the standards applicable to each such classification, which will be appropriate for the purpose of classifying each of the waters of the State in such a way as to promote the policy and purposes of this Article most effectively;

(2) To survey all the waters of the State and to separately identify all such waters as the Commission believes ought to be classified separately in order to promote the policy and purposes of this Article, omitting only such waters, as in the opinion of the Commission, are insufficiently important to justify classification or control under this Article; and

(3) To assign to each identified water of the State such classification, from the series adopted as specified above, as the Commission deems proper in order to promote the policy and purposes of this Article most effectively.

(b) Criteria for Classification. – In developing and adopting classifications, and the standards applicable to each, the Commission shall recognize that a number of different classifications should be provided for (with different standards applicable to each) so as to give effect to the need for balancing conflicting considerations as to usage and other variable factors; that different classifications with different standards applicable thereto may frequently be appropriate for different segments of the same water; and that each classification and the standards applicable thereto should be adopted with primary reference to the best usage to be made of the waters to which such classification will be assigned.

(c) Criteria for Standards. – In establishing the standards applicable to each classification, the Commission shall consider and the standards when finally adopted and

published shall state: the extent to which any physical, chemical, or biological properties should be prescribed as essential to the contemplated best usage.

(d) Criteria for Assignment of Classifications. – In assigning to each identified water the appropriate classifications (with its accompanying standards), the Commission shall consider, and the decision of the Commission when finally adopted and published shall contain its conclusions with respect to the following factors as related to such identified waters:

(1) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient and temperature of the water;

(2) The character of the district bordering said water, including any peculiar suitability such district may have or any dominant economic interest or development which has become established in relation to or by reason of any particular use of such water;

(3) The uses and extent thereof which have been made, are being made, or may in the future be made, of such water for domestic consumption, bathing, fish or wildlife and their culture, industrial consumption, transportation, fire prevention, power generation, scientific or research uses, the disposal of sewage, industrial wastes and other wastes, or any other uses;

(4) In revising existing or adopting new water quality classifications or standards, the Commission shall consider the use and value of State waters for public water supply, propagation of fish and wildlife, recreation, agriculture, industrial and other purposes, use and value for navigation, and shall take into consideration, among other things, an estimate as prepared under section 305(b)(1) of the Federal Water Pollution Control Act amendments of 1972 of the environmental impact, the economic and social costs necessary to achieve the proposed standards, the economic and social benefits of such achievement and an estimate of the date of such achievement;

(5) With regard to the groundwaters, the factors to be considered shall include the natural quality of the water below land surface and the condition of occurrences, recharge, movement and discharge, the vulnerability to pollution from wastewaters and other substances, and the potential for improvement of the quality and quantity of the water.

(e) Chapter 150B of the General Statutes governs the adoption and publication of rules under this Article.

(f), (g) Repealed by Session Laws 1987, c. 827, s. 156.

(1951, c. 606; 1957, c. 1275, s. 2; 1967, c. 892, s. 1; 1969, c. 822, s. 1; 1973, c. 1262, s. 23; 1975, c. 19, s. 50; c. 583, s. 8; c. 655, s. 5; 1977, c. 771, s. 4; 1979, c. 633, s. 6; 1979, 2nd Sess., c. 1199; 1983, c. 296, s. 1; 1987, c. 827, ss. 154, 156.)

§ 143-214.2. Prohibited discharges.

(a) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste to the waters of the State is prohibited.

(b) The discharge of any wastes to the subsurface or groundwaters of the State by means of wells is prohibited. This section shall not be construed to prohibit (i) the operation of closed-loop groundwater remediation systems in accordance with G.S. 143-215.1A or (ii) injection of hydraulic fracturing fluid for the exploration or development of natural gas resources.

(c) Unless permitted by a rule of the Commission, the discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited. (1973, c. 698, s. 2; c. 1262, s. 23; 1987, c. 827, ss. 154, 157; 1991 (Reg. Sess., 1992), c. 786, s. 2; 2012-143, s. 3(b).)

§ 143-214.2A. Prohibited disposal of medical waste.

(a) Violation. – It is unlawful for any person to engage in conduct which causes or results in the dumping, discharging, or disposal directly or indirectly, of any medical waste as defined in G.S. 130A-290 to the open waters of the Atlantic Ocean over which the State has jurisdiction or to any waters of the State.

(b) Civil Penalty. –

(1) A civil penalty of not more than twenty-five thousand dollars ($25,000) may be assessed by the Secretary against any person for a first violation of this section and an additional penalty of twenty-five thousand dollars ($25,000) may be assessed for each day during which the violation continues. A civil penalty of not more than fifty thousand dollars ($50,000) may be assessed by the Secretary for a second or further violation and an additional penalty of fifty thousand dollars ($50,000) may be assessed for each day during which the violation continues.

(2) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(3) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

(4) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the

Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(5) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary 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, unless the violator contests the assessment as provided in subdivision (3) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (4) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary 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.

(6) Repealed by Session Laws 1995 (Regular Session, 1996).

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

(c) Criminal Penalties. –

(1) A person who willfully violates this section is guilty of a Class 1 misdemeanor.

(2) A person who willfully violates this section and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars ($50,000) per day of violation.

(d) Restoration. –

(1) Any person having control over medical waste discharged in violation of this section shall immediately undertake to collect, remove, and dispose of the medical waste discharged and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the medical waste, the person responsible shall take all practicable actions and measures to otherwise contain, treat, and disperse the medical waste; but no chemical or other dispersants or treatment materials shall be used for such purposes unless they shall have been previously approved by the Department.

(2) Notwithstanding the requirements of subdivision (1), the Department is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies, and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary, to collect, investigate, perform

surveillance over, remove, contain, treat or disperse or dispose of medical waste discharged into the waters of the State in violation of this section, and to perform any necessary restoration. The Secretary shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material.

(3) Every person owning or having control over medical waste discharged in violation of, or in circumstances likely to constitute a violation of this section, upon discovery that the discharge of medical waste has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain, remove, treat and dispose of the medical waste. The agent or employee of the department receiving the notification shall immediately notify the Secretary or such member of the permanent staff of the Department as the Secretary may designate.

(4) Any person who discharges medical waste in violation of this section or violates any order or rule of the Commission regarding the prohibitions concerning medical waste, or fails to perform any duty imposed regarding medical waste, and in the course thereof causes the death of, or injury to fish, animals, vegetation or other resources of the State, or otherwise causes a reduction in the quality of the waters of the State below the standards set by the Commission, or causes the incurring of costs by the State for the containment, removal, treatment, or dispersal, or disposal of such medical waste, shall be liable to pay the State damages. Such damages shall be an amount equal to the cost of all reasonable and necessary investigations made or caused to be made by the State in connection with such violation and the sum of money necessary to restock such waters, replenish such resources, contain, remove, treat, or disperse, or dispose of such medical waste, or otherwise restore such waters and adjacent lands prior to the injury as such condition is determined by the Commission in conference with the Wildlife Resources Commission, the Marine Fisheries Commission, and any other State agencies having an interest affected by such violation (or by the designees of any such boards, commissions, and agencies).

(5) Upon receipt of the estimate of damages caused, the Department shall give written notice by registered or certified mail to the person responsible for the death, killing, or injury to fish, animals, vegetation, or other resources of the State, or any reduction in quality of the waters of the State, or the costs of the removal, treatment or disposal of such discharge, describing the damages and their causes with reasonable specificity, and shall request payment from such person. Damages shall

become due and payable upon receipt of such notice. The Environmental Management Commission, if collection or other settlement of the damages is not obtained within a reasonable time, shall bring a civil action to recover such damages in the superior court in the county in which the discharge of waste or the damages to resources occurred, or in Wake County if the discharge or resource damage occurs in the open waters of the Atlantic Ocean. The assessment of damages is not a contested case under G.S. 150B-23.

(6) "Person having control over medical waste" shall mean, but shall not be limited to, any person using, storing, or transporting medical waste immediately prior to a discharge of such waste into the waters of the State, and specifically shall include carriers and bailees of such medical waste. (1989, c. 742, s. 8; 1989 (Reg. Sess., 1990), c. 1036, s. 9; 1993, c. 539, ss. 1016, 1312; 1994, Ex. Sess., c. 24, s. 14(c); 1995 (Reg. Sess., 1996), c. 743, s. 12; 1998-215, s. 60.)

§ 143-214.2B. Storage of waste on vessels.

The operator of a vessel in the State's waters shall take precautions to ensure that certain items do not enter and contaminate the waters. The operator shall store fuel, oil, paint, varnish, solvent, pesticide, insecticide, fungicide, algicide, or any other hazardous liquid in one or more closed containers that are adequate to prevent the release of the items into the waters of the State. (1993, c. 466, s. 5.)

§ 143-214.3. Revision to water quality standard.

(a) Any person subject to the provisions of G.S. 143-215.1 may petition the Commission for a hearing pursuant to G.S. 143-215.4 for a revision to water quality standards adopted pursuant to G.S. 143-214.1 as such water quality standards may apply to a specific stream segment into which the petitioner discharges or proposes to discharge.

(b) Upon a finding by the Commission that:

(1) Natural background conditions in the stream segment preclude the attainment of the applicable water quality standards; or

(2) Irretrievable and uncontrollable man-induced conditions preclude the attainment of the applicable water quality standards; or

(3) Application of effluent limitations for existing sources established or proposed pursuant to G.S. 143-215.1 more restrictive than those effluent standards and limitations determined or promulgated by the United States Environmental Protection Agency pursuant to section 301 of the Federal Water Pollution Control Act in order to achieve and maintain applicable water quality standards would result in adverse social and economic impact, disproportionate to the benefits to the public health, safety or welfare as a result of maintaining the standards; and

(4) There exists no reasonable relationship between the cost to the petitioner of achieving the effluent limitations necessary to comply with applicable

water quality standards to the benefits, including the incremental benefits to the receiving waters, to be obtained from the application of the said effluent limitations;

Then the Commission shall revise the standard or standards, as such standard may apply to the petitioner, provided that such revised standards shall be no less stringent than that which can be achieved by the application of the highest level of treatment which will result in benefits, including the incremental benefits to the receiving waters, having a reasonable relationship to the cost to the petitioner to apply such treatment, as determined by the evidence; provided, however, in no event shall these standards be less stringent than the level attainable with the application by the petitioner of those effluent standards and limitations determined or promulgated by the United States Environmental Protection Agency pursuant to section 301 of the Federal Water Pollution Control Act; provided, further, that no revision shall be granted which would endanger human health or safety. (1979, c. 929; 1987, c. 827, s. 154.)

§ 143-214.4. Certain cleaning agents containing phosphorus prohibited.

(a) No person may manufacture, store, sell, use, or distribute for sale or use any cleaning agent containing phosphorus in the State, except as otherwise provided in this section.

(b) As used in this section, "cleaning agent" means a laundry detergent, dishwashing compound, household cleaner, metal cleaner or polish, industrial cleaner, or other substance that is used or intended for use for cleaning purposes.

(c) This section shall not apply to cleaning agents which are used:

(1) In agricultural or dairy production;

(2) To clean commercial food or beverage processing equipment or containers;

(3) As industrial sanitizers, metal brighteners, or acid cleaners, including those containing phosphoric acid or trisodium phosphate;

(4) In industrial processes for metal, fabric or fiber cleaning and conditioning;

(5) In hospitals, clinics, nursing homes, other health care facilities, or veterinary hospitals or clinics;

(6) By a commercial laundry or textile rental service company or any other commercial entity: (i) to provide laundry service to hospitals, clinics, nursing homes, other health care facilities, or veterinary hospitals or clinics; (ii) to clean textile products supplied to industrial or commercial users of the products on a rental basis; or (iii) to clean professional, industrial or commercial work uniforms;

(7) In the manufacture of health care or veterinary supplies;

(8) In any medical, biological, chemical, engineering or other such laboratory, including those associated with any academic or research facility;

(9) As water softeners, antiscale agents, or corrosion inhibitors, where such use is in a closed system such as a boiler, air conditioner, cooling tower, or hot water heating system;

(10) To clean hard surfaces including windows, sinks, counters, floors, ovens, food preparation surfaces, and plumbing fixtures.

(d) This section shall not apply to cleaning agents which:

(1) Contain phosphorus in an amount not exceeding five-tenths of one percent (0.5%) by weight which is incidental to manufacturing;

(2) Contain phosphorus in an amount not exceeding eight and seven-tenths percent (8.7%) by weight and which are intended for use in a commercial or household dishwashing machine;

(3) Are manufactured, stored, sold, or distributed for use solely outside the State.

(e) The Commission may permit the use of a cleaning agent which contains phosphorus in an amount exceeding five-tenths of one percent (0.5%) but not exceeding eight and seven-tenths percent (8.7%) by weight upon a finding that there is no adequate substitute for such cleaning agent, or that compliance with this section would otherwise be unreasonable or create a significant hardship on the user. The Commission shall adopt rules to administer this subsection.

(f) Any person who manufactures, sells or distributes any cleaning agent in violation of this section shall be guilty of a Class 3 misdemeanor punishable only by a fine not to exceed fifty dollars ($50.00).

(g) Any person who uses any cleaning agent in violation of the provisions of this section shall be responsible for an infraction for which the sanction is a penalty of not more than ten dollars ($10.00). Notwithstanding G.S. 14-3.1(a), the clear proceeds of infractions pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1987, c. 111, s. 1; c. 817; c. 827, s. 154; 1993, c. 539, s. 1017; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 61; 2006-203, s. 88.)

§ 143-214.5. Water supply watershed protection.

(a) Policy Statement. – This section provides for a cooperative program of water supply watershed management and protection to be administered by local governments consistent with minimum statewide management requirements established by the Commission. If a local government fails to adopt a water supply watershed protection program or does not adequately carry out its responsibility to enforce the minimum water supply watershed management requirements of its approved program, the Commission shall administer and enforce the minimum statewide requirements. The reduction of agricultural nonpoint source discharges shall be accomplished primarily through the Agriculture Cost Share Program for Nonpoint Source Pollution Control.

(b) Development and Adoption of Water Supply Watershed Classifications and Management Requirements. – The Commission shall adopt rules for the classification of water supply watersheds and that establish minimum statewide water supply watershed protection requirements applicable to each classification to protect surface water supplies by (i) controlling development density, (ii) providing for performance-based alternatives to development density controls that are based on sound engineering principles, or (iii) a combination of both (i) and (ii). The Commission may designate water supply watersheds

or portions thereof as critical water supply watersheds and impose management requirements that are more stringent than the minimum statewide water supply watershed management requirements. The Commission may adopt rules that require that any permit issued by a local government for a development or construction activity conducted by that local government within a designated water supply watershed be approved by the Department prior to issuance. Any variance from the minimum statewide water supply watershed management requirements must be approved by the Commission prior to the issuance of a permit by a local government. Except as provided by G.S. 153A-347 and G.S. 160A-392, the power to implement this section with respect to development or construction activities that are conducted by State agencies is vested exclusively in the Commission.

(c) Classification of Water Supply Watersheds. – The Commission shall assign to each water supply watershed in the State the appropriate classification with the applicable minimum management requirements. The Commission may reclassify water supply watersheds as necessary to protect future water supplies or improve protection at existing water supplies. A local government shall not be required to submit a revised water supply watershed protection program to the Commission earlier than 270 days after it receives notice of a reclassification from the Commission.

(d) Mandatory Local Programs. – The Department shall assist local governments to develop water supply watershed protection programs that comply with this section. Local government compliance programs shall include an implementing local ordinance and shall provide for maintenance, inspection, and enforcement procedures. As part of its assistance to local governments, the Commission shall approve and make available a model local water supply watershed management and protection ordinance. The model management and protection ordinance adopted by the Commission shall, at a minimum, include as options (i) controlling development density, (ii) providing for performance-based alternatives to development density controls that are based on sound engineering principles, and (iii) a combination of both (i) and (ii). Local governments shall administer and enforce the minimum management requirements. Every local government that has within its jurisdiction all or a portion of a water supply watershed shall submit a local water supply watershed management and protection ordinance to the Commission for approval. Local governments may adopt such ordinances pursuant to their general police power, power to regulate the subdivision of land, zoning power, or any combination of such powers. In adopting a local ordinance that imposes water supply watershed management requirements that are more stringent than those adopted by the Commission, a county must comply with the notice provisions of G.S. 153A-343 and a municipality must comply with the notice provisions of G.S. 160A-384. This section shall not be construed to affect the validity of any local ordinance adopted for the protection of water supply watersheds prior to completion of the review of the ordinance by the Commission or prior to the assumption by the Commission of responsibility for a local water supply watershed protection program. Local governments may create or designate agencies to administer and enforce such programs. The Commission shall approve a local program only if it determines that the requirements of the program equal or exceed the minimum statewide water supply watershed management requirements adopted pursuant to this section.

(d1) A local ordinance adopted to implement the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities shall be no more restrictive than those adopted by the Commission. In adopting minimum statewide water supply watershed management requirements applicable to agriculture activities, the Commission shall consider the policy regarding agricultural nonpoint source discharges set out in subsection (a) of this section. The Commission may by rule designate another State agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities. If the Commission designates another State agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities, management requirements adopted by local governments shall not apply to such activities.

(d2) A local government implementing a water supply watershed program shall allow an applicant to average development density on up to two noncontiguous properties for purposes of achieving compliance with the water supply watershed development standards if all of the following circumstances exist:

(1) The properties are within the same water supply watershed. If one of the properties is located in the critical area of the watershed, the critical area property shall not be developed beyond the applicable density requirements for its classification.

(2) Overall project density meets applicable density or stormwater control requirements under 15A NCAC 2B .0200.

(3) Vegetated buffers on both properties meet the minimum statewide water supply watershed protection requirements.

(4) Built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

(5) Areas of concentrated density development are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways.

(6) The property or portions of the properties that are not being developed will remain in a vegetated or natural state and will be managed by a homeowners' association as common area, conveyed to a local government as a park or greenway, or placed under a permanent conservation or farmland preservation easement unless it can be demonstrated that the local government can ensure long-term compliance through deed restrictions and an electronic permitting mechanism. A metes and bounds description of the areas to remain vegetated and limits on use shall be recorded on the subdivision plat, in homeowners' covenants, and on individual deed and shall be irrevocable.

(7) Development permitted under density averaging and meeting applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

(8) A special use permit or other such permit or certificate shall be obtained from the local Watershed Review Board or Board of Adjustment to ensure that both properties considered together meet the standards of the watershed ordinance and that potential owners have record of how the watershed regulations were applied to the properties.

(e) Assumption of Local Programs. – The Commission shall assume responsibility for water supply watershed protection, within all or the affected portion of a water supply watershed, if a local government fails to adopt a program that meets the requirements of this section or whenever a local government fails to adequately administer and enforce the provisions of its program. The Commission shall not assume responsibility for an approved local water supply watershed protection program until it or its designee notifies the local government in writing by certified mail, return receipt requested, of local program deficiencies, recommendations for changes and improvements in the local program, and the deadline for compliance. The Commission shall allow a local government a minimum of 120 days to bring its program into compliance. The Commission shall order assumption of an approved local program if it finds that the local government has made no substantial progress toward compliance. The Commission may make such finding at any time between 120 days and 365 days after receipt of notice under this subsection by the local government, with no further notice. Proceedings to review such orders by the Commission shall be conducted by the superior court pursuant to Article 4 of Chapter 150B of the General Statutes based on the agency record submitted to the Commission by the Secretary.

(f) State Enforcement Authority. – The Commission may take any appropriate preventive or remedial enforcement action authorized by this Part against any person who violates any minimum statewide water supply watershed management requirement.

(g) Civil Penalties. – A local government that fails to adopt a local water supply watershed protection program as required by this section or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements shall be subject to a civil penalty pursuant to G.S. 143-215.6A(e). In any area of the State that is not covered by an approved local water supply watershed protection program, any person who violates or fails to act in accordance with any minimum statewide water supply watershed management requirement or more stringent management requirement adopted by the Commission for a critical water supply watershed established pursuant to this section shall be subject to a civil penalty as specified in G.S. 143-215.6A(a)(7).

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(h) Planning Grants to Local Governments. – The Secretary may make annual grants to local governments for the purpose of assisting in the development of local water supply watershed protection programs. The Secretary shall develop and administer generally applicable criteria under which local governments may qualify for such assistance. Such

criteria shall give priority to local governments that are not then administering zoning ordinances in affected water supply watershed areas.

(i) Every State agency shall act in a manner consistent with the policies and purposes of this section, and shall comply with the minimum statewide water supply watershed management requirements adopted by the Commission and with all water supply watershed management and protection ordinances adopted by local governments. (1989, c. 426, s. 1; 1991, c. 342, s. 9; c. 471, s. 2; c. 579, s. 1; 1991 (Reg. Sess., 1992), c. 890, s. 14; 1998-215, s. 62; 2012-200, s. 7.)

§ 143-214.6: Repealed by Session Laws 2004-195, s. 3.1, effective August 17, 2004.

§ 143-214.7. Stormwater runoff rules and programs.

(a) Policy, Purpose and Intent. – The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(a1) Definitions. – The following definitions apply in this section:

(1) Development. – Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the subsoil. When additional development occurs at a site that has existing development, the built-upon area of the existing development shall not be included in the density calculations for additional stormwater control requirements, and stormwater control requirements cannot be applied retroactively to existing development, unless otherwise required by federal law.

(2) Redevelopment. – Any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control to that of the previous development.

(b) The Commission shall implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

(1) Classified shellfish waters.

(2) Water supply watersheds.

(3) Outstanding resource waters.
(4) High quality waters.
(5) All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article.

(b1) The Commission shall develop model practices for incorporation of stormwater capture and reuse into stormwater management programs and shall make information on those model practices available to State agencies and local governments.

(b2) For purposes of implementing stormwater programs, "built-upon area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a slatted deck; the water area of a swimming pool; a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; a trail as defined in G.S. 113A-85 that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour); or landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, such as the area between sections of pavement that support the weight of a vehicle. The owner or developer of a property may opt out of any of the exemptions from "built-upon area" set out in this subsection. For State stormwater programs and local stormwater programs approved pursuant to subsection (d) of this section, all of the following shall apply:

(1) The volume, velocity, and discharge rates of water associated with the one-year, 24-hour storm and the difference in stormwater runoff from the predevelopment and postdevelopment conditions for the one-year, 24-hour storm shall be calculated using any acceptable engineering hydrologic and hydraulic methods.
(2) Development may occur within the area that would otherwise be required to be placed within a vegetative buffer required by the Commission pursuant to G.S. 143-214.1 and G.S. 143-214.7 to protect classified shellfish waters, outstanding resource waters, and high-quality waters provided the stormwater runoff from the development is collected and treated from the entire impervious area and discharged so that it passes through the vegetative buffer and is managed so that it otherwise complies with all applicable State and federal stormwater management requirements.
(3) The requirements that apply to development activities within one-half mile of and draining to Class SA waters or within one-half mile of Class SA waters and draining to unnamed freshwater tributaries shall not apply to development activities and associated stormwater discharges that do not occur within one-half mile of and draining to Class SA waters or are not within one-half mile of Class SA waters and draining to unnamed freshwater tributaries.

(b3) Stormwater runoff rules and programs shall not require private property owners to install new or increased stormwater controls for (i) preexisting development or (ii) redevelopment activities that do not remove or decrease existing stormwater controls. When a preexisting development is redeveloped, either in whole or in part, increased stormwater controls shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment.

(c) The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. Model stormwater management programs shall be developed to protect existing water uses and assure compliance with water quality standards and classifications. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program for implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(c1) Any land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall be enforced by any owner of the land on which the best management practice or project is located, any adjacent property owners, any downstream property owners who would be injured by failure to enforce the land-use restriction, any local government having jurisdiction over any part of the land on which the best management practice or project is located, or the Department through the remedies provided by any provision of law that is implemented or enforced by the Department or by means of a civil action, without first having exhausted any available administrative remedies. A land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission 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.

(c2) The Department shall transfer a permit issued under this section for a stormwater management system from the declarant of a condominium or a planned community to the unit owners association, owners association, or other management entity identified in the condominium or planned community's declaration upon request of a permittee if the Department finds that (i) common areas related to the operation and maintenance of the stormwater management system have been conveyed to the unit owners association or owners association in accordance with the declaration; (ii) the declarant has conveyed at

least fifty percent (50%) of the units or lots to owners other than a declarant; and (iii) the stormwater management system is in substantial compliance with the stormwater permit issued to the permittee by the Department. In support of a request made pursuant to this subsection, a permittee shall submit documentation to the Department sufficient to demonstrate that ownership of the common area related to the operation and maintenance of the stormwater management system has been conveyed from the declarant to the association and that the declarant has conveyed at least fifty percent (50%) of the units or lots to owners other than a declarant. For purposes of this subsection, declarant of a condominium shall have the same meaning as provided in Chapter 47C of the General Statutes, and declarant of a planned community shall have the same meaning as provided in Chapter 47F of the General Statutes.

(c3) In accordance with the Federal Aviation Administration August 28, 2007, Advisory Circular No. 150/5200-33B (Hazardous Wildlife Attractants on or Near Airports), neither the Department nor any local government shall require the use of stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section, or in order to comply with any local ordinance adopted under G.S. 143-214.5, at public airports that support commercial air carriers or general aviation services. Development projects located within five statute miles from the farthest edge of an airport air operations area, as that term is defined in 14 C.F.R. § 153.3 (July 2011 Edition), shall not be required to use stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section or with any local ordinance. Existing stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section, or with any local ordinance, and that is located at a public airport or that is within five statute miles from the farthest edge of an airport operations area may be replaced with alternative measures included in the Division of Water Resources' Best Management Practice Manual chapter on airports. In order to be approved by the Department, alternative measures or management designs that are not expressly included in the Division of Water Resources' Best Management Practice Manual shall provide for equal or better stormwater control based on the pre- and post-development hydrograph. Any replacement of existing stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water shall be considered a minor modification to the State general stormwater permit, and a variance to allow any replacement shall be considered a minor variance under any local government ordinance adopted under G.S. 143-214.5.

(c4) The Department and local governments shall deem runways, taxiways, and any other areas that provide for overland stormwater flow that promote infiltration and treatment of stormwater into grassed buffers, shoulders, and grass swales permitted pursuant to the State post-construction stormwater requirements and to be in compliance with any local government water supply watershed management protection ordinance adopted under G.S. 143-214.5.

(c5) The Department may transfer a permit issued pursuant to this section without the consent of the permit holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection:

(1) The Department may transfer a permit if all of the following conditions are met:

a. The successor-owner of the property submits to the Department a written request for the transfer of the permit.

b. The Department finds all of the following:

1. The permit holder is one of the following:

I. A natural person who is deceased.

II. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.

III. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.

IV. A person who has sold the property on which the permitted activity is occurring or will occur.

2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.

3. The successor-owner is the sole claimant of the right to engage in the permitted activity.

4. There will be no substantial change in the permitted activity.

(2) The permit holder shall comply with all terms and conditions of the permit until such time as the permit is transferred.

(3) The successor-owner shall comply with all terms and conditions of the permit once the permit has been transferred.

(4) Notwithstanding changes to law made after the original issuance of the permit, the Department may not impose new or different terms and conditions in the permit without the prior express consent of the successor-owner.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal those of the model program adopted by the Commission pursuant to this section.

(d1) Repealed by Session Laws 2013-265, s. 19, effective July 17, 2013.

(d2) Repealed by Session Laws 2008-198, s. 8(a), effective August 8, 2008.

(e) On or before October 1 of each year, the Department shall report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government. The status report shall include information on any integration of stormwater capture and reuse into stormwater control programs administered by State agencies and units of local government. The report shall be submitted to the Environmental Review

Commission with the report required by G.S. 113A-67 as a single report. (1989, c. 447, s. 2; 1995, c. 507, s. 27.8(q); 1997-458, s. 7.1; 2004-124, s. 6.29(a); 2006-246, s. 16(b); 2007-323, s. 6.22(a); 2008-198, s. 8(a); 2011-256, s. 1; 2011-394, s. 6; 2012-200, ss. 1, 6; 2013-121, s. 1; 2013-265, s. 19; 2013-413, ss. 51(a), 57(h); 2014-90, s. 2; 2014-115, s. 17; 2014-120, s. 45(a); 2015-149, s. 1(a); 2015-286, s. 4.20(b); 2017-10, ss. 3.12, 4.15(b); 2017-104, s. 2; 2017-211, s. 8.)

§ 143-214.7A. Stormwater control best management practices.

(a) The Department of Environmental Quality shall establish standard stormwater control best management practices and standard process water treatment processes or equivalent performance standards for composting operations that are required to be permitted by the Division of Water Resources in the Department and the Division of Waste Management in the Department. These practices, processes, and standards shall be developed for the purpose of protecting water quality by controlling and containing stormwater that is associated with composting operations, by reducing the pollutant levels of process water from composting operations, and by reducing the opportunities for generation of such waters.

(b) Unless otherwise provided in this subsection, the Division of Water Resources shall clarify that stormwater is water that does not contact anything considered a feedstock, intermediate product, or final product of composting operations. Unless otherwise provided in this subsection, the Division of Water Resources shall clarify that wastewater is leachate and water that contacts feedstocks, intermediate products, or final product, of composting operations. The clarifications shall incorporate available scientifically valid information obtained from sampling and analyses of North Carolina composting facilities and from valid representative data from other states. In addition, the Division of Water Resources shall establish threshold quantities of feedstocks, intermediate products, and final products above which water quality permitting will be required. A Type 1 solid waste compost facility shall be subject only to applicable State stormwater requirements and federal stormwater requirements established pursuant to 33 U.S.C. § 1342(p)(3)(B). A Type 1 solid waste compost facility shall not be required to obtain a National Pollutant Discharge Elimination System (NPDES) permit for discharge of process wastewater based solely on the discharge of stormwater that has come into contact with feedstock, intermediate product, or final product at the facility. For purposes of this section, "Type 1 solid waste compost facilities" are facilities that may receive yard and garden waste, silvicultural waste, untreated and unpainted wood waste, or any combination thereof.

(c) The Department shall establish revised water quality permitting procedures for the composting industry. The revised permitting procedures shall identify the various circumstances that determine which water quality permit is required for various composting activities. The Department shall determine whether selected low-risk subsets of the composting industry may be suitable for expedited or reduced water quality permitting procedures. The determination shall include consideration of the economic impact of regulatory decisions.

(d) In developing the practices, processes, and standards and the revised water quality permitting procedures required by this section, the Department shall review practices, processes, and standards and permitting procedures adopted by other states and similar federal programs.

(e) The Department shall form a Compost Operation Stakeholder Advisory Group composed of representatives from the North Carolina Chapter of the United States Composting Council, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina State Agricultural Extension Service, the North Carolina Chapter of the American Water Works Association-Water Environment Federation, the North Carolina Pumper Group, the North Carolina Chapter of the Solid Waste Association of North America, the North Carolina Septic Tank Association, and any individual or group commenting to the Department on issues related to water quality at composting operations. The Compost Operation Stakeholder Advisory Group shall be convened periodically to provide input and assistance to the Department.

(f) The practices, processes, and standards and the revised permitting procedures shall address the site size of an operation, the nature of the feedstocks composted, the type of compost production method employed, the quantity and water quality of the stormwater or process water associated with composting facilities, the water quality of the receiving waters, as well as operation and maintenance requirements for the resulting standard stormwater control best management practices and standard process water treatment processes. (2009-322, s. 1(a)-(f); 2011-394, s. 7; 2012-200, s. 5; 2013-413, s. 57(i), (bb); 2014-115, s. 17; 2015-241, s. 14.30(u).)

§ 143-214.7B. Fast-track permitting for stormwater management systems.

The Commission shall adopt rules to establish a fast-track permitting process that allows for the issuance of stormwater management system permits without a technical review when the permit applicant (i) complies with the Minimum Design Criteria for stormwater management developed by the Department and (ii) submits a permit application prepared by a qualified professional. In developing the rules, the Commission shall consult with a technical working group that consists of industry experts, engineers, environmental consultants, relevant faculty from The University of North Carolina, and other interested stakeholders. The rules shall, at a minimum, provide for all of the following:

(1) A process for permit application, review, and determination.

(2) The types of professionals that are qualified to prepare a permit application submitted pursuant to this section and the types of qualifications such professionals must have.

(3) A process for ensuring compliance with the Minimum Design Criteria.

(4) That permits issued pursuant to the fast-track permitting process comply with State water quality standards adopted pursuant to G.S. 143-214.1, 143-214.7, and 143-215.3(a)(1).

(5) A process for establishing the liability of a qualified professional who prepares a permit application for a stormwater management system that fails to comply with the Minimum Design Criteria. (2013-82, s. 2.)

§ 143-214.7C. Prohibit the requirement of mitigation for certain impacts; establish threshold for mitigation of impacts to streams.

(a) Except as required by federal law, the Department of Environmental Quality shall not require mitigation for any of the following:

(1) Impacts to an intermittent stream. For purposes of this section, "intermittent stream" means a well-defined channel that has all of the following characteristics:

a. It contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table.

b. The flow of water in the intermittent stream may be heavily supplemented by stormwater runoff.

c. It often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.

(2) Impacts associated with the removal of a dam when the removal complies with the requirements of Part 3 of this Article.

(b) Except as required by federal law, the Department of Environmental Quality shall not require mitigation for losses of 300 linear feet or less of stream bed. (2015-241, s. 14.30(c); 2015-286, s. 4.31(a); 2017-10, s. 3.13(a); 2017-145, s. 2(a).)

§ 143-214.8. Division of Mitigation Services: established.

The Division of Mitigation Services is established within the Department of Environmental Quality. The Division of Mitigation Services shall be developed by the Department as a nonregulatory statewide mitigation services program for the acquisition, maintenance, restoration, enhancement, and creation of wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities. The Division of Mitigation Services shall consist of the following components:

(1) Restoration and perpetual maintenance of wetlands.

(2) Development of restoration plans.

(3) Landowner contact and land acquisition.

(4) Evaluation of site plans and engineering studies.

(5) Oversight of construction and monitoring of restoration sites.

(6) Land ownership and management.

(7) Mapping, site identification, and assessment of wetlands functions.

(8) Oversight of private wetland mitigation banks to facilitate the components of the Division of Mitigation Services. (1996, 2nd Ex. Sess., c. 18, s. 27.4(a); 1997-443, s. 11A.119(a); 2005-386, s. 3.1; 2015-1, s. 4.1; 2015-241, s. 14.30(u).)

§ 143-214.9. Division of Mitigation Services: purposes.

The purposes of the Division of Mitigation Services are as follows:

(1) To restore wetlands functions and values across the State to replace critical functions lost through historic wetlands conversion and through current and future permitted impacts. It is not the policy of the State to destroy upland habitats unless it would further the purposes of the Division of Mitigation Services.
(2) To provide a consistent and simplified approach to address mitigation requirements associated with permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344.
(3) To streamline the wetlands permitting process, minimize delays in permit decisions, and decrease the burden of permit applicants of planning and performing compensatory mitigation for wetlands losses.
(4) To increase the ecological effectiveness of compensatory mitigation.
(5) To achieve a net increase in wetland acres, functions, and values in each major river basin.
(6) To foster a comprehensive approach to environmental protection. (1996, 2nd Ex. Sess., c. 18, s. 27.4(a); 2005-386, s. 3.2; 2015-1, s. 4.2.)

§ 143-214.10. Division of Mitigation Services: development and implementation of basinwide restoration plans.

Develop Basinwide Restoration Plans. – The Department shall develop basinwide plans for wetlands and riparian area restoration with the goal of protecting and enhancing water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities within each of the 17 major river basins in the State. The Department shall develop and implement a basinwide restoration plan for each of the 17 river basins in the State in accordance with the basinwide schedule currently established by the Division of Water Resources. (1996, 2nd Ex. Sess., c. 18, s. 27.4(a); 2005-386, s. 3.3; 2013-413, s. 57(j); 2014-115, s. 17; 2015-1, s. 4.3.)

§ 143-214.11. Division of Mitigation Services: compensatory mitigation.

(a) Definitions. – The following definitions apply to this section:
(1) Compensatory mitigation. – The restoration, creation, enhancement, or preservation of jurisdictional waters required as a condition of a permit issued by the Department or by the United States Army Corps of Engineers.
(1a) Compensatory mitigation bank. – A private compensatory mitigation bank or an existing local compensatory mitigation bank.
(1b) Existing local compensatory mitigation bank. – A mitigation bank operated by a unit of local government that is a party to a mitigation banking instrument executed on or before July 1, 2011, notwithstanding subsequent amendments to such instrument executed after July 1, 2011.
(2) Government entity. – The State and its agencies and subdivisions, or the federal government. "Government entity" does not include a unit of local government unless the unit of local government was a party to a

mitigation banking instrument executed on or before July 1, 2011, notwithstanding subsequent amendments to such instrument executed after July 1, 2011.

(3) Hydrologic area. – An eight-digit Cataloging Unit designated by the United States Geological Survey.

(4) Jurisdictional waters. – Wetlands, streams, or other waters of the State or of the United States.

(4a) Mitigation banking instrument. – The legal document for the establishment, operation, and use of a mitigation bank.

(4b) Private compensatory mitigation bank. – A site created by a private compensatory mitigation provider and approved for mitigation credit by State and federal regulatory authorities through execution of a mitigation banking instrument. No site owned by a government entity or unit of local government shall be considered a "private compensatory mitigation bank.

(5) Unit of local government. – A "local government," "public authority," or "special district" as defined in G.S. 159-7.

(b) Department to Coordinate Compensatory Mitigation. – All compensatory mitigation required by permits or authorizations issued by the Department or by the United States Army Corps of Engineers shall be coordinated by the Department consistent with the basinwide restoration plans and rules developed by the Environmental Management Commission. All compensatory mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans. All compensatory mitigation shall be consistent with rules adopted by the Commission for wetland and stream mitigation and for protection and maintenance of riparian buffers.

(c) Compensatory Mitigation Emphasis on Replacing Ecological Function Within Same River Basin. – The emphasis of compensatory mitigation is on replacing functions within the same river basin unless it is demonstrated that restoration of other areas would be more beneficial to the overall purposes of the Division of Mitigation Services.

(d) Compensatory Mitigation Options Available to Government Entities. – A government entity may satisfy compensatory mitigation requirements by the following actions, if those actions are consistent with the basinwide restoration plans and also meet or exceed the requirements of the Department or of the United States Army Corps of Engineers, as applicable:

(1) Payment of a fee established by the Commission into the Ecosystem Restoration Fund established in G.S. 143-214.12.

(2) Donation of land to the Division of Mitigation Services or to other public or private nonprofit conservation organizations as approved by the Department.

(3) Participation in a compensatory mitigation bank that has been approved by the United States Army Corps of Engineers, provided that the Department or the United States Army Corps of Engineers, as applicable, approves the use of such bank for the required compensatory mitigation.

(4) Preparing and implementing a compensatory mitigation plan.

(d1) Compensatory Mitigation Options Available to Applicants Other than Government Entities. – An applicant other than a government entity may satisfy compensatory mitigation requirements by the following actions, if those actions meet or exceed the requirements of the United States Army Corps of Engineers:

(1) Participation in a compensatory mitigation bank that has been approved by the United States Army Corps of Engineers, provided that the Department or the United States Army Corps of Engineers, as applicable, approves the use of such bank for the required compensatory mitigation. This option is only available in a hydrologic area where there is at least one compensatory mitigation bank that has been approved by the United States Army Corps of Engineers.

(2) Payment of a fee established by the Commission into the Ecosystem Restoration Fund established in G.S. 143-214.12. – This option is only available to an applicant who demonstrates that the option under subdivision (1) of this subsection is not available.

(3) Donation of land to the Division of Mitigation Services or to other public or private nonprofit conservation organizations as approved by the Department.

(4) Preparing and implementing a compensatory mitigation plan.

(e) Payment Schedule. – A standardized schedule of compensatory mitigation payment amounts shall be established by the Commission. Compensatory mitigation payments shall be made by applicants to the Ecosystem Restoration Fund established in G.S. 143-214.12. The monetary payment shall be based on the ecological functions and values of wetlands and streams permitted to be lost and on the cost of restoring or creating wetlands and streams capable of performing the same or similar functions, including directly related costs of wetland and stream restoration planning, long-term monitoring, and maintenance of restored areas. Compensatory mitigation payments for wetlands shall be calculated on a per acre basis. Compensatory mitigation payments for streams shall be calculated on a per linear foot basis.

(f) Mitigation Banks. – State agencies and mitigation banks shall demonstrate that adequate, dedicated financial surety exists to provide for the perpetual land management and hydrological maintenance of lands acquired by the State as mitigation banks, or proposed to the State as privately operated and permitted mitigation banks.

(g) Payment for Taxes. – A State agency acquiring land to restore, enhance, preserve, or create wetlands must also pay a sum in lieu of ad valorem taxes lost by the county in accordance with G.S. 146-22.3.

(h) Sale of Mitigation Credits by Existing Local Compensatory Mitigation Bank. – An existing local compensatory mitigation bank shall comply with the requirements of Article 12 of Chapter 160A of the General Statutes applicable to the disposal of property whenever it transfers any mitigation credits to another person.

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

(1) Full delivery/bank credit purchase program. – The Division of Mitigation Services shall first seek to meet compensatory mitigation procurement requirements through the Division's full delivery program or by the purchase of credits from a private compensatory mitigation bank.

(2) Existing local compensatory mitigation bank credit purchase program. – Any compensatory mitigation procurement requirements that are not fulfillable under subdivision (1) of this subsection shall be procured from an existing local compensatory mitigation bank, provided that the credit purchase is made to mitigate the impacts of a project located within the mitigation bank service area and hydrologic area of the existing local compensatory mitigation bank.

(3) Design/build program. – Any compensatory mitigation procurement requirements that are not fulfillable under subdivision (1) or (2) of this subsection shall be procured under a program in which the Division of Mitigation Services contracts with one private entity to lead or implement the design, construction, and postconstruction monitoring of compensatory mitigation at sites obtained by the Division of Mitigation Services. Such a program shall be considered the procurement of compensatory mitigation credits.

(4) Design-bid-build program. – Any compensatory mitigation procurement requirements that are not fulfillable under either subdivision (1) or (2) of this subsection may be procured under the Division of Mitigation Services' design-bid-build program. The Division of Mitigation Services may utilize this program only when procurement under subdivision (1) or (2) of this subsection is not feasible. Any mitigation site design work currently being performed through contracts awarded under the design-bid-build program shall be allowed to continue as scheduled. Contracts for construction of projects with a design already approved by the Division of Mitigation Services shall be awarded by the Division of Mitigation Services by issuing a Request for Proposal (RFP). Only contractors who have prequalified under procedures established by the Division of Mitigation Services shall be eligible to bid on Division of Mitigation Services construction projects. Construction contracts issued under this subdivision shall be exempt from the requirements of Article 8B of Chapter 143 of the General Statutes.

(j) The regulatory requirements for the establishment, operation, and monitoring of a compensatory mitigation bank or full delivery project shall vest at the time of the execution of the mitigation banking instrument or the award of a full delivery contract. (1996, 2nd Ex. Sess., c. 18, s. 27.4(a); 1997-443, s. 11A.119(a); 2004-188, s. 2; 2005-386, s. 3.4; 2008-152, s. 1; 2009-337, s. 1; 2011-343, s. 1.1; 2012-201, s. 5(a); 2015-1, s. 4.4.)

§ 143-214.12. Division of Mitigation Services: Ecosystem Restoration Fund.

(a) Ecosystem Restoration Fund. – The Ecosystem Restoration Fund is established as a nonreverting fund within the Department. The 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 Ecosystem Restoration Fund shall provide a repository for monetary contributions and donations or dedications of interests in real property to promote projects for the restoration, enhancement, preservation, or creation of wetlands and riparian areas and for payments made in lieu of compensatory mitigation as described in subsection (b) of this section. No funds shall be expended from this Fund for any purpose other than those directly contributing to the acquisition, perpetual maintenance, enhancement, restoration, or creation of wetlands, streams, and riparian areas in accordance with the basinwide plan as described in G.S. 143-214.10. The cost of acquisition includes a payment in lieu of ad valorem taxes required under G.S. 146-22.3 when the Department is the State agency making the acquisition.

(a1) The Department may distribute funds from the Ecosystem Restoration Fund directly to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A recipient of funds under this subsection that acquires a conservation easement or interest in real property appurtenant to a restoration project delivered to the Division of Mitigation Services may transfer the conservation easement or interest in real property to a federal or State agency, a local government, or a private, nonprofit conservation organization approved by the Division of Mitigation Services. The Department may convey real property or an interest in real property that has been acquired under the Division of Mitigation Services to a federal or State agency, a local government, or a private, nonprofit conservation organization approved by the Division of Mitigation Services to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. When a grantee of real property or an interest in real property under this subsection grants a conservation easement in the real property or interest in real property to a federal or State agency, a local government, or a private, nonprofit conservation organization approved by the Division of Mitigation Services, the grant shall be made in a form that is acceptable to the Department.

(b) Authorized Methods of Payment. – A person subject to a permit or authorization issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 may contribute to the Division of Mitigation Services in order to comply with conditions to, or terms of, the permit or authorization if participation in the Division of Mitigation Services will meet the mitigation requirements of the United States Army Corps of Engineers. The Department shall, at the discretion of the applicant, accept payment into the Ecosystem Restoration Fund in lieu of other compensatory mitigation requirements of any authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 if the contributions will meet the mitigation requirements of the United States Army Corps of Engineers. Payment may be made in the form of monetary contributions according to a fee schedule established by the Environmental Management Commission or

in the form of donations of real property provided that the property is approved by the Department as a suitable site consistent with the basinwide wetlands restoration plan.

(c) Accounting of Payments. – The Department shall provide an itemized statement that accounts for each payment into the Fund. The statement shall include the expenses and activities financed by the payment. (1996, 2nd Ex. Sess., c. 18, s. 27.4(a); 1997-496, s. 13; 1999-329, s. 6.1; 2004-188, s. 3; 2005-386, s. 3.5; 2015-1, s. 4.5; 2017-209, s. 14.)

§ 143-214.13. Division of Mitigation Services: reporting requirement.

(a) The Department of Environmental Quality shall report each year by November 1 to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division regarding its progress in implementing the Division of Mitigation Services and its use of the funds in the Ecosystem Restoration Fund. The report shall document statewide wetlands losses and gains and compensatory mitigation performed under G.S. 143-214.8 through G.S. 143-214.12. The report shall also provide an accounting of receipts and disbursements of the Ecosystem Restoration Fund, an analysis of the per-acre cost of wetlands restoration, and a cost comparison on a per-acre basis between the State's Division of Mitigation Services and private mitigation banks. The Department shall also send a copy of its report to the Fiscal Research Division of the General Assembly.

(b) The Department shall maintain an inventory of all property that is held, managed, maintained, enhanced, restored, or used to create wetlands under the Division of Mitigation Services. The inventory shall also list all conservation easements held by the Department. The inventory shall be included in the annual report required under subsection (a) of this section. (1996, 2nd Ex. Sess., c. 18, s. 27.4(a); 1997-443, s. 11A.119(a); 1999-329, s. 6.2; 2005-386, s. 3.6; 2010-142, s. 3; 2015-1, s. 4.6; 2015-241, s. 14.30(u); 2017-57, s. 14.1(h).)

§ 143-214.14. Cooperative State-local coalition water quality protection plans.

(a) Definitions. – The following definitions apply in this section:

(1) "Basin" means a river basin as defined in G.S. 143-215.22G or any subbasin or segment thereof.

(2) "Coalition plan" means a water quality protection plan developed by a coalition of local governments for water quality protection of a basin.

(3) "Local government" means a city, county, special district, authority, or other political subdivision of the State.

(4) "Water quality protection" means management of water use, quantity, and quality.

(b) Legislative Findings. – This section establishes a framework to encourage State-local pollutant reduction strategies for basins under the supervision and coordination of the Commission. The General Assembly finds that:

(1) Water quality conditions and sources of water contamination may vary from one basin to another.

(2) Water quality conditions and sources of water contamination may vary within a basin.

(3) Some local governments have demonstrated greater capacity than others to protect and improve water quality conditions.

(4) In some areas of the State artificial alteration of watercourses by surface water impoundments or other means may have a significant effect on water quality.

(5) Imposition of standard basinwide water quality protection requirements and strategies may not equitably address the varying conditions and needs of all areas.

(6) There is a need to develop distinct approaches to address water quality protection in basins in the State, drawing upon the resources of local governments and the State, under the supervision and coordination of the Commission.

(c) Legislative Goals and Policies. – It is the goal of the General Assembly that, to the extent practicable, the State shall adopt water quality protection plans that are developed and implemented in cooperation and coordination with local governments and that the State shall adopt water quality protection requirements that are proportional to the relative contributions of pollution from all sources in terms of both the loading and proximity of those sources. Furthermore, it is the goal of the General Assembly to encourage and support State-local partnerships for improved water quality protection through the provision of technical and financial assistance available through the Clean Water Management Trust Fund, the Division of Mitigation Services, the Ecosystem Restoration Fund, water quality planning and project grant programs, the State's revolving loan and grant programs for water and wastewater facilities, other funding sources, and future appropriations. The Commission shall implement these goals in accordance with the standards, procedures, and requirements set out in this section.

(d) The Commission may, as an alternative method of attaining water quality standards in a basin, approve a coalition plan proposed by a coalition of local governments whose territorial area collectively includes the affected basin in the manner provided by this section. The Commission may approve a coalition plan proposed by a coalition of local governments whose territorial area or water quality protection plan does not include all of an affected basin if the Commission determines that the omission will not adversely affect water quality.

(e) A coalition of local governments choosing to propose a coalition plan to the Commission shall do so through a nonprofit corporation the coalition of local governments incorporates with the Secretary of State.

(f) The Commission may approve a coalition plan only if the Commission first determines that:

(1) The basin under consideration is an appropriate unit for water quality planning.

(2) The coalition plan meets the requirements of subsection (g) of this section.

(3) The coalition of local governments has formed a nonprofit corporation pursuant to subsection (e) of this section.

(4) The coalition plan has been approved by the governing board of each local government that is a member of the coalition of local governments proposing the coalition plan.

(5) The coalition plan will provide a viable alternative method of attaining equivalent compliance with federal and State water quality standards, classifications, and management practices in the affected basin.

(g) A coalition plan shall include all of the following:

(1) An assessment of water quality and related water quantity management in the affected basin.

(2) A description of the goals and objectives for protection and improvement of water quality and related water quantity management in the affected basin.

(3) A workplan that describes proposed water quality protection strategies, including point and nonpoint source programs, for achieving the specified goals and objectives; an implementation strategy including specified tasks, timetables for action, implementation responsibilities of State and local agencies; and sources of funding, where applicable.

(4) A description of the performance indicators and benchmarks that will be used to measure progress in achieving the specified goals and objectives, and an associated monitoring framework.

(5) A timetable for reporting to the Commission on progress in implementing the coalition plan.

(h) A coalition plan shall cover a specified period. The coalition plan may provide for the phasing in of specific strategies, tasks, or mechanisms by specified dates within the period covered by the plan. The Commission may approve one or more successive coalition plan periods. The coalition plan may include strategies that vary among the subareas or jurisdictions of the geographic area covered by the coalition plan.

(i) If a local government chooses to withdraw from a coalition of local governments or fails to implement a coalition plan, the remaining members of a coalition of local governments may prepare and submit a revised coalition plan for approval by the Commission. If the Commission determines that an approved coalition plan no longer provides a viable alternative method of attaining equivalent compliance with federal and State water quality standards, classifications, and management practices, the Commission may suspend or revoke its approval of the coalition plan.

(j) The Commission may approve one or more amendments to a coalition plan proposed by a coalition of local governments through its nonprofit corporation with the approval of the governing board of each local government that is a member of the coalition of local governments that proposed the coalition plan.

(k) With the approval of the Commission, any coalition of local governments with an approved coalition plan may establish and implement a pollutant trading program for

specific pollutants between and among point source dischargers and nonpoint pollution sources.

(l) The Commission shall submit an annual progress report on the implementation of this section to the Environmental Review Commission on or before 1 October of each year. (1997-493, s. 1; 2005-386, s. 3.7; 2015-1, s. 4.7.)

§ 143-214.15. Compensatory mitigation for diverse habitats.

(a) The Department of Environmental Quality shall seek more net gains of aquatic resources through compensatory mitigation by increasing wetland establishment of diverse habitats, including emergent marsh habitat, shallow open water, and other forested and non-forested wetland habitats.

(b) The Department of Environmental Quality shall further establish with the district engineer of the Wilmington District of the United States Army Corps of Engineers compensatory mitigation credit ratios that incentivize the creation or establishment of diverse wetland habitats to support waterfowl and other wildlife.

(c) The Department of Environmental Quality shall work in cooperation with the Wildlife Resources Commission to ensure that all purchased mitigation lands or conservation easements on these lands maximize opportunities for public recreation, including hunting, and promote wildlife and biological diversity. The Department and the Commission shall pursue the voluntary involvement of third-party groups to leverage resources and ensure that there is no additional cost to private mitigation bankers or the taxpayers in achieving these mitigation credits.

(d) The Office of Land and Water Stewardship of the Department of Environmental Quality shall catalog an inventory of all its land holdings and determine how many of those holdings are potential wildlife habitats, either as currently held or with some modification. The Wildlife Resources Commission shall conduct a third-party review of this inventory, and the Commission and the Office of Land and Water Stewardship shall both report their findings to the Environmental Review Commission as part of the report required under subsection (f) of this section.

(e) If private individuals, corporations, or other nongovernmental entities wish to purchase any of the inventory of land suitable for wildlife habitat, then the Office of Land and Water Stewardship of the Department of Environmental Quality shall issue a request for proposal to all interested respondents for the purchase of the land, and the State shall accept a proposal and proceed to dispose of the land only if the Department determines that the proposal meets both of the following requirements:

(1) The proposal provides for the maintenance in perpetuity of management measures listed in the original mitigation instrument or otherwise needed on an ongoing or periodic basis to maintain the functions of the mitigation site.

(2) Where the functions of the mitigation site include provision of recreation or hunting opportunities to members of the general public, the proposal includes measures needed to continue that level of access.

The instrument conveying a property interest in a mitigation site shall be executed in the manner required by Article 16 of Chapter 146 of the General Statutes, and shall reflect the requirements of this subsection.

(f) The Department of Environmental Quality shall report to the Environmental Review Commission by March 1 of each year on its progress in complying with the provisions of this section. (2015-194, s. 2; 2015-241, s. 14.30(c).)

§§ 143-214.16 through 143-214.19. Reserved for future codification purposes.

§ 143-214.20. Riparian Buffer Protection Program: Alternatives to maintaining riparian buffers; compensatory mitigation fees.

(a) Compensatory Mitigation for Riparian Buffer Loss. – The Commission shall establish a program to provide alternatives for persons who would otherwise be required to maintain riparian buffers and who can demonstrate that they have attempted to avoid and minimize the loss of the riparian buffer and that there is no practical alternative to the loss of the buffer. This program is intended to allow these persons to perform compensatory mitigation in lieu of complying with laws and rules that require that riparian buffers be protected and maintained. All compensatory mitigation for riparian buffer loss shall be consistent with rules adopted by the Commission for protection and maintenance of riparian buffers.

(a1) Compensatory Mitigation Options Available to Government Entities. – A government entity, as defined in G.S. 143-214.11, may satisfy compensatory mitigation requirements by any of the following actions:

(1) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration Fund established in G.S. 143-214.21.

(2) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an interest in real property only if the real property or interest in real property either:

a. Is a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost.

b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost.

(3) Restoration or enhancement of an existing riparian buffer that is not otherwise required to be protected, or creation of a new riparian buffer, that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(4) Construction of an alternative measure that reduces nutrient loading as well or better than the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(5) Participation in a compensatory mitigation bank if the Department has approved the bank and the Department approves the use of the bank for the required compensatory mitigation.

(a2) Compensatory Mitigation Options Available to Applicants Other than Government Entities. – An applicant other than a government entity, as defined in G.S. 143-214.11, may satisfy compensatory mitigation requirements by any of the following actions:

(1) Participation in a compensatory mitigation bank if the Department has approved the bank and the Department approves the use of the bank for the required compensatory mitigation. This option is only available in a hydrologic area, as defined in G.S. 143-214.11, where there is at least one compensatory mitigation bank that has been approved by the Department.

(2) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration Fund established in G.S. 143-214.21. This option only is available to an applicant who demonstrates that the option under subdivision (1) of this subsection is not available.

(3) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an interest in real property only if the real property or interest in real property either:

a. Is a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost.

b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost.

(4) Restoration or enhancement of an existing riparian buffer that is not otherwise required to be protected, or creation of a new riparian buffer,

that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(5) Construction of an alternative measure that reduces nutrient loading as well as or better than the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(b) Compensatory mitigation is available for loss of a riparian buffer along an intermittent stream, a perennial stream, or a perennial waterbody.

(c) The Commission shall establish a standard schedule of compensatory mitigation fees for payments to the Riparian Buffer Restoration Fund pursuant to this section. The compensatory mitigation fee schedule shall be based on the area of the riparian buffer that is permitted to be lost and the cost to provide equivalent or greater protection of water quality in the same river basin as that provided by the riparian buffer this is lost by:

(1) Restoration or enhancement of existing riparian buffers.

(2) Acquisition of land for and creation of new riparian buffers.

(3) Maintenance and monitoring of restored, enhanced, or created riparian buffers over time.

(4) Construction of alternative measures that reduce nutrient loading.

(d) The Commission may adopt rules to implement this section. (1999-448, s. 1; 2009-337, s. 2.)

§ 143-214.21. Riparian Buffer Protection Program: Riparian Buffer Restoration Fund.

The Riparian Buffer Restoration Fund is established as a nonreverting fund within the Department. The 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 Riparian Buffer Restoration Fund shall provide a repository for monetary contributions to promote projects for the restoration, enhancement, or creation of riparian buffers or to construct approved alternative measures that reduce nutrient loading as well or better than a riparian buffer that is lost and for compensatory mitigation fees paid to the Department. The Fund shall be administered by the Department. Moneys shall be expended from the Fund only for those purposes directly related to the restoration, acquisition, creation, enhancement, and maintenance of riparian buffers or to construct approved alternative measures that reduce nutrient loading as well or better than a riparian buffer. Compensatory mitigation fees paid into the Fund in connection with the loss of riparian buffers in a river basin and the interest earned on those fees may be used only for projects in that river basin. (1998-221, s. 1.5(b); 1999-448, s. 2; 2005-443, s. 1.)

§ 143-214.22. Riparian Buffer Protection Program: Department may accept donations of real property.

The Department may accept donations of real property and interests in real property if the real property or interest in real property is a riparian buffer or will be used to restore,

create, enhance, or maintain a riparian buffer that will provide protection of water quality. (1998-221, s. 1.13; 1999-448, s. 3.)

§ 143-214.23. Riparian Buffer Protection Program: Delegation of riparian buffer protection requirements to local governments.

(a) The Commission may delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements to units of local government that have the power to regulate land use. A delegation under this section shall not affect the jurisdiction of the Commission over State agencies and units of local government. Any unit of local government that has the power to regulate land use may request that responsibility for the implementation and enforcement of the State's riparian buffer protection requirements be delegated to the unit of local government. To this end, units of local government may adopt ordinances and regulations necessary to establish and enforce the State's riparian buffer protection requirements.

(b) Within 90 days after the Commission receives a complete application requesting delegation of responsibility for the implementation and enforcement of the State's riparian buffer protection requirement, the Commission shall review the application and notify the unit of local government that submitted the application whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a delegation unless the Commission finds that local implementation and enforcement of the State's riparian buffer protection requirements will equal implementation and enforcement by the State.

(c) If the Commission determines that a unit of local government is failing to implement or enforce the State's riparian buffer protection requirements, the Commission shall notify the unit of local government in writing and shall specify the deficiencies in implementation and enforcement. If the local government has not corrected the deficiencies within 90 days after the unit of local government receives the notification, the Commission shall rescind delegation and shall implement and enforce the State's riparian buffer protection program. If the unit of local government indicates that it is willing and able to resume implementation and enforcement of the State's riparian buffer protection requirements, the unit of local government may reapply for delegation under this section.

(d) The Department shall provide technical assistance to units of local government in the development, implementation, and enforcement of the State's riparian buffer protection requirements.

(e) The Department shall provide a stream identification training program to train individuals to determine the existence of surface water for purposes of rules adopted by the Commission for the protection and maintenance of riparian buffers. The Department may charge a fee to cover the full cost of the training program. No fee shall be charged to an employee of the State who attends the training program in connection with the employee's official duties.

(e1) Repealed by Session Laws 2015-246, s. 13.1(a), effective October 1, 2015.

(f) The Commission may adopt rules to implement this section. (1999-448, s. 1; 2012-200, s. 8(a); 2015-246, s. 13.1(a).)

§ 143-214.23A. Limitations on local government riparian buffer requirements.

(a) As used in this section:

(1) "Local government ordinance" means any action by a local government carrying the effect of law approved before or after October 1, 2015, whether by ordinance, comprehensive plan, policy, resolution, or other measure.

(2) "Protection of water quality" means nutrient removal, pollutant removal, stream bank protection, or protection of an endangered species as required by federal law.

(3) "Riparian buffer area" means an area subject to a riparian buffer requirement.

(4) "Riparian buffer requirement" means a landward setback from surface waters.

(b) Except as provided in this section, a local government may not enact, implement, or enforce a local government ordinance that establishes a riparian buffer requirement that exceeds riparian buffer requirements necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency.

(c) Subsection (b) of this section shall not apply to any local government ordinance that establishes a riparian buffer requirement enacted prior to August 1, 1997, if (i) the ordinance included findings that the requirement was imposed for purposes that include the protection of aesthetics, fish and wildlife habitat, and recreational use by maintaining water temperature, healthy tree canopy and understory, and the protection of the natural shoreline through minimization of erosion and potential chemical pollution in addition to the protection of water quality and the prevention of excess nutrient runoff, and (ii) the ordinance would permit small or temporary structures within 50 feet of the water body and docks and piers within and along the edge of the water body under certain circumstances.

(d) A local government may request from the Commission the authority to enact, implement, and enforce a local government ordinance that establishes a riparian buffer requirement for the protection of water quality that exceeds riparian buffer requirements for the protection of water quality necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency. To do so, a local government shall submit to the Commission an application requesting this authority that includes the local government ordinance, including the riparian buffer requirement for the protection of water quality, scientific studies of the local environmental and physical conditions that support the necessity of the riparian buffer requirement for the protection of water quality, and any other information requested by the Commission. Within 90 days after the Commission receives a complete application, the Commission shall review the application and notify the local government whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a local government ordinance that establishes a riparian buffer requirement for the protection of water quality unless the Commission finds that the

scientific evidence presented by the local government supports the necessity of the riparian buffer requirement for the protection of water quality.

(e) Cities and counties shall not treat the land within a riparian buffer area as if the land is the property of the State or any of its subdivisions unless the land or an interest therein has been acquired by the State or its subdivisions by a conveyance or by eminent domain. Land within a riparian buffer area in which neither the State nor its subdivisions holds any property interest may be used by the property owner to satisfy any other development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements.

(f) When riparian buffer requirements are included within a lot, cities and counties shall require that the riparian buffer area be shown on the recorded plat. Nothing in this subsection shall be construed to require that the riparian buffer area be surveyed. When riparian buffer requirements are placed outside of lots in portions of a subdivision that are designated as common areas or open space and neither the State nor its subdivisions holds any property interest in that riparian buffer area, the local government shall attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements.

(g) The Commission may adopt rules to implement this section. (2015-246, s. 13.1(b).)

§ 143-214.24. Riparian Buffer Protection Program: Coordination with River Basin Associations.

(a) Prior to drafting temporary or permanent rules that require the preservation of riparian buffers in a river basin, the Department shall consult with major stakeholders who may have an interest in the proposed rules, including the board of directors or representatives designated by the board of directors of any river basin association in the affected river basin that meets all of the following criteria:

(1) The association is a nonprofit corporation, as defined by G.S. 55A-1-40.

(2) The association has as its primary purpose the conservation, preservation, and restoration of the environmental and natural resources of the river basin in which it is located.

(3) Membership in the association is open on a nondiscriminatory basis to all citizens in the river basin.

(4) The membership of the board of directors of the association includes at least one representative from each county with a significant portion of its territory in the river basin.

(5) The membership of the association includes significant representation from each of the following categories of persons:

a. Elected local officials.
b. Persons involved in agriculture.
c. Persons involved in residential and commercial land development.
d. Persons involved in forestry.
e. Representatives of community-based organizations.
f. Representatives of organizations that advocate for protection of the environment and conservation of natural resources.
g. Persons with special training and scientific expertise in protection of water who are affiliated with colleges and universities.
h. Private property owners.
i. Persons with a general interest in water quality protection.

(b) The purpose of the consultation required by subsection (a) of this section is to assure that major stakeholders who may have an interest in the proposed rules have an opportunity to inform the Department of their concerns before the Department drafts the rules. (2000-172, s. 5.1.)

§ 143-214.25. Expired.

§ 143-214.25A. Riparian Buffer Protection Program: Surface Water Identification Training and Certification Program.

(a) The Division of Water Resources of the Department shall develop a program to train and certify individuals to determine the presence of surface waters that would require the application of rules adopted by the Commission for the protection of riparian buffers. The Division may train and certify employees of the Division as determined by the Director of the Division of Water Resources; employees of units of local government to whom responsibility for the implementation and enforcement of the riparian buffer protection rules is delegated pursuant to G.S. 143-214.23; and Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services as determined by the Assistant Commissioner of the North Carolina Forest Service. The Director of the Division of Water Resources may review the determinations made by individuals who are certified pursuant to this section, may override a determination made by an individual certified under this section, and, if the Director of the Division of Water Resources determines that an individual is failing to make correct determinations, revoke the certification of that individual.

(b) The Division of Water Resources shall develop standard forms for use in making and reporting determinations. Each individual who is certified to make determinations under this section shall prepare a written report of each determination and shall submit the report to the agency that employs the individual. Each agency shall maintain reports of determinations made by its employees, shall forward a copy of each report to the Director of the Division of Water Resources, and shall maintain these reports and all other records related to determinations so that they will be readily accessible to the public.

(c) In implementing the Surface Water Identification Training and Certification Program established by this section, the Division of Water Resources of the Department of Environmental Quality shall give priority to training and certifying the most highly qualified and experienced personnel in each agency. The Division of Water Resources shall evaluate the effectiveness of the Surface Water Identification Training and Certification Program and shall submit an annual report of its findings and recommendations, if any, to the Environmental Review Commission on or before October 1 of each year. (2010-180, s. 4(a), (b); 2011-145, s. 13.25(uu); 2013-155, s. 22; 2013-413, s. 57(k), (cc); 2014-115, s. 17; 2015-241, s. 14.30(u).)

§ 143-214.26. Nutrient offset credits.

(a) Nutrient offset credits may be purchased to partially offset nutrient loadings to surface waters as required by the Environmental Management Commission. Nutrient offset projects authorized under this section shall be all of the following:

(1) Consistent with rules adopted by the Commission for implementation of nutrient management strategies.

(2) Located within the same hydrologic area, as defined in G.S. 143-214.11, in which the associated nutrient loading takes place.

(b) A government entity, as defined in G.S. 143-214.11, may purchase nutrient offset credits through either:

(1) Participation in a nutrient offset bank that has been approved by the Department if the Department approves the use of the bank for the required nutrient offsets.

(2) Payment of a nutrient offset fee established by the Department into the Riparian Buffer Restoration Fund established in G.S. 143-214.21.

(c) A party other than a government entity, as defined in G.S. 143-214.11, may purchase nutrient offset credits through either:

(1) Participation in a nutrient offset bank that has been approved by the Department if the Department approves the use of the bank for the required nutrient offsets.

(2) Payment of a nutrient offset fee established by the Department into the Riparian Buffer Restoration Fund established in G.S. 143-214.21. This option is only available to an applicant who demonstrates that the option under subdivision (1) of this subsection is not available. (2009-337, s. 4(a)-(c).)

§ 143-215. Effluent standards or limitations.

(a) The Commission is authorized and directed to develop, adopt, modify and revoke effluent standards or limitations and waste treatment management practices as it determines necessary to prohibit, abate, or control water pollution. The effluent standards or limitations and management practices may provide, without limitation, standards or limitations or management practices for any point source or sources; standards, limitations, management practices, or prohibitions for toxic wastes or combinations of toxic wastes

discharged from any point source or sources; and pretreatment standards for wastes discharged to any disposal system subject to effluent standards or limitations or management practices.

(b) The effluent standards or limitations developed and adopted by the Commission shall provide limitations upon the effluents discharged from pretreatment facilities and from outlets and point sources to the waters of the State adequate to limit the waste loads upon the waters of the State to the extent necessary to maintain or enhance the chemical, physical, biological and radiological integrity of the waters. The management practices developed and adopted by the Commission shall prescribe practices necessary to be employed in order to prevent or reduce contribution of pollutants to the State's waters.

(c), (d) Repealed by Session Laws 1995, c. 507, s. 27.

(e) Repealed by Session Laws 1997-458, s. 13.1. (1967, c. 892, s. 1; 1971, c. 1167, s. 5; 1973, c. 821, s. 4; c. 929; c. 1262, s. 23; 1975, c. 583, s. 1; 1979, c. 633, ss. 2-4; 1987, c. 827, ss. 154, 158; 1989, c. 168, s. 48; 1991, c. 403, s. 2; 1991 (Reg. Sess., 1992), c. 890, s. 15; 1995, c. 507, s. 27.8(s); 1995 (Reg. Sess., 1996), c. 626, s. 4; 1997-458, s. 13.1.)

§ 143-215.1. Control of sources of water pollution; permits required.

(a) Activities for Which Permits Required. – Except as provided in subsection (a6) of this section, no person shall do any of the following things or carry out any of the following activities unless that person has received a permit from the Commission and has complied with all conditions set forth in the permit:

(1) Make any outlets into the waters of the State.

(2) Construct or operate any sewer system, treatment works, or disposal system within the State.

(3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State.

(4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent that would result in any violation of the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters to the extent of violating any applicable standard.

(5) Change the nature of the waste discharged through any disposal system in any way that would exceed the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters in relation to any applicable standards.

(6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Commission under the provisions of this Article.

(7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in that facility.

(8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facility.

(9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto.

(10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(11) Cause or permit discharges regulated under G.S. 143-214.7 that result in water pollution.

(12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under either this Part or Part 1A of this Article.

(a1) In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Commission shall be applicable and controlling.

(a2) No permit shall be granted for the disposal of waste in waters classified as sources of public water supply where the head of the agency that administers the public water supply program pursuant to Article 10 of Chapter 130A of the General Statutes, after review of the plans and specifications for the proposed disposal facility, determines and advises the Commission that any outlet for the disposal of waste is, or would be, sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect on the public health.

(a3) If the Commission denies an application for a permit, the Commission shall state in writing the reason for the denial and shall also state the Commission's estimate of the changes in the applicant's proposed activities or plans that would be required in order that the applicant may obtain a permit.

(a4) The Department shall regulate wastewater systems under rules adopted by the Commission for Public Health pursuant to Article 11 of Chapter 130A of the General Statutes except as otherwise provided in this subsection. No permit shall be required under this section for a wastewater system regulated under Article 11 of Chapter 130A of the General Statutes. The following wastewater systems shall be regulated by the Department under rules adopted by the Commission:

(1) Wastewater 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.

(a5) For purposes of this subsection, "agricultural products" means horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products. Notwithstanding subsection (a) of this section, a permit shall not be required for a wastewater management system for the treatment and disposal of wastewater produced from activities related to the processing of agricultural products if all of the following conditions are met:

(1) The activities related to the processing of the agricultural products are carried out by the owner of the agricultural products.
(2) The activities related to the processing of the agricultural products produce no more than 1,000 gallons of wastewater per day.
(3) The wastewater is not generated by an animal waste management system as defined in G.S. 143-215.10B.
(4) The wastewater is disposed of by land application.
(5) No wastewater is discharged to surface waters.
(6) The disposal of the wastewater does not result in any violation of surface water or groundwater standards.

(a6) No permit shall be required to enter into a contract for the construction, installation, or alteration of any treatment works or disposal system or to construct, install, or alter any treatment works or disposal system within the State when the system's or work's principal function is to conduct, treat, equalize, neutralize, stabilize, recycle, or dispose of industrial waste or sewage from an industrial facility and the discharge of the industrial waste or sewage is authorized under a permit issued for the discharge of the industrial waste or sewage into the waters of the State. Notwithstanding the above, the permit issued for the discharge may be modified if required by federal regulation.

(a7) For high rate infiltration wastewater disposal systems that utilize non-native soils or materials in a basin sidewall to enhance infiltration, the non-native soils or materials in the sidewall shall not be considered part of the disposal area provided that all of the following standards are met:

(1) In addition to the requirements established by the Commission pursuant to subsection (a4) of G.S. 143-215.1, the treatment system shall include a mechanism to provide filtration of effluent to 0.5 microns or less and all essential treatment units shall be provided in duplicate.
(2) Particle size analysis in accordance with ASTM guidelines for all native and non-native materials shall be performed. Seventy-five percent (75%) of all non-native soil materials specified shall have a particle size of less than 4.8 millimeters.
(3) Non-native materials shall comprise no more than fifty percent (50%) of the basin sidewall area.

(4) Systems meeting the standards set out in subdivisions (1), (2), and (3) of this subsection shall be considered nondischarge systems, and the outfall of any associated groundwater lowering device shall be considered groundwater provided the outfall does not violate water quality standards.

(b) Commission's Power as to Permits. –

(1) The Commission shall act on all permits so as to prevent, so far as reasonably possible, considering relevant standards under State and federal laws, any significant increase in pollution of the waters of the State from any new or enlarged sources. No permit shall be denied and no condition shall be attached to the permit, except when the Commission finds such denial or such conditions necessary to effectuate the purposes of this Article.

(2) The Commission shall also act on all permits so as to prevent violation of water quality standards due to the cumulative effects of permit decisions. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity. All permit decisions shall require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized.

(3) General permits may be issued under rules adopted pursuant to Chapter 150B of the General Statutes. Such rules may provide that minor activities may occur under a general permit issued in accordance with conditions set out in such rules. All persons covered under general permits shall be subject to all enforcement procedures and remedies applicable under this Article.

(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this section; and

2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

3. As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (April 1, 1990, Edition).

4. For a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, financial qualification may be demonstrated through the use of a letter of credit, insurance, surety, trust agreement, financial test, bond, or a guarantee by corporate parents or third parties who can pass the financial test. No permit shall be issued under this section for a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, until financial qualification is established and the issuance of the permit shall be contingent on the continuance of the financial qualification for the duration of the activity for which the permit was issued.

c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

d. To designate certain classes of minor activities for which a general permit may be issued, after considering:

1. The environmental impact of the activities;
2. How often the activities are carried out;
3. The need for individual permit oversight; and
4. The need for public review and comment on individual permits.

e. To designate certain classes of minor activities for which:

1. Performance conditions may be established by rule; and
2. Individual or general permits are not required.

(5) The Commission shall not issue a permit for a new municipal or domestic wastewater treatment works that would discharge to the surface waters of the State or for the expansion of an existing municipal or domestic wastewater treatment works that would discharge to the surface waters of the State unless the applicant for the permit demonstrates to the satisfaction of the Commission that:

a. The applicant has prepared and considered an engineering, environmental, and fiscal analysis of alternatives to the proposed facility.

b. The applicant is in compliance with the applicable requirements of the systemwide municipal and domestic wastewater collection systems permit program adopted by the Commission.

(b1) Repealed by Session Laws 1991, c. 156, s. 1.

(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. –

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of

wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

(3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for hearing, and if the Commission determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of intent was sent and to any other person requesting notice. At least 30 days prior to the date of hearing, the Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. In any county in which there is more than one newspaper having general circulation in that county, the Commission shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Commission in its discretion determines may be necessary to assure that such notice is generally available throughout the county. The Commission shall prescribe the form and content of the notices.

The Commission shall prescribe the procedures to be followed in hearings. If the hearing is not conducted by the Commission, detailed minutes of the hearing shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the

hearing, to the Commission for its consideration prior to final action granting or denying the permit.

(4) Not later than 60 days following notice of intent or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Commission and all decisions denying application for permit or renewal shall be in writing.

(5) Repealed by Session Laws 2011-398, s. 60(b), effective July 25, 2011, and applicable to permits that are issued on or after July 1, 2011.

(6) The Commission shall not act upon an application for a new nonmunicipal domestic wastewater discharge facility until it has received a written statement from each city and county government having jurisdiction over any part of the lands on which the proposed facility and its appurtenances are to be located which states whether the city or county has in effect a zoning or subdivision ordinance and, if such an ordinance is in effect, whether the proposed facility is consistent with the ordinance. The Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval of such application has statewide significance and is in the best interest of the State. An applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission may proceed to consider the permit application notwithstanding this subdivision.

(c1) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging to the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission shall not discharge more than an average annual mass load of total nitrogen than would result from a discharge of the permitted flow, determined at the time the Commission makes a finding that those waters are experiencing or are subject to excessive growth of microscopic or macroscopic vegetation, having a total nitrogen concentration of five and one-half milligrams of nitrogen per liter (5.5 mg/l). The total nitrogen concentration of 5.5 mg/l for nutrient sensitive waters required by this subsection applies only to:

(1) Facilities that were placed into operation prior to 1 July 1997 or for which an authorization to construct was issued prior to 1 July 1997 and that have a design capacity to discharge 500,000 gallons per day or more.

(2) Facilities for which an authorization to construct is issued on or after 1 July 1997.

(c2) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging to the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission where phosphorus is designated by the Commission as a nutrient of concern shall not discharge more than an average annual mass load of total phosphorus than would result from a discharge of the permitted flow, determined at the time the Commission makes a finding that those waters are experiencing or are subject to excessive growth of microscopic or macroscopic vegetation, having a total phosphorus concentration of two milligrams of phosphorus per liter (2.0 mg/l). The total phosphorus concentration of 2.0 mg/l for nutrient sensitive waters required by this subsection applies only to:

(1) Facilities that were placed into operation prior to 1 July 1997 or for which an authorization to construct was issued prior to 1 July 1997 and that have a design capacity to discharge 500,000 gallons per day or more.

(2) Facilities for which an authorization to construct is issued on or after 1 July 1997.

(c3) A person to whom subsection (c1) or (c2) of this section applies may meet the limits established under those subsections either individually or on the basis of a cooperative agreement with other persons who hold individual wastewater permits if the cooperative agreement is approved by the Commission. A person to whom subsection (c1) or (c2) of this section applies whose agreement to accept wastewater from another wastewater treatment facility that discharges into the same water body and that results in the elimination of the discharge from that wastewater treatment facility shall be allowed to increase the average annual mass load of total nitrogen and total phosphorus that person discharges by the average annual mass load of total nitrogen and total phosphorus of the wastewater treatment facility that is eliminated. If the wastewater treatment facility that is eliminated has a permitted flow of less than 500,000 gallons per day, the average annual mass load of total nitrogen or phosphorus shall be calculated from the most recent available data. A person to whom this subsection applies shall comply with nitrogen and phosphorus discharge monitoring requirements established by the Commission. This average annual load of nitrogen or phosphorus shall be assigned to the wastewater discharge allocation of the wastewater treatment facility that accepts the wastewater.

(c4) A person to whom subsection (c1) of this section applies may request the Commission to approve a total nitrogen concentration greater than that set out in subsection (c1) of this section at a decreased permitted flow so long as the average annual mass load of total nitrogen is equal to or is less than that required under subsection (c1) of this section. A person to whom subsection (c2) of this section applies may request the Commission to approve a total phosphorus concentration greater than that set out in subsection (c2) of this section at a decreased permitted flow so long as the average annual mass load of total phosphorus is equal to or is less than that required under subsection (c2) of this section. If, after any 12-month period following approval of a greater concentration at a decreased permitted flow, the Commission finds that the greater concentration at a decreased

permitted flow does not result in an average annual mass load of total nitrogen or total phosphorus equal to or less than those that would be achieved under subsections (c1) and (c2) of this section, the Commission shall rescind its approval of the greater concentration at a decreased permitted flow and the requirements of subsections (c1) and (c2) of this section shall apply.

(c5) For surface waters to which the limits set out in subsection (c1) or (c2) of this section apply and for which a calibrated nutrient response model that meets the requirements of this subsection has been approved by the Commission, mass load limits for total nitrogen or total phosphorus shall be based on the results of the nutrient response model. A calibrated nutrient response model shall be developed and maintained with current data, be capable of predicting the impact of nitrogen or phosphorus in the surface waters, and incorporated into nutrient management plans by the Commission. The maximum mass load for total nitrogen or total phosphorus established by the Commission shall be substantiated by the model and may require individual discharges to be limited at concentrations that are different than those set out in subsection (c1) or (c2) of this section. A calibrated nutrient response model shall be developed by the Department in conjunction with the affected parties and is subject to approval by the Commission.

(c6) For surface waters that the Commission classifies as nutrient sensitive waters (NSW) on or after 1 July 1997, the Commission shall establish a date by which facilities that were placed into operation prior to the date on which the surface waters are classified NSW or for which an authorization to construct was issued prior to the date on which the surface waters are classified NSW must comply with subsections (c1) and (c2) of this section. The Commission shall establish the compliance schedule at the time of the classification.

(d) Applications and Permits for Sewer Systems, Sewer System Extensions and Pretreatment Facilities, Land Application of Waste, and for Wastewater Treatment Facilities Not Discharging to the Surface Waters of the State. –

(1) All applications for new permits and for renewals of existing permits for sewer systems, sewer system extensions and for disposal systems, and for land application of waste, or treatment works which do not discharge to the surface waters of the State, and all permits or renewals and decisions denying any application for permit or renewal shall be in writing. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. If the Commission fails to act on an application for a permit, including a renewal of a permit, within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved. Permits and renewals issued in approving such facilities pursuant to this subsection shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission. Prior to acting on a permit

application for the land application of bulk residuals resulting from the operation of a wastewater treatment facility, the Commission shall provide notice and an opportunity for comment from the governing board of the county in which the site of the land application of bulk residuals is proposed to be located. Local governmental units to whom pretreatment program authority has been delegated shall establish, maintain, and provide to the public, upon written request, a list of pretreatment applications received.

(2) An applicant for a permit to dispose of petroleum contaminated soil by land application shall give written notice that he intends to apply for such a permit to each city and county government having jurisdiction over any part of the land on which disposal is proposed to occur. The Commission shall not accept such a permit application unless it is accompanied by a copy of the notice and evidence that the notice was sent to each such government by certified mail, return receipt requested. The Commission may consider, in determining whether to issue the permit, the comments submitted by local governments.

(d1) Each applicant under subsections (c) or (d) for a permit (or the renewal thereof) for the operation of a treatment works for a private multi-family or single family residential development, in which the owners of individual residential units are required to organize as a lawfully constituted and incorporated homeowners' association of a subdivision, condominium, planned unit development, or townhouse complex, shall be required to enter into an operational agreement with the Commission as a condition of any such permit granted. The agreement shall address, as necessary, construction, operation, maintenance, assurance of financial solvency, transfers of ownership and abandonment of the plant, systems, or works, and shall be modified as necessary to reflect any changed condition at the treatment plant or in the development. Where the Commission finds appropriate, it may require any other private residential subdivision, condominium, planned unit development or townhouse complex which is served by a private treatment works and does not have a lawfully constituted and incorporated homeowners' association, and for which an applicant applies for a permit or the renewal thereof under subsections (c) or (d), to incorporate as a lawfully constituted homeowners' association, and after such incorporation, to enter into an operational agreement with the Commission and the applicant as a condition of any permit granted under subsections (c) or (d). The local government unit or units having jurisdiction over the development shall receive notice of the application within an established comment period and prior to final decision.

(d2) No permit issued pursuant to subsection (c) of this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section for which an expiration date is specified shall be issued for a term not to exceed eight years.

(d3) The Department may transfer a permit issued pursuant to subsection (d) of this section without the consent of the permit holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection:

(1) The Department may transfer a permit if all of the following conditions are met:

a. The successor-owner of the property submits to the Department a written request for the transfer of the permit.

b. The Department finds all of the following:

1. The permit holder is one of the following:

I. A natural person who is deceased.

II. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.

III. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.

IV. A person who has sold the property on which the permitted activity is occurring or will occur.

2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.

3. The successor-owner is the sole claimant of the right to engage in the permitted activity.

4. There will be no substantial change in the permitted activity.

(2) The permit holder shall comply with all terms and conditions of the permit until such time as the permit is transferred.

(3) The successor-owner shall comply with all terms and conditions of the permit once the permit has been transferred.

(4) Notwithstanding changes to law made after the original issuance of the permit, the Department may not impose new or different terms and conditions in the permit without the prior express consent of the successor-owner.

(e) Administrative Review. – A permit applicant, a permittee, or a third party who is dissatisfied with a decision of the Commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant, the permittee, or a third party does not file a petition within the required time, the Commission's decision is final and is not subject to review.

(f) Local Permit Programs for Sewer Extension and Reclaimed Water Utilization. – 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 general permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8) above, for construction, operation, alteration, extension, change of proposed or existing sewer system, subject to the prior certification of the Commission. 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 sewer service or a reclaimed water utilization system is already being provided by the municipality to the permit applicant or connection to the municipal sewer system or a reclaimed water utilization system is

immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where sewer service or a reclaimed water utilization system 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 a program and statement submitted by any local government, commission, authority, or board the Commission shall certify any local program that does all of the following:

(1) Provides by ordinance or local law for requirements compatible with those imposed by this Part and the rules implementing this Part.

(2) Provides that the Department receives notice and a copy of each application for a permit and that it receives copies of approved permits and plans upon request by the Commission.

(3) Provides that plans and specifications for all construction, extensions, alterations, and changes 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.

(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 sewer or a reclaimed water utilization system.

(8) Is approved by the Commission as adequate to meet the requirements of this Part and the rules implementing this Part.

(f1) The Commission may deny, suspend, or revoke certification of a local program upon a finding that a violation of the provisions in subsection (f) of this section has occurred. A denial, suspension, or revocation of a certification of a local program shall be made only after notice and a public hearing. If the failure of a local program to carry out this subsection creates an imminent hazard, the Commission may summarily revoke the certification of the local program. Chapter 150B of the General Statutes does not apply to proceedings under this subsection.

(f2) Notwithstanding any other provision of subsections (f) and (f1) of this section, if the Commission determines that a sewer system, treatment works, or disposal system is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to enforce those provisions, the Commission may, after written notice to the appropriate local government, take enforcement action in accordance with the provisions of this Article.

(g) Any person who is required to hold a permit under this section shall submit to the Department a written description of his current and projected plans to reduce the discharge of waste and pollutants under such permit by source reduction or recycling. The

written description shall accompany the payment of the annual permit fee. The written description shall also accompany any application for a new permit, or for modification of an existing permit, under this section. The written description required by this subsection shall not be considered part of a permit application and shall not serve as the basis for the denial of a permit or permit modification.

(h) Each applicant for a new permit or the modification of an existing permit issued under subsection (c) of this section shall include with the application: (i) the extent to which the new or modified facility is constructed in whole or in part with funds provided or administered by the State or a unit of local government, (ii) the impact of the facility on water quality, and (iii) whether there are cost-effective alternative technologies that will achieve greater protection of water quality. The Commission shall prepare an annual summary and analysis of the information provided by applicants pursuant to this subsection. The Commission shall submit the summary and analysis required by this subsection to the Environmental Review Commission (ERC) as a part of each annual report that the Commission is required to make to the ERC under G.S. 143B-282(b).

(i) Any person subject to the requirements of this section who is required to obtain an individual permit from the Commission for a disposal system under the authority of G.S. 143-215.1 or Chapter 130A of the General Statutes shall have a compliance boundary as may be established by rule or permit for various categories of disposal systems and beyond which groundwater quality standards may not be exceeded. Multiple contiguous properties under common ownership and permitted for use as a disposal system shall be treated as a single property with regard to determination of a compliance boundary and setbacks to property lines.

(j) Repealed by Session Laws 2014-122, s. 12(a), effective September 20, 2014.

(k) Where operation of a disposal system permitted under this section results in exceedances of the groundwater quality standards at or beyond the compliance boundary, the Commission shall require the permittee to undertake corrective action, without regard to the date that the system was first permitted, to restore the groundwater quality by assessing the cause, significance, and extent of the violation of standards and submit the results of the investigation and a plan and proposed schedule for corrective action to the Secretary. The permittee shall implement the plan as approved by, and in accordance with, a schedule established by the Secretary. In establishing a schedule the Secretary shall consider any reasonable schedule proposed by the permittee. (1951, c. 606; 1955, c. 1131, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 6; 1973, c. 476, s. 128; c. 821, s. 5; c. 1262, s. 23; 1975, c. 19, s. 51; c. 583, ss. 2-4; c. 655, ss. 1, 2; 1977, c. 771, s. 4; 1979, c. 633, s. 5; 1985, c. 446, s. 1; c. 697, s. 2; 1985 (Reg. Sess., 1986), c. 1023, ss. 1-5; 1987, c. 461, s. 1; c. 734, s. 1; c. 827, ss. 154, 159; 1989, c. 51, s. 2; c. 168, s. 29; c. 453, ss. 1, 2; c. 494, s. 1; c. 727, ss. 160, 161; 1989 (Reg. Sess., 1990), c. 1004, s. 17; c. 1024, s. 33; c. 1037, s. 1; 1991, c. 156, s. 1; c. 498, s. 1; 1991 (Reg. Sess., 1992), c. 944, s. 12; 1995 (Reg. Sess., 1996), c. 626, s. 2; 1997-458, ss. 6.1, 9.1, 11.2; 1997-496, s. 3; 1998-212, s. 14.9H(b), (d); 1999-329, s. 10.1; 2004-195, s. 1.5; 2006-250, s. 5; 2007-182, s. 2; 2011-41, s. 1; 2011-394, s. 9; 2011-398, s. 60(b), (c); 2012-194, s. 33; 2012-200, s. 9(a);

2013-121, s. 2; 2013-340, s. 1; 2013-413, ss. 46(a), 53; 2014-95, s. 3; 2014-115, s. 17; 2014-122, s. 12(a); 2015-1, s. 3.5; 2017-10, s. 4.13(b); 2017-209, s. 7.)

§ 143-215.1A. Closed-loop groundwater remediation systems allowed.

(a) The phrase "closed-loop groundwater remediation system" means a system and attendant processes for cleaning up contaminated groundwater by pumping groundwater, treating the groundwater to reduce the concentration of or remove contaminants, and reintroducing the treated water beneath the surface so that the treated groundwater will be recaptured by the system.

(b) The Secretary may issue a permit for the siting, construction, and operation of a closed-loop groundwater remediation system. Permits shall be issued in accordance with G.S. 143-215.1 and applicable rules of the Commission. A permit issued under this section constitutes prior permission under G.S. 87-88.

(c) A permit for a closed-loop groundwater remediation system shall specify the location at which groundwater is to be reintroduced and shall specify design, construction, operation, and closure requirements for the closed-loop groundwater remediation system necessary to ensure that the treated groundwater will be captured by the contaminant and removal system that extracts the groundwater for treatment. The Secretary may impose any additional permit conditions or limitations necessary to:

(1) Achieve efficient, effective groundwater remediation.
(2) Minimize the possibility of spills or other releases from the closed-loop groundwater remediation system.
(3) Specify or limit the distance between the point at which contaminated groundwater is extracted and the point at which treated groundwater is reintroduced.
(4) Specify the minimum or maximum gradients between the point at which contaminated groundwater is extracted and the point at which treated groundwater is reintroduced.
(5) Specify or limit the chemical, physical, or biological treatment processes that may be used.
(6) Protect the environment or public health.

(d) The Commission may adopt rules to implement this section. (1991 (Reg. Sess., 1992), c. 786, s. 3.)

§ 143-215.1B. Extension of date for compliance with nitrogen and phosphorus discharge limits.

(a) The Commission may extend a compliance date established under G.S. 143-215.1(c6) only in accordance with the requirements of this section and only upon the request of a person who holds a permit under G.S. 143-215.1 that authorizes a discharge into surface waters to which the limits set out in subsections (c1) or (c2) of G.S. 143-215.1 apply. The Commission shall act on a request for an extension of a compliance date within 120 days after the Commission receives the request. The Commission shall not extend a compliance date if the Commission concludes, on the basis of the scientific data available

to the Commission at the time of the request, that the extension will result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition). The Commission shall not extend a compliance date unless the Commission finds that the permit holder needs additional time to develop a calibrated nutrient response model that meets the requirements of this section. If the Commission requires an individual discharge to be limited to a maximum mass load or concentration that is different from those set out in subsections (c1) or (c2) of G.S. 143-215.1, the maximum mass load or concentration shall be substantiated by the model.

(b) The Commission shall determine the extended compliance date by adding to the date on which the Commission grants the extension: (i) two years for the collection of data needed to prepare a calibrated nutrient response model; (ii) a maximum of one year to prepare the calibrated nutrient response model; (iii) the amount of time, if any, that is required for the Commission to develop a nutrient management strategy and to adopt rules or to modify discharge permits to establish maximum mass loads or concentration limits based on the calibrated nutrient response model; and (iv) a maximum of three years to plan, design, finance, and construct a facility that will comply with those maximum mass loads and concentration limits. If the Commission finds that additional time is needed to complete the construction of a facility, the Commission may further extend an extended compliance date by a maximum of two additional years.

(c) Notwithstanding the provisions of G.S. 150B-21.1(a), the Commission may adopt temporary rules to establish maximum mass loads or concentration limits pursuant to this section or as may otherwise be necessary to implement this section.

(d) A permit holder who is granted an extended compliance date under this section shall:

(1) Develop a calibrated nutrient response model in conjunction with other affected parties and in accordance with a timetable for the development of the model that has been approved by the Commission. The model shall be based on current data, capable of predicting the impact of nitrogen and phosphorus in the surface waters, capable of being incorporated into any nutrient management plan developed by the Commission, and approved by the Commission.

(2) Evaluate and optimize the operation of all facilities operated by the permit holder that are permitted under G.S. 143-215.1(c) and that discharge into the nutrient sensitive waters (NSW) for which the compliance date is extended pursuant to this section in order to reduce nutrient loading.

(3) Evaluate methods to reduce the total mass load of waste that is discharged from all facilities operated by the permit holder that are permitted under G.S. 143-215.1(c) and that discharge into the nutrient sensitive waters (NSW) for which the compliance date is extended pursuant to this section and determine whether these methods are cost-effective.

(4) Evaluate methods to reduce the discharge of treated effluent from all facilities operated by the permit holder that are permitted under G.S. 143-215.1(c) and that discharge into the nutrient sensitive waters (NSW)

for which the compliance date is extended pursuant to this section; including land application of treated effluent, the use of restored or created wetlands that are not located in a 100-year floodplain to polish treated effluent, and other methods to reuse treated effluent; and determine whether these methods are cost-effective.

(5) Report to the Commission on progress in the development of the calibrated nutrient response model, on efforts to optimize the operation of facilities, on the evaluation of methods of reducing the total mass load of waste, and on the evaluation of methods to reduce the discharge of treated effluent. The Commission shall establish a schedule for reports that requires the permit holder to report on at least a semiannual basis.

(e) The Commission may revoke an extension granted under this section and impose the limits set out in subsections (c1) and (c2) of G.S. 143-215.1 if the Commission determines that a permit holder who has obtained an extension under this section has, at any time during the period of the extension:

(1) Failed to comply with the requirements of subsection (d) of this section; or

(2) Violated any conditions or limitations of any permit issued under G.S. 143-215.1 or special order issued under G.S. 143-215.2 if the violation is the result of conduct by the permit holder that results in a significant violation of water quality standards. (1998-212, s. 14.9H(c); 2004-195, s. 1.6.)

§ 143-215.1C. Report to wastewater system customers on system performance; report discharge of untreated wastewater to the Department; publication of notice of discharge of untreated wastewater and waste.

(a) Report to Wastewater System Customers. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part and having an average annual flow greater than 200,000 gallons per day, shall provide to the users or customers of the collection system or treatment works and to the Department an annual report that summarizes the performance of the collection system or treatment works and the extent to which the collection system or treatment works has violated the permit or federal or State laws, regulations, or rules related to the protection of water quality. The report shall be prepared on either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of the calendar or fiscal year.

(a1) Report Discharge of Untreated Wastewater to the Department. – The owner or operator of any wastewater collection or treatment works for which a permit is issued under this Part shall report a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State to the Department as soon as practicable, but no later than 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. This reporting requirement shall be in addition to any other reporting

requirements applicable to the owner or operator of the wastewater collection or treatment works.

(b) Publication of Notice of Discharge of Untreated Wastewater. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated wastewater to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED SEWAGE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(c) Publication of Notice of Discharge of Untreated Waste. – The owner or operator of any wastewater collection or treatment works, other than a wastewater collection or treatment works the operation of which is primarily to collect or treat municipal or domestic wastewater, for which a permit is issued under this Part shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner

or operator shall issue the press release within 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection. (1999-329, s. 8.1; 1999-456, s. 68; 2010-180, s. 5; 2014-122, s. 6(a).)

§ 143-215.2. Special orders.

(a) Issuance. – The Commission may, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, or a water supply watershed management requirement adopted pursuant to G.S. 143-214.5, issue, and from time to time modify or revoke, a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. The order or instrument may direct the person to take, or refrain from taking an action, or to achieve a result, within a period of time specified by the special order, as the Commission deems necessary and feasible in order to alleviate or eliminate the pollution. The Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water, subject to the provisions of subsection (a1) of this section regarding proposed orders, and the consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission issued pursuant to hearing.

(a1) Public Notice and Review of Consent Orders.

(1) The Commission shall give notice of a proposed consent order to the proper State, interstate, and federal agencies, to interested persons, and to the public. The Commission may also provide any other data it considers appropriate to those notified. The Commission shall prescribe the form and content of the notice. The notice shall be given at least 45 days prior to any final action regarding the consent order. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county in which the pollution originates.

(2) Any person who desires a public meeting on any proposed consent order may request one in writing to the Commission within 30 days following date of the notice of the proposed consent order. The Commission shall consider all such requests for meetings. If the Commission determines that there is significant public interest in holding a meeting, the Commission shall schedule a meeting and shall give notice of such meeting at least 30 days in advance to all persons to whom notice of the proposed consent order was given and to any other person requesting notice. At least 30 days prior to the date of meeting, the Commission shall also have a copy of the notice of the meeting published at least one time in a newspaper having general circulation within the county in which the pollution originates. The Commission shall prescribe the form and content of notices under this subsection.

(3) The Commission shall prescribe the procedures to be followed in such meetings. If the meeting is not conducted by the Commission, detailed minutes of the meeting shall be kept and shall be submitted, along with any other written comment, exhibits or other documents presented at the meeting, to the Commission for its consideration prior to final action granting or denying the consent order.

(4) The Commission shall take final action on a proposed consent not later than 60 days following notice of the proposed consent order or, if a public meeting is held, within 90 days following such meeting.

(b) Procedure to Contest Certain Orders. – A special order that is issued without the consent of the person affected may be contested by that person by filing a petition for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the person affected does not file a petition within the required time, the order is final and is not subject to review.

(c) Repealed by Session Laws 1987, c. 827, s. 160.

(d) Effect of Compliance. – Any person who installs a treatment works for the purpose of alleviating or eliminating water pollution in compliance with the terms of, or as a result of the conditions specified in, a permit issued pursuant to G.S. 143-215.1, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Commission or a court rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or

any other State law relating to the control of water pollution, for a period to be fixed by the Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order, consent special order, assurance of voluntary compliance, other document, or decision, or the conditions of such permit become finally effective, if:

(1) The treatment works result in the elimination or alleviation of water pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance or other document, or decision and complies with any other terms thereof; and

(2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document, or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance. (1951, c. 606; 1955, c. 1131, s. 2; 1967, c. 892, s. 1; 1973, c. 698, s. 3; c. 1262, s. 23; 1975, c. 19, s. 52; 1979, c. 889; 1987, c. 827, ss. 154, 160; 1989, c. 426, s. 3; c. 766, s. 1; 1995 (Reg. Sess., 1996), c. 626, s. 3.)

§ 143-215.2A. Relief for contaminated private drinking water wells.

(a) The Secretary shall, upon direction of the Governor, order any person who the Secretary finds responsible for the discharge or release of industrial waste that includes per- and poly-fluoroalkyl substances (PFAS), including the chemical known as "GenX" (CAS registry number 62037-80-3 or 13252-13-6), into the air, groundwater, surface water, or onto the land that results in contamination of a private drinking water well, as that term is defined in G.S. 87-85, to establish permanent replacement water supplies for affected parties. For purposes of this section, the terms (i) "contamination" means an exceedance of a standard established by the Environmental Management Commission for groundwater, surface water, or air quality, or an exceedance of a health advisory level established by the United States Environmental Protection Agency, for any chemical classified as a PFAS, including GenX; and (ii) "affected party" means a household, business, school, or public building with a well contaminated with PFAS, including GenX, as a result of the discharge or release of industrial waste.

(b) If the Secretary orders a person responsible for the discharge or release of a PFAS, including GenX, that results in contamination of a private drinking water well to establish a permanent replacement water supply for an affected party with such a well pursuant to subsection (a) of this section, preference shall be given to permanent replacement water supplies by connection to public water supplies; provided that (i) an affected party 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 affected party would not be cost-effective, the Department shall authorize provision of a permanent replacement water supply to that affected party through installation of a filtration system. For affected parties for which filtration systems are installed, the person responsible shall be liable for any periodic required maintenance of the filtration system. An order issued by the Secretary pursuant to subsection (a) of this

section shall include a deadline by which the responsible person must establish the permanent replacement water supply for the affected party or parties subject to the order.

(c) An order issued by the Secretary pursuant to subsection (a) of this section shall be delivered by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4, to the person ordered to establish the permanent replacement water supply and shall include detailed findings of fact and conclusions in support of the order. A person to whom such order is issued may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after receipt of notice of the order. If the person does not file a petition within the required time, the Secretary's decision is final and is not subject to review.

(d) A person required to establish a permanent replacement water supply pursuant to this section shall be jointly and severally liable for all necessary costs associated with establishment of the permanent replacement water supply. The remedy under this section is in addition to those provided by existing statutory and common law. Nothing in this section shall limit or diminish any rights of contribution for costs incurred herein.

(e) Nothing in this section shall be construed to (i) require an eligible affected party 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.

(f) All State entities and local governments shall expedite any permits and approvals that may be required for the establishment of permanent replacement water supplies required pursuant to this section. (2018-5, s. 13.1(c); 2018-97, s. 4.4(b).)

§ 143-215.3. General powers of Commission and Department; auxiliary powers.

(a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

(1) To make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter.

(1a) To adopt fee schedules and collect fees for the following:

a. Processing of applications for permits or registrations issued under Article 21, other than Parts 1 and 1A, Articles 21A, 21B, and 38 of this Chapter;

b. Administering permits or registrations issued under Article 21, other than Parts 1 and 1A, Articles 21A, 21B, and 38 of this Chapter including monitoring compliance with the terms of those permits; and

c. Reviewing, processing, and publicizing applications for construction grant awards under the Federal Water Pollution Control Act.

No fee may be charged under this provision, however, to a farmer who submits an application that pertains to his farming operations.

(1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed five hundred dollars

($500.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars ($50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under Article 21, other than Parts 1 and 1A, and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars ($1,500) per year. Fees for processing all permits under Article 21A and all other sections of Article 21B shall not exceed one hundred dollars ($100.00) for any single permit. The total payment for fees that are set by the Commission under this subsection for all permits for any single facility shall not exceed seven thousand five hundred dollars ($7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for the renewal or amendment.

(1c) Moneys collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:

a. Eliminate, insofar as possible, backlogs of permit applications awaiting agency action;

b. Improve the quality of permits issued;

c. Improve the rate of compliance of permitted activities with environmental standards; and

d. Decrease the length of the processing period for permit applications.

(1d) The Commission may adopt and implement a graduated fee schedule sufficient to cover all direct and indirect costs required for the State to develop and administer a permit program which meets the requirements of Title V. The provisions of subdivision (1b) of this subsection do not apply to the adoption of a fee schedule under this subdivision. In adopting and implementing a fee schedule, the Commission shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V to pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V. The fee schedule shall be adopted according to the procedures set out in Chapter 150B of the General Statutes.

a. The total amount of fees collected under the fee schedule adopted pursuant to this subdivision shall conform to the requirements of section 502(b)(3)(B) of Title V. No fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant, as defined in section 502(b)(3)(B)(ii) of Title V, emitted by any source. Fees collected pursuant to this subdivision shall be credited to the Title V Account.

b. The Commission may reduce any permit fee required under this section to take into account the financial resources of small business stationary sources as defined under Title V and regulations promulgated by the United States Environmental Protection Agency.

c. When funds in the Title V Account exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of administering the Title V permit program in that fiscal year.

(1e) The Commission shall collect the application, annual, and project fees for processing and administering permits, certificates of coverage under general permits, and certifications issued under Parts 1 and 1A of this Article and for compliance monitoring under Parts 1 and 1A of this Article as provided in G.S. 143-215.3D and G.S. 143-215.10G.

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions, or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under

oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system, or treatment works. In the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article 21B of this Chapter shall be related to any applicable effluent or emission limitations or toxic, pretreatment, or new source performance standards. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article or by Article 21B of this Chapter.

(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission.

(5) To institute such actions in the superior court of any county in which a violation of this Article, Article 21B of this Chapter, or the rules of the Commission has occurred, or, in the discretion of the Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Commission may deem necessary for the enforcement of any of the provisions of this Article, Article 21B of this Chapter, or of any official action of the Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Commission.

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law,

has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Commission shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Commission on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery, less the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for the construction or operation of any new or additional disposal system or

systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Commission that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given in accordance with the provisions of G.S. 150B-21.2.

A person aggrieved by an order of the Commission under this subdivision may seek judicial review of the order under Article 4 of Chapter 150B of the General Statutes without first commencing a contested case. An order may not be stayed while it is being reviewed.

(9) If an investigation conducted pursuant to this Article or Article 21B of this Chapter reveals a violation of any rules, standards, or limitations adopted by the Commission pursuant to this Article or Article 21B of this Chapter, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or G.S. 143-215.110, the Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.

(10) To require a laboratory facility that performs any tests, analyses, measurements, or monitoring required under this Article or Article 21B of this Chapter to be certified annually by the Department, to establish standards that a laboratory facility and its employees must meet and maintain in order for the laboratory facility to be certified, and to charge a laboratory facility a fee for certification. Fees collected under this subdivision shall be credited to the Water and Air Account and used to administer this subdivision. These fees shall be applied to the cost of certifying commercial, industrial, and municipal laboratory facilities.

(11) Repealed by Session Laws 1983, c. 296, s. 6.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Commission shall fix a place and time for a hearing before the Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Commission shall either affirm, modify or set aside the order.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article or Article 21B of this Chapter. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this subdivision shall apply.

(13) Repealed by Session Laws 1983, c. 296, s. 6.

(14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with

treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.

(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143.

(b) Research Functions. – The Department shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for air pollution and waste disposal problems. To this end, the Department may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina educational institution, with the consent of such institution. In addition, the Department shall have the power to cooperate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this Article or Article 21B of this Chapter. All State departments shall advise with and cooperate with the Department on matters of mutual interest.

(c) Relation with the Federal Government. – The Commission as official water and air pollution control agency for the State is delegated to act in local administration of all matters covered by any existing federal statutes and future legislation by Congress relating to water and air quality control. In order for the State of North Carolina to effectively participate in programs administered by federal agencies for the regulation and abatement of water and air pollution, the Department is authorized to accept and administer funds provided by federal agencies for water and air pollution programs and to enter into contracts with federal agencies regarding the use of such funds.

(d) Relations with Other States. – The Commission or the Department may, with the approval of the Governor, consult with qualified representatives of adjoining states relative to the establishment of regulations for the protection of waters and air of mutual interest,

but the approval of the General Assembly shall be required to make any regulations binding.

(e) Variances. – Any person subject to the provisions of G.S. 143-215.1 or 143-215.108 may apply to the Commission for a variance from rules, standards, or limitations established pursuant to G.S. 143-214.1, 143-215, or 143-215.107. The Commission may grant such variance, for fixed or indefinite periods after public hearing on due notice, or where it is found that circumstances so require, for a period not to exceed 90 days without prior hearing and notice. Prior to granting a variance hereunder, the Commission shall find that:

(1) The discharge of waste or the emission of air contaminants occurring or proposed to occur do not endanger human health or safety; and

(2) Compliance with the rules, standards, or limitations from which variance is sought cannot be achieved by application of best available technology found to be economically reasonable at the time of application for such variances, and would produce serious hardship without equal or greater benefits to the public, provided that such variances shall be consistent with the provisions of the Federal Water Pollution Control Act as amended or the Clean Air Act as amended; and provided further, that any person who would otherwise be entitled to a variance or modification under the Federal Water Pollution Control Act as amended or the Clean Air Act as amended shall also be entitled to the same variance from or modification in rules, standards, or limitations established pursuant to G.S. 143-214.1, 143-215, and 143-215.107, respectively.

(f) Notification of Completed Remedial Action. – 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 groundwater has been remediated to meet the standards and classifications established under this Part. A request for a determination that groundwater has been remediated to meet the standards and classifications established under this Part shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that groundwater has been remediated to established standards and classifications, the Department shall issue a written notification that no further remediation of the groundwater will be required. The notification shall state that no further remediation of the groundwater will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the groundwater has not been remediated to established standards and classifications 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 groundwater to established standards and classifications. (1951, c. 606; 1957, c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c. 1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, c. 1167, ss. 7, 8; 1973, c. 698, ss. 1-7, 9, 17; c. 712, s. 1; c. 1262, ss. 23, 86; c. 1331, s. 3; 1975, c. 583, ss. 5, 6; c. 655, s. 3; 1977, c. 771, s. 4; 1979, c. 633, ss. 6-8; 1979, 2nd Sess., c. 1158, ss. 1, 3, 4; 1983, c. 296, ss. 5-8; 1985, c. 551, s. 2; 1987, c. 111, s. 2; c. 767, s. 1; c. 827, ss. 1, 154, 161, 266; 1987 (Reg. Sess., 1988), c. 1035, s. 2; 1989, c. 500, s. 122;

c. 652, s. 1; 1991, c. 552, ss. 2, 11; c. 712, s. 2; 1991 (Reg. Sess., 1992), c. 890, s. 16; c. 1039, ss. 14, 20.1; 1993, c. 344, s. 2; c. 400, ss. 1(c), 2, 3, 15; c. 496, s. 4; 1993 (Reg. Sess., 1994), c. 694, s. 1; 1995, c. 484, s. 5; 1997-357, s. 6; 1997-496, s. 4; 1998-212, s. 29A.11(b).)

§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.

(a) The Water and Air Quality Account is established as an account within the Department. Revenue in the Account shall be applied to the costs of administering the programs for which the fees were collected. Revenue credited to the Account pursuant to G.S. 105-449.43, G.S. 105-449.125, and G.S. 105-449.136 shall be used to administer the air quality program. Any funds credited to the Account from fees collected for laboratory facility certifications under G.S. 143-215.3(a)(10) that are not expended at the end of each fiscal year for the purposes for which these fees may be used under G.S. 143-215.3(a)(10) shall revert. Any other funds credited to the Account that are not expended at the end of each fiscal year shall not revert. Except for the following fees, all application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

(1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.
(2) Fees credited to the Title V Account.
(3) Repealed by Session Laws 2005-454, s. 7, effective January 1, 2006.
(4) Fees collected under G.S. 143-215.28A.
(5) Fees collected under G.S. 143-215.94C shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.
(6) Fees collected under G.S. 143-215.3D for the following permits and certificates shall be credited to the General Fund for use by the Department to administer the program for which the fees were collected:
    a. Stormwater permits and certificates of general permit coverage authorized under G.S. 143-214.7.
    b. Permits to apply petroleum contaminated soil to land authorized under G.S. 143-215.1.

(a1) The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a), after deducting those monies collected under G.S. 143-215.3(a)(1d), shall not exceed thirty percent (30%) of the total budgets from all sources of environmental permitting and compliance programs within the Department. This subsection shall not be construed to relieve any person of the obligation to pay a fee established under this Article or Articles 21A, 21B, or 38 of this Chapter.

(b) The Title V Account is established as a nonreverting account within the Department. Revenue in the Account shall be used for developing and implementing a permit program that meets the requirements of Title V. The Title V Account shall consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A. Fees collected

under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and indirect costs required to develop and administer the Title V permit program, and fees collected under G.S. 143-215.106A shall be used only for the eligible expenses of the Title V program. Expenses of the ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services provided by the Attorney General, and contracts with consultants and program expenses listed in section 502(b)(3)(A) of Title V shall be included among Title V program expenses.

(b1) The I & M Air Pollution Control Account is established as a nonreverting account within the Department. Fees transferred to the Division of Air Quality of the Department pursuant to G.S. 20-183.7(c) shall be credited to the I & M Air Pollution Control Account and shall be applied to administering the air quality program.

(c) The Department shall report to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division on the cost of the State's environmental permitting programs contained within the Department on or before January 1 of each odd-numbered year. The report shall include, but is not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned, and any other information requested by the General Assembly. The Department shall submit this report with the report required by G.S. 143B-279.17 as a single report. (1987, c. 767, s. 2; 1989, c. 500, s. 121; c. 727, s. 218(104); 1989 (Reg. Sess., 1990), c. 976, s. 2; 1991, c. 552, s. 3; 1991 (Reg. Sess., 1992), c. 1039, s. 12; 1993, c. 400, s. 14; 1995, c. 390, s. 28; 1995 (Reg. Sess., 1996), c. 743, s. 13; 1998-212, s. 29A.11(c); 2001-452, s. 2.4; 2001-474, s. 27; 2005-386, s. 8.1; 2005-454, s. 7; 2008-198, s. 11.2; 2011-145, s. 13.7; 2011-266, ss. 1.35(b), 3.3(b); 2014-120, s. 38(a); 2015-241, s. 14.16(d); 2017-10, s. 4.12(a); 2017-57, ss. 13.1, 14.1(i).)

§ 143-215.3B: Repealed by Session Laws, 2005-454, s. 8, effective January 1, 2006.

§ 143-215.3C. Confidential information protected.

(a) Information obtained under this Article or Article 21A or 21B of this Chapter shall be available to the public except that, upon a showing satisfactory to the Commission by any person that information to which the Commission has access, if made public, would divulge methods or processes entitled to protection as trade secrets pursuant to G.S. 132-1.2, the Commission shall consider the information confidential.

(b) Effluent data, as defined in 40 Code of Federal Regulations § 2.302 (1 July 1993 Edition) and emission data, as defined in 40 Code of Federal Regulations § 2.301 (1 July 1993 Edition) is not entitled to confidential treatment under this section.

(c) Confidential information may be disclosed to any officer, employee, or authorized representative of any federal or state agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant in any proceeding under this Article or Article 21A or Article 21B of this Chapter.

(d) The Commission shall provide for adequate notice to any person who submits information of any decision that the information is not entitled to confidential treatment and of any decision to release information that the person who submits the information contends is entitled to confidential treatment. Any person who requests information and any person who submits information who is dissatisfied with a decision of the Commission to withhold or release information may request a declaratory ruling from the Commission under G.S. 150B-4 within 10 days after the Commission notifies the person of its decision. The information may not be released by the Commission until the Commission issues a declaratory ruling or, if judicial review of the final agency decision is sought by any party, the information may not be released by the Commission until a final judicial determination has been made. (1993 (Reg. Sess., 1994), c. 694, s. 2.)

§ 143-215.3D. Fee schedule for water quality permits.

(a) Annual fees for discharge and nondischarge permits under G.S. 143-215.1. –

(1) Major Individual NPDES Permits. – The annual fee for an individual permit for a point source discharge of 1,000,000 or more gallons per day, a publicly owned treatment works (POTW) that administers a POTW pretreatment program, as defined in 40 Code of Federal Regulations § 403.3 (1 July 1996 Edition), or an industrial waste treatment works that has a high toxic pollutant potential is three thousand four hundred forty dollars ($3,440).

(2) Minor Individual NPDES Permits. – The annual fee for an individual permit for a point source discharge other than a point source discharge to which subdivision (1) of this subsection applies is eight hundred sixty dollars ($860.00).

(3) Single-Family Residence. – The annual fee for a certificate of coverage under a general permit for a point source discharge or an individual nondischarge permit from a single-family residence is sixty dollars ($60.00).

(4) Stormwater and Wastewater Discharge General Permits. – The annual fee for a certificate of coverage under a general permit for a point source discharge of stormwater or wastewater is one hundred dollars ($100.00).

(5) Recycle Systems. – The annual fee for an individual permit for a recycle system nondischarge permit is three hundred sixty dollars ($360.00).

(6) Major Nondischarge Permits. – The annual fee for an individual permit for a nondischarge of 10,000 or more gallons per day or requiring 300 or more acres of land is one thousand three hundred ten dollars ($1,310).

(7) Minor Nondischarge Permits. – The annual fee for an individual permit for a nondischarge of less than 10,000 gallons per day or requiring less than 300 acres of land is eight hundred ten dollars ($810.00).

(8) Animal Waste Management Systems. – The annual fee for animal waste management systems is as set out in G.S. 143-215.10G.

(b) Application fee for new discharge and nondischarge permits. – An application for a new permit of the type set out in subsection (a) of this section shall be accompanied by an initial application fee equal to the annual fee for that permit. If a permit is issued, the application fee shall be applied as the annual fee for the first year that the permit is in effect. If the application is denied, the application fee shall not be refunded.

(c) Application and annual fees for consent special orders. –

(1) Major Consent Special Orders. – If the Commission enters into a consent special order, assurance of voluntary compliance, or similar document pursuant to G.S. 143-215.2 for an activity subject to an annual fee under subdivision (1) or (6) of subsection (a) of this section, the initial project fee is four hundred dollars ($400.00) and the annual fee is five hundred dollars ($500.00). These fees are in addition to the annual fee due under subsection (a) of this section.

(2) Minor Consent Special Orders. – If the Commission enters into a consent special order, assurance of voluntary compliance, or similar document pursuant to G.S. 143-215.2 for an activity subject to an annual fee under subdivision (2) or (7) of subsection (a) of this section, the initial project fee is four hundred dollars ($400.00) and the annual fee is two hundred fifty dollars ($250.00). These fees are in addition to the annual fee due under subsection (a) of this section.

(d) Fee for major permit modifications. – An application for a major modification of a permit of the type set out in subsection (a) of this section shall be accompanied by an application fee equal to thirty percent (30%) of the annual fee applicable to that permit. A major modification of a permit is any modification that would allow an increase in the volume or pollutant load of the discharge or nondischarge or that would result in a significant relocation of the point of discharge, as determined by the Commission. This fee is in addition to the fees due under subsections (a) and (c) of this section. If the application is denied, the application fee shall not be refunded.

(e) Other fees under this Article. –

(1) Sewer System Extension Permits. – The application fee for a permit for the construction of a new sewer system or for the extension of an existing sewer system is four hundred eighty dollars ($480.00).

(2) State Stormwater Permits. – The application fee for a permit regulating stormwater runoff under G.S. 143-214.7 and G.S. 143-215.1 is five hundred five dollars ($505.00).

(3) Major Water Quality Certifications. – The fee for a water quality certification involving one acre or more of wetland fill or 150 feet or more of stream impact is five hundred seventy dollars ($570.00).

(4) Minor Water Quality Certifications. – The fee for a water quality certification involving less than one acre of wetland fill or less than 150 feet of stream impact is two hundred forty dollars ($240.00).

(5) Permit for Land Application of Petroleum Contaminated Soils. – The fee for a permit to apply petroleum contaminated soil to land is four hundred eighty dollars ($480.00).

(6) Fee Nonrefundable. – If an application for a permit or a certification described in this subsection is denied, the application or certification fee shall not be refunded.

(7) Limit Water Quality Certification Fee Required for CAMA Permit. – An applicant for a permit under Article 7 of Chapter 113A of the General Statutes for which a water quality certification is required shall pay a fee established by the Secretary. The Secretary shall not establish a fee that exceeds the greater of the fee for a permit under Article 7 of Chapter 113A of the General Statutes or the fee for a water quality certification under subdivision (3) or (4) of this subsection.

(f) Local Government Fee Authority Not Impaired. – This section shall not be construed to limit any authority that a unit of local government may have pursuant to any other provision of law to assess or collect a fee for the review of an application for a permit, the review of a mitigation plan, or the inspection of a site or a facility under any local program that is approved by the Commission under this Article. (1998-212, s. 29A.11(a); 1999-413, s. 6; 2006-250, s. 4; 2007-323, s. 30.3(a).)

§ 143-215.3E. (Expires December 31, 2020) Authority of Governor to require facility to cease operations and activities for unauthorized PFAS discharges or releases.

(a) The Governor is authorized to require a facility to cease all operations and activities in the State that result in the production of a pollutant if all of the following circumstances exist:

(1) The facility has a National Pollutant Discharge Elimination System (NPDES) permit.

(2) The Department has determined that the facility has had unauthorized discharges or releases of per- and poly-fluoroalkyl substances (PFAS) into the air, surface water, and groundwater and these discharges or releases have resulted in an exceedance of a standard set by the Environmental Management Commission for groundwater, surface water, or air quality, or an exceedance of a health advisory level established by the United States Environmental Protection Agency for any chemical classified as a PFAS, and the facility has received more than one notice of violation from the Department within a two-year period for unauthorized discharges or releases of such substances.

(3) The Department has been unable to stop all ongoing unauthorized discharges or releases of such substances from the facility that result in the violation of a standard or health advisory level within one year from the time the Department first learned of the unauthorized discharges or releases.

(4) The Department has determined that the best available scientific data indicates that the ongoing unauthorized discharges or releases present a danger to the public health.

(b) In determining whether to exercise the authority established under this section, the Governor may take into account remedial actions undertaken by the operator of the facility.

(c) If the Governor exercises the authority established under this subsection to require a facility to cease operations and activities, the Governor shall issue an order in writing to the operator accordingly, including findings of fact that demonstrate the criteria set forth in subdivisions (1) through (4) of subsection (a) of this section have been met, which order shall be delivered by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4, to the facility's operator. An order to cease operations and activities issued pursuant to this subsection shall not become effective until 15 days after issuance of the order. A person to whom such order is issued may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after receipt of notice of the order. If the person does not file a petition within the required time, the Governor's decision is final and is not subject to review.

(d) The authority established by this section shall be in addition to, and not exclusive of, other authority given to the Commission, the Secretary, and the Department under this Article to take enforcement action against a person for unauthorized discharges or releases of PFAS into the air, surface water, and groundwater, including the authority granted under G.S. 143-215.6C to request that the Attorney General institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. (2018-5, s. 13.1(a); 2018-97, s. 4.4(a).)

§ 143-215.4. Mailing list for rules; procedures for public input; form of order or decision; seal; official notice.

(a) Mailing List. – When the Commission proposes or adopts a rule establishing water quality classifications and standards under G.S. 143-214.1 or establishing effluent standards or waste treatment management practices under G.S. 143-215, it shall send notice of the action to each person who has requested to be notified of these matters. The Department shall maintain a mailing list for this purpose on which it shall record the name and address of each person who has made a written request to be on the list and the date on which the request was made. In making a request to be put on the list, a person may request to be added to the list for a specified period or indefinitely.

(b) Procedures for Public Input. –

(1) The Commission may, on its own motion or when required by federal law, request public comments on or hold public hearings on matters within the scope of its authority under this Article or Articles 21A or 21B of this Chapter. To request public comments on a matter, the Commission shall notify appropriate agencies of the opportunity to submit written comments to the Commission on the matter and shall publish a notice in

a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and informing the public of its opportunity to submit written comments to the Commission on the matter. A public comment period shall extend for at least 30 days after the notice is published.

(2) To hold a public hearing on a matter, the Commission shall notify, by personal service or certified mail, persons directly affected by the matter under consideration and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and the time, date, and place of a public hearing to be held on the matter. A public hearing shall be held no sooner than 20 days after the notice is published. The proceedings at a public hearing held under this subsection shall be recorded. Upon payment of a fee established by the Commission, any person may obtain a copy of the record of the public hearing. After a public hearing, the Commission shall accept written comments for the time period prescribed by the Commission.

(3) This subsection does not apply to rule-making proceedings, contested case hearings, or the issuance of permits required under Title V. The Commission shall establish procedures for public hearings, public notice, and public comment respecting permits required by Title V as provided by G.S. 143-215.111(4).

(4) The Commission may hold a public meeting on any matter within its scope of authority. The Commission may hold a public meeting in addition to any public hearing that is required under any provision of law, but a public meeting may not be substituted for any required public hearing. Except as may be otherwise provided by law, the Commission may determine the procedures for any public meeting it holds.

(c) Decisions and Orders. – An order or decision of the Commission shall state the Commission's findings of fact and conclusions of law and shall state the statute or rule on which the order or decision is based.

(d) Seal/Official Notice. – The Department shall have the authority to adopt a seal which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, rule of procedure or any other official act or records of the Commission or its minutes may be certified by the secretary of the department under his hand and the seal of the Department and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Commission shall have the right to take official notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Commission or by any other person or interested party where material, relevant and competent. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 10; c. 1262, s. 23; 1977, c.

374, s. 1; c. 771, s. 4; 1983, c. 296, s. 9; 1987, c. 827, ss. 154, 162, 169; 1993, c. 400, s. 4; 1995, c. 504, s. 10; 1997-496, s. 5.)

§ 143-215.5. Judicial review.

(a) Article 4 of Chapter 150B of the General Statutes governs judicial review of a final agency decision or order of the Secretary or of the Commission under this Article and Articles 21A and 21B of this Chapter. If a case that concerns an action of the Secretary or of the Commission under this Article or Article 21A or 21B of this Chapter is appealed from the superior court to the Appellate Division of the General Court of Justice, no bond shall be required of the Secretary or of the Commission.

(b) A person aggrieved, as defined in G.S. 150B-2, other than the applicant or permittee, who seeks judicial review of a final agency decision on an application for a permit required under Title V shall file a petition for judicial review under G.S. 150B-45 within 30 days after public notice of the final agency decision is given as provided in rules adopted by the Commission pursuant to G.S. 143-215.4(b)(3). A permit applicant, permittee, or other person aggrieved who seeks judicial review of a failure of the Commission to act within the time specified in rules adopted pursuant to G.S. 143-215.108(d)(2) on an application for a permit required by Title V or G.S. 143-215.108 shall file a petition for judicial review under G.S. 150B-45 within 30 days after the expiration of the time specified for action on the application. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 108, s. 88; c. 698, s. 11; c. 1262, s. 23; 1983, c. 296, s. 4; 1987, c. 827, ss. 154, 163; 1991 (Reg. Sess., 1992), c. 1028, s. 3; 1993, c. 400, s. 5.)

§ 143-215.6: Recodified as §§ 143-215.6A through 143-215.6C.

(a) Recodified as G.S. 143-215.6A by Session Laws 1989 (Regular Session, 1990), c. 1045, s. 1.

(b) Recodified as G.S. 143-215.6B by Session Laws 1989 (Regular Session, 1990), c. 1045, s. 2.

(c) Recodified as G.S. 143-215.6C by Session Laws 1989 (Regular Session, 1990), c. 1045, s. 3.

§ 143-215.6A. Enforcement procedures: civil penalties.

(a) A civil penalty of not more than twenty-five thousand dollars ($25,000) may be assessed by the Secretary against any person who:

(1) Violates any classification, standard, limitation, or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.

(2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit or any other permit or certification issued pursuant to authority conferred by this Part, including pretreatment permits issued by local governments and laboratory certifications.

(3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.

(4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Article or G.S. 143-355(k) relating to water use information.

(5) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.

(6) Violates a rule of the Commission implementing this Part, Part 2A of this Article, or G.S. 143-355(k).

(7) Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.

(8) Violates the offenses set out in G.S. 143-215.6B.

(9) Is required, but fails, to apply for or to secure a certificate required by G.S. 143-215.22L, or who violates or fails to act in accordance with the terms, conditions, or requirements of the certificate.

(10) Violates subsections (c1) through (c5) of G.S. 143-215.1 or a rule adopted pursuant to subsections (c1) through (c5) of G.S. 143-215.1.

(11) Violates or fails to act in accordance with G.S. 143-214.7(d1).

(a1) For purposes of this section, the term "Part" includes Part 1A of this Article.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed twenty-five thousand dollars ($25,000) per day for so long as the violation continues, unless otherwise stipulated.

(b1) The Secretary may assess a civil penalty of more than ten thousand dollars ($10,000) or, in the case of a continuing violation, more than ten thousand dollars ($10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the five years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars ($10,000) or, in the case of a continuing violation, more than ten thousand dollars ($10,000) per day for so long as the violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional.

(c) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

(e) Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand dollars ($10,000) per month may be assessed by the Commission against any local

government that fails to adopt a local water supply watershed protection program as required by G.S. 143-214.5, or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary 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, unless the violator contests the assessment as provided in subsection (d) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary 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.

(h) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 14.

(h1) The clear proceeds of civil penalties assessed by the Secretary or the Commission pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) As used in this subsection, "municipality" refers to any unit of local government which operates a wastewater treatment plant. As used in this subsection, "unit of local government" has the same meaning as in G.S. 130A-290. The provisions of this subsection shall apply whenever a municipality that operates a wastewater treatment plant with an influent bypass diversion structure and with a permitted discharge of 10 million gallons per day or more into any of the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission is subject to a court order which specifies (i) a schedule of activities with respect to the treatment of wastewater by the municipality; (ii) deadlines for the completion of scheduled activities; and (iii)

stipulated penalties for failure to meet such deadlines. A municipality as specified herein that violates any provision of such order for which a penalty is stipulated shall pay the full amount of such penalty as provided in the order unless such penalty is modified, remitted, or reduced by the court.

(j) Local governments certified and approved by the Commission to administer and enforce pretreatment programs pursuant to G.S. 143-215.3(a)(14), stormwater programs pursuant to G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23 may assess civil penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a local government and the civil penalty assessed by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section.

(k) A person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may request a review of the assessment by filing a request for review with the local government within 30 days of the date the notice of assessment is received. If a local ordinance provides for a local administrative hearing, the hearing shall afford minimum due process including an unbiased hearing official. The local government shall make a final decision on the request for review within 90 days of the date the request for review is filed. The final decision on a request for review shall be subject to review by the superior court pursuant to Article 27 of Chapter 1 of the General Statutes. If the local ordinance does not provide for a local administrative hearing, a person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may contest the assessment by filing a civil action in superior court within 60 days of the date the notice of assessment is received. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 583, s. 7; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 633, ss. 9-11; 1981, c. 514, s. 1; c. 585, s. 13; 1987, c. 271; c. 827, ss. 154, 164; 1989, c. 426, s. 4; 1989 (Reg. Sess., 1990), c. 951, s. 1; c. 1036, s. 3; c. 1045, s. 1; c. 1075, s. 6; 1991, c. 579, s. 2; c. 725, s. 3; 1993, c. 348, s. 2; 1995 (Reg. Sess., 1996), c. 743, s. 14; 1997-458, s. 6.2; 1998-215, s. 63; 1999-329, ss. 5.1, 5.3, 5.5, 5.7; 2004-124, s. 6.29(b); 2006-250, s. 6; 2007-484, s. 43.7C; 2007-518, s. 5; 2007-536, s. 3.)

§ 143-215.6B. Enforcement procedures: criminal penalties.

(a) For purposes of this section, the term "person" shall mean, in addition to the definition contained in G.S. 143-212, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this section shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(a1) For purposes of this section, the term "Part" includes Part 1A of this Article.

(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. 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 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 to develop or use written civil enforcement guidelines.

(6) Occasional, inadvertent, short-term violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(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 negligently violates any: (i) classification, standard, or limitation established in rules adopted by the Commission pursuant to G.S. 143-214.1, 143-214.2, or 143-215; (ii) term, condition, or requirement of a permit issued pursuant to this Part, including permits issued pursuant to G.S. 143-215.1, pretreatment permits issued by local governments, and laboratory certifications; (iii) term, condition, or requirement of a special order or other appropriate document issued pursuant to G.S. 143-215.2; or (iv) rule of the Commission implementing this Part; and any person who negligently fails to apply for or to secure a permit required by G.S. 143-215.1 shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues.

(g) Any person who knowingly and willfully violates any (i) classification, standard, or limitation established in rules adopted by the Commission pursuant to G.S. 143-214.1, 143-214.2, or 143-215; (ii) term, condition, or requirement of a permit issued pursuant to this Part, including permits issued pursuant to G.S. 143-215.1, pretreatment permits issued by local governments, and laboratory certifications; or (iii) term, condition, or requirement of a special order or other appropriate document issued pursuant to G.S. 143-215.2; and any person who knowingly and willfully fails to apply for or to secure a permit required by G.S. 143-215.1 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. For the purposes of this subsection, 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.

(h) (1) Any person who knowingly violates any: (i) classification, standard, or limitation established in rules adopted by the Commission pursuant to G.S. 143-214.1, 143-214.2, 143-215; (ii) term, condition, or requirement of a permit issued pursuant to this Part, including permits issued pursuant to G.S. 143-215.1, pretreatment permits issued by local governments, and laboratory certifications; or (iii) term, condition, or requirement of a special order or other appropriate document issued pursuant to G.S. 143-215.2; and any person who knowingly fails to apply for or to secure a permit required by G.S. 143-215.1 and who knows at that time that he thereby places another person in imminent danger of death or serious 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.

(i) 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 Article or a rule implementing this Article; or who knowingly makes a false statement of a material fact in a rulemaking proceeding or contested case under this Article; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or rules of the Commission implementing this Article shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed ten thousand dollars ($10,000).

(j) Repealed by Session Laws 1993, c. 539, s. 1315.

(k) The Secretary shall refer to the State Bureau of Investigation for review any discharge of waste by any person or facility in any manner that violates this Article or rules adopted pursuant to this Article that involves the possible commission of a felony. Upon receipt of a referral under this section, the State Bureau of Investigation may conduct an investigation and, if appropriate, refer the matter to the district attorney in whose jurisdiction any criminal offense has occurred. This subsection shall not be construed to limit the authority of the Secretary to refer any matter to the State Bureau of Investigation for review. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 583, s. 7; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 633, ss. 9-11; 1981, c. 514, s. 1; c. 585, s. 13; 1987, c. 271; c. 827, ss. 154, 164; 1989, c. 426, s. 4; 1989

(Reg. Sess., 1990), c. 1004, s. 48; c. 1045, s. 2; 1991, c. 725, s. 4; 1993, c. 539, ss. 1018, 1019, 1313-1315; 1994, Ex. Sess., c. 24, s. 14(c); 1997-458, s. 11.1; 2007-536, s. 4.)

§ 143-215.6C. Enforcement procedures; injunctive relief.

Whenever the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part, any of the terms of any permit issued pursuant to this Part, or a rule implementing this Part, the Department may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part or the regulations of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Part. For purposes of this section references to "this Part" include Part 1A of this Article and G.S. 143-355(k) relating to water use information. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 583, s. 7; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 633, ss. 9-11; 1981, c. 514, s. 1; c. 585, s. 13; 1987, c. 217; c. 827, ss. 154, 164; 1989, c. 426, s. 4; 1989 (Reg. Sess., 1990), c. 1045, s. 3; 2007-536, s. 5.)

§ 143-215.6D. Additional requirements applicable to certain municipal wastewater treatment facilities.

(a) As used in this section, "municipal" and "municipality" refer to any unit of local government which operates a wastewater treatment plant. As used in this section, "unit of local government" has the same meaning as in G.S. 130A-290.

(b) A municipality that operates a wastewater treatment plant with an influent bypass diversion structure and with a permitted discharge of five million gallons per day or more into any of the surface waters of the State shall maintain a notification list of units of local government which have requested to be on such list. Any unit of local government with territorial jurisdiction over or adjacent to any part of the surface waters of the State located within 100 miles downstream from the point of discharge from a municipal wastewater treatment plant to which this section applies as measured along the path of the stream, and any unit of local government which withdraws water from such surface waters to supply water to the public, may request the municipality operating the wastewater treatment plant to include the names of appropriate officials of the unit of local government on the notification list required by this subsection. The municipality operating such municipal wastewater treatment plant shall give notice of each instance when untreated or

partially treated wastewater is diverted so as to bypass the wastewater treatment plant to each person on the notification list at least 24 hours before any such instance which is planned or anticipated and within 24 hours after any such instance which is unplanned or unanticipated. (1989 (Reg. Sess., 1990), c. 951, s. 2, c. 1075, s. 6.)

§ 143-215.6E. Violation Points System applicable to swine farms.

(a) The Commission shall develop a Violation Points System applicable to permits for animal waste management systems for swine farms. This system shall operate in addition to the provisions of G.S. 143-215.6A. This system shall not alter the authority of the Commission to revoke a permit for an animal waste management system for a swine farm. The Violation Points System shall provide that:

(1) Violations that involve the greatest harm to the natural resources of the State, the groundwater or surface water quantity or quality, public health, or the environment shall receive the most points and shall be considered significant violations.

(2) Violations that are committed willfully or intentionally shall be considered significant violations.

(3) The number of points received shall be directly related to the degree of negligence or willfulness.

(4) The commission of three significant violations, or the commission of lesser violations that result in a predetermined cumulative number of points, within a limited period of time of not less than five years shall result in the mandatory revocation of a permit.

(5) The commission of one willful violation that results in serious harm may result in the revocation of a permit.

(b) In developing the Violation Points System under this section, the Commission shall determine the:

(1) Number of points that lesser violations must cumulatively total to result in the revocation of a permit.

(2) Limited period of time during which the commission of three significant violations, or the commission of a greater number of lesser violations, will result in the revocation of the operator's permit. This limited period of time shall not be less than five years.

(3) Duration of the permit revocation.

(4) Conditions under which the person whose permit is revoked may reapply for another permit for an animal waste management system for a swine farm.

(c) In developing the Violation Points System under this section, the Commission shall provide for an appeals process. (1997-458, s. 10.1.)

§ 143-215.7. Effect on laws applicable to public water supplies and the sanitary disposal of sewage.

This Article shall not be construed as amending, repealing, or in any manner abridging or interfering with the provisions of Article 10 of Chapter 130A of the General Statutes relating to the control of public water supplies; nor shall the provisions of this Article be construed as being applicable to or in anywise affecting the authority of the Department to control the sanitary disposal of sewage as provided in Article 11 of Chapter 130A of the General Statutes, or as affecting the powers, duties and authority of local health departments or as affecting the charter powers, or other lawful authority of municipal corporations, to pass ordinances in regard to sewage disposal. (1951, c. 606; 1957, c. 1357, s. 11; 1967, c. 892, s. 1; 1973, c. 476, s. 128; 1987, c. 827, s. 165; 1989, c. 727, s. 162; 1997-502, s. 9.)

§ 143-215.8. Repealed by Session Laws 1973, c. 698, s. 13.

§ 143-215.8A. Planning.

(a) Policy, Purpose and Intent. – The Commission and Department shall undertake a continuing planning process to develop and adopt plans and programs to assure that the policy, purpose and intent declared in this Article are carried out with regard to establishing and enforcing standards of water purity designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to enhance the quality of the environment, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development, and to insure the beneficial use of the water resources of the State.

(b) Goals. – The goals of the continuing planning process shall be the enhancement of the quality of life and protection of the environment through development by the Commission of water quality plans and programs utilizing the resources of the State on a priority basis to attain, maintain, and enhance water quality standards and water purity throughout the State.

(c) Statewide and Regional Planning. – The planning process may be conducted on a statewide or regional basis, as the Commission shall determine appropriate. If the Commission elects to proceed on a regional basis, it shall delineate the boundaries of each region by preparation of appropriate maps; by description referring to geographical features, established landmarks or political boundaries; or such other manner that the extent and limits of each region shall be easily ascertainable. The Commission shall consult officials and agencies of localities and regions in the development of plans affecting those areas.

(d) Local Planning Organizations. – The Commission shall submit to the Governor or his designee any plans, projections, data, comments or recommendations that he may request. If the Governor determines that the goals of this section will be more expeditiously and efficiently achieved, he may designate a representative organization, capable of carrying out a planning process for any region of the State or area therein, to develop plans, consistent with the State's water quality management plans, for the control or abatement of water pollution within such region or area. The Commission shall consult with, advise, and

assist any organization so designated in the preparation of its plans and shall submit to the Governor the Commission's comments and recommendations regarding such plans. All such organizations shall submit plans developed by them to the Governor for review, and no plan shall be effective until concurred in and approved by him.

(e) Interstate Planning Regions. – The Governor may consult and cooperate with the governor of any adjoining state in establishing an interstate planning region or area and in designating a representative organization, capable of carrying out a planning process for the region or area, to develop plans, consistent with the State's water quality management plans, for the control or abatement of water pollution within such region or area, if he determines that such region or area has common water quality control problems for which an interstate plan would be most effective.

(f) Repealed by Session Laws 1987, c. 827, s. 166. (1973, c. 698, s. 13; c. 1262, s. 23; 1977, c. 771, s. 4; 1987, c. 827, ss. 154, 166.)

§ 143-215.8B. Basinwide water quality management plans.

(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all of the following:

(1) All activities across a river basin and all point sources and nonpoint sources of pollutants, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, atmospheric deposition, and animal operations.

(2) All transfers into and from a river basin that are required to be registered under G.S. 143-215.22H.

(b) Each basinwide water quality management plan shall:

(1) Provide that all point sources and nonpoint sources of pollutants jointly share the responsibility of reducing the pollutants in the State's waters in a fair, reasonable, and proportionate manner, using computer modeling and the best science and technology reasonably available and considering future anticipated population growth and economic development.

(2) If any of the waters located within the river basin are designated as nutrient sensitive waters, then the basinwide water quality management plan shall establish a goal to reduce the average annual mass load of nutrients that are delivered to surface waters within the river basin from point and nonpoint sources. The Commission shall establish a nutrient reduction goal for the nutrient or nutrients of concern that will result in improvements to water quality such that the designated uses of the water, as provided in the classification of the water under G.S. 143-214.1(d), are not impaired. The plan shall require incremental progress toward achieving the goal. In developing the plan, the Commission shall

determine and allow appropriate credit toward achieving the goal for reductions of water pollution by point and nonpoint sources through voluntary measures.

(c) The Commission shall review and revise its 17 basinwide water quality management plans at least every 10 years to reflect changes in water quality, improvements in modeling methods, improvements in wastewater treatment technology, and advances in scientific knowledge and, as need to support designated uses of water, modifications to management strategies.

(d) As a part of the report required pursuant to G.S. 143-355(p), the Commission and the Department shall each report on or before November 1 of each year on an annual basis to the Environmental Review Commission on the progress in developing and implementing basinwide water quality management plans and on increasing public involvement and public education in connection with basinwide water quality management planning. The report to the Environmental Review Commission by the Department shall include a written statement as to all concentrations of heavy metals and other pollutants in the surface waters of the State that are identified in the course of preparing or revising the basinwide water quality management plans.

(e) A basinwide water quality management plan is not a rule and Article 2A of Chapter 150B of the General Statutes does not apply to the development of basinwide water quality management plans. Any water quality standard or classification and any requirement or limitation of general applicability that implements a basinwide water quality management plan is a rule and must be adopted as provided in Article 2A of Chapter 150B of the General Statutes. (1997-458, s. 8.2; 1998-168, s. 2; 2012-200, s. 9(b); 2017-10, s. 4.16(d).)

§ 143-215.8C: Repealed by Session Laws 2005-386, s. 2.1, effective December 1, 2005.

§ 143-215.8D. North Carolina Water Quality Workgroup; Rivernet.

(a) The Department of Environmental Quality and North Carolina State University shall jointly establish the North Carolina Water Quality Workgroup. The Workgroup shall work collaboratively with the appropriate divisions of the Department of Environmental Quality and North Carolina State University, the Environmental Management Commission, and the Environmental Review Commission to identify the scientific and State agency databases that can be used to formulate public policy regarding the State's water quality, evaluate those databases to determine the information gaps in those databases, and establish the priorities for obtaining the information lacking in those databases. The Workgroup shall have the following duties:

(1) To address specifically the ongoing need of evaluation, synthesis, and presentation of current scientific knowledge that can be used to formulate public policy on water quality issues.

(2) To identify knowledge gaps in the current understanding of water quality problems and fill these gaps with appropriate research projects.

(3) To maintain a web-based water quality data distribution site.

(4) To organize and evaluate existing scientific and State agency water quality databases.

(5) To prioritize recognized knowledge gaps in water quality issues for immediate funding.

(b) The North Carolina Water Quality Workgroup shall be composed of no more than 15 members. Those members shall be jointly appointed by the Chancellor of North Carolina State University and the Secretary of Environmental Quality. Any person appointed as a member of the Workgroup shall be knowledgeable in one of the following areas:

(1) Water Quality Assessment, Water Quality Monitoring, and Water Quality Permitting.

(2) Nutrient Management.

(3) Water Pollution Control.

(4) Waste Management.

(5) Groundwater Resources.

(6) Stream Hydrology.

(7) Aquatic Biology.

(8) Environmental Education and Web-Based Data Dissemination.

(c) North Carolina State University shall provide meeting facilities for the North Carolina Water Quality Workgroup as requested by the Chair.

(d) The members of the North Carolina Water Quality Workgroup shall elect a Chair. The Chair shall call meetings of the Workgroup and set the meeting agenda.

(e) The Chair of the North Carolina Water Quality Workgroup shall report each year by January 30 to the Environmental Review Commission, to the Cochairs of the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources, and to the Chancellor of North Carolina State University or the Chancellor's designee on the previous year's activities, findings, and recommendations of the North Carolina Water Quality Workgroup.

(f) The North Carolina Water Quality Workgroup shall develop a water quality monitoring system to be known as Rivernet that effectively uses the combined resources of North Carolina State University and State agencies. The Rivernet system shall be designed to implement advances in monitoring technology and information management systems with web-based data dissemination in the waters that are impaired based on the criteria of the State's basinwide water quality management plans. Water quality and nutrient parameters shall be continuously monitored at each station, and the data shall be sent back to a centralized computer server.

The Rivernet system shall be coordinated with related data collection and monitoring activities of the Department of Environmental Quality, the Water Resources Research Institute, the North Carolina Water Quality Workgroup, and other research efforts pursued by academic institutions or State government entities. If the North Carolina Water Quality Workgroup chooses to employ a technology for which there are testing procedure guidelines promulgated by the United States Environmental Protection Agency, the American Public Health Association, the American Water Works Association, or the Water

Environment Federation then the testing procedures shall comply with the appropriate guidelines. If the North Carolina Water Quality Workgroup chooses to employ a technology for which there are no testing procedure guidelines promulgated by any of the groups cited in this subsection, then the North Carolina Water Quality Workgroup may establish testing procedure guidelines.

The Rivernet system shall also have the capabilities to trigger alarms and notify the appropriate member of the Workgroup when monitoring stations exceed defined limits indicating a spill or a significant water quality or nutrient measurement event, which then can be comprehensively analyzed. (2001-424, s. 19.5; 2004-195, ss. 3.3, 3.4; 2015-241, ss. 14.30(u), (v).)

§ 143-215.9. Restrictions on authority of the Commission.

Nothing in this Article shall be construed to:

(1) Grant to the Commission any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works or shops;

(2) Affect the relations between employers and employees with respect or arising out of conditions of air contamination or air pollution;

(3) Supersede or limit the applicability of any law, rules and regulations or ordinances relating to industrial health or safety. (1967, c. 892, s. 1; 1973, c. 1262, s. 23; 1987, c. 827, s. 154.)

§ 143-215.9A. Reports.

(a) The Department shall report to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division on or before 1 October of each year on the status of facilities discharging into surface waters during the previous fiscal year. The report shall include:

(1) The names and locations of all persons permitted under G.S. 143-215.1(c).

(2) The number of compliance inspections of persons permitted under G.S. 143-215.1(c) that the Department has conducted since the last report.

(3) The number of violations found during each inspection, including the date on which the violation occurred and the nature of the violation; the status of enforcement actions taken and pending; and the penalties imposed, collected, and in the process of being negotiated for each violation.

(4) Any other information that the Department determines to be appropriate or that is requested by the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, or the Fiscal Research Division.

(b) The information to be included in the report pursuant to subsection (a) of this section shall be itemized by each regional office of the Department, with totals for the State indicated.

(c) Repealed by Session Laws 2002-148, s. 5. (1998-221, s. 4.1; 2002-148, s. 5; 2017-57, s. 14.1(j).)

§ 143-215.9B. Systemwide municipal and domestic wastewater collection system permit program report.

The Environmental Management Commission shall develop and implement a permit program for municipal and domestic wastewater collection systems on a systemwide basis. The collection system permit program shall provide for performance standards, minimum design and construction requirements, a capital improvement plan, operation and maintenance requirements, and minimum reporting requirements. In order to ensure an orderly and cost-effective phase-in of the collection system permit program, the Commission shall implement the permit program over a five-year period beginning 1 July 2000. The Commission shall issue permits for approximately twenty percent (20%) of municipal and domestic wastewater collection systems that are in operation on 1 July 2000 during each of the five calendar years beginning 1 July 2000 and shall give priority to those collection systems serving the largest populations, those under a moratorium imposed by the Commission under G.S. 143-215.67, and those for which the Department of Environmental Quality has issued a notice of violation for the discharge of untreated wastewater. (2001-452, s. 2.6; 2015-241, s. 14.30(u); 2017-10, s. 4.3.)

§ 143-215.9C. Use of certain types of culverts allowed.

(a) The Division of Water Resources in the Department of Environmental Quality shall allow the use of structures known as three-sided, open-bottom, or bottomless culverts. A culvert authorized under this section shall be designed, constructed, and installed so that it satisfies all of the following requirements:

(1) Adheres to professional engineering standards and sound engineering practices.
(2) To the extent practicable, minimizes the erosive velocity of water.
(3) Has an inside that is greater than or equal to 1.2 times the bankfull width of the spanned waterbody. For purposes of this subdivision, "bankfull width " means the width of the stream where over-bank flow begins during a flood event.

(b) The Division shall allow the use of culverts authorized under this section throughout the State and may not limit their use to locations where they must be tied into bedrock. Culverts authorized under this section may only be used on private property and may not be transferred to, or operated or maintained by, the Department of Transportation. (2009-478, s. 1; 2013-413, s. 57(l); 2014-115, s. 17; 2015-241, s. 14.30(u).)

§ 143-215.9D. Agricultural operation investigations confidential.

Complaints of violations of this Article relating to an agricultural operation and all other records accumulated in conjunction with the investigation of these complaints shall be considered confidential records and may be released only by order of a court of competent jurisdiction. If the Department determines that a violation has occurred, the complaint of the violation and all records accumulated in conjunction with the investigation of the complaint shall be considered public records pursuant to G.S. 132-6. Any information obtained by the Department from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of such an investigation shall be confidential and exempt from the requirements of G.S. 132-6(a) to the same extent that it is confidential in the possession of the providing agency or organization. (2014-103, s. 1(a).)

§ 143-215.9E. Initial consideration of complaint.

(a) When a complaint alleging a violation of this Article is filed with the Department, the Department may, at its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(b) The Department may decline to accept or further investigate a complaint about an agricultural operation if, after an initial assessment of the complaint, the Department finds reasonable grounds to believe that the complaint is frivolous or was filed in bad faith. (2014-103, s. 1(a).)

§ 143-215.10: Repealed by Session Laws 1973, c. 1262, s. 23.

Part 1A. Animal Waste Management Systems.

§ 143-215.10A. Legislative findings and intent.

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical assistance will be provided by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services. Inspection and enforcement will be provided by the Division of Water Resources. (1995 (Reg. Sess., 1996), c. 626, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 27.34(a); 2002-176, s. 1.2; 2011-145, ss. 13.22(a), 13.22A(p); 2013-413, s. 57(m).)

§ 143-215.10B. Definitions.

As used in this Part:

(1) "Animal operation" means any agricultural feedlot activity involving 250 or more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more sheep, or 30,000 or more confined poultry with a liquid animal waste management system, or any agricultural feedlot activity with a liquid animal waste management system that discharges to the surface waters of the State. A public livestock market regulated under Article 35 of Chapter 106 of the General Statutes is an animal operation for purposes of this Part.

(2) "Animal waste" means livestock or poultry excreta or a mixture of excreta with feed, bedding, litter, or other materials from an animal operation.

(3) "Animal waste management system" means a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste.

(4) "Division" means the Division of Water Resources of the Department.

(5) "Feedlot" means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and either specifically designed as a confinement area in which animal waste may accumulate or where the concentration of animals is such that an established vegetative cover cannot be maintained. A building or lot is not a feedlot unless animals are confined for 45 or more days, which may or may not be consecutive, in a 12-month period. Pastures shall not be considered feedlots for purposes of this Part.

(6) "Technical specialist" means an individual designated by the Soil and Water Conservation Commission, pursuant to rules adopted by that Commission, to certify animal waste management plans. (1995 (Reg. Sess., 1996), c. 626, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 27.34(b); 2001-326, s. 1; 2004-176, s. 1; 2013-413, s. 57(n).)

§ 143-215.10C. Applications and permits.

(a) No person shall construct or operate an animal waste management system for an animal operation or operate an animal waste management system for a dry litter poultry facility that is required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), without first obtaining an individual permit or a general permit under this Article. The Commission shall develop a system of individual and general permits for animal operations and dry litter poultry facilities based on species, number of animals, and other relevant factors. It is the intent of the General Assembly that most animal waste management systems be permitted under a general permit. The Commission, in its discretion, may require that an animal waste management system be permitted under an individual permit if the Commission determines that an individual permit is necessary to protect water quality, public health, or the environment. The owner or operator of an animal operation shall submit an application for a permit at least 180 days prior to construction of a new animal waste management system or expansion of an existing animal waste management system and shall obtain the permit

prior to commencement of the construction or expansion. The owner or operator of a dry litter poultry facility that is required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall submit an application for a permit at least 180 days prior to operation of a new animal waste management system.

(a1) An owner or operator of an animal waste management system for an animal operation or a dry litter poultry facility that is required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall apply for an individual National Pollutant Discharge Elimination System (NPDES) permit or a general NPDES permit under this Article and may not discharge into waters of the State except in compliance with an NPDES permit.

(b) An animal waste management system that is not required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm.

(b1) An existing animal waste management system that is required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall be designed, constructed, maintained, and operated in accordance with 40 Code of Federal Regulations § 412, as amended at 73 Federal Register 70418 (November 20, 2008), so that the animal operation served by the animal waste management system does not cause pollution in waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm. A new animal operation or dry litter poultry facility that is required to be permitted under 40 Code of Federal Regulations § 412.46, as amended at 73 Federal Register 70418 (November 20, 2008), shall be designed, constructed, maintained, and operated so that there is no discharge of pollutants to waters of the State.

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

(d) All applications for permits or for renewal of an existing permit shall be in writing, and the Commission may prescribe the form of the applications. All applications shall include an animal waste management system plan approved by a technical specialist. The Commission may require an applicant to submit additional information the Commission considers necessary to evaluate the application. Permits and renewals issued pursuant to this section shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission.

(e) An animal waste management plan for an animal operation shall include all of the following components:

(1) A checklist of potential odor sources and a choice of site-specific, cost-effective remedial best management practices to minimize those sources.

(2) A checklist of potential insect sources and a choice of site-specific, cost-effective best management practices to minimize insect problems.

(3) Provisions that set forth acceptable methods of disposing of mortalities.

(4) Provisions regarding best management practices for riparian buffers or equivalent controls, particularly along perennial streams.

(5) Provisions regarding the use of emergency spillways and site-specific emergency management plans that set forth operating procedures to follow during emergencies in order to minimize the risk of environmental damage.

(6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least once every three years, of soils at crop sites where the waste products are applied. Nitrogen shall be a rate-determining element. Phosphorus shall be evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission of the Department of Agriculture and Consumer Services and the Natural Resources Conservation Service of the United States Department of Agriculture for facilities that are required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008). If the evaluation demonstrates the need to limit the application of phosphorus in order to comply with the nutrient management standard, then phosphorus shall be a rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels.

(7) Provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements, that assure that lime is applied to maintain pH in the optimum range for crop production, and that include corrective action, including revisions to the waste utilization plan based on data of crop yields and crops analysis, that will be taken if this balance is not achieved as determined by testing conducted pursuant to subdivision (6) of this subsection.

(8) Provisions regarding the completion and maintenance of records on forms developed by the Department, which records shall include information addressed in subdivisions (6) and (7) of this subsection, including the dates and rates that waste products are applied to soils at crop sites, and shall be made available upon request by the Department.

(f) Any owner or operator of a dry litter poultry facility that is not required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), but that involves 30,000 or more birds shall develop an animal waste management plan that complies with the testing and record-keeping requirements under subdivisions (6) through (8) of subsection (e) of this section. Any

operator of this type of animal waste management system shall retain records required under this section and by the Department on-site for three years.

(f1) An animal waste management plan for a dry litter poultry facility required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall include the components set out in subdivisions (3), (6), (7), and (8) of subsection (e) of this section, and to the extent required by 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), for land application discharges, subdivision (4) of subsection (e) of this section.

(f2) Periodic testing of waste products as required in subdivision (6) of subsection (e) of this section, subsection (f) of this section and subsection (f1) of this section may be temporarily suspended in compliance with G.S. 106-399.4 when the State Veterinarian, in consultation with the Commissioner of Agriculture and with the approval of the Governor, determines that there is an imminent threat within the State of a contagious animal disease. The suspension of testing only applies to the animal operation types designated by the State Veterinarian, and shall be in effect for a period of time that the State Veterinarian deems necessary to prevent and control the animal disease. During the suspension of waste analysis, waste product nutrient content to be used for application of waste at no greater than agronomic rates shall be established by the 1217 Interagency Committee as created by Session Law 1995-626.

(g) The Commission shall encourage the development of alternative and innovative animal waste management technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the timely evaluation of alternative and innovative animal waste management technologies and shall encourage operators of animal waste management systems to participate in the evaluation of these technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the prompt implementation of alternative and innovative animal waste management technologies that are demonstrated to provide improved protection to public health and the environment.

(h) The owner or operator of an animal waste management system shall:

(1) In the event of a discharge of 1,000 gallons or more of animal waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of animal waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the

discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF ANIMAL WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(i) A person who obtains an individual permit under G.S. 143-215.1 for an animal waste management system that serves a public livestock market shall not be required to obtain a permit under this Part and is not subject to the requirements of this Part. (1995 (Reg. Sess., 1996), c. 626, s. 1; 1997-458, s. 9.2; 1999-329, s. 8.2; 1999-456, s. 68; 2001-254, ss. 3, 4; 2001-326, s. 2; 2004-176, s. 2; 2009-92, s. 1; 2011-145, s. 13.22A(q); 2013-228, s. 1; 2015-263, s. 33(b).)

§ 143-215.10D. Operations review.

(a) The Division, in cooperation with the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services, shall develop a reporting procedure for use by technical specialists who conduct operations reviews of animal operations. The reporting procedure shall be consistent with the Division's inspection procedure of animal operations and with this Part. The report shall include any corrective action recommended by the technical specialist to assist the owner or operator of the animal operation in complying with all permit requirements. The report shall be submitted to the Division within 10 days following the operations review unless the technical specialist observes a violation described in G.S. 143-215.10E. If the technical specialist finds a violation described in G.S. 143-215.10E, the report shall be filed with the Division immediately.

(b) An animal operation may request an operations review. The operations review shall be conducted by a technical specialist employed by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services, a local Soil and Water Conservation District, or the federal Natural Resources Conservation Services working under the direction of the Division of Soil and Water Conservation.

(c) Operations reviews shall not be performed by technical specialists with a financial interest in any animal operation. (1995 (Reg. Sess., 1996), c. 626, s. 1; 2011-145, ss. 13.22(b), 13.22A(r); 2011-391, s. 30; 2012-194, s. 42(a).)

§ 143-215.10E. Violations requiring immediate notification.

(a) Any employee of a State agency or unit of local government lawfully on the premises and engaged in activities relating to the animal operation who observes any of the following violations shall immediately notify the owner or operator of the animal operation and the Division:

(1) Any direct discharge of animal waste into the waters of the State.

(2) Any deterioration or leak in a lagoon system that poses an immediate threat to the environment.

(3) Failure to maintain adequate storage capacity in a lagoon that poses an immediate threat to public health or the environment.

(4) Overspraying animal waste either in excess of the limits set out in the animal waste management plan or where runoff enters waters of the State.

(5) Any discharge that bypasses a lagoon system.

(b) Any employee of a federal agency lawfully on the premises and engaged in activities relating to the animal operation who observes any of the above violations is encouraged to immediately notify the Division. (1995 (Reg. Sess., 1996), c. 626, s. 1.)

§ 143-215.10F. Inspections.

(a) Except as provided in subsection (b) of this section, the Division shall conduct inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least once a year to determine whether the system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit.

(b) As an alternative to the inspection program set forth in subsection (a) of this section, the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services shall conduct inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least once a year to determine whether the system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The alternative inspection program shall be located in up to four counties selected using the criteria set forth in Section 15.4(a) of S.L. 1997-443, as amended, as it existed prior to its expiration. The Department of Agriculture and Consumer Services shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the counties are used for quick response to complaints and reported problems previously referred only to the Division of Water Resources. (1995 (Reg. Sess., 1996), c. 626, s. 1; 2013-131, s. 1; 2013-413, s. 57(gg).)

§ 143-215.10G. Fees for animal waste management systems.

(a) The Department shall charge an annual permit fee to an animal operation that is subject to a permit under G.S. 143-215.10C for an animal waste management system according to the following schedule:

(1) For a system with a design capacity of 38,500 or more and less than 100,000 pounds steady state live weight, sixty dollars ($60.00).

(2) For a system with a design capacity of 100,000 or more and less than 800,000 pounds steady state live weight, one hundred eighty dollars ($180.00).

(3) For a system with a design capacity of 800,000 pounds or more steady state live weight, three hundred sixty dollars ($360.00).

(a1) The Department shall charge an annual permit fee to a dry litter poultry facility that is subject to a permit under G.S. 143-215.10C for an animal waste management system according to the following schedule:

(1) For a system with a permitted capacity of less than 25,000 laying chickens, less than 37,500 nonlaying chickens, or less than 16,500 turkeys, sixty dollars ($60.00).

(2) For a system with a permitted capacity of 25,000 or more but less than 200,000 laying chickens, 37,500 or more but less than 290,000 nonlaying chickens, 16,500 or more but less than 133,000 turkeys, one hundred eighty dollars ($180.00).

(3) For a system with a permitted capacity of more than 200,000 laying chickens, more than 290,000 nonlaying chickens, or more than 133,000 turkeys, three hundred sixty dollars ($360.00).

(b) An application for a new permit under this section shall be accompanied by an initial application fee equal to the annual fee for that permit. If a permit is issued, the application fee shall be applied as the annual fee for the first year that the permit is in effect. If the application is denied, the application fee shall not be refunded.

(c) Fees collected under this section shall be credited to the Water and Air Quality Account. The Department shall use fees collected pursuant to this section to cover the costs of administering this Part. (1995 (Reg. Sess., 1996), c. 626, s. 1; 1997-496, s. 14; 1998-212, s. 29A.11(d); 2004-176, s. 3; 2007-323, s. 30.3(b).)

§ 143-215.10H. Swine integrator registration.

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

(1) "Grower" means a person who holds a permit for an animal waste management system under this Part or Part 1 of this Article for a swine farm, or who operates a swine farm that is subject to an operations review conducted pursuant to G.S. 143-215.10D or an inspection conducted pursuant to G.S. 143-215.10F.

(2) "Swine farm" has the same meaning as in G.S. 106-802.

(3) "Swine operation integrator" or "integrator" means a person, other than a grower, who provides 250 or more animals to a swine farm and who either has an ownership interest in the animals or otherwise establishes management and production standards for the permit holder for the maintenance, care, and raising of the animals. An ownership interest includes a right or option to purchase the animals.

(b) Registration Required. – As part of an operations review conducted pursuant to G.S. 143-215.10D or an inspection conducted pursuant to G.S. 143-215.10F, the

Department shall require a grower to register any swine operation integrator with which the grower has a contractual relationship to raise swine. The registration shall be in writing and shall include only:

(1) The name of the owner of the swine farm.
(2) The mailing address of the owner of the swine farm.
(3) The physical location of the swine farm.
(4) The swine farm facility number.
(5) A description of the animal waste management system for the swine farm.
(6) The name and address of the grower, if different from the owner of the swine farm.
(7) The name and mailing address of the integrator.

(c) Notice of Termination or New Relationship. – If the swine operation integrator removes all animals from a swine farm or terminates the integrator's relationship with the swine farm, the grower shall notify the Department of the termination or removal within 30 days. If the grower terminates the grower's relationship with the integrator or enters into a relationship with a different integrator, the grower shall notify the Department of the termination or new relationship within 30 days.

(d) Disclosure of Violations. – The Department shall notify a swine operation integrator of all notices of deficiencies and violations of laws and rules governing the animal waste management system at any swine farm for which the integrator has been registered with the Department. A notice of deficiency or violation of any law or rule governing an animal waste management system is a public record within the meaning of G.S. 132-1 and is subject to disclosure as provided in Chapter 132 of the General Statutes. (1998-188, s. 1.)

§ 143-215.10I. Performance standards for animal waste management systems that serve swine farms; lagoon and sprayfield systems prohibited.

(a) As used in this section:

(1) "Anaerobic lagoon" means a lagoon that treats waste by converting it into carbon dioxide, methane, ammonia, and other gaseous compounds; organic acids; and cell tissue through an anaerobic process.
(2) "Anaerobic process" means a biological treatment process that occurs in the absence of dissolved oxygen.
(3) "Lagoon" has the same meaning as in G.S. 106-802.
(4) "Swine farm" has the same meaning as in G.S. 106-802.

(b) The Commission shall not issue or modify a permit to authorize the construction, operation, or expansion of an animal waste management system that serves a swine farm that employs an anaerobic lagoon as the primary method of treatment and land application of waste by means of a sprayfield as the primary method of waste disposal. The Commission may issue a permit for the construction, operation, or expansion of an animal waste management system that serves a swine farm under this Article only if the Commission determines that the animal waste management system will meet or exceed all of the following performance standards:

(1) Eliminate the discharge of animal waste to surface water and groundwater through direct discharge, seepage, or runoff.
(2) Substantially eliminate atmospheric emission of ammonia.
(3) Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located.
(4) Substantially eliminate the release of disease-transmitting vectors and airborne pathogens.
(5) Substantially eliminate nutrient and heavy metal contamination of soil and groundwater. (2007-523, s. 1(a).)

§ 143-215.10J. Reserved for future codification purposes.

§ 143-215.10K. Reserved for future codification purposes.

§ 143-215.10L. Reserved for future codification purposes.

§ 143-215.10M. Reports.

(a) The Department shall report to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division on or before 1 October of each year as required by this section. Each report shall include:

(1) The number of permits for animal waste management systems, itemized by type of animal subject to such permits, issued since the last report.
(2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services has conducted since the last report.
(3) The number of operations reviews of animal waste management systems conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services that have been conducted since the last report.
(4) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.
(5) The number of reinspections associated with operations reviews conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.
(6) The number of compliance inspections of animal waste management systems that the Division of Water Resources has conducted since the last report.

(7) The number of follow-up inspections associated with compliance inspections conducted by the Division of Water Resources since the last report.

(8) The average length of time for each category of reviews and inspections under subdivisions (2) through (7) of this subsection.

(9) The number of violations found during each category of review and inspection under subdivisions (2) through (7) of this subsection, the status of enforcement actions taken and pending, and the penalties imposed, collected, and in the process of being negotiated for each such violation.

(10) Any other information that the Department determines to be appropriate or that is requested by the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, or the Fiscal Research Division.

(b) The information to be included in the reports pursuant to subsection (a) of this section shall be itemized by each regional office of the Department, with totals for the State indicated.

(c) Repealed by Session Laws 2002-148, s. 6 effective October 9, 2002. (1998-221, s. 4.2; 2002-148, s. 6; 2011-145, s. 13.22A(s); 2013-413, s. 57(o); 2014-115, s. 17; 2017-57, s. 14.1(k).)

Part 2. Regulation of Use of Water Resources.

§ 143-215.11. Short title.

This Part shall be known and may be cited as the Water Use Act of 1967. (1967, c. 933, s. 1.)

§ 143-215.12. Declaration of purpose.

It is hereby declared that the general welfare and public interest require that the water resources of the State be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation in order to conserve these resources and to provide and maintain conditions which are conducive to the development and use of water resources. (1967, c. 933, s. 2.)

§ 143-215.13. Declaration of capacity use areas.

(a) The Environmental Management Commission may declare and delineate from time to time, and may modify, capacity use areas of the State where it finds that the use of groundwater or surface water or both require coordination and limited regulation for protection of the interests and rights of residents or property owners of such areas or of the public interest.

(b) Within the meaning of this Part "a capacity use area" is one where the Commission finds that the aggregate uses of groundwater or surface water, or both, in or affecting said area (i) have developed or threatened to develop to a degree which requires coordination and regulation, or (ii) exceed or threaten to exceed, or otherwise threaten or impair, the renewal or replenishment of such waters or any part of them.

(c) The Commission may declare and delineate capacity use areas in accordance with the following procedures:

(1) Whenever the Commission believes that a capacity use situation exists or may be emerging in any area of the State, it may direct the Department to investigate and report to the Commission thereon.

(2) In conducting its investigation the Department shall consult with all interested persons, groups and agencies; may retain consultants; and shall consider all factors relevant to the conservation and use of water in the area, including established or pending water classifications under Part 1 of this Article and the criteria for such classifications. Following its investigation the Department shall render a written report to the Commission. This report shall indicate whether the water use problems of the area involve surface waters, groundwaters or both and shall identify the Department's suggested boundaries for any capacity use area that may be proposed. It shall present such alternatives as the Department deems appropriate, including actions by any agency or person which might preclude the need for additional regulation at that time, and measures which might be employed limited to surface water or groundwater.

(3) If the Commission finds, following its review of the departmental report (or thereafter following its evaluation of measures taken falling short of regulation) that a capacity use area should be declared, it may adopt a rule declaring said capacity use area. A rule declaring an area to be a capacity use area shall delineate the boundaries of the area.

(4) to (6) Repealed by Session Laws 1981, c. 585, s. 3.

(7) Repealed by Session Laws 1987, c. 827, s. 167.

(d) The Commission may conduct a public hearing pursuant to the provisions of this subsection in any area of the State, whether or not a capacity use area has been declared, when it has reason to believe that the withdrawal of water from or the discharge of water pollutants to the waters in such area is having an unreasonably adverse effect upon such waters. If the Commission determines that withdrawals of water from or discharge of water pollutants to the waters within such area has resulted or probably will result in a generalized condition of water depletion or water pollution within the area to the extent that the availability or fitness for use of such water has been impaired for existing or proposed uses and that injury to the public health, safety or welfare will result if increased or additional withdrawals or discharges occur, the Commission may issue a rule:

(1) Prohibiting any person withdrawing waters in excess of 100,000 gallons per day from increasing the amount of the withdrawal above such limit as may be established in the rule.

(2) Prohibiting any person from constructing, installing or operating any new well or withdrawal facilities having a capacity in excess of a rate established in the rule; but such prohibition shall not extend to any new well or facility having a capacity of less than 10,000 gallons per day.

(3) Prohibiting any person discharging water pollutants to the waters from increasing the rate of discharge in excess of the rate established in the rule.

(4) Prohibiting any person from constructing, installing or operating any facility that will or may result in the discharge of water pollutants to the waters in excess of the rate established in the rule.

(5) Prohibiting any agency or political subdivision of the State from issuing any permit or similar document for the construction, installation, or operation of any new or existing facilities for withdrawing water from or discharging water pollutants to the waters in such area in excess of the rates established in the rule.

The determination of the Commission shall be based upon the record of the public hearing and other information considered by the Commission in the rule-making proceeding. The rule shall describe the geographical area of the State affected thereby with particularity and shall provide that the prohibitions set forth therein shall continue pending a determination by the Commission that the generalized condition of water depletion or water pollution within the area has ceased.

Upon issuance of any rule by the Commission pursuant to this subsection, a certified copy of such rule shall be mailed by registered or certified mail to the governing body of every county, city, town, and affected political subdivision lying, in whole or in part, within the area and to every affected or interested State and federal agency. A certified copy of the rule shall be posted at the courthouse in every county lying, in whole or in part, within the area, and a notice setting forth the substantive provisions and effective date of the rule shall be published once a week for two successive weeks in a newspaper or newspapers having general circulation within the area. After publication of notice is completed, any person violating any provision of such rule after the effective date thereof shall be subject to the penalties and proceedings set forth in G.S. 143-215.17. (1967, c. 933, s. 3; 1973, c. 698, s. 14; c. 1262, s. 23; 1977, c. 771, s. 4; 1981, c. 585, ss. 1-4; 1987, c. 827, ss. 154, 167.)

§ 143-215.14. Rules within capacity use areas; scope and procedures.

(a) Following the declaration of a capacity use area by the Commission, it shall prepare proposed rules to be applied in said area, containing such of the following provisions as the Commission finds appropriate concerning the use of surface waters or groundwaters or both:

(1) Provisions requiring water users within the area to submit reports not more frequently than at 30-day intervals concerning quantity of water used or withdrawn, sources of water and the nature of the use thereof.

(2) With respect to surface waters, groundwaters, or both: provisions concerning the timing of withdrawals; provisions to protect against or abate salt water encroachment; provisions to protect against or abate unreasonable adverse effects on other water users within the area, including but not limited to adverse effects on public use.

(3) With respect to groundwaters: provisions concerning well-spacing controls; and provisions establishing a range of prescribed pumping levels (elevations below which water may not be pumped) or maximum pumping rates, or both, in wells or for the aquifer or for any part thereof based on the capacities and characteristics of the aquifer.

(4) Such other provisions not inconsistent with this Part as the Commission finds necessary to implement the purposes of this Part.

(b) In adopting rules for a capacity use area, the Commission shall consider the factors listed in G.S. 143-215.15(h). (1967, c. 933, s. 4; 1973, c. 1262, s. 23; 1981, c. 585, s. 5; 1987, c. 827, ss. 154, 168.)

§ 143-215.15. Permits for water use within capacity use areas – Procedures.

(a) In areas declared by the Commission to be capacity use areas no person shall (after the expiration of such period, not in excess of six months, as the Commission may designate) withdraw, obtain, or utilize surface waters or groundwaters or both, as the case may be, in excess of 100,000 gallons per day for any purpose unless such person shall first obtain a permit therefor from the Commission.

(b) When sufficient evidence is provided by the applicant that the water withdrawn or used from a stream or the ground is not consumptively used, a permit therefor shall be issued by the Commission without a hearing and without the conditions provided in subsection (c) of this section. Applications for such permits shall set forth such facts as the Commission shall deem necessary to enable it to establish and maintain adequate records of all water uses within the capacity use area.

(c) In all cases in which sufficient evidence of a nonconsumptive use is not presented the Department shall notify each person required by this Part to secure a permit of the Commission's proposed action concerning such permit, and shall transmit with such notice a copy of any permit it proposes to issue to such persons, which permit will become final unless a request for a hearing is made within 15 days from the date of service of such notice. If sufficient evidence of a nonconsumptive use is not presented, the Commission may: (i) grant such permit with conditions as the Commission deems necessary to implement the rules adopted pursuant to G.S. 143-215.14; (ii) grant any temporary permit for such period of time as the Commission shall specify where conditions make such temporary permit essential, even though the action allowed by such permit may not be consistent with the Commission's rules applicable to such capacity use area; (iii) modify or revoke any permit upon not less than 60 days' written notice to any person affected; and (iv) deny such permit if the application therefor or the effect of the water use proposed or described therein upon the water resources of the area is found to be contrary to public interest. Before issuing a permit under this subsection, the Commission shall notify the permit applicant of its proposed action by sending the permit applicant a copy of the permit the Commission proposes to issue. Unless the permit applicant contests the proposed permit, the proposed permit shall become effective on the date set in the proposed permit. A water user who is dissatisifed with a decision of the Commission concerning that user's

or another user's permit application or permit may commence a contested case under G.S. 150B-23.

(d) The Commission shall give notice of receipt of an application for a permit under this Part to all other holders of permits and applicants for permits under this Part within the same capacity use area, and to all other persons who have requested to be notified of permit applications. Notice of receipt of an application shall be given within 10 days of the receipt of the application by the Commission. The Commission shall also give notice of its proposed action on any permit application under this Part to all permit holders or permit applicants within the same capacity use area at least 18 days prior to the effective date of the proposed action. Notices of receipt of applications for permits and notice of proposed action on permits shall be by first-class mail and shall be effective upon depositing the notice, postage prepaid, in the United States mail.

(e) Repealed by Session Laws 1981, c. 585, s. 8.

(f) (1) Recodified as G.S. 143-215.4(d) by Session Laws 1987, c. 827, s. 169.

(2), (3) Repealed by Session Laws 1987, c. 827, s. 169.

(g) Repealed by Session Laws 1987, c. 827, s. 169.

(h) In determining whether to issue, modify, revoke, or deny a permit under this section, the Commission shall consider:

(1) The number of persons using an aquifer or stream and the object, extent and necessity of their respective withdrawals or uses;

(2) The nature and size of the stream or aquifer;

(3) The physical and chemical nature of any impairment of the aquifer or stream, adversely affecting its availability or fitness for other water uses (including public use);

(4) The probable severity and duration of such impairment under foreseeable conditions;

(5) The injury to public health, safety or welfare which would result if such impairment were not prevented or abated;

(6) The kinds of businesses or activities to which the various uses are related;

(7) The importance and necessity of the uses claimed by permit applicants (under this section), or of the water uses of the area (under G.S. 143-215.14) and the extent of any injury or detriment caused or expected to be caused to other water uses (including public use);

(8) Diversion from or reduction of flows in other watercourses or aquifers; and

(9) Any other relevant factors. (1967, c. 933, s. 5; 1973, c. 108, s. 89; c. 698, s. 15; c. 1262, s. 23; 1977, c. 771, s. 4; 1981, c. 585, ss. 6-10; 1987, c. 827, ss. 154, 169.)

§ 143-215.16. Permits for water use within capacity use areas – duration, transfer, reporting, measurement, present use, fees and penalties.

(a) No permit under G.S. 143-215.15 shall be issued for a longer period than the longest of the following: (i) 10 years, or (ii) the duration of the existence of a capacity use

area, or (iii) the period found by the Commission to be necessary for reasonable amortization of the applicant's water-withdrawal and water-using facilities. Permits may be renewed following their expiration upon compliance with the provisions of G.S. 143-215.15.

(b) Permits shall not be transferred except with the approval of the Commission.

(c) Every person in a capacity use area who is required by this Part to secure a permit shall file with the Commission in the manner prescribed by the Commission a certified statement of quantities of water used and withdrawn, sources of water, and the nature of the use thereof not more frequently than 30-day intervals. Such statements shall be filed on forms furnished by the Department within 90 days after the adoption of an order by the Commission declaring a capacity use area. Water users in a capacity use area not required to secure a permit shall comply with procedures established to protect and manage the water resources of the area. Such procedures shall be adapted to the specific needs of the area, shall be within the provisions of this and other North Carolina water resource acts, and shall be adopted after public hearing in the area. The requirements embodied in the two preceding sentences shall not apply to individual domestic water use.

(d) If any person who is required to secure a permit under this Part is unable to furnish accurate information concerning amounts of water being withdrawn or used, or if there is evidence that his certified statement is false or inaccurate or that he is withdrawing or using a larger quantity of water or under different conditions than has been authorized by the Commission, the Commission shall have the authority to require such person to install water meters, or some other more economical means for measuring water use acceptable to the Commission. In determining the amount of water being withdrawn or used by a permit holder or applicant the Commission may use the rated capacity of his pumps, the rated capacity of his cooling system, data furnished by the applicant, or the standards or methods employed by the United States Geological Survey in determining such quantities or by any other accepted method.

(e) In any case where a permit applicant can prove to the Commission's satisfaction that the applicant was withdrawing or using water prior to the date of declaration of a capacity use area, the Commission shall take into consideration the extent to which such prior use or withdrawal was reasonably necessary in the judgment of the Commission to meet its needs, and shall grant a permit which shall meet those reasonable needs. Provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.

(f) The Commission shall also take into consideration in the granting of any permit the prior investments of any person in lands, and plans for the usage of water in connection with such lands which plans have been submitted to the Commission within a reasonable time after June 27, 1967. Provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.

(g) It is the intention of the General Assembly that if the provisions of subsection (e) or subsection (f) of this section are held invalid as a grant of an exclusive or separate

emolument or privilege, within the meaning of Article I, Sec. 7 of the North Carolina Constitution, the remainder of this Part shall be given effect without the invalid provision or provisions.

(h) Pending the issuance or denial of a permit pursuant to subsection (e) or (f) of this section, the applicant may continue the same withdrawal or use which existed prior to the date of declaration of the capacity use area. (1967, c. 933, s. 6; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1987, c. 827, s. 154.)

§ 143-215.17. Enforcement procedures.

(a) Criminal Penalties. – Any person who shall be adjudged to have violated any provision of this Part shall be guilty of a Class 3 misdemeanor and shall only be liable to a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) for each violation. In addition, if any person is adjudged to have committed such violation willfully, the court may determine that each day during which such violation continued constitutes a separate violation subject to the foregoing penalty.

(b) Civil Penalties. –

(1) The Secretary may assess a civil penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) against any person who violates any provisions of, or any order issued pursuant to this Part, or who violates a rule of the Commission implementing this Part.

(2) If any action or failure to act for which a penalty may be assessed under this Part is willful, the Secretary may assess a penalty not to exceed one thousand dollars ($1,000) per day for each day of violation.

(3) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(4) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

(5) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to

the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(6) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary 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, unless the violator contests the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (5) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary 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.

(7) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 15.

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

(c) Injunctive Relief. – Upon violation of any of the provisions of this Part, a rule implementing this Part, or an order issued under this Part, the Secretary may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violations, request the Attorney General to institute a civil action in the superior court of the county or counties where the violation occurred in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of same. (1967, c. 933, s. 7; 1973, c. 698, s. 16; c. 1262, s. 23; 1975, c. 842, s. 2; 1977, c. 771, s. 4; 1981, c. 585, s. 11; 1987, c. 827, ss. 154, 170; 1989 (Reg. Sess., 1990), c. 1036, s. 4; 1993, c. 539, s. 1020; 1994, Ex. Sess., c. 24, s. 14(c); 1995 (Reg. Sess., 1996), c. 743, s. 15; 1998-215, s. 64; 2009-134, s. 1.)

§ 143-215.18. Map or description of boundaries of capacity use areas.

(a) The Commission in designating and the Department in recommending the boundaries of any capacity use area may define such boundaries by showing them on a map or drawings, by a written description, or by any combination thereof, to be designated appropriately and filed permanently with the Department. Alterations in these lines shall be indicated by appropriate entries upon or additions to such map or description. Such entries shall be made under the direction of the Secretary of Environmental Quality. Photographic, typed or other copies of such map or description, certified by the Secretary of Environmental Quality, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. If the boundaries are

changed pursuant to other provisions of this Part, the Department may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or all maps which it is designated to replace.

(b) The Department shall file with the Secretary of State a certified copy of the map, drawings, description or combination thereof, showing the boundaries of any capacity use area designated by the Commission; and a certified copy of any redrawn or altered map or drawing, and of any amendments or additions to written descriptions, showing alterations to said boundaries. (1967, c. 933, s. 8; 1973, c. 1262, s. 23; c. 1331, s. 3; 1977, c. 771, s. 4; 1987, c. 827, ss. 154, 171; 1989, c. 727, s. 218(107); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v).)

§ 143-215.19. Administrative inspection; reports.

(a) When necessary for enforcement of this Part, and when authorized by rules of the Commission, employees of the Commission may inspect any property, public or private, to investigate:

(1) The condition, withdrawal or use of any waters;

(2) Water sources; or

(3) The installation or operation of any well or surface water withdrawal or use facility.

(b) The Commission's rules must state appropriate standards for determining when property may be inspected under subsection (a).

(c) Entry to inspect property may be made without the possessor's consent only if the employee seeking to inspect has a valid administrative inspection warrant issued pursuant to G.S. 15-27.2.

(d) The Commission may also require the owner or possessor of any property to file written statements or submit reports under oath concerning the installation or operation of any well or surface water withdrawal or use facility.

(e) The Commission shall accompany any request or demand for information under this section with a notice that any trade secrets or confidential information concerning business activities is entitled to confidentiality as provided in this subsection. Upon a contention by any person that records, reports or information or any particular part thereof to which the Commission has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets or would divulge confidential information concerning business activities, the Commission shall consider the material referred to as confidential, except that it may be made available in a separate file marked "Confidential Business Information" to employees of the department concerned with carrying out the provisions of this Part for that purpose only. The disclosure or use of such information in any administrative or judicial proceeding shall be governed by the rules of evidence, but the affected business shall be notified by the Commission at least seven days prior to any such proposed disclosure or use of information, and the Commission will not oppose a motion by any affected business to intervene as a party to the judicial or administrative proceeding. (1967, c. 933, s. 9; 1973, c. 1262, s. 23; 1981, c. 585, s. 12; 1987, c. 827, ss. 154, 172.)

§ 143-215.20. Repealed by Session Laws 1987, c. 827, s. 173.

§ 143-215.21. Definitions.

Unless the context otherwise requires, the following terms as used in this Part are defined as follows:

(1), (2) Repealed by Session Laws 1987, c. 827, s. 174.

(3) "Consumptive use" means any use of water withdrawn from a stream or the ground other than a "nonconsumptive use," as defined in this Part.

(4) Repealed by Session Laws 1987, c. 827, s. 174.

(5) "Nonconsumptive use" means (i) the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken; or, if the user owns both sides of the stream at the point of withdrawal, the water is returned to the stream upstream of the next property below the point of diversion on either side of the stream; (ii) the use of water withdrawn from a groundwater system or aquifer in such a manner that it is returned to the groundwater system or aquifer from which it was withdrawn without substantial diminution in quantity or substantial impairment in quality at or near the point from which it was withdrawn; (iii) provided, however, that (in determining whether a use of groundwater is nonconsumptive) the Commission may take into consideration whether any material injury or detriment to other water users of the area by reason of reduction of water pressure in the aquifer or system has not been adequately compensated by the permit applicant who caused or substantially contributed to such injury or detriment.

(6), (7) Repealed by Session Laws 1987, c. 827, s. 174. (1967, c. 933, s. 11; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1987, c. 827, ss. 154, 174.)

§ 143-215.22. Law of riparian rights not changed.

Nothing contained in this Part shall change or modify existing common or statutory law with respect to the relative rights of riparian owners concerning the use of surface water in this State. (1967, c. 933, s. 12.)

§ 143-215.22A. Water withdrawal policy; remedies.

(a) It is against the public policy of North Carolina to withdraw water from any major river or reservoir if both of the following factors are present: (i) the withdrawal will cause the natural flow of water in the river or a portion of the reservoir to be reversed; and (ii) substantial portions of the water are not returned to the river system after use. For purposes of this section, a withdrawal will cause natural flow to be reversed if as a result of the withdrawal, the rate of flow in the river or discrete portion of the reservoir is 15 cubic feet per second or more, moving in a generally opposite direction than prior to the withdrawal, over a distance of more than one mile. To correct for periodic effects,

including tidal influences and reservoir fluctuations, flow speed and direction shall be calculated by using annual average flow data to determine pre-withdrawal flows, and projected annual average flow assuming the maximum practical rate of withdrawal, to determine post-withdrawal flows.

(b) This section shall not be construed to create an independent cause of action by the State or by any person. This section shall not apply to any project or facility for which a withdrawal of water began prior to the date this section is effective. (1991, c. 567, c. 712, ss. 5, 6.)

§ 143-215.22B. Roanoke River Basin water rights.

The State reserves and allocates to itself, as protector of the public interest, all rights in the water located in those portions of Kerr Lake and Lake Gaston that are in the State. (1995, c. 504, s. 1.)

§§ 143-215.22C through 143-215.22F. Reserved for future codification purposes.

Part 2A. Registration of Water Withdrawals and Transfers; Regulation of Surface Water Transfers.

§ 143-215.22G. Definitions.

In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following definitions apply to this Part.

(1) "Mainstem" means that portion of a river having the same name as a river basin defined in subdivision (1b) of this section. "Mainstem" does not include named or unnamed tributaries.

(1a) "Public water system" means any unit of local government or large community water system subject to the requirements of G.S. 143-355(l).

(1b) "River basin" means any of the following river basins designated on the map entitled "Major River Basins and Sub-basins in North Carolina" and filed in the Office of the Secretary of State on 16 April 1991. The term "river basin" includes any portion of the river basin that extends into another state. Any area outside North Carolina that is not included in one of the river basins listed in this subdivision comprises a separate river basin.

a.	1-1	Broad River.
b.	2-1	Haw River.
c.	2-2	Deep River.
d.	2-3	Cape Fear River.
e.	2-4	South River.
f.	2-5	Northeast Cape Fear River.
g.	2-6	New River.
h.	3-1	Catawba River.
i.	3-2	South Fork Catawba River.
j.	4-1	Chowan River.

k.	4-2	Meherrin River.
l.	5-1	Nolichucky River.
m.	5-2	French Broad River.
n.	5-3	Pigeon River.
o.	6-1	Hiwassee River.
p.	7-1	Little Tennessee River.
q.	7-2	Tuskasegee (Tuckasegee) River.
r.	8-1	Savannah River.
s.	9-1	Lumber River.
t.	9-2	Big Shoe Heel Creek.
u.	9-3	Waccamaw River.
v.	9-4	Shallotte River.
w.	10-1	Neuse River.
x.	10-2	Contentnea Creek.
y.	10-3	Trent River.
z.	11-1	New River.
aa.	12-1	Albemarle Sound.
bb.	13-1	Ocoee River.
cc.	14-1	Roanoke River.
dd.	15-1	Tar River.
ee.	15-2	Fishing Creek.
ff.	15-3	Pamlico River and Sound.
gg.	16-1	Watauga River.
hh.	17-1	White Oak River.
ii.	18-1	Yadkin (Yadkin-Pee Dee) River.
jj.	18-2	South Yadkin River.
kk.	18-3	Uwharrie River.
ll.	18-4	Rocky River.

(2) "Surface water" means any of the waters of the State located on the land surface that are not derived by pumping from groundwater.

(3) "Transfer" means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin. However, notwithstanding the basin definitions in G.S. 143-215.22G(1b), the following are not transfers under this Part:

a. The discharge of water upstream from the point where it is withdrawn.

b. The discharge of water downstream from the point where it is withdrawn. (1991, c. 712, s. 1; 1993, c. 348, s. 1; 1997-443, s. 15.48(b); 2013-388, s. 1.)

§ 143-215.22H. Registration of water withdrawals and transfers required.

(a) Any person who withdraws 100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers 100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

(1) The maximum daily amount of the water withdrawal or transfer expressed in thousands of gallons per day.

(1a) The monthly average withdrawal or transfer expressed in thousands of gallons per day.

(2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.

(3) The monthly average discharge expressed in thousands of gallons per day.

(b) Any person initiating a new water withdrawal or transfer of 100,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than two months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer.

(b1) Subsections (a) and (b) of this section shall not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products, or to the creation or maintenance of waterfowl impoundments.

(b2) Registration of a withdrawal or transfer of water under this section or information that is provided by a water user pursuant to G.S. 106-24 and authorized for release to the Commission by the individual water user may be used as evidence of historic water use in the event that it becomes necessary or desirable to allocate available water resources among specific classes, persons, or individuals who use water resources.

(c) A unit of local government that has completed a local water supply plan that meets the requirements of G.S. 143-355(l) and that has periodically revised and updated its plan as required by the Department has satisfied the requirements of this section and is not required to separately register a water withdrawal or transfer or to update a registration under this section.

(d) Any person who is required to register a water withdrawal or transfer under this section shall update the registration by providing the Commission with a current version of the information required by subsection (a) of this section at five-year intervals following the initial registration. A person who submits information to update a registration of a water withdrawal or transfer is not required to pay an additional registration fee under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), but is subject to the civil penalty established under this section in the event that updated information is not submitted as required by this subsection.

(e) Any person who is required to register a water transfer or withdrawal under this section and fails to do so shall pay, in addition to the registration fee required under G.S.

143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a civil penalty of one hundred dollars ($100.00). A person who is required to update a registration under this section and fails to do so shall pay a civil penalty of fifty dollars ($50.00). For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation. A separate penalty may be assessed for each separate violation. (1991, c. 712, s. 1; 1993, c. 344, s. 1; c. 553, s. 81; 1998-168, s. 3; 2008-143, s. 1; 2008-198, s. 11.6.)

§ 143-215.22I: Repealed by Session Laws 2007-518, s. 2, effective August 31, 2007, and applicable to any petition for a certificate for a transfer of surface water from one river basin to another river basin for which preparation of an environmental assessment or an environmental impact statement has begun on or after August 31, 2007.

§ 143-215.22J: Repealed by Session Laws 2004-195, s. 3.1, effective August 17, 2004.

§ 143-215.22K: Repealed by Session Laws 2004-195, s. 3.1, effective August 17, 2004.

§ 143-215.22L. Regulation of surface water transfers.

(a) Certificate Required. – No person, without first obtaining a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day, calculated as a daily average of a calendar month and not to exceed 3,000,000 gallons per day in any one day, from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending 1 July 1993 if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to 1 July 1993.

(b) Exception. – Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was in existence or under construction on 1 July 1993.

(c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of intent to file a petition that includes a nontechnical description of the applicant's request and an identification of the proposed water source. Within 90 days after the applicant files a notice of intent to file a petition, the applicant shall hold at least one public meeting in the source river basin upstream from the proposed point of withdrawal, at least one public meeting in the source river basin downstream from the proposed point of withdrawal, and at least one public meeting in the receiving river basin to provide information to interested parties and

the public regarding the nature and extent of the proposed transfer and to receive comment on the scope of the environmental documents. Written notice of the public meetings shall be provided at least 30 days before the public meetings. At the time the applicant gives notice of the public meetings, the applicant shall request comment on the alternatives and issues that should be addressed in the environmental documents required by this section. The applicant shall accept written comment on the scope of the environmental documents for a minimum of 30 days following the last public meeting. Notice of the public meetings and opportunity to comment on the scope of the environmental documents shall be provided as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in:

a. Each county in this State located in whole or in part of the area of the source river basin upstream from the proposed point of withdrawal.

b. Each city or county located in a state located in whole or in part of the surface drainage basin area of the source river basin that also falls within, in whole or in part, the area denoted by one of the following eight-digit cataloging units as organized by the United States Geological Survey:

03050105 (Broad River: NC and SC);
03050106 (Broad River: SC);
03050107 (Broad River: SC);
03050108 (Broad River: SC);
05050001 (New River: NC and VA);
05050002 (New River: VA and WV);
03050101 (Catawba River: NC and SC);
03050103 (Catawba River: NC and SC);
03050104 (Catawba River: SC);
03010203 (Chowan River: NC and VA);
03010204 (Chowan River: NC and VA);
06010105 (French Broad River: NC and TN);
06010106 (French Broad River: NC and TN);
06010107 (French Broad River: TN);
06010108 (French Broad River: NC and TN);
06020001 (Hiwassee River: AL, GA, TN);
06020002 (Hiwassee River: GA, NC, TN);
06010201 (Little Tennessee River: TN);
06010202 (Little Tennessee River: TN, GA, and NC);
06010204 (Little Tennessee River: NC and TN);
03060101 (Savannah River: NC and SC);
03060102 (Savannah River: GA, NC, and SC);
03060103 (Savannah River: GA and SC);
03060104 (Savannah River: GA);

03060105 (Savannah River: GA);
03040203 (Lumber River: NC and SC);
03040204 (Lumber River: NC and SC);
03040206 (Lumber River: NC and SC);
03040207 (Lumber River: NC and SC);
03010205 (Albemarle Sound: NC and VA);
06020003 (Ocoee River: GA, NC, and TN);
03010101 (Roanoke River: VA);
03010102 (Roanoke River: NC and VA);
03010103 (Roanoke River: NC and VA);
03010104 (Roanoke River: NC and VA);
03010105 (Roanoke River: VA);
03010106 (Roanoke River: NC and VA);
06010102 (Watauga River: TN and VA);
06010103 (Watauga River: NC and TN);
03040101 (Yadkin River: VA and NC);
03040104 (Yadkin River: NC and SC);
03040105 (Yadkin River: NC and SC);
03040201 (Yadkin River: NC and SC);
03040202 (Yadkin River: NC and SC).

c. Each county in this State located in whole or in part of the area of the source river basin downstream from the proposed point of withdrawal.

d. Any area in the State in a river basin for which the source river basin has been identified as a future source of water in a local water supply plan prepared pursuant to G.S. 143-355(l).

e. Each county in the State located in whole or in part of the receiving river basin.

(3) By giving notice by first-class mail or electronic mail to each of the following:

a. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the source river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

b. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the receiving river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by

one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

c. The governing body of any public water system that withdraws water upstream or downstream from the withdrawal point of the proposed transfer.

d. If any portion of the source or receiving river basins is located in another state, all state water management or use agencies, environmental protection agencies, and the office of the governor in that state upstream or downstream from the withdrawal point of the proposed transfer.

e. All persons who have registered a water withdrawal or transfer from the proposed source river basin under this Part or under similar law in an another state.

f. All persons who hold a certificate for a transfer of water from the proposed source river basin under this Part or under similar law in an another state.

g. All persons who hold a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit for a discharge of 100,000 gallons per day or more upstream or downstream from the proposed point of withdrawal.

h. To any other person who submits to the applicant a written request to receive all notices relating to the petition.

(d) Environmental Documents. – Except as provided in this subsection, the definitions set out in G.S. 113A-9 apply to this section. Notwithstanding the thresholds for significant expenditure of public monies or use of public land set forth in G.S. 113A-9, the Department shall conduct a study of the environmental impacts of any proposed transfer of water for which a certificate is required under this section. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. Notwithstanding G.S. 113A-4(2), the study shall include secondary and cumulative impacts. An environmental assessment shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes; except that an environmental impact statement shall be prepared for every proposed transfer of water from one major river basin to another for which a certificate is required under this section. The applicant who petitions the Commission for a certificate under this section shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes. An environmental impact statement prepared pursuant to this subsection shall include all of the following:

(1) A comprehensive analysis of the impacts that would occur in the source river basin and the receiving river basin if the petition for a certificate is granted.

(2) An evaluation of alternatives to the proposed interbasin transfer, including water supply sources that do not require an interbasin transfer and use of water conservation measures.

(3) A description of measures to mitigate any adverse impacts that may arise from the proposed interbasin transfer.

(e) Public Hearing on the Draft Environmental Document. – The Commission shall hold a public hearing on the draft environmental document for a proposed interbasin transfer after giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate where a copy of the environmental document can be reviewed and the procedure to be followed by anyone wishing to submit written comments and questions on the environmental document. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The Commission shall accept written comment on the draft environmental document for a minimum of 30 days following the last public hearing. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft environmental document.

(f) Determination of Adequacy of Environmental Document. – The Commission shall not act on any petition for an interbasin transfer until the Commission has determined that the environmental document is complete and adequate. A decision on the adequacy of the environmental document is subject to review in a contested case on the decision of the Commission to issue or deny a certificate under this section.

(g) Petition. – An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include all of the following:

(1) A general description of the facilities to be used to transfer the water, including current and projected areas to be served by the transfer, current and projected capacities of intakes, and other relevant facilities.

(2) A description of all the proposed consumptive and nonconsumptive uses of the water to be transferred.

(3) A description of the water quality of the source river and receiving river, including information on aquatic habitat for rare, threatened, and endangered species; in-stream flow data for segments of the source and receiving rivers that may be affected by the transfer; and any waters that are impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).

(4) A description of the water conservation measures used by the applicant at the time of the petition and any additional water conservation measures that the applicant will implement if the certificate is granted.

(5) A description of all sources of water within the receiving river basin, including surface water impoundments, groundwater wells, reinjection storage, and purchase of water from another source within the river basin, that is a practicable alternative to the proposed transfer that would meet

the applicant's water supply needs. The description of water sources shall include sources available at the time of the petition for a certificate and any planned or potential water sources.

(6) A description of water transfers and withdrawals registered under G.S. 143-215.22H or included in a local water supply plan prepared pursuant to G.S. 143-355(l) from the source river basin, including transfers and withdrawals at the time of the petition for a certificate and any planned or reasonably foreseeable transfers or withdrawals by a public water system with service area located within the source river basin.

(7) A demonstration that the proposed transfer, if added to all other transfers and withdrawals required to be registered under G.S. 143-215.22H or included in any local water supply plan prepared by a public water system with service area located within the source basin pursuant to G.S. 143-355(l) from the source river basin at the time of the petition for a certificate, would not reduce the amount of water available for use in the source river basin to a degree that would impair existing uses, pursuant to the antidegradation policy set out in 40 Code of Federal Regulation § 131.12 (Antidegradation Policy) (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto, or existing and planned consumptive and nonconsumptive uses of the water in the source river basin. If the proposed transfer would impact a reservoir within the source river basin, the demonstration must include a finding that the transfer would not result in a water level in the reservoir that is inadequate to support existing uses of the reservoir, including recreational uses.

(8) The applicant's future water supply needs and the present and reasonably foreseeable future water supply needs for public water systems with service area located within the source river basin. The analysis of future water supply needs shall include agricultural, recreational, and industrial uses, and electric power generation. Local water supply plans prepared pursuant to G.S. 143-355(l) for water systems with service area located within the source river basin shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems.

(9) The applicant's water supply plan prepared pursuant to G.S. 143-355(l). If the applicant's water supply plan is more than two years old at the time of the petition, then the applicant shall include with the petition an updated water supply plan.

(10) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(h) Settlement Discussions. – Upon the request of the applicant, any interested party, or the Department, or upon its own motion, the Commission may appoint a mediation officer. The mediation officer may be a member of the Commission, an employee of the Department, or a neutral third party but shall not be a hearing officer under subsections (e)

or (j) of this section. The mediation officer shall make a reasonable effort to initiate settlement discussions between the applicant and all other interested parties. Evidence of statements made and conduct that occurs in a settlement discussion conducted under this subsection, whether attributable to a party, a mediation officer, or other person shall not be subject to discovery and shall be inadmissible in any subsequent proceeding on the petition for a certificate. The Commission may adopt rules to govern the conduct of the mediation process.

(i) Draft Determination. – Within 90 days after the Commission determines that the environmental document prepared in accordance with subsection (d) of this section is adequate or the applicant submits its petition for a certificate, whichever occurs later, the Commission shall issue a draft determination on whether to grant the certificate. The draft determination shall be based on the criteria set out in this section and shall include the conditions and limitations, findings of fact, and conclusions of law that would be required in a final determination. Notice of the draft determination shall be given as provided in subsection (c) of this section.

(j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the draft determination as provided in subsection (i) of this section, the Commission shall hold public hearings on the draft determination. At least one hearing shall be held in the affected area of the source river basin, and at least one hearing shall be held in the affected area of the receiving river basin. In determining whether more than one public hearing should be held within either the source or receiving river basins, the Commission shall consider the differing or conflicting interests that may exist within the river basins, including the interests of both upstream and downstream parties potentially affected by the proposed transfer. The public hearings shall be conducted by one or more hearing officers appointed by the Chair of the Commission. The hearing officers may be members of the Commission or employees of the Department. The Commission shall give at least 30 days' written notice of the public hearing as provided in subsection (c) of this section. The Commission shall accept written comment on the draft determination for a minimum of 30 days following the last public hearing. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft determination.

(k) Final Determination: Factors to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact and conclusions of law with regard to each item:

(1) The necessity and reasonableness of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs,

wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans for public water systems with service area located within the source river basin prepared pursuant to G.S. 143-355(l) shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems. Information on projected future water needs for public water systems with service area located within the source river basin that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the source river basin.

(3) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the petition for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan for public water systems with service area located within the source river basin that has been submitted to the Department in accordance with G.S. 143-355(l).

(4) The present and reasonably foreseeable future beneficial and detrimental effects on the receiving river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans prepared pursuant to G.S. 143-355(l) that affect the receiving river basin shall be used to evaluate the projected future water needs in the receiving river basin that will be met by public water systems. Information on projected future water needs that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the receiving river basin.

(5) The availability of reasonable alternatives to the proposed transfer, including the potential capacity of alternative sources of water, the potential of each alternative to reduce the amount of or avoid the proposed transfer, probable costs, and environmental impacts. In considering alternatives, the Commission is not limited to consideration of alternatives that have been proposed, studied, or considered by the applicant. The determination shall include a specific finding as to why the applicant's need for water cannot be satisfied by alternatives within the receiving basin, including unused capacity under a transfer for which a certificate is in effect or that is otherwise authorized by law at the time the applicant submits the petition. The determination shall consider the extent to which access to potential sources of surface water or

groundwater within the receiving river basin is no longer available due to depletion, contamination, or the declaration of a capacity use area under Part 2 of Article 21 of Chapter 143 of the General Statutes. The determination shall consider the feasibility of the applicant's purchase of water from other water suppliers within the receiving basin and of the transfer of water from another sub-basin within the receiving major river basin. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the Commission's determination as to reasonable alternatives shall give preference to alternatives that would involve a transfer from one sub-basin to another within the major receiving river basin over alternatives that would involve a transfer from one major river basin to another major river basin.

(6) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(7) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(8) Whether the service area of the applicant is located in both the source river basin and the receiving river basin.

(9) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(l) Final Determination: Information to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall consider all of the following sources of information:

(1) The petition.

(2) The environmental document prepared pursuant to subsection (d) of this section.

(3) All oral and written comment and all accompanying materials or evidence submitted pursuant to subsections (e) and (j) of this section.

(4) Information developed by or available to the Department on the water quality of the source river basin and the receiving river basin, including waters that are identified as impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)), that are subject to a total maximum daily load (TMDL) limit under subsections (d) and (e) of section 303 of the federal Clean Water Act, or that would have their assimilative capacity impaired if the certificate is issued.

(5) Any other information that the Commission determines to be relevant and useful.

(m) Final Determination: Burden and Standard of Proof; Specific Findings. – The Commission shall grant a certificate for a water transfer if the Commission finds that the applicant has established by a preponderance of the evidence all of the following:

(1) The benefits of the proposed transfer outweigh the detriments of the proposed transfer. In making this determination, the Commission shall be guided by the approved environmental document and the policy set out in subsection (t) of this section.

(2) The detriments have been or will be mitigated to the maximum degree practicable.

(3) The amount of the transfer does not exceed the amount of the projected shortfall under the applicant's water supply plan after first taking into account all other sources of water that are available to the applicant.

(4) There are no reasonable alternatives to the proposed transfer.

(n) Final Determination: Certificate Conditions and Limitations. – The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may impose any conditions or limitations on a certificate that the Commission finds necessary to achieve the purposes of this Part including a limit on the period for which the certificate is valid. The conditions and limitations shall include any mitigation measures proposed by the applicant to minimize any detrimental effects within the source and receiving river basins. In addition, the certificate shall require all of the following conditions and limitations:

(1) A water conservation plan that specifies the water conservation measures that will be implemented by the applicant in the receiving river basin to ensure the efficient use of the transferred water. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the water conservation plan shall provide for the mandatory implementation of water conservation measures by the applicant that equal or exceed the most stringent water conservation plan implemented by a public water system that withdraws water from the source river basin.

(2) A drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions or other emergencies that occur within the source river basin. Except in circumstances of technical or economic infeasibility or adverse environmental impact, this drought management plan shall include mandatory reductions in the permitted amount of the transfer based on the severity and duration of a drought occurring within the source river basin and shall provide for the mandatory implementation of a drought management plan by the applicant that equals or exceeds the most stringent water conservation plan implemented by a public water system that withdraws water from the source river basin.

(3) The maximum amount of water that may be transferred, calculated as a daily average of a calendar month, and methods or devices required to be

installed and operated that measure the amount of water that is transferred.

(4) A provision that the Commission may amend a certificate to reduce the maximum amount of water authorized to be transferred whenever it appears that an alternative source of water is available to the certificate holder from within the receiving river basin, including, but not limited to, the purchase of water from another water supplier within the receiving basin or to the transfer of water from another sub-basin within the receiving major river basin.

(5) A provision that the Commission shall amend the certificate to reduce the maximum amount of water authorized to be transferred if the Commission finds that the applicant's current projected water needs are significantly less than the applicant's projected water needs at the time the certificate was granted.

(6) A requirement that the certificate holder report the quantity of water transferred during each calendar quarter. The report required by this subdivision shall be submitted to the Commission no later than 30 days after the end of the quarter.

(7) Except as provided in this subdivision, a provision that the applicant will not resell the water that would be transferred pursuant to the certificate to another public water system. This limitation shall not apply in the case of a proposed resale or transfer among public water systems within the receiving river basin as part of an interlocal agreement or other regional water supply arrangement, provided that each participant in the interlocal agreement or regional water supply arrangement is a co-applicant for the certificate and will be subject to all the terms, conditions, and limitations made applicable to any lead or primary applicant.

(o) Administrative and Judicial Review. – Administrative and judicial review of a final decision on a petition for a certificate under this section shall be governed by Chapter 150B of the General Statutes.

(p) Certain Preexisting Transfers. – In cases where an applicant requests approval to increase a transfer that existed on 1 July 1993, the Commission may approve or disapprove only the amount of the increase. If the Commission approves the increase, the certificate shall be issued for the amount of the preexisting transfer plus any increase approved by the Commission. A certificate for a transfer approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part. A certificate for the increase of a preexisting transfer shall contain all of the conditions and limitations required by subsection (m) of this section.

(q) Emergency Transfers. – In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health, safety, or welfare requires a transfer of water, the Secretary of Environmental Quality may grant approval for a temporary transfer. Prior to approving a

temporary transfer, the Secretary shall consult with those parties listed in subdivision (3) of subsection (c) of this section that are likely to be affected by the proposed transfer. However, the Secretary shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions of law in approving a temporary transfer under this subsection. If the Secretary approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary based on demonstrated need as set forth in this subsection.

(r) Relationship to Federal Law. – The substantive restrictions, conditions, and limitations upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government. This section shall govern the transfer of water from one river basin to another unless preempted by federal law.

(s) Planning Requirements. – When any transfer for which a certificate was issued under this section equals or exceeds eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S.143-355(l). When the transfer equals or exceeds ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(t) Statement of Policy. – It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. It is the public policy of this State that the reasonably foreseeable future water needs of a public water system with its service area located primarily in the receiving river basin are subordinate to the reasonably foreseeable future water needs of a public water system with its service area located primarily in the source river basin. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto.

(u) Repealed by Session Laws 2013-388, s. 2, effective August 23, 2013.

(v) Modification of Certificate. – A certificate may be modified as provided in this subsection:

(1) The Commission or the Department may make any of the following modifications to a certificate after providing electronic notice to persons who have identified themselves in writing as interested parties:

a. Correction of typographical errors.

b. Clarification of existing conditions or language.

c. Updates, requested by the certificate holder, to a conservation plan, drought management plan, or compliance and monitoring plan.

d. Modifications requested by the certificate holder to reflect altered requirements due to the amendment of this section.

(2) A person who holds a certificate for an interbasin transfer of water may request that the Commission modify the certificate. The request shall be considered and a determination made according to the following procedures:

a. The certificate must have been issued pursuant to G.S. 162A-7, 143-215.22I, or 143-215.22L and the certificate holder must be in substantial compliance with the certificate.

b. The certificate holder shall file a notice of intent to file a request for modification that includes a nontechnical description of the certificate holder's request and identification of the proposed water source.

c. The certificate holder shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required for the modification of a certificate unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

d. Upon determining that the documentation submitted by the certificate holder is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the request for modification in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the request for the modification and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The certificate holder who petitions the Commission for a modification under this subdivision shall pay the costs associated with the notice and public hearing.

e. The Department shall accept comments on the requested modification for a minimum of 30 days following the public hearing.

f. The Commission or the Department may require the certificate holder to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

g. The Commission shall make a final determination whether to grant the requested modification based on the factors set out in subsection (k) of this section, information provided by the certificate holder, and any other information the Commission

deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

h. The Commission shall grant the requested modification if it finds that the certificate holder has established by a preponderance of the evidence that the requested modification satisfies the requirements of subsection (m) of this section. The Commission may grant the requested modification in whole or in part, or deny the request, and may impose such limitations and conditions on the modified certificate as it deems necessary and relevant to the modification.

i. The Commission shall not grant a request for modification if the modification would result in the transfer of water to an additional major river basin.

j. The Commission shall not grant a request for modification if the modification would be inconsistent with the December 3, 2010 Settlement Agreement entered into between the State of North Carolina, the State of South Carolina, Duke Energy Carolinas, and the Catawba River Water Supply Project.

(w) Requirements for Coastal Counties and Reservoirs Constructed by the United States Army Corps of Engineers. – A petition for a certificate (i) to transfer surface water to supplement ground water supplies in the 15 counties designated as the Central Capacity Use Area under 15A NCAC 2E.0501, (ii) to transfer surface water withdrawn from the mainstem of a river to provide service to one of the coastal area counties designated pursuant to G.S. 113A-103, or (iii) to withdraw or transfer water stored in any multipurpose reservoir constructed by the United States Army Corps of Engineers and partially located in a state adjacent to North Carolina, provided the United States Army Corps of Engineers approved the withdrawal or transfer on or before July 1, 2014, shall be considered and a determination made according to the following procedures:

(1) The applicant shall file a notice of intent that includes a nontechnical description of the applicant's request and identification of the proposed water source.

(2) The applicant shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

(3) Upon determining that the documentation submitted by the applicant is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the petition in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the petition and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in

subdivision (3) of subsection (c) of this section. The applicant who petitions the Commission for a certificate under this subdivision shall pay the costs associated with the notice and public hearing.

(4) The Department shall accept comments on the petition for a minimum of 30 days following the public hearing.

(5) The Commission or the Department may require the applicant to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

(6) The Commission shall make a final determination whether to grant the certificate based on the factors set out in subsection (k) of this section, information provided by the applicant, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

(7) The Commission shall grant the certificate if it finds that the applicant has established by a preponderance of the evidence that the petition satisfies the requirements of subsection (m) of this section. The Commission may grant the certificate in whole or in part, or deny the request, and may impose such limitations and conditions on the certificate as it deems necessary and relevant. (1993, c. 348, s. 1; 1997-443, ss. 11A.119(a), 15.48(c); 1997-524, s. 1; 1998-168, s. 4; 2001-474, s. 28; 2007-484, s. 43.7C; 2007-518, s. 3; 2008-125, s. 1; 2008-198, s. 11.5; 2010-155, ss. 2, 3; 2011-398, s. 50; 2013-388, s. 2; 2014-120, s. 37; 2015-90, s. 7; 2015-241, s. 14.30(v).)

Part 3. Dam Safety Law.

§ 143-215.23. Short title.

This Part shall be known and may be cited as the Dam Safety Law of 1967. (1967, c. 1068, s. 1.)

§ 143-215.24. Declaration of purpose.

It is the purpose of this Part to provide for the certification and inspection of dams in the interest of public health, safety, and welfare, in order to reduce the risk of failure of dams; to prevent injuries to persons, damage to downstream property and loss of reservoir storage; and to ensure maintenance of minimum stream flows of adequate quantity and quality below dams. (1967, c. 1068, s. 2; 1977, c. 878, s. 1; 1993, c. 394, s. 1.)

§ 143-215.25. Definitions.

As used in this Part, unless the context otherwise requires:

(1) Dam. – A structure and appurtenant works erected to impound or divert water.

(1a) Mill dam. – A dam built across a stream to raise the level of water for the purpose of providing water to a mill for the operation of the mill.

(2) Minimum stream flow or minimum flow. – A stream flow of a quantity and quality sufficient in the judgment of the Department to meet and maintain stream

classifications and water quality standards established by the Department under G.S. 143-214.1 and applicable to the waters affected by the project under consideration, and to maintain aquatic habitat in the length of the stream that is affected.

(3) Professionally supervised dam removal. – The voluntary removal of a low or intermediate hazard mill dam or run-of-river dam that (i) is not operated primarily for flood control or hydroelectric power generation purposes and (ii) the removal of which is designed and supervised by a qualified engineer.

(4) Qualified engineer. – An engineer licensed as a professional engineer under Chapter 89C of the General Statutes.

(5) Run-of-river dam. – A riverine or stream dam that is designed or operated to release water at approximately the same rate as the natural flow of the river or stream. (1967, c. 1068, s. 3; 1973, c. 1262, ss. 23, 38; 1977, c. 771, s. 4; c. 878, ss. 2, 4; 1983, c. 306; 1987, c. 827, ss. 154, 175; 1993, c. 394, s. 2; 2017-145, s. 1(a).)

§ 143-215.25A. Exempt dams.

(a) Except as otherwise provided in this Part, this Part does not apply to any dam:

(1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.

(2) Constructed with financial assistance from the United States Natural Resources Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.

(3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.

(4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission.

(5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.

(6) **(See Editor's Note)** That is less than 25 feet in height or that has an impoundment capacity of less than 50 acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam.

(7) **(See Editor's Note)** Constructed for and maintains the purpose of providing water for agricultural use, when a person who is licensed as a professional engineer or is employed by the Natural Resources Conservation Service, county, or local Soil and Water Conservation District, and has federal engineering job approval authority under Chapter 89C of the General Statutes designed or approved plans for the dam, supervised its construction, and registered the dam with the Division of Energy, Mineral, and Land Resources of the Department prior to

construction of the dam. This exemption shall not apply to dams that are determined to be high-hazard by the Department.

(b) The exemption from this Part for a dam described in subdivisions (1) and (2) of subsection (a) of this section does not apply after the supervising federal agency relinquishes authority for the operation and maintenance of the dam to a local entity. (1993, c. 394, s. 3; 2009-390, s. 3(a); 2011-394, s. 10(a); 2012-143, s. 1(f); 2013-265, s. 20.)

§ 143-215.26. Construction of dams.

(a) No person shall begin the construction of any dam until at least 10 days after filing with the Department a statement concerning its height, impoundment capacity, purpose, location and other information required by the Department. A person who constructs a dam, including a dam that is otherwise exempt from this Part under subdivisions (4) or (5) of G.S. 143-215.25A(a), shall comply with the malaria control requirements of the Department. If on the basis of this information the Department is of the opinion that the proposed dam is not exempt from the provisions of this Part, it shall so notify the applicant, and construction shall not be commenced until a full application is filed by the applicant and approved as provided by G.S. 143-215.29. The Department may also require of applicants so notified the filing of any additional information it deems necessary, including, but not limited to, streamflow and rainfall data, maps, plans and specifications. Every applicant for approval of a dam subject to the provisions of this Part shall also file with the Department the certificate of an engineer legally qualified in this State. The certificate shall state that the person who files the certificate is responsible for the design of the dam and that the design is safe and adequate.

(b) The Department shall send a copy of each completed application to the State Health Director, the Wildlife Resources Commission, the Department of Transportation, and other State and local agencies it considers appropriate for review and comment. (1967, c. 1068, s. 4; 1973, c. 476, s. 128; c. 507, s. 5; c. 1262, s. 23; 1987, c. 827, s. 176; 1989, c. 727, s. 163; 1993, c. 394, s. 4; 1995, c. 509, s. 80.)

§ 143-215.27. Repair, alteration, or removal of dam.

(a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it may be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of original construction. This subsection shall not apply to a professionally supervised dam removal.

(b) When emergency repairs are necessary to safeguard life and property they may be started immediately but the Department shall be notified of the proposed repairs and of the work underway as soon as possible, but not later than 24 hours after first knowledge of the necessity for the emergency repairs, and the emergency repairs shall be made to conform to the Department's orders.

(c) A professionally supervised dam removal is not subject to the procedures set forth in subsection (a) of this section, provided that the dam removal complies with all of the following:

(1) A qualified engineer determines, based on good engineering practices, that the removal of the dam can be accomplished safely, certifies that the dam is a low or intermediate hazard dam, and the removal plan reflects (i) the geomorphology of the streambed upriver and downriver from the dam site and (ii) the most desirable longitudinal profile for the post-removal stream channel that will minimize physical impacts on riparian landowners.

(2) The person who proposes to remove the dam notifies the director of the Division of Energy, Mineral, and Land Resources of the Department of the proposed removal no less than 60 days prior to removal. The notice shall include information identifying the dam, including the stream and county where the dam is located, the dam's height and impoundment capacity, a map showing the dam location and vicinity, the qualified engineer's name and North Carolina license number, and a notarized certification from the owner of the dam that the dam is a low or intermediate hazard dam not currently operated for the purposes of flood control or hydroelectric power generation. The notification and certification required by this subdivision may be provided electronically.

(3) The person who proposes to remove the dam notifies the North Carolina Floodplain Mapping Program of the Department of Public Safety, the North Carolina Department of Transportation, adjacent property owners of the dam and reservoir, and all impacted local governments of the proposed removal no less than 60 days prior to removal. The notice shall include a qualified engineer's determination that (i) the removal plan for the dam is based on the criteria set forth in subdivision (1) of this subsection and (ii) the removal will lower or maintain water levels above the location of the dam and will not cause an increase in the risk of flood damage or impacts to downstream bridges or road crossings. For purposes of the notice required by this subdivision, an "impacted local government" shall mean any unit of local government that could experience changes to its base floodplain, as defined in G.S. 143-215.52, as a result of the dam removal.

(d) The Division of Water Resources of the Department of Environmental Quality shall develop a water quality general certification under section 401 of the Clean Water

Act for short-term sediment releases associated with the construction phase of a dam removal when all of the following occur:

(1) The removal meets the definition and requirements of a professionally supervised dam removal under this section.

(2) The applicant for the water quality general certification demonstrates that the sediment to be released has similar or lower level of contamination than sediment sampled from downstream of the dam. (1967, c. 1068, s. 5; 1979, c. 55, s. 1; 2014-122, s. 7; 2017-145, ss. 1(b), 2(b).)

§ 143-215.27A. Closure of coal combustion residuals surface impoundments to render such facilities exempt from the North Carolina Dam Safety Law of 1967.

(a) Decommissioning Request. – The owner of a coal combustion residuals surface impoundment, as defined by G.S. 130A-309.201, that seeks to decommission the impoundment shall submit a Decommissioning Request to the Division of Energy, Mineral, and Land Resources of the Department requesting that the facility be decommissioned. The Decommissioning Request shall include, at a minimum, all of the following:

(1) A proposed geotechnical investigation plan scope of work. Upon preliminary plan approval pursuant to subsection (b) of this section, the owner shall proceed with necessary field work and submit a geotechnical report with site-specific field data indicating that the containment dam and material impounded by the containment dam are stable, and that the impounded material is not subject to liquid flow behavior under expected static and dynamic loading conditions. Material testing should be performed along the full extent of the containment dam and in a pattern throughout the area of impounded material.

(2) A topographic map depicting existing conditions of the containment dam and impoundment area at two-foot contour intervals or less.

(3) If the facility contains areas capable of impounding by topography, a breach plan must be included that ensures that there shall be no place within the facility capable of impounding. The breach plan shall include, at a minimum, proposed grading contours superimposed on the existing topographic map as well as necessary engineering calculations, construction details, and construction specifications.

(4) A permanent vegetation and stabilization or capping plan by synthetic liner or other means, if needed. These plans shall include at minimum, proposed grading contours superimposed on the existing topographic map where applicable as well as necessary engineering calculations, construction details, construction specifications, and all details for the establishment of surface area stabilization.

(5) A statement indicating that the impoundment facility has not received sluiced coal combustion residuals for at least three years and that there

are no future plans to place coal combustion residuals in the facility by sluicing methods. The Division of Energy, Mineral, and Land Resources may waive the three-year requirement if proper evidence is presented by a North Carolina registered professional engineer indicating that the impounded material is not subject to liquid flow behavior.

(b) Preliminary Review and Approval. – The Decommissioning Request shall undergo a preliminary review by the Division for completeness and approval of the proposed geotechnical investigation plan scope of work. The owner shall be notified by letter with results of the preliminary review, including approval or revision requests relative to the proposed scope of work included in the geotechnical investigation plan. Upon receipt of a letter issued by the Division approving the preliminary geotechnical plan scope of work, the owner may proceed with field work and development of the geotechnical report.

(c) Final Determination and Approval. – Upon receipt of the geotechnical report, the Division shall complete the submittal review as provided in this subsection.

(1) If it is determined that sufficient evidence has been presented to clearly show that the facility no longer functions as a dam in its current state, a letter decommissioning the facility shall be issued by the Division, and the facility shall no longer be under jurisdiction of the Dam Safety Law of 1967.

(2) If modifications such as breach construction or implementation of a permanent vegetation or surface lining plan are needed, such plans shall be reviewed per standard procedures for consideration of a letter of approval to modify or breach.

(3) If approved, such plans shall follow standard procedure for construction, including construction supervision by a North Carolina registered professional engineer, as-built submittal by a North Carolina registered professional engineer, and follow up final inspection by the Division.

(4) Final approval shall be issued by the Division in the form of a letter decommissioning the facility, and the facility shall no longer be under jurisdiction of the Dam Safety Law of 1967. (2014-122, s. 7.1.)

§ 143-215.28. Action by Commission upon applications.

(a) Following receipt of agency comments the Commission shall approve, disapprove, or approve subject to conditions necessary to ensure safety and to satisfy minimum stream flow requirements, all applications made pursuant to this Part.

(b) A defective application shall not be rejected but notice of the defects shall be sent to the applicant by registered mail. If the applicant fails to file a perfected application within 30 days the original shall be canceled unless further time is allowed.

(c) If the Commission disapproves an application, one copy shall be returned with a statement of its objections. If an application is approved, the approval shall be attached thereto, and a copy returned by registered mail. Approval shall be granted under terms, conditions and limitations which the Commission deems necessary to safeguard life and property.

(d) Construction shall be commenced within one year after the date of approval of the application or such approval is void. The Commission upon written application and good cause shown may extend the time for commencing construction. Notice by registered mail shall be given the Commission at least 10 days before construction is commenced. (1967, c. 1068, s. 6; 1973, c. 1262, s. 23; 1987, c. 827, s. 154.)

§ 143-215.28A. Application fees.

(a) In accordance with G.S. 143-215.3(a)(1a), the Commission may establish a fee schedule for processing applications for approvals of construction or removal of dams issued under this Part. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing the applications and for related compliance activities. The total amount of fees collected in any fiscal year may not exceed one-third of the total personnel and administrative costs incurred by the Department for processing the applications and for related compliance activities in the prior fiscal year. An approval fee may not exceed the larger of two hundred dollars ($200.00) or two percent (2%) of the actual cost of construction or removal of the applicable dam. The fee for notification of a professionally supervised dam removal under G.S. 143-215.27(c)(1) shall be five hundred dollars ($500.00) and shall be paid to the Department. The provisions of G.S. 143-215.3(a)(1b) do not apply to these fees.

(b) The Dam Safety Account is established as a nonreverting account within the Department. Fees collected under this section shall be credited to the Account and shall be applied to the costs of administering this Part. (1989 (Reg. Sess., 1990), c. 976, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 15; 1993, c. 394, s. 5; 2017-145, s. 1(c).)

§ 143-215.29. Supervision by qualified engineers; reports and modification during work.

(a) Any project for which the Commission's approval is required under G.S. 143-215.26, 143-215.27, and 143-215.28, and any project undertaken pursuant to an order of the Commission issued pursuant to this section or G.S. 143-215.32 shall be designed and supervised by an engineer legally qualified in the State of North Carolina.

(b) During the construction, enlargement, repair, alteration or removal of a dam, the Commission may require such progress reports from the supervising engineer as it deems necessary.

(c) If during construction, reconstruction, repair, alteration or enlargement of any dam, the Commission finds the work is not being done in accordance with the provisions of the approval and the approved plans and specifications, it shall give written notice by registered mail or personal service to the person who received the approval and to the person in charge of construction at the dam. The notice shall state the particulars in which compliance has not been made, and shall order immediate compliance with the terms of the approval, and the approved plans and specifications. The Commission may order that no further construction work be undertaken until such compliance has been effected and approved by the Commission. A failure to comply with the approval and the approved plans and specifications shall render the approval revocable unless compliance is made

after notice as provided in this section. (1967, c. 1068, s. 7; 1973, c. 1262, s. 23; 1977, c. 878, s. 5; 1987, c. 827, s. 154.)

§ 143-215.30. Notice of completion; certification of final approval; notice of transfer.

(a) Except as set forth in subsection (d1) of this section, immediately upon completion, enlargement, repair, alteration or removal of a dam, notice of completion shall be given the Commission. As soon as possible thereafter supplementary drawings or descriptive matter showing or describing the dam as actually constructed shall be filed with the Department in such detail as the Commission may require.

(b) When an existing dam is enlarged, the supplementary drawings and descriptive matter need apply only to the new work.

(c) The completed work shall be inspected by the supervising engineers, and upon finding that the work has been done as required and that the dam is safe and satisfies minimum streamflow requirements, they shall file with the Department a certificate that the work has been completed in accordance with approved design, plans, specifications and other requirements. Unless the Commission has reason to believe that the dam is unsafe or is not in compliance with any applicable rule or law, the Commission shall grant final approval of the work in accordance with the certificate, subject to such terms as it deems necessary for the protection of life and property.

(d) Pending issuance of the Commission's final approval, the dam shall not be used except on written consent of the Commission, subject to conditions it may impose.

(d1) The requirements of this section shall not apply to a professionally supervised dam removal under G.S. 143-215.27(c) if the person removing the dam provides confirmation of completion of dam removal to the Department within 10 days of completion of the removal.

(e) The owner of a dam shall provide written notice of transfer to the Department within 30 days after title to the dam has been legally transferred. The notice of transfer shall include the name and address of the new dam owner. (1967, c. 1068, s. 8; 1973, c. 1262, s. 23; 1987, c. 827, ss. 154, 177; 2014-122, s. 8(c); 2017-145, s. 1(d).)

§ 143-215.31. Supervision over maintenance and operation of dams.

(a) The Commission shall have jurisdiction and supervision over the maintenance and operation of dams to safeguard life and property and to satisfy minimum streamflow requirements. The Commission may adopt standards for the maintenance and operation of dams as may be necessary for the purposes of this Part. The Commission may vary the standards applicable to various dams, giving due consideration to the minimum flow requirements of the stream, the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of failure of a dam to perform its function.

(a1) The owner of a dam classified by the Department as a high-hazard dam or an intermediate-hazard dam shall develop an Emergency Action Plan for the dam as provided in this subsection:

(1) The owner of the dam shall submit a proposed Emergency Action Plan for the dam within 90 days after the dam is classified as a high-hazard dam or an intermediate-hazard dam to the Department and the Department of Public Safety for their review and approval. The Department and the Department of Public Safety shall approve the Emergency Action Plan if they determine that it complies with the requirements of this subsection and will protect public health, safety, and welfare; the environment; and natural resources.

(2) The Emergency Action Plan shall include, at a minimum, all of the following:

a. A description of potential emergency conditions that could occur at the dam, including security risks.

b. A description of actions to be taken in response to an emergency condition at the dam.

c. Emergency notification procedures to aid in warning and evacuations during an emergency condition at the dam.

d. A downstream inundation map depicting areas affected by a dam failure and sudden release of the impoundment. A downstream inundation map prepared pursuant to this section does not require preparation by a licensed professional engineer or a person under the responsible charge of a licensed professional engineer unless the dam is associated with a coal combustion residuals surface impoundment, as defined by G.S. 130A-309.201.

(3) The owner of the dam shall update the Emergency Action Plan annually and shall submit it to the Department and the Department of Public Safety for their review and approval within one year of the prior approval.

(4) The Department shall provide a copy of the Emergency Action Plan to the regional offices of the Department that might respond to an emergency condition at the dam.

(5) The Department of Public Safety shall provide a copy of the Emergency Action Plan to all local emergency management agencies that might respond to an emergency condition at the dam.

(6) Information included in an Emergency Action Plan that constitutes sensitive public security information, as provided in G.S. 132-1.7, shall be maintained as confidential information and shall not be subject to disclosure under the Public Records Act. For purposes of this section, "sensitive public security information" shall include Critical Energy Infrastructure Information protected from disclosure under rules adopted by the Federal Energy Regulatory Commission in 18 C.F.R. § 388.112.

(b) The Department, consistent with rules adopted by the Commission, may impose any condition or requirement in orders and written approvals issued under this Part that is necessary to ensure that stream classifications, water quality standards, and aquatic habitat requirements are met and maintained, including conditions and requirements relating to the

release or discharge of designated flows from dams, the location and design of water intakes and outlets, the amount and timing of the withdrawal of water from a reservoir, and the construction of submerged weirs or other devices intended to maintain minimum streamflows.

The Commission shall adopt rules that specify the minimum streamflow in the length of the stream affected.

(c) The minimum streamflow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream shall be:

(1) The minimum average flow for a period of seven consecutive days that would have an average occurrence of once in 10 years in the absence of the dam, or ten percent (10%) of the average annual flow of the stream in the absence of the dam, whichever is less, if prior to 1 January 1995 the small power producer was either licensed by the Federal Energy Regulatory Commission or held a certificate of public convenience and necessity issued by the North Carolina Utilities Commission.

(2) The minimum average flow for a period of seven consecutive days that would have an average occurrence of once in 10 years in the absence of the dam, or ten percent (10%) of the average annual flow of the stream in the absence of the dam, whichever is greater, if subdivision (1) of this subsection does not apply.

(3) To protect the habitat of the Cape Fear Shiner and other aquatic species, 28 cubic feet per second for any dam that diverts water from 2,500 feet or more of the natural streambed of any stream on which six or more dams operated by small power producers were located on 1 January 1995, notwithstanding subdivisions (1) and (2) of this subsection.

(d) Subsection (c) of this section establishes the policy of this State with respect to minimum streamflows in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream, whether the dam is subject to or exempt from this Part. In its comments and recommendations to the Federal Energy Regulatory Commission regarding the minimum streamflow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream, the Commission and the Department shall not advocate or recommend a minimum streamflow that exceeds the minimum streamflow that would be required under subsection (c) of this section.

(e) The minimum streamflow in the length of the stream affected by a dam to which subsections (c) and (d) of this section do not apply shall be established as provided in subsection (b) of this section. Subsections (c) and (d) of this section do not apply if the length of the stream affected:

(1) Receives a discharge of waste from a treatment works for which a permit is required under Part 1 of this Article; or

(2) Includes any part of a river or stream segment that:

a. Is designated as a component of the State Natural and Scenic Rivers System by G.S. 143B-135.152 or G.S. 143B-135.154.

b. Is designated as a component of the national Wild and Scenic Rivers System by 16 U.S.C. § 1273 and 1274. (1967, c. 1068, s. 9; 1973, c. 1262, s. 23; 1987, c. 827, s. 154; 1993, c. 394, s. 6; c. 553, s. 80; 1995, c. 184, s. 1; c. 439, s. 1; 2014-122, s. 8(a); 2015-7, s. 9(a); 2015-241, s. 14.30(aaa); 2017-102, s. 21.)

§ 143-215.32. Inspection of dams.

(a) The Department may at any time inspect any dam, including a dam that is otherwise exempt from this Part, upon receipt of a written request of any affected person or agency, or upon a motion of the Environmental Management Commission. Within the limits of available funds the Department shall endeavor to provide for inspection of all dams at intervals of approximately five years.

(a1) Coal combustion residuals surface impoundments, as defined by G.S. 130A-309.201, shall be inspected as provided in this subsection:

(1) The Department shall inspect each dam associated with a coal combustion residuals surface impoundment at least annually.

(2) The owner of a coal combustion residuals surface impoundment shall inspect the impoundment weekly and after storms to detect evidence of any of the following conditions:

a. Deterioration, malfunction, or improper operation of spillway control systems.

b. Sudden drops in the level of the contents of the impoundment.

c. Severe erosion or other signs of deterioration in dikes or other containment devices or structures.

d. New or enlarged seeps along the downstream slope or toe of the dike or other containment devices or structures.

e. Any other abnormal conditions at the impoundment that could pose a risk to public health, safety, or welfare; the environment; or natural resources.

(3) If any of the conditions described in subdivision (2) of this subsection are observed, the owner shall provide documentation of the conditions to the Department and a registered professional engineer. The registered professional engineer shall investigate the conditions and, if necessary, develop a plan of corrective action to be implemented by the owner of the impoundment. The owner of the impoundment shall provide documentation of the completed corrective action to the Department.

(4) The owner of a coal combustion residuals surface impoundment shall provide for the annual inspection of the impoundment by an independent

registered professional engineer to ensure that the structural integrity and the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards. Within 30 days of the inspection, the owner shall provide to the Department the inspection report and a certification by the engineer that the impoundment is structurally sound and that the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards. The owner and the Department shall each place the inspection report and certification on a publicly accessible Internet Web site.

(b) If the Department upon inspection finds that any dam is not sufficiently strong, is not maintained in good repair or operating condition, is dangerous to life or property, or does not satisfy minimum streamflow requirements, the Department shall present its findings to the Commission and the Commission may issue an order directing the owner or owners of the dam to make at his or her expense maintenance, alterations, repairs, reconstruction, change in construction or location, or removal as may be deemed necessary by the Commission within a time limited by the order, not less than 90 days from the date of issuance of each order, except in the case of extreme danger to the safety of life or property, as provided by subsection (c) of this section.

(c) If at any time the condition of any dam becomes so dangerous to the safety of life or property, in the opinion of the Environmental Management Commission, as not to permit sufficient time for issuance of an order in the manner provided by subsection (b) of this section, the Environmental Management Commission may immediately take such measures as may be essential to provide emergency protection to life and property, including the lowering of the level of a reservoir by releasing water impounded or the destruction in whole or in part of the dam or reservoir. The Environmental Management Commission may recover the costs of such measures from the owner or owners by appropriate legal action.

(d) An order issued under this Part shall be served on the owner of the dam as provided in G.S. 1A-1, Rule 4. (1967, c. 1068, s. 10; 1973, c. 1262, s. 23; 1977, c. 878, s. 3; 1987, c. 827, s. 154; 1993, c. 394, s. 7; 2014-122, s. 10.)

§ 143-215.33. Administrative hearing.

A person to whom a decision or a dam safety order is issued under this Part may contest the decision or order by filing a contested case petition in accordance with G.S. 150B-23. A person to whom a decision is issued must file a contested case petition within 30 days after the decision is mailed to that person. A person to whom a dam safety order is issued must file a contested case petition within 10 days after the order is served. (1967, c. 1068, s. 11; 1973, c. 1262, s. 23; 1975, c. 842, s. 4; 1977, c. 878, s. 6; 1979, c. 55, s. 2; 1987, c. 827, s. 178, 1993, c. 394, s. 8.)

§ 143-215.34. Investigations by Department; employment of consultants.

The Department shall make such investigations and assemble such data as it deems necessary for a proper review and study of the design and construction of dams, reservoirs

and appurtenances, and for such purposes may enter upon private property. The Department may employ or make such agreements with geologists, engineers, or other expert consultants and such assistants as it deems necessary to carry out the provisions of this Part. (1967, c. 1068, s. 12; 1973, c. 1262, s. 23; 1987, c. 827, s. 179.)

§ 143-215.35. Liability for damages.

No action shall be brought against the State of North Carolina, the Department, or the Commission or any agent of the Commission or any employee of the State or the Department for damages sustained through the partial or total failure of any dam or its maintenance by reason of any supervision or other action taken pursuant to or under this Part. Nothing in this Part shall relieve an owner or operator of a dam from the legal duties, obligations and liabilities arising from such ownership or operation. (1967, c. 1068, s. 13; 1973, c. 1262, s. 23; 1987, 827, s. 154.)

§ 143-215.36. Enforcement procedures.

(a) Criminal Penalties. – Any person who shall be adjudged to have violated this Article shall be guilty of a Class 3 misdemeanor and shall only be liable to a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) for each violation. In addition, if any person is adjudged to have committed such violation willfully, the court may determine that each day during which such violation continued constitutes a separate violation subject to the foregoing penalty.

(b) Civil Penalties. –

(1) The Secretary may assess a civil penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) against any person who violates any provisions of this Part, a rule implementing this Part, or an order issued under this Part.

(2) If any action or failure to act for which a penalty may be assessed under this Part is willful, the Secretary may assess a penalty not to exceed five hundred dollars ($500.00) per day for each day of violation.

(3) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(4) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed in accordance with G.S. 150B-23 within 30 days of receipt of the notice of assessment.

(5) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment

was based. Consistent with the limitations in G.S. 143B-282.1(c) and G.S. 143-282.1(d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(6) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary 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, unless the violator contests the assessment as provided in subdivision (4) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary 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. A civil action shall be filed within three years of the date the final agency decision was served on the violator.

(7) The Secretary may delegate his powers and duties under this section to the Director of the Division of Energy, Mineral, and Land Resources of the Department.

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

(c) Injunctive Relief. – Upon violation of any of the provisions of this Part, a rule implementing this Part, or an order issued under this Part, the Secretary may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violations, request the Attorney General to institute a civil action in the superior court of the county or counties where the violation occurred in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of the same. (1967, c. 1068, s. 14; 1973, c. 1262, s. 23; 1975, c. 842, s. 3; 1977, c. 771, s. 4; 1987, c. 827, ss. 154, 180; 1989 (Reg. Sess., 1990), c. 1036, s. 5; 1991, c. 342, ss. 10, 11; 1993, c. 394, s. 9; c. 539, s. 1021; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 65; 2012-143, s. 1(f).)

§ 143-215.37. Rights of investigation, entry, access, and inspection.

The Commission shall have the right to direct the conduct of such investigations as it may reasonably deem necessary to carry out its duties prescribed in this Part, and the

Department shall have the right to conduct such investigations, and for this purpose the employees of the Department and agents of the Commission have the right to enter at reasonable times on any property, public or private, for the purpose of investigating the condition, construction, or operation of any dam or associated equipment facility or property, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the construction or operation of any dam: Provided, that no person shall be required to disclose any secret formula, processes or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties. (1967, c. 1068, s. 15; 1973, c. 1262, s. 23.)

Part 4. Federal Water Resources Development Projects.

§ 143-215.38. Short title.

This Part shall be known as and may be cited as the Federal Water Resources Development Law of 1969. (1969, cc. 724, 968.)

§ 143-215.39. Public policy.

It is hereby declared the public policy of the State of North Carolina to encourage development of such river and harbor, flood control and other similar civil works projects as will accrue to the general or special benefit of any county or municipality of North Carolina or to any region of the State. To this end, it is also hereby declared that within the meaning of the North Carolina Constitution expenditures for such projects and obligations incurred for such projects are for public purposes, that county and municipal and other local government expenditures and obligations incurred therefor are necessary expenses, and that county expenditures therefor are for special purposes for which the special approval of the General Assembly is hereby given. (1969, cc. 724, 968.)

§ 143-215.40. Resolutions and ordinances assuring local cooperation.

(a) The boards of commissioners of the several counties, in behalf of their respective counties, the governing bodies of the several municipalities, in behalf of their respective municipalities, the governing bodies of any other local government units, in behalf of their units, and the North Carolina Environmental Management Commission, in behalf of the State of North Carolina, subject to the approval of the Governor, are hereby authorized to adopt such resolutions or ordinances as may be required giving assurances to any appropriate agency of the United States government for the fulfillment of the required items of local cooperation as expressed in acts of Congress or congressional documents, as conditions precedent to the accomplishment of river and harbor, flood control or other such civil works projects, when it shall appear, and is determined by such board or governing body that any such project will accrue to the general or special benefit of such county or municipality or to a region of the State. In each case where the subject of such local

cooperation requirements comes before a board of county commissioners or the governing body of any municipality or other local unit a copy of its final action, whether it be favorable or unfavorable, shall be sent to the Secretary of Environmental Quality for the information of the Governor.

(b) Within the meaning of this Part, a "local government unit" means any local subdivision or unit of government or local public corporate entity (other than a county or municipality), including any manner of special district or public authority. (1969, cc. 724, 968; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1983, c. 717, s. 69; 1985 (Reg. Sess., 1986), c. 955, ss. 91, 92; 1989, c. 727, s. 218(108); 1997-443, s. 11A.119(a); 2006-203, s. 89; 2015-241, s. 14.30(v).)

§ 143-215.41. Items of cooperation to which localities and the State may bind themselves.

Such resolutions and ordinances may irrevocably bind such county, municipality, other local unit, or the State of North Carolina, acting through the Commission, to the following when included as requirements of local cooperation for a federal water resources development project:

(1) To provide, without cost to the United States, all lands, easements, and rights-of-way required for construction and subsequent maintenance of the project and for aids to navigation, if required, upon the request of the Chief of Engineers, or other official to be required in the general public interest for initial and subsequent disposal of spoil, and also necessary retaining dikes, bulkheads, and embankments therefor, or the costs of such retaining works;

(2) To hold and save the United States free from damages due to the construction works and subsequent maintenance of the project;

(3) To provide firm assurances that riverside terminal and transfer facilities will be constructed at the upper limit of the modified project to permit transfer of commodities from or to plants and barges;

(4) To provide and maintain, without cost to the United States, depths in berthing areas and local access channels serving the terminals commensurate with depths provided in related project areas;

(5) To accomplish, without cost to the United States, such alterations, if any, as required in sewer, water supply, drainage, electrical power lines, and other utility facilities, as well as their maintenance;

(6) To provide, without cost to the United States, all lands, easements, rights-of-way, utility relocations and alterations, and, with the concurrence and under the direction of the Board of Transportation, highway or highway bridge construction and alterations necessary for project construction;

(7) To adjust all claims concerning water rights;

(8) To maintain and operate the project after completion, without cost to the United States, in accordance with regulations prescribed by the Secretary of the Army or other responsible federal official, board, or agency;

(9) To provide a cash contribution for project costs assigned to project features other than flood control;

(10) To prevent future encroachment which might interfere with proper functioning of the project for flood control;

(11) To provide or satisfy any other items or conditions of local cooperation as stipulated in the congressional or other federal document covering the particular project involved.

This section shall not be interpreted as limiting but as descriptive of the items of local cooperation, the accomplishment of which counties, municipalities and the State are herein authorized to irrevocably bind themselves; it being intended to authorize counties, municipalities and the Commission in behalf of the State to comply fully and completely with all of the items of local cooperation as contemplated by Congress and as stipulated in the congressional acts or documents concerned, or project reports by the Army Chief of Engineers, the Administrator of the Soil Conservation Service, the Board of Directors of the Tennessee Valley Authority, or other responsible federal official, board or agency. (1969, cc. 724, 968; 1973, c. 507, s. 5; c. 1262, s. 23; c. 1446, s. 14; 1987, c. 827, s. 154.)

§ 143-215.42. Acquisition of lands.

(a) For the purpose of complying with the terms of local cooperation as specified in this Part, and as stipulated in the congressional document covering the particular project involved, any county, municipality, other local government unit or the State of North Carolina, acting on behalf of the Commission, may acquire the necessary lands, or interest in lands, by lease, purchase, gift or condemnation. A municipality, county or other local government unit may acquire such lands by any of the aforesaid means outside as well as inside its territorial boundaries, if the local governing body finds that substantial benefits will accrue to property inside such territorial boundaries as a result of such acquisition.

(b) The power of condemnation herein granted to counties, municipalities and other local government units may be exercised only after:

(1) The municipality, county or other local unit makes application to the Commission, identifying the land sought to be condemned and stating the purposes for which said land is needed; and

(2) The Commission finds that the land is sought to be acquired for a proper purpose within the intent of this Part. The findings of the Commission will be conclusive in the absence of fraud, notwithstanding any other provision of law.

(c) The Department shall certify copies of the Commission's findings to the applicant municipality, county, or other local unit, and to the clerk of superior court of the county or counties wherein any of the land sought to be condemned lies for recordation in the special proceedings thereof.

(d) For purposes of this section:

(1) The term "interest in land" means any land, right-of-way, rights of access, privilege, easement, or other interest in or relating to land. Said "interest in land" does not include an interest in land which is held or used in whole or in part for a public water supply, unless such "interest in land" is not necessary or essential for such uses or purposes.

(2) A "description" of land shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land. In the discretion of the applicant, boundaries may be described by any of the following methods or by any combination thereof: by reference to a map; by metes and bounds; by general description referring to natural boundaries, or to boundaries of existing political subdivisions or municipalities, or to boundaries of particular tracts or parcels of land.

(e) The procedure in all condemnation proceedings pursuant to this section shall conform as nearly as possible to the procedure provided in Article 3 of Chapter 40A of the General Statutes.

(f) Interests in land acquired pursuant to this section may be used in such manner and for such purpose as the condemning authority deems best. If the local government unit so determines, such lands may be sold, leased, or rented, subject to the prior approval of the Commission. The State may sell, lease or rent any lands acquired by it, and if the Commission is participating with any local government unit or units in a water resources project under this Article, may convey such lands or interests to the unit or units as a part of its participation therein.

(g) This section is intended to confer supplementary and additional authority, and not to confer exclusive authority nor to impose cumulative requirements. If a municipality, county or other local government unit is authorized to acquire lands or interests in lands by some other law (such as by General Statutes Chapter 139, 153A, 160A, or 162A) as well as by this section, compliance with the requirements of this section or the requirements of such other law will be sufficient.

(h) This section shall not authorize acquisition by condemnation of interests in land within the boundaries of any project to be constructed by the Tennessee Valley Authority, its agents or subdivision or any project licensed by the Federal Power Commission or interests in land owned or held for use by a public utility, as defined in G.S. 62-3. No commission created pursuant to G.S. 158-8 shall condemn or acquire any property to be used by the Tennessee Valley Authority, its agents or subdivision. (1969, cc. 724, 968; 1973, c. 621, ss. 2-4; c. 1262, s. 23; 1977, c. 771, s. 4; 1987, c. 827, ss. 154, 181; 2013-360, s. 15.28(d); 2013-363, s. 5.7(b).)

§ 143-215.43. Additional powers.

For the purpose of complying with requirements of local cooperation as described in this Part, county and municipal governing bodies shall also have the power to accept funds, and to use general tax funds for necessary project purposes, including project maintenance. (1969, cc. 724, 968.)

Part 5. Right of Withdrawal of Impounded Water.

§ 143-215.44. Right of withdrawal.

(a) A person who lawfully impounds water for the purpose of withdrawal shall have a right of withdrawal of excess volume of water attributable to the impoundment. Within the meaning of this subsection, the word "purpose" shall include one of several purposes in a multiple purpose impoundment.

(b) A "right of withdrawal," within the meaning of this Part, is an interest which establishes a right to withdraw an excess volume of water superior to other interests in the water.

(c) "Excess volume of water," within the meaning of this Part, is that volume which may be withdrawn from an impoundment or from a watercourse below the impoundment without foreseeably reducing the rate of flow of a watercourse below that which would obtain in that watercourse if the impoundment did not exist.

(d) "Impound," within the meaning of this Part, shall include but is not limited to financial contributions or the assurance of financial contributions in the construction or operation of an impoundment.

(e) Repealed by Session Laws 1987, c. 827, s. 182. (1971, c. 111, s. 1; 1987, c. 827, s. 182.)

§ 143-215.45. Transfer of right of withdrawal.

A person with a right of withdrawal may assign or transfer it in whole or in part to another, subject to those rights of reassignment or transfer by the State specified in G.S. 143-354(a)(11). A person who has a right of withdrawal of excess volume of water by virtue of an assignment or transfer has an interest in water superior to other interests only to the extent that his withdrawal is in accordance with the terms of the assignment or transfer. (1971, c. 111, s. 1; 1991, c. 342, s. 12.)

§ 143-215.46. Exercise of right of withdrawal.

A person may exercise right of withdrawal by withdrawing directly from the impoundment, from a watercourse below the impoundment, or from both; provided, however, that the exercise of the right of withdrawal shall not require any person other than the holder of said right to incur additional capital expenditures in order to enable the holder of said right to withdraw any excess volume of water from a watercourse below the impoundment. (1971, c. 111, s. 1.)

§ 143-215.47. Effect of right of withdrawal on discharges of water.

Neither a right of withdrawal nor any assignment or transfer of said right may be asserted in defense against a claim that the method of releasing or discharging water is improper, that the quality of water has been impaired by the withdrawal or release of the water or by its return to the stream following its use, that water has been diverted without authority from the basin from which it was withdrawn, or that water resulting from

augmentation of the natural streamflow to control water quality has been withdrawn. (1971, c. 111, s. 1.)

§ 143-215.48. Determining streamflows.

(a) In litigation in which the rate of flow of water that would exist in the absence of an impoundment is in issue, that rate shall be deemed to be the minimum average flow for a period of seven consecutive days that have an average recurrence of once in 10 years unless a party to the litigation introduces a calculation that more closely approximates the actual rate. A determination made by the Commission (i) of either that minimum average flow, or (ii) that adopts a calculation that more closely approximates the actual rate of flow, and introduced by one of the parties to the litigation, shall be **prima facie** correct.

(b) The Commission is authorized to make the determinations specified in subsection (a) of this section and to require the submission of such reports and such inspections as are necessary to permit those determinations. (1971, c. 111, s. 1; 1973, c. 1262, s. 23; 1987, c. 827, s. 154.)

§ 143-215.49. Right of withdrawal for use in community water supply.

A person operating a municipal, county, community or other local water distribution or supply system and having a right of withdrawal may assert that right when its withdrawal is for use in any such water system as well as in other circumstances. (1971, c. 111, s. 1.)

§ 143-215.50. Interpretation with other statutes.

Whether rights of withdrawal shall have effect in a capacity use area declared by the Commission under the Water Use Act of 1967 shall be in the discretion of the Commission. This Part shall be subject to the provisions of the Water and Air Resources Act, and the Dam Safety Law of 1967. (1971, c. 111, s. 1; 1973, c. 1262, s. 23; 1987, c. 827, s. 154.)

Part 6. Floodway Regulation.

§ 143-215.51. Purposes.

The purposes of this Part are to:

(1) Minimize the extent of floods by preventing obstructions that inhibit water flow and increase flood height and damage.

(2) Prevent and minimize loss of life, injuries, property damage, and other losses in flood hazard areas.

(3) Promote the public health, safety, and welfare of citizens of North Carolina in flood hazard areas. (1971, c. 1167, s. 3; 1973, c. 621, s. 5; 2000-150, s. 1.)

§ 143-215.52. Definitions.

(a) As used in this Part:

(1) "Artificial obstruction" means any obstruction to the flow of water in a stream that is not a natural obstruction, including any that, while not a

significant obstruction in itself, is capable of accumulating debris and thereby reducing the flood-carrying capacity of the stream.

(1a) "Base flood" or "100-year flood" means a flood that has a one percent (1%) chance of being equaled or exceeded in any given year. The term "base flood" is used in the National Flood Insurance Program to indicate the minimum level of flooding to be addressed by a community in its floodplain management regulations.

(1b) "Base floodplain" or "100-year floodplain" means that area subject to a one percent (1%) or greater chance of flooding in any given year, as shown on the current floodplain maps prepared pursuant to the National Flood Insurance Program or approved by the Department.

(1c) "Department" means the Department of Public Safety.

(1d) "Flood hazard area" means the area designated by a local government, pursuant to this Part, as an area where development must be regulated to prevent damage from flooding. The flood hazard area must include and may exceed the base floodplain.

(2) Repealed by Session Laws 2000, c. 150, s. 1, effective August 2, 2000.

(3) "Local government" means any county or city, as defined in G.S. 160A-1.

(3a) "Lowest floor", when used in reference to a structure, means the lowest enclosed area, including a basement, of the structure. An unfinished or flood resistant enclosed area, other than a basement, that is usable solely for parking vehicles, building access, or storage is not a lowest floor.

(4) "Natural obstruction" includes any rock, tree, gravel, or other natural matter that is an obstruction and has been located within the 100-year floodplain by a nonhuman cause.

(4b) "Secretary" means the Secretary of Public Safety.

(5) "Stream" means a watercourse that collects surface runoff from an area of one square mile or greater.

(6) "Structure" means a walled or roofed building, including a mobile home and a gas or liquid storage tank.

(b) As used in this Part, the terms "artificial obstruction" and "structure" do not include any of the following:

(1) An electric generation, distribution, or transmission facility.

(2) A gas pipeline or gas transmission or distribution facility, including a compressor station or related facility.

(3) A water treatment or distribution facility, including a pump station.

(4) A wastewater collection or treatment facility, including a lift station.

(5) Processing equipment used in connection with a mining operation. (1971, c. 1167, s. 3; 2000-150, s. 1; 2011-145, s. 19.1(g).)

§ 143-215.53: Repealed by Session Laws 2000-150, s. 1.

§ 143-215.54. Regulation of flood hazard areas; prohibited uses.

(a) A local government may adopt ordinances to regulate uses in flood hazard areas and grant permits for the use of flood hazard areas that are consistent with the requirements of this Part.

(b) The following uses may be made of flood hazard areas without a permit issued under this Part, provided that these uses comply with local land-use ordinances and any other applicable laws or regulations:

(1) General farming, pasture, outdoor plant nurseries, horticulture, forestry, mining, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses;

(2) Ground level loading areas, parking areas, rotary aircraft ports and other similar ground level area uses;

(3) Lawns, gardens, play areas and other similar uses;

(4) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space and other similar private and public recreational uses.

(5) Land application of waste at agronomic rates consistent with a permit issued under Part 1 or Part 1A of Article 21 of Chapter 143 of the General Statutes or an approved animal waste management plan.

(6) Land application of septage consistent with a permit issued under G.S. 130A-291.1.

(c) New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities are prohibited in the 100-year floodplain except as authorized under G.S. 143-215.54A(b). (1971, c. 1167, s. 3; 1973, c. 621, s. 8; 1979, c. 413, ss. 1, 2; 2000-150, s. 1.)

§ 143-215.54A. Minimum standards for ordinances; variances for prohibited uses.

(a) A flood hazard prevention ordinance adopted by a county or city pursuant to this Part shall, at a minimum:

(1) Meet the requirements for participation in the National Flood Insurance Program and of this section.

(2) Prohibit new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities in the 100-year floodplain except as authorized under subsection (b) of this section.

(3) Provide that a structure or tank for chemical or fuel storage incidental to a use that is allowed under this section or to the operation of a water treatment plant or wastewater treatment facility may be located in a 100-year floodplain only if the structure or tank is either elevated above base flood elevation or designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

(b) A flood hazard prevention ordinance may include a procedure for granting variances for uses prohibited under G.S. 143-215.54(c). A county or city shall notify the

Secretary of its intention to grant a variance at least 30 days prior to granting the variance. A county or city may grant a variance upon finding that all of the following apply:

(1) The use serves a critical need in the community.

(2) No feasible location exists for the location of the use outside the 100-year floodplain.

(3) The lowest floor of any structure is elevated above the base flood elevation or is designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

(4) The use complies with all other applicable laws and regulations. (2000-150, s. 1.)

§ 143-215.55. Acquisition of existing structures.

A local government may acquire, by purchase, exchange, or condemnation an existing structure located in a flood hazard area in the area regulated by the local government if the local government determines that the acquisition is necessary to prevent damage from flooding. The procedure in all condemnation proceedings pursuant to this section shall conform as nearly as possible to the procedure provided in Article 3 of Chapter 40A of the General Statutes. (1971, c. 1167, s. 3; 1987, c. 827, s. 183; 2000-150, s. 1.)

§ 143-215.56. Delineation of flood hazard areas and 100-year floodplains; powers of Department; powers of local governments and of the Department.

(a) For the purpose of delineating a flood hazard area and evaluating the possibility of flood damages, a local government may:

(1) Request technical assistance from the competent State and federal agencies, including the Army Corps of Engineers, the Natural Resources Conservation Service, the Tennessee Valley Authority, the Federal Emergency Management Agency, the North Carolina Department of Public Safety, the North Carolina Geodetic Survey, the North Carolina Geological Survey, and the U.S. Geological Survey, or successor agencies.

(2) Utilize the reports and data supplied by federal and State agencies as the basis for the exercise by local ordinance or resolution of the powers and responsibilities conferred on responsible local governments by this Part.

(b) The Department shall provide advice and assistance to any local government having responsibilities under this Part. In exercising this function the Department may furnish manuals, suggested standards, plans, and other technical data; conduct training programs; give advice and assistance with respect to delineation of flood hazard areas and the development of appropriate ordinances; and provide any other advice and assistance that the Department deems appropriate. The Department shall send a copy of every rule adopted to implement this Part to the governing body of each local government in the State.

(c) A local government may delineate any flood hazard area subject to its regulation by showing it on a map or drawing, by a written description, or any combination thereof, to be designated appropriately and filed permanently with the clerk of superior court and with the register of deeds in the county where the land lies. A local government may also delineate a flood hazard area by reference to a map prepared pursuant to the National Flood Insurance Program. Alterations in the lines delineated shall be indicated by appropriate entries upon or addition to the appropriate map, drawing, or description. Entries or additions shall be made by or under the direction of the clerk of superior court. Photographic, typed or other copies of the map, drawing, or description, certified by the clerk of superior court, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. A local government may provide for the redrawing of any map. A redrawn map shall supersede for all purposes the earlier map or maps that it is designated to replace upon the filing and approval thereof as designated and provided above.

(d) The Department may prepare a floodplain map that identifies the 100-year floodplain and base flood elevations for an area for the purposes of this Part if all of the following conditions apply:

(1) The 100-year floodplain and base flood elevations for the area are not identified on a floodplain map prepared pursuant to the National Flood Insurance Program within the previous five years.

(2) The Department determines that the 100-year floodplain and the base flood elevations for the area need to be identified and the use of the area regulated in accordance with the requirements of this Part in order to prevent damage from flooding.

(3) The Department prepares the floodplain map in accordance with the federal standards required for maps to be accepted for use in administering the National Flood Insurance Program.

(e) Prior to preparing a floodplain map pursuant to subsection (d) of this section, the Department shall advise each local government whose jurisdiction includes a portion of the area to be mapped.

(f) Upon completing a floodplain map pursuant to subsection (d) of this section, the Department shall both:

(1) Provide copies of the floodplain map to every local government whose jurisdiction includes a portion of the 100-year floodplain identified on the floodplain map.

(2) Submit the floodplain map to the Federal Emergency Management Agency for approval for use in administering the National Flood Insurance Program.

(g) Upon approval of a floodplain map prepared pursuant to subsection (d) of this section by the Federal Emergency Management Agency for use in administering the National Flood Insurance Program, it shall be the responsibility of each local government whose jurisdiction includes a portion of the 100-year floodplain identified in the floodplain map to incorporate the revised map into its floodplain ordinance.

(h) To the extent permitted by National Flood Insurance Program requirements, a professionally supervised dam removal, as defined in G.S. 143-215.25, that complies with the requirements of G.S. 143-215.27(c) shall not be required to submit a Letter of Map Revision to the Department. (1971, c. 1167, s. 3; 1973, c. 621, ss. 6, 7; c. 1262, s. 23; 1977, c. 374, s. 2; c. 771, s. 4; 1987, c. 827, ss. 154, 184; 2000-150, s. 1; 2002-165, s. 1.6; 2011-145, s. 19.1(g); 2017-145, s. 1(e).)

§ 143-215.56A. Floodplain Mapping Fund.

The Floodplain Mapping Fund is established as a special revenue fund. The Fund consists of the fees credited to it under G.S. 161-11.5. Revenue in the fund may be used only to offset the Department's cost in preparing floodplain maps and performing its other duties under this Part. (2008-107, s. 29.7(c); 2013-225, s. 7(d).)

§ 143-215.57. Procedures in issuing permits.

(a) A local government may establish application forms and require maps, plans, and other information necessary for the issuance of permits in a manner consonant with the objectives of this Part. For this purpose a local government may take into account anticipated development in the foreseeable future that may be adversely affected by the obstruction, as well as existing development. They shall consider the effects of a proposed artificial obstruction in a stream in creating danger to life and property by:

(1) Water that may be backed up or diverted by the obstruction.

(2) The danger that the obstruction will be swept downstream to the injury of others.

(3) The injury or damage at the site of the obstruction itself.

(b) In prescribing standards and requirements for the issuance of permits under this Part and in issuing permits, local governments shall proceed as in the case of an ordinance for the better government of the county or city as the case may be. A city may exercise the powers granted in this Part not only within its corporate boundaries but also within the area of its extraterritorial zoning jurisdiction. A county may exercise the powers granted in this Part at any place within the county that is outside the zoning jurisdiction of a city in the county. If a city does not exercise the powers granted in this Part in the city's extraterritorial zoning jurisdiction, the county may exercise the powers granted in this Part in the city's extraterritorial zoning jurisdiction. The county may regulate territory within the zoning jurisdiction of any city whose governing body, by resolution, agrees to the regulation. The governing body of a city may, upon one year's written notice, withdraw its approval of the county regulations, and those regulations shall have no further effect within the city's jurisdiction.

(c) The local governing body is hereby empowered to adopt regulations it may deem necessary concerning the form, time, and manner of submission of applications for permits under this Part. These regulations may provide for the issuance of permits under this Part by the local governing body or by an agency designated by the local governing body, as prescribed by the governing body. Every final decision granting or denying a permit under this Part shall be subject to review by the superior court of the county, with the right of jury

trial at the election of the party seeking review. The time and manner of election of a jury trial shall be governed by G.S. 1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of an appeal, no action shall be taken that would be unlawful in the absence of a permit issued under this Part. (1971, c. 1167, s. 3; 2000-150, s. 1.)

§ 143-215.58. Violations and penalties.

(a) Any willful violation of this Part or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part shall constitute a Class 1 misdemeanor.

(a1) A local government may use all of the remedies available for the enforcement of ordinances under Chapters 153A and 160A of the General Statutes to enforce an ordinance adopted pursuant to this Part.

(b) Failure to remove any artificial obstruction or enlargement or replacement thereof, that violates this Part or any ordinance adopted (or the provision of any permit issued) under the authority of this Part, shall constitute a separate violation of this Part for each day that the failure continues after written notice from the county board of commissioners or governing body of a city.

(c) In addition to or in lieu of other remedies, the county board of commissioners or governing body of a city may institute any appropriate action or proceeding to restrain or prevent any violation of this Part or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part, or to require any person, firm or corporation that has committed a violation to remove a violating obstruction or restore the conditions existing before the placement of the obstruction. (1971, c. 1167, s. 3; 1993, c. 539, s. 1022; 1994, Ex. Sess., c. 24, s. 14(c); 2000-150, s. 1.)

§ 143-215.59. Other approvals required.

(a) The granting of a permit under the provisions of this Part shall in no way affect any other type of approval required by any other statute or ordinance of the State or any political subdivision of the State, or of the United States, but shall be construed as an added requirement.

(b) No permit for the construction of any structure to be located within a flood hazard area shall be granted by a political subdivision unless the applicant has first obtained the permit required by any local ordinance adopted pursuant to this Part. (1971, c. 1167, s. 3; 2000-150, s. 1.)

§ 143-215.60. Liability for damages.

No action for damages sustained because of injury or property damage caused by a structure or obstruction for which a permit has been granted under this Part shall be brought against the State or any political subdivision of the State, or their employees or agents. (1971, c. 1167, s. 3; 2000-150, s. 1.)

§ 143-215.61. Floodplain management.

The provisions of this Part shall not preclude the imposition by responsible local governments of land use controls and other regulations in the interest of floodplain management for the 100-year floodplain. (1971, c. 1167, s. 3; 2000-150, s. 1.)

Part 6A. Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund.

§ 143-215.62. Revolving fund established; conditions and procedures.

(a) There is established under the control and direction of the Department a Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund, to consist of any moneys that may be appropriated for use through the fund by the General Assembly or that may be made available to it from any other source for the purpose of financing the local portion of the nonfederal share of the cost of hurricane flood protection and beach erosion control projects. The Department shall, when funds are available, and in accordance with priorities established by the Commission, make advances from the fund to any county or municipality for:

(1) Advance planning and engineering work necessary or desirable in order to promote the development, construction, or preservation of hurricane flood protection and beach erosion works or projects;

(2) Construction of hurricane flood protection and beach erosion control works or projects, or other related costs which are a responsibility of local government, including costs associated with construction, such as the acquisition of land or rights-of-way or the relocation of public roads and utilities;

(3) Maintenance and nourishment of the constructed works or project.

Such advances shall be subject to repayment by the recipient to the Department from the proceeds of bonds or other obligations for the beach erosion control and hurricane flood protection works or projects, or from other funds available to the recipient, including grants.

(b) Prior to making any advance to a county or municipal government the Commission shall advise the county or municipal government:

(1) Its opinion as to whether or not the projected works or project would further beach erosion control or provide protection to life or property from floodwaters resulting from hurricanes;

(2) Its opinion as to whether or not there is a reasonable prospect of federal aid in the financing of the projected works or project and whether or not the advance will exceed the local portion of the nonfederal share of the cost of the works or project to be financed by the county or municipality making the application;

(3) Its opinion as to whether or not the anticipated financial outlays in connection with the projected works or project for the county or municipality making the application would constitute an unreasonable burden on the citizens of the county or municipality.

The Commission shall authorize no advance to a county or municipal government without first receiving satisfactory assurances from such government that the projected works or project shall be undertaken and the funds advanced repaid as provided herein.

(c) Repayment of any advance may be in equal installments or in a lump sum, but the term for such repayment shall not exceed a term of 10 years. All moneys received from repayments on advances shall be paid into the revolving fund and shall be used for the purposes set forth in this section.

(d) Repealed by Session Laws 1987, c. 827, s. 185. (1971, c. 1159, s. 1; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1987, c. 827, ss. 154, 185 .)

Part 7. Water and Air Quality Reporting.

§ 143-215.63. Short title.

This Part shall be known and may be cited as the Water and Air Quality Reporting Act of 1971. (1971, c. 1167, s. 9.)

§ 143-215.64. Purpose.

The purpose of this Article is to require all persons who are subject to the provisions of G.S. 143-215.1, 143-215.108, or 143-215.109 to file reports with the Commission covering the discharge of waste and air contaminants to the waters and outdoor atmosphere of the State and to establish and maintain approved systems for monitoring the quantity and quality of such discharges and their effects upon the water and air resources of the State. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23; 1987, c. 827, s. 154; 1989, c. 135, s. 3.)

§ 143-215.65. Reports required.

All persons subject to the provisions of G.S. 143-215.1, 143-215.108, or 143-215.109 who discharge wastes to the waters or emit air contaminants to the outdoor atmosphere of this State shall file at such frequencies as the Commission may specify and at least quarterly reports with the Commission setting forth the volume and characteristics of wastes discharged or air contaminants emitted daily or such other period of time as may be specified by the Commission in its rules. Such reports may be required less frequently than quarterly for any permit for a minor activity as defined in G.S. 143-215.1(b)(4)d. and e. Such reports shall be filed on forms provided by the Department and approved by the Commission and shall include such pertinent data with reference to the total and average volume of wastes or air contaminants discharged, the strength and amount of each waste substance or air contaminant discharged, the type and degree of treatment such wastes or air contaminants received prior to discharge and such other information as may be specified by the Commission in its rules. The information shall be used by the Commission only for the purpose of air and water pollution control. The Department shall provide proper and adequate facilities and procedures and the Commission shall adopt rules to safeguard the confidentiality of proprietary manufacturing processes except that confidentiality shall not extend to wastes discharged or air contaminants emitted. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23; 1975, c. 655, s. 4; 1987, c. 827, ss. 154, 186; 1989, c. 135, s. 4, c. 453, s. 3.)

§ 143-215.66. Monitoring required.

In order to provide for adequately monitoring the discharge of wastes to the waters and the emission of contaminants to the outdoor atmosphere and their effects upon the quality

of the environment, all persons subject to the provisions of G.S. 143-215.1, 143-215.108, or 143-215.109 who cause such discharges or emissions shall establish and maintain adequate water and air quality monitoring systems and report the data obtained therefrom to the Commission. Each monitoring system shall include the collection of water or air quality data as appropriate from such locations, in such detail, and with such frequency as required by rule of the Commission for evaluating the efficiency of treatment facilities or air-cleaning devices and the effects of the discharges or emissions upon the waters and air resources of the State. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23; 1987, c. 827, ss. 154, 187; 1989, c. 135, s. 5.)

§ 143-215.67. Acceptance of wastes to disposal systems and air-cleaning devices.

(a) No person subject to the provisions of G.S. 143-215.1, 143-215.108, or 143-215.109 shall willfully cause or allow the discharge of any wastes or air contaminants to a waste-disposal system or air-cleaning device in excess of the capacity of the disposal system or cleaning device or any wastes or air contaminants which the disposal system or cleaning device cannot adequately treat. This subsection does not prohibit the discharge of waste to a treatment works operated by a public utility or unit of local government in excess of the capacity of the treatment works by any person who holds a valid building permit issued prior to the date on which the public utility or unit of local government receives the notice required by subsection (c) of this section if the Commission finds that the discharge of waste will not result in any significant degradation in the quality of the waters ultimately receiving the discharge as provided in subsection (b) of this section.

(b) The Commission may authorize a unit of government subject to the provisions of subsection (a) of this section to accept additional wastes to its waste-disposal system upon a finding by the Commission (i) that the unit of government has secured a grant or has otherwise secured financing for planning, design, or construction of a new or improved waste disposal system which will adequately treat the additional waste, and (ii) the additional waste will not result in any significant degradation in the quality of the waters ultimately receiving the discharge. The Commission may impose such conditions on permits issued under G.S. 143-215.1 as it deems necessary to implement the provisions of this subsection, including conditions on the size, character, and number of additional dischargers. Nothing in this subsection shall be deemed to authorize a unit of government to violate water quality standards, effluent limitations or the terms of any order or permit issued under Part 1 of this Article nor does anything herein preclude the Commission from enforcing by appropriate means the provisions of Part 1 of this Article.

(c) The Commission may impose a moratorium on the addition of waste to a treatment works if the Commission determines that the treatment works is not capable of adequately treating additional waste. The Commission shall give notice of its intention to impose a moratorium at least 45 days prior to the effective date of the moratorium to any person who holds a permit for a treatment works subject to the moratorium. Except to the extent that the provisions of subsection (b) of this section apply, the Commission shall not issue a permit for a sewer line that will connect to a treatment works that the Commission has determined to be incapable of treating additional waste from the date on which the

Commission determines that the treatment works is incapable of adequately treating additional waste until the moratorium on the addition of waste to the treatment works is lifted.

(d) A public utility or unit of local government that operates a treatment works shall give notice of a moratorium on the discharge of additional waste to the treatment works within 15 days of the date on which the public utility or unit of local government receives notice of the moratorium from the Commission. The public utility or unit of local government shall give public notice of a moratorium by publication of the notice one time in a newspaper having general circulation in the county in which the treatment works is located. The Commission shall prescribe the form and content of the notice. (1971, c. 1167, s. 9; 1979, c. 566; 1987, c. 827, s. 154; 1989, c. 135, s. 6; 1995, c. 202, s. 1.)

§ 143-215.68. Repealed by Session Laws 1987, c. 827, s. 188.

§ 143-215.69. Enforcement procedures.

(a) (1) Criminal Penalties. – Except as provided in subdivision (2) of this subsection, any person who violates any provisions of this Part or any rules adopted by the Commission for its implementation shall be guilty of a Class 3 misdemeanor and shall be only liable to a penalty of not less than one hundred dollars ($100.00), nor more than one thousand dollars ($1,000) for each violation and each day such person shall fail to comply after having been officially notified by the Commission shall constitute a separate offense subject to the foregoing penalty.

(2) Any person who violates any provision of this Part or any rule adopted by the Commission to implement this Part that imposes a requirement that is also a requirement under Title V or any rule adopted by the Commission to implement Title V shall be subject to punishment as provided by G.S. 143-215.114B.

(b) Civil Penalties. – The Commission may assess a civil penalty against a person who violates this Part or a rule of the Commission implementing this Part. For persons subject to the provisions of G.S. 143-215.1, the amount of the penalty shall not exceed the maximum imposed in G.S. 143-215.6A and shall be assessed in accordance with the procedure set out in G.S. 143-215.6A for assessing a civil penalty. For persons subject to the provisions of Title V, G.S. 143-215.108, or G.S. 143-215.109, the amount of penalty shall not exceed the maximum imposed in G.S. 143-215.114A and shall be assessed in accordance with the procedure set out in G.S. 143-215.114A for assessing a civil penalty. The clear proceeds of civil penalties assessed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c) Injunctive Relief. – Upon violation of any of the provisions of this Part, a rule implementing this Part, or an order issued under this Part, the Secretary may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violations, request the Attorney General to institute a civil action in the superior court of the county or counties where the violation occurred in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or require

corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of same.

(d) Repealed by Session Laws 1987, c. 827, s. 189. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23; 1975, c. 842, s. 5; 1977, c. 771, s. 4; 1987, c. 827, ss. 154, 189; 1989 (Reg. Sess., 1990), c. 1045, s. 10; 1993, c. 400, s. 6; c. 539, s. 1023; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 66.)

Part 8. Grants for Water Resources Development Projects.

§ 143-215.70. Secretary of Environmental Quality authorized to accept applications.

The Secretary is authorized to accept applications for grants for nonfederal costs relating to water resources development projects from units of local government sponsoring such projects, except that this shall not include small watershed projects reviewed by the State Soil and Water Conservation Commission pursuant to G.S. 139-55. (1979, c. 1046, s. 1; 1987, c. 827, s. 154; 1989, c. 727, s. 218(109); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v).)

§ 143-215.71. Purposes for which grants may be requested.

Applications for grants may be made for the nonfederal share of water resources development projects for the following purposes in amounts not to exceed the percentage of the nonfederal costs indicated:

(1) General navigation projects that are sponsored by local governments – eighty percent (80%);
(2) Recreational navigation projects – twenty-five percent (25%);
(3) Construction costs for water management (flood control and drainage) purposes, including utility and road relocations not funded by the State Department of Transportation – sixty-six and two-thirds percent (66 2/3%), but only of that portion of the project specifically allocated for such flood control or drainage purposes;
(4) Stream restoration – sixty-six and two-thirds percent (66 2/3%);
(5) Protection of privately owned beaches where public access is allowed and provided for – seventy-five percent (75%);
(6) Land acquisition and facility development for water-based recreation sites operated by local governments – fifty percent (50%);
(7) Aquatic weed control projects sponsored by local governments – fifty percent (50%);
(8) Projects that are part of the Environmental Quality Incentives Program – one hundred percent (100%). (1979, c. 1046, s. 1; 1983, c. 450; 1987, c. 781, s. 1; 2016-94, s. 37.2(h).)

§ 143-215.72. Review of applications.

(a) The Secretary shall receive and review applications for the grants specified in this Part and approve, approve in part, or disapprove such applications.

(b) In reviewing each application, the Secretary shall consider:

(1) The economic, social, and environmental benefits to be provided by the projects;

(2) Regional benefits of projects to an area greater than the area under the jurisdiction of the local sponsoring entity;

(3) The financial resources of the local sponsoring entity;

(4) The environmental impact of the project;

(5) Any direct benefit to State-owned lands and properties.

(c) When the Secretary issues new or revised policies for review of grant applications and fund disbursement under this Part, those policies shall not apply to a project already approved for funding unless the project applicant agrees to the new or revised policy. For purposes of this section, a project is approved for funding when the Department enters into a contract or other binding agreement to provide any share of State funding for the project. Nothing in this subsection is intended to preclude the Secretary from issuing or enforcing policies applicable to projects approved for funding in order to comply with a requirement of State law or federal law or regulations.

(d) The following procedures apply only to grants for the purpose set forth in G.S. 143-215.71(8):

(1) A nongovernmental entity managing, administering, or executing the grant on behalf of a unit of local government may apply as a co-applicant for the grant and may be included as a responsible party on any required resolution issued by the unit of local government.

(2) Upon request signed by the grant applicant and co-applicant, the Department shall make periodic payments to the co-applicant for its share of nonfederal costs of a project prior to receipt of a final practice approval from the Natural Resources Conservation Service if the grantee has submitted a certified reimbursement request or invoice. (1979, c. 1046, s. 1; 2017-57, s. 36.3(h); 2017-212, s. 4.10(b).)

§ 143-215.73. Recommendation and disbursal of grants.

After review of grant applications, project funds shall be disbursed and monitored by the Department. (1979, c. 1046, s. 1; 1983, c. 717, s. 70; 1985 (Reg. Sess., 1986), c. 955, s. 93; 1987, c. 827, s. 154; 2006-203, s. 90.)

Part 8A. Water Resources Development Projects.

§ 143-215.73A. Water Resources Development Plan.

(a) Plan prepared. – Before 1 July in each calendar year, the Department of Environmental Quality shall prepare a statewide plan for water resources development projects for a period of six years into the future. The plan shall be known as the Water Resources Development Plan. If the plan differs from the Water Resources Development Plan adopted for the preceding calendar year, the Department shall indicate the changes

and the reasons for such changes. The Department shall submit the plan to the Director of the Budget for review.

(b) Projects listed. – The plan shall list the following water resources development projects based on their status as of 1 May of the year in which the plan is prepared:

(1) Projects approved by the Congress of the United States.
(2) Projects for which the Congress of the United States has appropriated funds.
(3) Projects for which grant applications have been submitted under Part 8 of Article 21 of Chapter 143 of the General Statutes.
(4) Projects for which grant applications have been submitted under Article 4 of Chapter 139 of the General Statutes.
(5) Projects planned as federal reservoir projects but for which no federal funds are scheduled and for which local governments are seeking State financial assistance.

(c) Project priorities and funding recommendations. – The Department shall assign a priority to each project within each of the five categories listed under subsection (b) of this section either by giving the project a number, with "1" assigned to the highest priority, or by recommending no funding. The Department shall state its reasons for recommending the funding, deferral, or elimination of a project. The Department shall determine the priority of a project based on the following criteria: local interest in the project, the cost of the project to the State, the benefit of the project to the State, and the environmental impact of the project.

(c1) The Department shall provide information annually to appropriate county or municipal officials about the availability, requirements, and process to secure federal and State funding under the Water Resource Development Program.

(d) Project information. – For each project listed under subsection (b) of this section, the Water Resources Development Plan shall:

(1) Provide a brief description.
(2) If federal, list the estimated cost of each of the following phases that have not been completed as of 1 July, (i) feasibility study, (ii) construction, (iii) operation and maintenance, and the amount of State funds required to match the federal funds needed.
(3) If State or local, list the estimated cost to complete the project and amount of State funds required under G.S. 143-215.71 or G.S. 139-54.
(4) Indicate the total cost to date and the State share of that cost.
(5) Indicate the status.
(6) Indicate the estimated completion date.

(e) Distribution of the plan. – The Director of the Budget shall provide copies of the plan to the General Assembly along with the recommended biennial budget and the recommended revised budget for the second year of the biennium.

(f) Budget recommendations. – The Director of the Budget shall determine which projects, if any, will be included in the recommended biennial budget and in the recommended revised budget for the second year of the biennium. The budget document

transmitted to the General Assembly shall identify the projects or types of projects recommended for funding. (1991, c. 181, s. 1; 1997-443, s. 11A.119(a); 2006-203, s. 91; 2011-145, s. 30.3(e); 2015-241, s. 14.30(u).)

§ 143-215.73B: Reserved for future codification purposes.

§ 143-215.73C: Reserved for future codification purposes.

§ 143-215.73D: Reserved for future codification purposes.

§ 143-215.73E: Reserved for future codification purposes.

Part 8B.

Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund.

§ 143-215.73F. Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund.

(a) Fund Established. – The Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund is established as a special revenue fund. The Fund consists of fees credited to it under G.S. 75A-3 and G.S. 75A-38, taxes credited to it under G.S. 105-449.126, and funds contributed by non-State entities.

(b) Uses of Fund. – Revenue in the Fund may only be used for the following purposes:

(1) To provide the State's share of the costs associated with any dredging project designed to keep shallow draft navigation channels located in State waters or waters of the state located within lakes navigable and safe.

(2) For aquatic weed control projects in waters of the State under Article 15 of Chapter 113A of the General Statutes. Funding for aquatic weed control projects is limited to one million dollars ($1,000,000) in each fiscal year.

(3) For the compensation of a beach and inlet management project manager with the Division of Coastal Management of the Department of Environmental Quality for the purpose of overseeing all activities related to beach and inlet management in the State. Funding for the position is limited to ninety-nine thousand dollars ($99,000) in each fiscal year.

(4) To provide funding for siting and acquisition of dredged disposal easement sites associated with the maintenance of the Atlantic Intracoastal Waterway between the border with the state of South Carolina and the border with the Commonwealth of Virginia, under a Memorandum of Agreement between the State and the federal government.

(c) Cost-Share. – Any project funded by revenue from the Fund must be cost-shared with non-State dollars as follows:

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

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

(3) The cost-share for an aquatic weed control project shall be at least one non-State dollar for every dollar from the Fund. The cost-share for an aquatic weed control project located within a component of the State Parks System shall be provided by the Division of Parks and Recreation of the Department of Natural and Cultural Resources. The Division of Parks and Recreation may use funds allocated to the State Parks System for capital projects under G.S. 143B-135.56 for the cost-share.

(4) The cost-share for the dredging of the access canal around the Roanoke Island Festival Park shall be paid from the Historic Roanoke Island Fund established by G.S. 143B-131.8A.

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

(e) Definitions. – For purposes of this section, "shallow draft navigation channel" means (i) a waterway connection with a maximum depth of 16 feet between the Atlantic Ocean and a bay or the Atlantic Intracoastal Waterway, (ii) a river entrance to the Atlantic Ocean through which tidal and other currents flow, or (iii) other interior coastal waterways. The term includes the Atlantic Intracoastal Waterway and its side channels, Beaufort Harbor, Bogue Inlet, Carolina Beach Inlet, the channel from Back Sound to Lookout Back, channels connected to federal navigation channels, Lockwoods Folly River, Manteo/Shallowbag Bay, including Oregon Inlet, Masonboro Inlet, New River, New Topsail Inlet, Rodanthe, Hatteras Inlet, Rollinson, Shallotte River, Silver Lake Harbor, and the waterway connecting Pamlico Sound and Beaufort Harbor.

(f) Report. – The Department shall report annually no later than October 1 regarding projects funded under this section to the Fiscal Research Division and the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources. The report shall include project type (dredging or weed control), project location, brief project description, entity receiving the funding, and amount of funding provided. (2013-360, s. 14.22(h); 2014-100, s. 14.19(a); 2015-241, ss. 14.6(a), 14.30(bbb); 2016-94, ss. 14.12(a), 14.19; 2017-190, s. 3.2(b); 2017-197, s. 4.11; 2018-5, s. 13.6.)

Part 8C. Deep Draft Navigation Channel Dredging and Maintenance Fund.

§ 143-215.73J. Deep Draft Navigation Channel Dredging and Maintenance Fund.

(a) Fund Established. – The Deep Draft Navigation Channel Dredging and Maintenance Fund is established as a special revenue fund. The Fund consists of General Fund appropriations, gifts, or grants, including monies contributed by a non-State entity for a particular dredging project or group of projects and any other revenues specifically allocated to the Fund by an act of the General Assembly.

(b) Uses of the Fund. – Revenue credited to the Fund may only be used for costs associated with projects providing safe and efficient navigational access to a State Port, including the design, construction, expansion, modification, or maintenance of deep draft navigation channels, turning basins, berths, and related structures, as well as surveys or studies related to any of the foregoing and the costs of disposal of dredged material.

(c) Conditions on Funding. – State funds credited to the Fund from the sources described in subsection (a) of this section must be cost-shared on a one-to-one basis with funds provided by the State Ports Authority, provided that:

(1) Funds contributed to the Fund by a non-State entity are not considered State funds and may be used to provide the cost-share required by this subsection.

(2) The Secretary may waive or modify the cost-share requirement for any project that supplements Corps funding for a study authorized by the Corps related to navigational access to a State Port, based on availability of alternate funding sources.

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

(e) Definitions. – The following definitions apply in this Part:

(1) Corps. – The United States Army Corps of Engineers.

(2) State Port. – Facilities at Wilmington or Morehead City managed or operated by the State Ports Authority. (2015-241, s. 14.6(c).)

Part 8D.

Coastal Storm Damage Mitigation Fund.

§ 143-215.73M. Coastal Storm Damage Mitigation Fund.

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

(b) Uses of the Fund. – Revenue credited to the Fund may only be used for costs associated with beach nourishment, artificial dunes, and other projects to mitigate or remediate coastal storm damage to the ocean beaches and dune systems of the State.

(c) Conditions on Funding. – Any project funded by revenue from the Fund must be cost-shared with non-State dollars on a basis of at least one non-State dollar for every one dollar from the Fund.

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

(e) Report. – The Department shall report annually no later than October 1 regarding projects funded under this section to the Fiscal Research Division and the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources. The report shall include project type, project location, brief project description, entity receiving the funding, and amount of funding provided. (2017-209, s. 6; 2018-5, s. 13.10(b).)

Part 9. Nonpoint Source Pollution Control Program.

§§ 143-215.74 through 143-215.74B: Recodified as Article 72 of Chapter 106, G.S. 106-850 through G.S. 106-852, by Session Laws 2011-145, s. 13.22A(t), effective July 1, 2011.

Part 9A. Application of Animal Waste.

§§ 143-215.74C through 143-215.74E: Repealed by Session Laws 1995 (Regular Session, 1996), c. 626, s. 13.

Part 10. Stream Watch Program.

§ 143-215.74F. Program authorized.

The Department of Environment, Health, and Natural Resources may establish a Stream Watch Program to recognize and assist civic, environmental, educational, and other volunteer groups interested in good water resources management and protection. The goals of the Stream Watch Program are to encourage volunteer groups to adopt streams and other water bodies and to work toward their good management and protection; to increase public awareness of and involvement in water resources management; and to promote cooperative activities among volunteer groups, local government, industry, the Department of Environment, Health, and Natural Resources, and other agencies and entities for improved protection and management of water resources. (1989, c. 412, c. 727, s. 218; 1997-443, s. 11A.119(a).)

§ 143-215.74G. Applications.

The Department may accept and approve applications to affiliate with the Stream Watch Program from volunteer groups willing to adopt a specific body of water and to

conduct at least one project each year to promote the protection of the adopted body of water or to increase public understanding of water resources. (1989, c. 412.)

§ 143.215.74H. Assistance.

The Department may provide technical, organizational, and financial assistance to stream watch groups from such resources as may be available to the Department. (1989, c. 412.)

§ 143-215.74I. Projects.

The Department may encourage and assist stream watch groups to carry out projects for stream cleanup and restoration, stream surveillance and water quality monitoring, public education, the establishment of trails and greenways, recreational use of water bodies, and other activities in furtherance of the goals of the Stream Watch Program. (1989, c. 412.)

§ 143-215.74J. Reserved for future codification purposes.

§ 143-215.74K. Reserved for future codification purposes.

§ 143-215.74L. Reserved for future codification purposes.

Part 11. Community Conservation Assistance Program.

§ 143-215.74M: Recodified as Article 73 of Chapter 106, G.S. 106-860, by Session Laws 2011-145, s. 13.22A(x), effective July 1, 2011.

Article 21A.

Oil Pollution and Hazardous Substances Control.

Part 1. General Provisions.

§ 143-215.75. Title.

This Article shall be known and may be cited as the "Oil Pollution and Hazardous Substances Control Act of 1978." (1973, c. 534, s. 1; 1979, c. 535, s. 1.)

§ 143-215.76. Purpose.

It is the purpose of this Article to promote the health, safety, and welfare of the citizens of this State by protecting the land and the waters over which this State has jurisdiction from pollution by oil, oil products, oil by-products, and other hazardous substances. It is not the intention of this Article to exercise jurisdiction over any matter as to which the United States government has exclusive jurisdiction, nor in any wise contrary to any governing provision of federal law, and no provision of this Article shall be so construed. The General Assembly further declares that it is the intent of this Article to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 et seq., as amended, and the National

Contingency Plan for removal of oil adopted pursuant thereto. (1973, c. 534, s. 1; 1979, c. 535, s. 2.)

§ 143-215.77. Definitions.

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

(1) "Barrel" shall mean 42 U.S. gallons at 60 degrees Fahrenheit.

(2) "Commission" means the North Carolina Environmental Management Commission.

(3) "Secretary" shall mean the North Carolina Secretary of Environmental Quality.

(4) "Discharge" shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil or other hazardous substances into waters of the State or into waters outside the territorial limits of the State which affect lands, waters or uses related thereto within the territorial limits of the State, or upon land in such proximity to waters that oil or other hazardous substances is reasonably likely to reach the waters, but shall not include amounts less than quantities which may be harmful to the public health or welfare as determined pursuant to G.S. 143-215.77A; provided, however, that this Article shall not be construed to prohibit the oiling of driveways, roads or streets for reduction of dust or routine maintenance; provided further, that the use of oil or other hazardous substances, oil-based products, or chemicals on the land or waters by any State, county, or municipal government agency in any program of mosquito or other pest control, or their use by any person in accepted agricultural, horticultural, or forestry practices, or in connection with aquatic weed control or structural pest and rodent control, in a manner approved by the State, county, or local agency charged with authority over such uses, shall not constitute a discharge; provided, further, that the use of a pesticide regulated by the North Carolina Pesticide Board in a manner consistent with the labelling required by the North Carolina Pesticide Law shall not constitute a "discharge" for purposes of this Article. The word "discharge" shall also include any discharge upon land, whether or not in proximity to waters, which is intentional, knowing or willful.

(5) "Having control over oil or other hazardous substances" shall mean, but shall not be limited to, any person, using, transferring, storing, or transporting oil or other hazardous substances immediately prior to a discharge of such oil or other hazardous substances onto the land or into the waters of the State, and specifically shall include carriers and bailees of such oil or other hazardous substances. This definition shall not include any person supplying or delivering oil into a petroleum underground storage tank that is not owned or operated by the person, unless:

a. The person knows or has reason to know that a discharge is occurring from the petroleum underground storage tank at the time of supply or delivery;

b. The person's negligence is a proximate cause of the discharge; or

c. The person supplies or delivers oil at a facility that requires an operating permit under G.S. 143-215.94U and a currently valid operating permit certificate is not held or displayed at the time of the supply or delivery.

(5a) "Hazardous substance" shall mean any substance, other than oil, which when discharged in any quantity may present an imminent and substantial danger to the public health or welfare, as designated pursuant to G.S. 143-215.77A.

(6) Repealed by Session Laws 1979, c. 981, s. 5.

(7) "Department" shall mean the Department of Environmental Quality.

(8) "Oil" shall mean oil of any kind and in any form, including, but specifically not limited to, petroleum, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether singly or in combination with other substances.

(9) "Bailee" shall mean any person who accepts oil or other hazardous substances to hold in trust for another for a special purpose and for a limited period of time.

(10) "Carrier" shall mean any person who engages in the transportation of oil or other hazardous substances for compensation.

(11) "Oil terminal facility" shall mean any facility of any kind and related appurtenances located in, on or under the surface of any land, or water, including submerged lands, which is used or capable of being used for the purpose of transferring, transporting, storing, processing, or refining oil; but shall not include any facility having a storage capacity of less than 500 barrels, nor any retail gasoline dispensing operation serving the motoring public. A vessel shall be considered an oil terminal facility only in the event that it is utilized to transfer oil from another vessel to an oil terminal facility; or to transfer oil between one oil terminal facility and another oil terminal facility; or is used to store oil.

(12) "Operator" shall mean any person owning or operating an oil terminal facility or pipeline, whether by lease, contract, or any other form of agreement.

(13) "Person" shall mean any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

(14) "Pipeline" shall mean any conduit, pipe or system of pipes, and any appurtenances related thereto and used in conjunction therewith, used, or capable of being used, for transporting or transferring oil to, from, or between oil terminal facilities.

(15) "Restoration" or "restore" shall mean any activity or project undertaken in the public interest or to protect public interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil or other hazardous substances discharge as nearly as is possible or desirable to the condition which existed prior to the discharge.

(16) "Transfer" shall mean the transportation, on-loading or off-loading of oil or other hazardous substances between or among two or more oil terminal facilities; between or among oil terminal facilities and vessels; and between or among two or more vessels.

(17) "Vessel" shall include every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and shall include, but shall not be limited to, barges and tugs; provided that the term "vessel" as used herein shall not apply to any pleasure, sport or commercial fishing vessel which has a fuel capacity of less than 500 gallons and is not used to transport petroleum, petroleum products, or general cargo.

(18) "Waters" shall mean any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, waterway, wetlands, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 771, s. 4; 1979, c. 535, ss. 3-10; c. 981, ss. 3-5; 1979, 2nd Sess., c. 1209, ss. 1, 2; 1987, c. 827, s. 155; 1989, c. 656, s. 1; c. 727, s. 218(111); 1995, c. 377, s. 12; 1997-443, s. 11A.119(a); 2015-241, ss. 14.30(u), (v).)

§ 143-215.77A. Designation of hazardous substances and determination of quantities which may be harmful.

(a) Those substances designated as hazardous as of June 1, 1980, by the Administrator of the United States Environmental Protection Agency under 33 U.S.C. 1321(b)(2)(A) are designated as hazardous substances for purposes of this Article.

(b) Such quantities of hazardous substances as may be harmful as determined as of June 1, 1980, by the Administrator of the United States Environmental Protection Agency under 33 U.S.C. 1321(b)(4) are quantities which may be harmful for purposes of this Article.

(c) Changes by Administrator of the United States Environmental Protection Agency in the designation of hazardous substances and the determination of quantities which may be harmful shall be deemed to be made to the designation of hazardous substances and the determination of quantities for purposes of this Article, unless the Commission objects within 120 days of

publication of the action in the Federal Register. The Commission may object to a change by the Administrator on the basis that the change is not consistent with the standards for determining hazardous substances or harmful quantities. Upon objection by the Commission to a change, the Commission shall initiate rule-making proceedings on the change. The change will not be made pending the hearing and a final determination by the Commission. After the hearing, the Commission may reject the change upon a finding that the change is not consistent with the standards for determining hazardous substances or harmful quantities. (1979, 2nd Sess., c. 1209, s. 3; 1987, c. 827, s. 190.)

§ 143-215.78. Oil pollution control program.

The Department shall establish an oil pollution control program for the administration of this Article. The Department may employ and prescribe the duties of employees assigned to this activity. (1973, c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, s. 11.)

§ 143-215.79. Inspections and investigations; entry upon property.

The Commission, through its authorized representatives, is empowered to conduct such inspections and investigations as shall be reasonably necessary to determine compliance with the provisions of this Article; to determine the person or persons responsible for violation of this Article; to determine the nature and location of any oil or other hazardous substances discharged to the land or waters of this State; and to enforce the provisions of this Article. The authorized representatives of the Commission are empowered upon presentation of their credentials to enter upon any private or public property, including boarding any vessel, for the purpose of inspection or investigation or in order to conduct any project or activity to contain, collect, disperse or remove oil or other hazardous substances discharges or to perform any restoration necessitated by an oil or other hazardous substances discharge. Neither the State nor its agencies, employees or agents shall be liable in trespass or damages arising out of the conduct of any inspection, investigation, or oil or other hazardous substances removal or restoration project or activity other than liability for damage to property or injury to persons arising out of the negligent or willful conduct of an employee or agent of the State during the course of an inspection, investigation, project or activity. (1973, c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, s. 12; 1987, c. 827, s. 154.)

§ 143-215.80. Confidential information.

Any information relating to a secret process, device or method of manufacturing or production discovered or obtained in the course of an inspection, investigation, project or activity conducted pursuant to this Article shall not be revealed except as may be required by law or lawful order or process. (1973, c. 534, s. 1.)

§ 143-215.81. Authority supplemental.

The authority and powers granted under this Article shall be in addition to, and not in derogation of, any authority or powers vested in the Commission under any other provision of law, except to the extent that such other powers or authority may conflict directly with the powers and authority granted under this Article. (1973, c. 534, s. 1; c. 1262, s. 23; 1987, c. 827, ss. 154, 191.)

§ 143-215.82. Local ordinances.

Nothing in the Article shall be construed to deny any county, municipality, sanitary district, metropolitan sewerage district or other authorized local governmental entity, by ordinance,

regulation or law, from exercising police powers with reference to the prevention and control of oil or other hazardous substances discharges to sewers or disposal systems. (1973, c. 534, s. 1; 1979, c. 535, s. 13.)

Part 2. Oil Discharge Controls.

§ 143-215.83. Discharges.

(a) Unlawful Discharges. – It shall be unlawful, except as otherwise provided in this Part, for any person to discharge, or cause to be discharged, oil or other hazardous substances into or upon any waters, tidal flats, beaches, or lands within this State, or into any sewer, surface water drain or other waters that drain into the waters of this State, regardless of the fault of the person having control over the oil or other hazardous substances, or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause.

(b) Excepted Discharges. – This section shall not apply to discharges of oil or other hazardous substances in the following circumstances:

(1) When the discharge was authorized by an existing rule of the Commission.

(2) When any person subject to liability under this Article proves that a discharge was caused by any of the following:

a. An act of God.

b. An act of war or sabotage.

c. Negligence on the part of the United States government or the State of North Carolina or its political subdivisions.

d. An act or omission of a third party, whether any such act or omission was or was not negligent.

e. Any act or omission by or at the direction of a law-enforcement officer or fireman.

(c) Permits. – Any person who desires or proposes to discharge oil or other hazardous substances onto the land or into the waters of this State shall first make application for and secure the permit required by G.S. 143-215.1. Application shall be made pursuant to the rules adopted by the Commission. Any permit granted pursuant to this subsection may contain such terms and conditions as the Commission shall deem necessary and appropriate to conserve and protect the land or waters of this State and the public interest therein. (1973, c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, s. 14; 1987, c. 827, ss. 154, 192.)

§ 143-215.84. Removal of prohibited discharges.

(a) Person Discharging. – Except as provided in subsection (a2) of this section, any person having control over oil or other hazardous substances discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Commission. The owner of an underground storage tank

who is the owner of the tank only because he is the owner of the land on which the underground storage tank is located, who did not know or have reason to know that the underground storage tank was located on his property, and who did not become the owner of the land as the result of a transfer or transfers to avoid liability for the underground storage tank shall not be deemed to be responsible for a release or discharge from the underground storage tank.

(a1) The Commission shall not require collection or removal of a discharge or restoration of an affected area under subsection (a) of this section if the person having control over oil or other hazardous substances discharged in violation of this Article complies with rules governing the collection and removal of a discharge and the restoration of an affected area adopted by the Commission pursuant to G.S. 143-214.1 or G.S. 143-215.94V. This subsection shall not be construed to affect the rights of any person under this Article or any other provision of law.

(a2) Discharges of Mineral Oil From Electrical Equipment. – As used in this subsection, "mineral oil" means a light nontoxic liquid petroleum distillate used as a coolant and insulator in electrical equipment owned by a public utility. Any person having control over mineral oil discharged from electrical equipment owned by a public utility, as defined in G.S. 62-100, including, but not limited to, transformers, regulators, bushings, and capacitors, shall restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. A person shall notify the applicable regional office of the Department by telephone, hand delivery, electronic mail, or fax when the restoration has been properly completed for a discharge that (i) exceeds 25 gallons, (ii) is directly to surface waters or causes a sheen on surface waters of the State, or (iii) is at a distance of 100 feet or less from any surface water and contains 50 parts per million or more of polychlorinated biphenyls. Where soil removal is necessary as part of a cleanup, all visible traces of the mineral oil shall be removed. For discharges of mineral oil which contain 50 parts per million or more of polychlorinated biphenyls, cleanup shall be performed in compliance with applicable provisions of the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., as amended. If it is not feasible to collect and remove the discharge of mineral oil from electrical equipment within 24 hours of confirmation of the release, the person responsible shall take all practicable actions to contain, treat, and disperse the discharge, except that no chemical or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Commission.

(b) Removal by Department. – Notwithstanding the requirements of subsections (a) and (a2) of this section, the Department is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat or disperse oil or other hazardous substances discharged onto the land or into the waters of the State and to perform any necessary restoration. The Secretary shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel

and for use of the State's equipment and material. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public interest or public property, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 et seq.

(c), (d) Repealed by Session Laws 1989, c. 656, s. 2.

(e) Notification of Completed Removal of Prohibited Discharges. – 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 discharge of oil or a hazardous substance in violation of this Article has been remediated to unrestricted use standards. A request for a determination that a discharge 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 discharge has been remediated to unrestricted use standards, the Department shall issue a written notification that no further remediation of the discharge will be required. The notification shall state that no further remediation of the discharge will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the discharge 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 discharge to unrestricted use standards.

(f) In order to reduce or eliminate the danger to public health or the environment posed by a discharge or release of oil or a hazardous substance, 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: (i) pursuant to rules for remediation of soil or groundwater contamination adopted by the Commission; (ii) with respect to the cleanup of a discharge or release from a petroleum underground storage tank, pursuant to rules adopted by the Commission pursuant to G.S. 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d). 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 oil or hazardous substance discharge site. Any land-use restriction may also be enforced by the Department through the remedies provided in this Article, Part 2 of Article 1 of Chapter 130A of the General Statutes, 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. (1973, c. 534, s. 1; c. 1262, s. 23; 1975, c. 885; 1977, c. 771, s. 4; 1979, c. 535, s. 15; 1987, c. 827, ss. 154, 193; 1989, c. 656, s. 2; 1991, c. 538, s. 14; 1995, c. 377, s. 13; 1997-357, s. 7; 1997-394, s. 4; 1997-456, s. 50; 2001-384, s. 11; 2011-38, s. 2.)

§ 143-215.85. Required notice.

(a) Except as provided in G.S. 143-215.94E(a1) and subsections (b) and (c) of this section, every person owning or having control over oil or other substances discharged in any circumstances other than pursuant to a rule adopted by the Commission, a regulation of the U.S. Environmental Protection Agency, or a permit required by G.S. 143-215.1 or the Federal Water Pollution Control Act, upon notice that such discharge has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. The agent or employee of the Department receiving the notification shall immediately notify the Secretary or such member or members of the permanent staff of the Department as the Secretary may designate. If the discharged substance of which the Department is notified is a pesticide regulated by the North Carolina Pesticide Board, the Department shall immediately inform the Chairman of the Pesticide Board. Removal operations under this Article of substances identified as pesticides defined in G.S. 143-460 shall be coordinated in accordance with the Pesticide Emergency Plan adopted by the North Carolina Pesticide Board; provided that, in instances where entry of such hazardous substances into waters of the State is imminent, the Department may take such actions as are necessary to physically contain or divert such substance so as to prevent entry into the surface waters.

(b) As used in this subsection, "petroleum" has the same meaning as in G.S. 143-215.94A. A person who owns or has control over petroleum that is discharged into the environment shall immediately take measures to collect and remove the discharge, report the discharge to the Department within 24 hours of the discharge, and begin to restore the area affected by the discharge in accordance with the requirements of this Article if the volume of the petroleum that is discharged is 25 gallons or more or if the petroleum causes a sheen on nearby surface water or if the petroleum is discharged at a distance of 100 feet or less from any surface water body. If the volume of petroleum that is discharged is less than 25 gallons, the petroleum does not cause a sheen on nearby surface water, and the petroleum is discharged at a distance of more than 100 feet from all surface water bodies, the person who owns or has control over the petroleum shall immediately take measures to collect and remove the discharge. If a discharge of less than 25 gallons of petroleum cannot be cleaned up within 24 hours of the discharge or if the discharge causes a sheen on nearby surface water, the person who owns or has control over the petroleum shall immediately notify the Department.

(c) As used in this subsection, "mineral oil" means a light nontoxic liquid petroleum distillate used as a coolant and insulator in electrical equipment owned by a public utility. Any person who owns or has control over mineral oil discharged from electrical equipment

owned by a public utility, as defined in G.S. 62-100, including, but not limited to, transformers, regulators, bushings, and capacitors, shall report the discharge to the applicable regional office of the Department within 24 hours of confirmation of a discharge when the discharge (i) exceeds 25 gallons, (ii) is directly to surface waters or causes a sheen on surface waters of the State, or (iii) is at a distance of 100 feet or less from any surface water and contains 50 parts per million or more of polychlorinated biphenyls. The notification shall include the time of discovery, address or location of the release, immediate actions taken, estimated amount of the release, and, if known, the concentration of polychlorinated biphenyls present in the discharge. This information may be submitted by telephone, hand delivery, electronic mail, or fax. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 771, s. 4; c. 858, s. 1; 1979, c. 535, ss. 16, 17; 1987, c. 827, ss. 154, 194; 2000-54, s. 1; 2011-38, s. 1.)

§ 143-215.85A. Recordation of oil or hazardous substance discharge sites.

(a) The owner of the real property on which a site is located that is subject to current or future use restrictions approved as provided in G.S. 143-215.84(f) shall submit to the Department a survey plat as required by this section within 180 days after the owner is notified to do so. The survey plat shall identify areas designated by the Department, shall be prepared and certified by a professional land surveyor, and shall be entitled "NOTICE OF OIL OR HAZARDOUS SUBSTANCE DISCHARGE SITE". Where an oil or hazardous substance discharge 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 oil or hazardous substances known to 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. 1.20, 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 the 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 oil or hazardous substance discharge site that is subject to current or future land-use restrictions under this section 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 an oil or hazardous substance discharge site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Oil or Hazardous Substance Discharge 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) 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. (1997-394, s. 5; 1997-443, s. 11A.119(b); 1997-456, s. 55.6(a), (b); 2012-18, s. 1.20; 2015-286, s. 4.7(d).)

§ 143-215.86. Other State agencies and State-designated local agencies.

(a) Planning. – The State Emergency Response Commission shall be responsible for developing a program, including training, for the waters of the State, including offshore marine waters, to enable the State to respond to an emergency oil or other hazardous substances spillage. In carrying out its duties under this section, designated representatives of the State Emergency Response Commission, the Board of Transportation, the Wildlife Resources Commission, the Environmental Management Commission, the Division of Marine Fisheries, the Outer Continental Shelf Lands Office of the Department of Administration, and any other agency or agencies of the State which the State Emergency Response Commission shall deem necessary and appropriate, shall confer and establish plans and procedures for the assignment and utilization of personnel, equipment and material to be used in carrying out the purposes of this Part. Every State agency involved is authorized to adopt such rules as shall be necessary to effectuate the purposes of this section.

(b) Cooperative Effort. – The Board of Transportation, the North Carolina Wildlife Resources Commission, the Division of Marine Fisheries, and any other agency of this State and any local agency designated by the State shall cooperate with and lend assistance to the Commission by assigning to the Commission upon its request personnel, equipment, and material to be utilized in any project or activity related to the containment, collection, dispersal, or removal of oil or other hazardous substances discharged upon the land or discharged into waters affecting this State.

(c) Trucks. – The Secretary of Transportation may, after consultation with the Secretary of Environmental Quality, purchase and equip a sufficient number of trucks designed to carry out the provisions of subsection (b) of this section. These trucks shall be maintained by the Department of Transportation and shall be strategically located at various locations throughout the State so as to furnish a ready response when word of an oil or other hazardous substances discharge has been received. The Secretary of Environmental Quality or his designee will, after consultation, decide where the trucks are to be located.

(d) Rules. – The Secretary of Transportation and the Secretary of Environmental Quality or their designees shall adopt rules for the placement of these trucks and shall determine the manner and way in which they are to be used. The Secretary of Environmental Quality shall reimburse the Department of Transportation for expenses incurred by the Department of Transportation during cleanups as provided in G.S. 143-215.88.

(e) Accounts. – Every State agency or other State-designated local agency participating in the containment, collection, dispersal, or removal of an oil or other hazardous substances discharge or in restoration necessitated by such discharge, shall keep a record of all expenses incurred in carrying out any such project or activity including the actual services performed by the agency's personnel and the use of the agency's personnel and the use of the agency's equipment and material. A copy of all records shall be delivered to the Commission upon completion of the project or activity. (1973, c. 507, s. 5; c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, ss. 18, 19; 1987, c. 827, ss. 154, 195; 1989, c. 656, s. 3; c. 727, ss. 164, 165; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v).)

§ 143-215.87. Oil or Other Hazardous Substances Pollution Protection Fund.

There is hereby established under the control and direction of the Department an Oil or Other Hazardous Substances Pollution Protection Fund which shall be a nonlapsing, revolving fund consisting of any moneys appropriated for such purpose by the General Assembly or that shall be available to it from any other source. The moneys shall be used to defray the expenses of any project or program for the containment, collection, dispersal or removal of oil or other hazardous substances discharged to the land or waters of this State, or discharged into waters outside the territorial limits of the State which affect land and waters or related uses within the State; to assess damages for injury to, destruction of, or loss of use of natural resources; and to develop and implement plans for restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources injured by the discharge. In addition to any moneys that shall be appropriated or otherwise made available to it, the fund shall be maintained by fees, charges, or other moneys except for the clear proceeds of civil penalties paid to or recovered by or on behalf of the Department under the provisions of this Part. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, or other payments as damages authorized by this Part except for the clear proceeds of civil penalties shall be paid to the Oil or Other Hazardous Substances Pollution Protection Fund in an amount equal to the sums expended from the fund for the project or activity.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, s. 20; 1989, c. 656, s. 4; 1993, c. 402, s. 10; 1998-215, s. 67(b).)

§ 143-215.88. Payment to State agencies or State-designated local agencies.

Upon completion of any oil or other hazardous substances removal or restoration project or activity conducted pursuant to the provisions of this Part, each agency of the State or any State-designated local agency that has participated by furnishing personnel, equipment or material shall deliver to the Department a record of the expenses incurred by the agency. The amount of incurred expenses shall be disbursed by the Secretary to each such agency from the Oil or Other Hazardous Substances Pollution Protection Fund. Upon completion of any oil or other hazardous substances removal or restoration project or activity, the Secretary shall prepare a statement of all expenses and costs of the project or activity expended by the State and shall make demand for payment upon the person having control over the oil or other hazardous substances discharged to the land or waters of the State, unless the Commission shall determine that the discharge occurred due to any of the reasons stated in G.S. 143-215.83(b). Any person having control of oil or other hazardous substances discharged to the land or waters of the State in violation of the provisions of this Part and any other person causing or contributing to the discharge of oil or other hazardous substances shall be directly liable to the State for the necessary expenses of oil or other hazardous substances cleanup projects and activities arising from such discharge and the State shall have a cause of action to recover from any or all such persons. If the person having control over the oil or other hazardous substances discharged shall fail or refuse to pay the sum expended by the State, the Secretary shall refer the matter to the Attorney General of North Carolina, who shall institute an action in the name of the State in the Superior Court of Wake County, or in his discretion, in the superior court of the county in which the discharge occurred, to recover such cost and expenses. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 858, s. 2; 1979, c. 535, ss. 21, 22; 1987, c. 827, s. 154.)

§ 143-215.88A. Enforcement procedures: civil penalties.

(a) Any person who intentionally or negligently discharges oil or other hazardous substances, or knowingly causes or permits the discharge of oil in violation of this Part or fails to report a discharge as required by G.S. 143-215.85 or who fails to comply with the requirements of G.S. 143-215.84(a) or orders issued by the Commission as a result of violations thereof, shall incur, in addition to any other penalty provided by law, a penalty in an amount not to exceed five thousand dollars ($5,000) for every such violation, the amount to be determined by the Secretary after taking into consideration the factors set out in G.S. 143B-282.1(b), the amount expended by the violator in complying with the provisions of G.S. 143-215.84, and the estimated damages attributed to the violator under G.S. 143-215.90. Every act or omission which causes, aids or abets a violation of this subsection shall be considered a violation under the provisions of this subsection and subject to the penalty herein provided. The procedures set out in G.S. 143-215.6 and G.S. 143B-282.1 shall apply to civil penalties assessed under this section. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Commission describing the violation with reasonable particularity and advising such person that the penalty is due. A person may contest a penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after receiving notice of the penalty. If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary 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, unless the violator contests the assessment as provided in this subsection, or requests remission of the assessment in whole or in part. If any civil penalty has

not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary 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. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any person in any criminal case, except as prosecution for perjury or for giving a false statement.

(b) The civil penalties provided by this section, except the civil penalty for failure to report, shall not apply to the discharge of a pesticide regulated by the North Carolina Pesticide Board, if such discharge would constitute a violation of the North Carolina Pesticide Law and if such discharge has not entered the surface waters of the State.

(c) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 534, s. 1; 1973, c. 1262, s. 23; 1979, c. 535, ss. 25, 26; 1987, c. 270; c. 827, ss. 154, 197; 1989 (Reg. Sess., 1990), c. 1036, s. 6; c. 1045, s. 7; c. 1075, s. 8; 1998-215, s. 67(a).)

§ 143-215.88B. Enforcement procedures: criminal penalties.

(a) 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.

(b) 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.

(c) 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. 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 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 to develop or use written civil enforcement guidelines.

(d) 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.

(e) Any person who knowingly and willfully discharges or causes or permits the discharge of oil or other hazardous substances in violation of this Part shall be guilty of a Class H felony which may include a fine to be not more than 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. For the purposes of this subsection, 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.

(f) (1) Any person who knowingly discharges or causes or permits the discharge of oil or other hazardous substances in violation of this Part, and who knows at that time that he places another person in imminent danger of death or serious 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.

(g) The criminal penalties provided by this section shall not apply to the discharge of a pesticide regulated by the North Carolina Pesticide Board, if such discharge would constitute a violation of the North Carolina Pesticide Law and if such discharge has not entered the surface waters of the State.

(h) Any person who knowingly and willfully makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or rules adopted under this Article; or who knowingly and willfully makes a false statement of a material fact in a rule-making proceeding or contested case under this Article; or who falsifies, tampers with, or knowingly and willfully renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or rules adopted under this Article is 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. (1973, c. 534, s. 1; 1973, c. 1262, s. 23; 1979, c. 535, ss. 25, 26; 1987, c. 270; c. 827, ss. 154, 197; 1989 (Reg. Sess., 1990), c. 1045, s. 8; 1993, c. 539, ss. 1316, 1317; 1994, Ex. Sess., c. 24, s. 14(c); 1997-394, s. 6.)

§ 143-215.89. Multiple liability for necessary expenses; limit on State recovery.

(a) Any person liable for costs of cleanup of oil or other hazardous substances under this Part shall have a cause of action to recover such costs in part or in whole from any other person causing or contributing to the discharge of oil or other hazardous substances into the waters of the State, including any amount recoverable by the State as necessary expenses.

(b) The total recovery by the State for damage to the public resources pursuant to G.S. 143-215.90 and for the cost of oil or other hazardous substances cleanup, arising from any discharge, shall not exceed the applicable limits prescribed by federal law with respect to the United States government on account of such discharge. The limitations on recovery referenced in this subsection shall not apply to damages recoverable pursuant to G.S. 143-215.94CC. (1973, c. 534, s. 1; 1979, c. 535, s. 23; 1989 (Reg. Sess., 1990), c. 1045, s. 12; 2010-179, s. 1(a).)

§ 143-215.90. Liability for damage to public resources.

(a) Any person who discharges oil or other hazardous substances in violation of this Article or violates any order or rule of the Commission adopted pursuant to this Article, or fails to perform any duty imposed by this Article, or violates an order or other determination of the Commission made pursuant to the provisions of this Article, including the provisions of a discharge permit issued pursuant to G.S. 143-215.1, and in the course thereof causes the death of, or injury to fish, animals, vegetation or other resources of the State or otherwise causes a reduction in the quality of the waters of the State below the standards set by the Commission, shall be liable to pay the State damages. Such damages shall be an amount equal to the cost of all reasonable and necessary investigations made or caused to be made by the Commission in connection with such violation and the sum of money necessary to restock such waters, replenish such resources, or otherwise restore the rivers, streams, bays, tidal flats, beaches, estuaries or coastal waters and public lands

adjoining the seacoast to their condition prior to the injury as such condition is determined by the Commission in conference with the Wildlife Resources Commission, and any other State agencies having an interest affected by such violation (or by the designees of any such boards, commissions, and agencies).

(b) Upon receipt of the estimate of damages caused, the Department shall give written notice by registered or certified mail to the person responsible for the death, killing, or injury to fish, animals, vegetation, or other resources of the State, or any reduction in quality of the waters of the State, describing the damages and their causes with reasonable specificity, and shall request payment from such person. Damages shall become due and payable upon receipt of such notice. A person may contest an assessment of damages by filing a petition for a contested case under G.S. 150B-23 within 30 days after receiving notice of the damages. In a contested case hearing, the estimate of the replacement cost of fish or animals or vegetation destroyed, and the estimate of costs of replacing or restoring other resources of the State, and the estimate of the cost of restoring the quality of waters of the State shall be **prima facie** evidence of the actual replacement of cost of fish, animals, vegetation or other resources of the State, and of the actual cost of restoring the quality of the waters of the State; provided, that such evidence is rebuttable. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Department or Wildlife Resources Commission to collect, handle, or weigh numerous specimens of dead or injured fish, animals, vegetation or other resources of the State, or to calculate the costs of restoring the quality of the waters using any technology other than that which is existing and practicable, as found to be such by the Secretary. Provided, that the Department may effect such mitigation of the amount of damages as the Commission may deem proper and reasonable. If a person fails to pay damages assessed against him, the Commission shall refer the matter to the Attorney General for collection. Any money recovered by the Attorney General or by payment of damages by the person charged therewith by the Department shall be transferred by the Commission to appropriate funds administered by the State agencies affected by the violation for use in such activities as food fish or shellfish management programs, wildlife and waterfowl management programs, water quality improvement programs and such other uses as may best mitigate the damage incurred as a result of the violation. No action shall be authorized under the provisions of this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to G.S. 143-215.1 and the provisions of this Part.

(c) For the purpose of carrying out its duties under this Article, the Commission shall have the power to direct the investigation of any death, killing, or injury to fish, animals, vegetation or other resources of the State, or any reduction in quality of the waters of the State, which in the opinion of the Commission is of sufficient magnitude to justify investigation. (1973, c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, s. 24; 1987, c. 827, ss. 154, 196.)

§ 143-215.91: Recodified as §§ 143-215.88A, 143-215.88B.

§ 143-215.91A. Limited liability for volunteers in oil and hazardous substance abatement.

Part 5 of this Article shall apply to the determination of civil liability or penalty pursuant to this Article. (1987, c. 269, s. 3.)

§ 143-215.92. Lien on vessel.

Any vessel (other than one owned or operated by the State of North Carolina or its political subdivisions or the United States government) from which oil or other hazardous substances is

discharged in violation of this Part or any rule prescribed pursuant thereto, shall be liable for the pecuniary penalty and costs of oil or other hazardous substances removal specified in this Part and such penalty and costs shall constitute a lien on such vessel; provided, however, that said lien shall not attach if a surety bond is posted with the Commission in an amount and with sureties acceptable to the Commission, or a cash deposit is made with the Commission in an amount acceptable to the Commission. Provided further, that such lien shall not have priority over any existing perfected lien or security interest. The Commission may adopt rules providing for such conditions, limitations, and requirements concerning the bond or deposit prescribed by this section as the Commission deems necessary. (1973, c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, s. 27; 1987, c. 827, ss. 154, 198.)

§ 143-215.93. Liability for damage caused.

Any person having control over oil or other hazardous substances which enters the waters of the State in violation of this Part shall be strictly liable, without regard to fault, for damages to persons or property, public or private, caused by such entry, subject to the exceptions enumerated in G.S. 143-215.83(b). (1973, c. 534, s. 1; 1979, c. 535, s. 28.)

§ 143-215.93A. Limitation on liability of persons engaged in removal of oil discharges.

(a) Except as provided in subsection (b) of this section, a person is not liable under this Part, Part 2C of this Article, Articles 21 and 21B of this Chapter, other provisions of the General Statutes relating to protection of the environment or public health, Chapter 1B of the General Statutes, or common law causes of action in tort for removal costs or damages which result from, arise out of, or are related to the discharge or threatened discharge of oil, when such removal costs or damages result from acts or omissions in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President of the United States, the Federal On-Scene Coordinator, the Governor, the Secretary, the Secretary of Public Safety, or any person designated to direct oil discharge removal activities by the President of the United States, the Governor, the Secretary, or the Secretary of Public Safety.

(b) The limitation on liability under subsection (a) of this section does not apply:

(1) To a responsible party;

(2) To a response under CERCLA/SARA or under Part 4 of Article 9 of Chapter 130A of the General Statutes;

(3) To a response under Part 3 of Article 9 of Chapter 130A of the General Statutes;

(4) To a cleanup under Part 2A of this Article;

(5) With respect to personal injury or wrongful death; or

(6) If the person is grossly negligent or engages in willful misconduct.

(c) A responsible party is liable for any removal costs and damages that another person is relieved of under this section.

(d) Nothing in this section affects the obligation of an owner or operator to respond immediately to a discharge, or the threat of a discharge, of oil.

(e) As used in this section:

(1) "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.

(2) "Damages" has the same meaning as in the Oil Pollution Act of 1990, 33 U.S.C. § 2701, and G.S. 143-215.94BB.

(3) "Federal On-Scene Coordinator" means a person designated as such in the National Contingency Plan.

(4) "National Contingency Plan" has the same meaning as in 33 U.S.C. § 1321, as amended.

(5) "Oil Pollution Act of 1990" means the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484, which appears generally as 33 U.S.C. § 2701 et seq., as amended.

(6) "Remove" or "removal" has the same meaning as in the Oil Pollution Act of 1990, 33 U.S.C. § 2701.

(7) "Removal costs" has the same meaning as in the Oil Pollution Act of 1990, 33 U.S.C. § 2701.

(8) "Responsible party" means a person who is a "responsible party" as defined in the Oil Pollution Act of 1990, 33 U.S.C. § 2701, and who is liable for removal costs or damages which result from, arise out of, or are related to the discharge or threatened discharge of oil. (1991, c. 432, s. 1; 2011-145, s. 19.1(g).)

§ 143-215.94. Joint and several liability.

In order to provide maximum protection for the public interest, any actions brought pursuant to G.S. 143-215.88 through 143-215.91(a), 143-215.93 or any other section of this Article, for recovery of cleanup costs or for civil penalties or for damages, may be brought against any one or more of the persons having control over the oil or other hazardous substances or causing or contributing to the discharge of oil or other hazardous substances. All said persons shall be jointly and severally liable, but ultimate liability as between the parties may be determined by common-law principles. (1973, c. 534, s. 1; 1977, c. 858, s. 3; 1979, c. 535, s. 29.)

Part 2A. Leaking Petroleum Underground Storage Tank Cleanup.

§ 143-215.94A. Definitions.

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part and Part 2B of this Article:

(1a) "Affiliate" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines "affiliate" as a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

(1b) "Commercial Fund" means the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.

(2) "Commercial underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term "commercial underground storage tank" does not include any:

a. Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

b. Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;

c. Underground storage tank of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households;

d. Septic tank;

e. Pipeline facility (including gathering lines) regulated under:

1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.);

2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.); or

3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

f. Surface impoundment, pit, pond, or lagoon;

g. Storm water or waste water collection system;

h. Flow-through process tank;

i. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

j. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(2a) "Cost-effective cleanup" means the cleanup method that meets all of the following criteria:

a. Addresses imminent threats to human health or the environment.

b. Provides for the cleanup or removal of all contaminated soil except in circumstances where it is impractical to remove contaminated soil.

c. Is approved by the Commission for remediation of the site.

d. Is the least expensive cleanup based on total cost, including costs not eligible for reimbursement from the Commercial Fund or the Noncommercial Fund.

(3) Repealed by Session Laws 2011-266, s. 1.20(b), effective July 1, 2011.

(3a) "Facility" means an underground storage tank, or two or more underground storage tanks located in close proximity to each other and having the same owner or operator, that are located on a single tract of land or on contiguous tracts of land that are owned or controlled by the same person. As used in this subdivision, the terms "owner", "operator", and "person" include any affiliate, parent, and subsidiary of the owner, operator, or person, respectively. The owner or person having control of the land on which an underground storage tank is located, or on which two or more underground storage tanks are located, need not be the owner or operator of the underground storage tank or underground storage tanks. The term "facility", as defined in this subdivision, does not apply to a "pipeline facility", as that phrase is used in subdivisions (2) and (7) of this section.

(4) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil; other residual fuel oils, including Navy Special Fuel Oil and Bunker C; and other fuels when used as substitutes for one of these fuel oils for the purpose of heating.

(5) "Loan Fund" means the Groundwater Protection Loan Fund.

(6) Repealed by Session Laws 2015-241, s. 14.16A(d), effective December 31, 2016.

(7) "Noncommercial underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term "noncommercial storage tank" does not include any:

a. Commercial underground storage tanks;

b. Septic tank;

c. Pipeline facility (including gathering lines) regulated under:

1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.);

2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.); or

3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

d. Surface impoundment, pit, pond, or lagoon;

e. Storm water or waste water collection system;
f. Flow-through process tank;
g. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
h. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(8) "Operator" means any person in control of, or having responsibility for, the operation of an underground storage tank.

(9) "Owner" means:
a. In the case of an underground storage tank in use on 8 November 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of petroleum products; and
b. In the case of an underground storage tank in use before 8 November 1984, but no longer in use on or after that date, any person who owned such tank immediately before the discontinuation of its use.

(9a) "Parent" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines "parent" as an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

(10) "Petroleum" or "petroleum product" means crude oil or any fraction thereof which is a liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), including any such liquid which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel. The terms "petroleum" and "petroleum product" do not include any hazardous substance as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601(14) as amended; any substance regulated as a hazardous waste under Subtitle C of Title II of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended; or any mixture of petroleum or a petroleum product containing any such hazardous substance or hazardous waste in greater than de minimis quantities.

(11) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines "subsidiary" as an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

(12) "Third party" means a person other than the owner or operator of an underground storage tank from which a release has occurred or employees or agents of an owner or operator. A property owner shall not

be considered a third party if the property was transferred by the owner or operator of an underground storage tank in anticipation of damage due to a release.

(13) "Third-party bodily injury" or "bodily injury" when used in connection with "third-party" means specific physical bodily injury proximately resulting from exposure, explosion, or fire caused by the presence of a petroleum release and that is incurred by a person other than the owner or operator of an underground storage tank from which a release has occurred or employees or agents of an owner or operator.

(14) "Third-party property damage" or "property damage" when used in connection with "third-party" means actual physical damage or damage due to specific loss of normal use that proximately resulted from exposure, explosion, or fire caused by the presence of a petroleum release and that is incurred to property owned by a person other than the owner or operator of an underground storage tank from which a release has occurred or employees or agents of an owner or operator. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 3; 1991, c. 538, s. 1; 1995, c. 377, s. 4; 1997-456, s. 27; 2003-352, s. 1; 2011-266, s. 1.20(b); 2015-241, s. 14.16A(d); 2015-263, s. 20(b).)

§ 143-215.94B. Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(a) There is established under the control and direction of the Department the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This Commercial Fund shall be a nonreverting revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, other monies paid to it or recovered on behalf of the Commercial Fund, and fees paid pursuant to this Part.

(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

(1) For discharges or releases discovered or reported between 30 June 1988 and 31 December 1991 inclusive, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of fifty thousand dollars ($50,000) per occurrence.

(2) For discharges or releases discovered on or after 1 January 1992 and reported between 1 January 1992 and 31 December 1993 inclusive, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars ($20,000) per occurrence.

(2a) For discharges or releases discovered and reported on or after 1 January 1994 and prior to 1 January 1995, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars

($20,000) if the owner or operator (i) notifies the Department prior to 1 January 1994 of its intent to permanently close the tank in accordance with applicable regulations or to upgrade the tank to meet the requirements that existing underground storage tanks must meet by 22 December 1998, (ii) commences closure or upgrade of the tank prior to 1 July 1994, and (iii) completes closure or upgrade of the tank prior to 1 January 1995.

(3) For discharges or releases reported on or after 1 January 1994, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars ($20,000) if, prior to the discharge or release, the commercial underground storage tank from which the discharge or release occurred met the performance standards applicable to tanks installed after 22 December 1988 or met the requirements that existing underground storage tanks must meet by 22 December 1998.

(4) For discharges or releases reported on or after 1 January 1994 from a commercial underground storage tank that does not qualify under subdivision (2a) of this subsection or does not meet the standards in subdivision (3) of this subsection, sixty percent (60%) of the costs per occurrence of the cleanup of environmental damage as required by G.S. 143-215.94E(a) that exceeds twenty thousand dollars ($20,000) but is not more than one hundred fifty-seven thousand five hundred dollars ($157,500) and one hundred percent (100%) of the costs above this amount, up to the limits established in this section.

(5) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars ($100,000) per occurrence. Claims for third-party property damage shall be based on the rental costs of comparable property during the period of loss of use up to a maximum amount equal to the fair market value. In the case of property that is actually destroyed as a result of a petroleum release, reimbursement shall be at an amount necessary to replace or repair the destroyed property.

(6) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision.

(7) Recordation of residual petroleum as required by G.S. 143B-279.11 if the Commercial Fund is responsible for the payment of costs under subdivisions (1) through (4) of this subsection.

(8) The costs of a site investigation required by the Department for the purpose of determining whether a release from a tank system has occurred, whether or not the investigation confirms that a release has occurred. This subdivision shall not be construed to allow reimbursement for costs of investigations that are part of routine leak detection procedures required by statute or rule.

(9) If the owner or operator cannot be identified or fails to proceed with the cleanup.

(10) That was taken out of operation prior to 1 January 1974 if, at the time the discharge or release is discovered, neither the owner nor operator owns or leases the lands on which the tank is located.

(11) Where the owner of the commercial underground storage tank is the owner only as a result of owning the land on which the commercial underground storage tank is located, the owner did not know or have reason to know that the underground storage tank was located on the property, and the land was not transferred to the owner to avoid liability for the commercial underground storage tank.

(12) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars ($100,000) per occurrence caused by releases from noncommercial underground storage tanks reported to the Department prior to October 1, 2015, if the claim for compensation is made prior to July 1, 2016. Claims for third-party property damage shall be based on the rental costs of comparable property during the period of loss of use up to a maximum amount equal to the fair market value. In the case of property that is actually destroyed as a result of a petroleum release, reimbursement shall be at an amount necessary to replace or repair the destroyed property.

(b1) In the event that two or more discharges or releases at any one facility, the first of which was discovered or reported on or after 30 June 1988, result in more than one plume of soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the payment of the costs of the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount shall be calculated as follows:

(1) Each discharge or release shall be considered separately as if it were the only discharge or release, and the cost for which the owner or operator is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this section, whichever are applicable, shall be determined for each discharge or release. For each discharge or release for which subdivision (4) of subsection (b) of this section is applicable, the cost for which the owner or operator is responsible, for the purpose of this subsection, shall be seventy-five thousand dollars ($75,000). For purposes of this subsection, two or more discharges or releases that result in a single plume of soil, surface water, or groundwater contamination shall be considered as a single discharge or release.

(2) The multiple discharge amount shall be the lesser of:

a. The sum of all the costs determined as set out in subdivision (1) of this subsection; or

b. The product of the highest of the costs determined as set out in subdivision (1) of this subsection multiplied by one and one-half (1 1/2).

(3) If an owner or operator elects to cleanup a separate discharge or release for which the owner or operator is not responsible, the responsible party for the other discharge cannot be identified, and the discharges are commingled, the owner or operator shall only be responsible for those costs applicable to the discharge for which the owner or operator is actually the responsible party.

(b2) In the event that the aggregate costs per occurrence described in subsection (b) or (b1) of this section exceed one million dollars ($1,000,000), the Commercial Fund shall be used for the payment of eighty percent (80%) of the costs in excess of one million dollars ($1,000,000) up to a maximum of one million five hundred thousand dollars ($1,500,000). The Department shall not pay or reimburse costs under this subsection unless the owner, operator, or landowner eligible for reimbursement under G.S. 143-215.94E(b1) submits proof that the owner, operator, or landowner eligible for reimbursement under G.S. 143-215.94E(b1) has paid at least twenty percent (20%) of the costs for which reimbursement is sought.

(b3) For purposes of subsections (b) and (b1) of this section, the cleanup of environmental damage includes connection of a third party to a public water system if the Department determines that connection of the third party to a public water system is a cost-effective measure, when compared to other available measures, to reduce risk to human health or the environment. A payment or reimbursement under this subsection is subject to the requirements and limitations of this section. This subsection shall not be construed to limit any right or remedy available to a third party under any other provision of law. This subsection shall not be construed to require a third party to connect to a public water system. Except as provided by this subsection, connection to a public water system does not constitute cleanup under Part 2 of this Article, G.S. 143-215.94E, G.S. 143-215.94V, any other applicable statute, or at common law.

(b4) The Commercial Fund shall pay any claim made after 1 September 2001 for compensation to third parties pursuant to subdivision (5) of subsection (b) of this section only if the owner, operator, or other party responsible for the discharge or release has complied with the requirements of G.S. 143B-279.9 and G.S. 143B-279.11, unless compliance is prohibited by another provision of law.

(b5) The Commercial Fund may be used by the Department for the payment of costs necessary to render harmless any commercial underground storage tank from which a discharge or release has not occurred but which poses an imminent hazard to the environment if the owner or operator cannot be identified or located, or if the owner or operator fails to take action to render harmless the underground storage tank within 90 days of having been notified of the imminent hazard posed by the underground storage tank. The Secretary shall seek to recover the costs of the action from any owner or operator as provided in G.S. 143-215.94G.

(c) The Commercial Fund is to be available on an occurrence basis, without regard to number of occurrences associated with tanks owned or operated by the same owner or operator.

(d) The Commercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or vehicle.

(2) The removal or replacement of any tank, pipe, fitting or related equipment.

(3) Costs incurred as a result of a discharge or release of petroleum from a transmission pipeline.

(4) Repealed by Session Laws 2015-241, s. 14.16A(d), effective December 31, 2016.

(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.

(6) Costs paid or reimbursed by or from any source other than the Commercial Fund, including but not limited to, any payment or reimbursement made under a contract of insurance.

(7) Costs incurred as a result of the cleanup of environmental damage to groundwater to a more protective standard than the risk-based standard required by the Department unless the cleanup of environmental damage to groundwater to a more protective standard is necessary to resolve a claim for compensation by a third party for property damage.

(8) Costs in excess of those required to achieve the most cost-effective cleanup.

(e) The Commercial Fund shall be treated as a 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).

(f) Expired October 1, 2011, pursuant to Session Laws 2001-442, s. 8, as amended by Session Laws 2008-195, s. 11.

(g) The Commercial Fund may be used to support the administrative functions of the program for underground storage tanks under this Part and Part 2B of this Article up to the amounts allowed by law, which amounts may be changed from time to time. In the case of a legislated increase or decrease in salaries and benefits, the administrative allowance existing at the time of the increase or decrease shall be correspondingly increased or decreased an amount equal to the legislated increase or decrease in salaries and benefits.

(h) The Commercial Fund may be used to reimburse the owner or operator of a commercial petroleum underground storage tank for annual operating fees that were paid under protest pursuant to G.S. 143-215.94C(f) to the extent the Department has recovered the fees from the previous owner or operator from whom the annual operating fees were due. The Commercial Fund may be used only to reimburse those fees that the owner or operator paid to eliminate an unpaid annual operating fees balance that had been accrued by and was the obligation of a previous owner or operator.

(i) During each fiscal year, the Department shall use up to one million dollars ($1,000,000) of the funds in the Commercial Fund to fund necessary assessment and cleanup to be conducted by the Department of discharges or releases for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. Any portion of the $1,000,000 designated each fiscal year, which is not used during that fiscal year to address situations of severe financial hardship, shall revert to the Commercial Fund for the uses otherwise provided by this section. The Commission shall adopt rules to define severe financial hardship; establish criteria for assistance due to severe financial hardship pursuant to this section; and establish a process for evaluation and determinations of eligibility with respect to applications for assistance due to severe financial hardship. The Commission shall create a subcommittee of the Commission's Committee on Civil Penalty Remissions as established by G.S. 143B-282.1 to render determinations of eligibility under this subsection. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 4, 16; 1991, c. 538, ss. 2, 3; 1991 (Reg. Sess., 1992), c. 817, s. 1; 1993, c. 400, s. 15; c. 402, s. 1; 1995, c. 377, s. 5; 1998-161, s. 2; 2001-384, ss. 4, 5, 8; 2001-442, s. 1; 2003-352, ss. 2, 3; 2007-323, s. 12.1(a); 2008-195, s. 11; 2008-198, s. 7(a); 2011-394, ss. 11.1, 11.2, 11.3(a); 2012-200, s. 13(a); 2014-100, s. 14.21(g); 2015-241, ss. 14.16A(a), (d); 2015-263, s. 20(c).)

§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.

(a) For purposes of this subsection, each compartment of a commercial underground storage tank that is designed to independently contain a petroleum product is a separate petroleum commercial underground storage tank. The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee of four-hundred twenty dollars ($420.00) for each petroleum commercial underground storage tank.

(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement

tank shall not exceed the annual operating fee for the replacement tank. Except as provided in this subsection, the annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. A person may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter.

(c) Beginning no later than sixty days before the first due date of the annual operating fee imposed by this section, any person who deposits a petroleum product in a commercial underground storage tank that would be subject to the annual operating fee shall, at least once in each calendar year during which such deposit of a petroleum product is made, notify the owner or operator of the duty to pay the annual operating fee. The requirement to notify pursuant to this subsection does not constitute a duty owed by the person depositing a petroleum product in a commercial underground storage tank to the owner or operator and the person depositing a petroleum product in an underground storage tank shall not incur any liability to the owner or operator for failure to give notice of the duty to pay the operating fee.

(d) Repealed by Session Laws 1991, c. 538, s. 3.1.

(e) An owner or operator of a commercial underground storage tank who fails to pay an annual operating fee due under this section within 30 days of the date that the fee is due shall pay, in addition to the fee, a late penalty of five dollars ($5.00) per day per commercial underground storage tank, up to a maximum equal to the annual operating fee due. The Department may waive a late penalty in whole or in part if:

(1) The late penalty was incurred because of the late payment or nonpayment of an annual operating fee by a previous owner or operator.

(2) The late penalty was incurred because of a billing error for which the Department is responsible.

(3) Where the late penalty was incurred because the annual operating fee was not paid by the owner or operator due to inadvertence or accident.

(4) Where payment of the late penalty will prevent the owner or operator from complying with any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases.

(f) A person who becomes the owner or operator of a commercial petroleum underground storage tank may pay, under protest, unpaid annual operating fees that were the obligation of a previous owner or operator for the purpose of obtaining an operating permit for the underground storage tanks. An owner or operator who pays unpaid operating fees that were due from a previous owner or operator may request reimbursement of those fees as provided in G.S. 143-215.94B(h). In collecting unpaid annual operating fees, the Department shall diligently seek to collect unpaid annual operating fees from the person

who was the owner or operator of the commercial petroleum underground storage tank at the time the fee first became due notwithstanding the fact that those fees were paid under protest as provided in this subsection. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 5, 16; 1991, c. 538, ss. 3.1, 4, 5; 1993, c. 400, s. 15; c. 402, s. 2; 1995, c. 377, s. 6; 1995 (Reg. Sess., 1996), c. 648, s. 2; 2008-195, s. 1; 2008-198, s. 7(b); 2011-394, s. 11.3(c).)

§ 143-215.94D: Repealed by Session Laws 2015-241, s. 14.16A(d), effective December 31, 2016.

§ 143-215.94E. Rights and obligations of the owner or operator.

(a) Upon a determination that a discharge or release of petroleum from an underground storage tank has occurred, the owner or operator of the underground storage tank shall notify the Department pursuant to G.S. 143-215.85. The owner or operator of the underground storage tank shall immediately undertake to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article.

(a1) If a spill or overfill associated with a petroleum underground storage tank results in a release of petroleum to the environment of 25 gallons or more or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately clean up the spill or overfill, report the spill or overfill to the Department within 24 hours of the spill or overfill, and begin to restore the area affected in accordance with the requirements of this Article. The owner or operator of a petroleum underground storage tank shall immediately clean up a spill or overfill of less than 25 gallons of petroleum that does not cause a sheen on nearby surface water. If a spill or overfill of less than 25 gallons of petroleum cannot be cleaned up within 24 hours of the spill or overfill or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately notify the Department.

(b) In the case of a discharge or release from a commercial underground storage tank where the owner or operator has been identified and has proceeded with cleanup, the owner or operator may elect to have the Commercial Fund pay or reimburse the owner or operator for any costs described in subsection (b) or (b1) of G.S. 143-215.94B that exceed the amounts for which the owner or operator is responsible under that subsection. The sum of payments by the owner or operator and the payments from the Commercial Fund shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2).

(b1) In the case of a discharge or release from a commercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, the following requirements apply:

(1) If the current landowner of the land in which the commercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the

requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Commercial Fund pay or reimburse the current landowner for any costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) that exceed the amounts for which the owner or operator is responsible under that subsection. [The following also apply:]

a. The current landowner is not eligible for payment or reimbursement until the current landowner has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) for which the owner or operator is responsible.

b. Eligibility for reimbursement under this subsection may be transferred from a current landowner who has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) to a subsequent landowner.

The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(2) The sum of payments from the Commercial Fund and from all other sources shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2).

(3) This subsection shall not be construed to require a current landowner to cleanup a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law.

(4) This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. In the event that an owner or operator is subsequently identified or located, the Secretary shall seek reimbursement as provided in G.S. 143-215.94G(d).

(c), (c1) Repealed by Session Laws 2015-241, s. 14.16A(e), effective December 31, 2016.

(d) In any case where the costs described in G.S. 143-215.94B(b) or 143-215.94B(b1), exceed one million dollars ($1,000,000), or one million five hundred thousand dollars ($1,500,000) if G.S. 143-215.94B(b2) applies, the provisions of Article 21A of this Chapter or any other applicable statute or common law principle regarding liability shall apply for the amount in excess of one million dollars ($1,000,000) or, if G.S. 143-215.94B(b2) applies, one million five hundred thousand dollars ($1,500,000). Nothing contained in this Part shall limit or modify any liability that any party may have pursuant to Article 21A of this Chapter, any other applicable statute, or at common law.

(e) When an owner, operator, or landowner pays the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum from an underground storage tank, the owner, operator, or landowner may seek reimbursement from the appropriate fund for any costs that the owner, operator, or landowner may elect to have either the Commercial Fund or the Noncommercial Fund pay in accordance with the applicable subsections of this section.

(e1) The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from the Commercial Fund, may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for reimbursement, and may pay the cost of these services from the fund against which the claim is made; provided that in any fiscal year the Department shall not expend from either fund more than one percent (1%) of the unobligated balance of the fund on 30 June of the previous fiscal year. The cost of contractual services to evaluate a claim or for expert witness or consultant services to defend a decision with respect to a claim shall be included as costs under G.S. 143-215.94B(b) and 143-215.94B(b1).

(e2) An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis. If the Department fails to notify an owner or operator of its decision on a claim for reimbursement under this section within 90 days after the date the claim is received by the Department, the owner or operator may elect to consider the claim to have been denied, and may appeal the denial as provided in Article 3 of Chapter 150B of the General Statutes.

(e3) The Department shall not pay any third party or reimburse any owner or operator who has paid any third party pursuant to any settlement agreement or consent judgment relating to a claim by or on behalf of a third party for compensation for bodily injury or property damage unless the Department has approved the settlement agreement or consent judgment prior to entry into the settlement agreement or consent judgment by the parties or entry of a consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case filed under Chapter 150B of the General Statutes.

(e4) (1) If the owner or operator takes initial steps to collect and remove the discharge or release as required by the Department and completes the initial assessment required to determine degree of risk, the owner or operator shall not be subject to any violation or penalty for any failure to proceed with further assessment or cleanup under G.S. 143-215.84 or this section before the owner or operator is authorized to proceed with further assessment or cleanup as provided in subsection (e5) of this section. The lack of availability of funds in the Commercial Fund shall not relieve an owner or operator of responsibility to immediately undertake to collect and remove the discharge or release or to conduct any assessment or

cleanup ordered by the Department or be a defense against any violations and penalties issued to the owner or operator for failure to conduct required assessment or cleanup.

(2) The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a commercial underground storage tank and shall determine a schedule for further assessment and cleanup that is based on the degree of risk to human health and the environment posed by the discharge or release and that gives priority to the assessment and cleanup of discharges and releases that pose the greatest risk. If any of the costs of assessment and cleanup of the discharge or release from a commercial underground storage tank are eligible to be paid or reimbursed from the Commercial Fund, the Department shall also consider the availability of funds in the Commercial Fund and the order in which the discharge or release was reported in determining the schedule.

(3) Repealed by Session Laws 2015-241, s. 14.16A(e), effective December 31, 2016.

(4) The Department may revise the schedules that apply to the assessment and cleanup of any discharge or release at any time based on its reassessment of any of the foregoing factors.

(e5) (1) As used in this subsection:

a. "Authorization" means a determination by the Department that a person may proceed with one or more tasks associated with the assessment or cleanup of a discharge or release from a petroleum underground storage tank. To "authorize" means to make such a determination.

b. "Preapproval" means a determination by the Department that:

1. The nature and scope of a task is reasonable and necessary to be performed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) in order to achieve the purposes of this Part.

2. The amount estimated for the cost of a task does not exceed the amount or rate that is reasonable for that task.

(2) The Department may require an owner, operator, or landowner to obtain preapproval before proceeding with any task. The Department shall specify those tasks for which preapproval is required. The Department shall deny any request for payment or reimbursement of the cost of any task for which preapproval is required if the owner, operator, or landowner failed to obtain preapproval of the task. Preapproval of a task by the Department does not guarantee payment or reimbursement in the amount estimated for the cost of the task at the time preapproval is requested. The Department shall pay or reimburse the cost of a task only if all of the following apply:

a. The cost is eligible to be paid under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1).
b. Payment is in accordance with G.S. 143-215.94B(d) or G.S. 143-215.94D(d).
c. The Department determines that the cost is reasonable and necessary.

(3) The Commission may adopt rules governing payment or reimbursement of reasonable and necessary costs and, consistent with any rules adopted by the Commission, the Department shall develop, implement, and periodically revise a schedule of costs that the Department determines to be reasonable and necessary costs for specific tasks. Statements that specify tasks for which preapproval is required and schedules of reasonable and necessary costs for specific tasks are statements within the meaning of G.S. 150B-2(8a)g. This subsection shall not be construed to invalidate any rule of the Commission related to preapproval of tasks that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1), provided, however, that the Department may specify additional tasks for which preapproval is required.

(4) In all cases, the Department shall require an owner, operator, or landowner to submit documentation sufficient to establish that a claim is eligible to be paid or reimbursed under this Part before the Department pays or reimburses the claim.

(5) The Department shall authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund only when the task is scheduled to be performed on the basis of a priority determination pursuant to subsection (e4) of this section. The Department shall not pay or reimburse the cost of any task for which authorization is required under this subsection until the Department has preapproved and authorized the task.

(6) Except as provided in subdivisions (8) and (9) of this subsection, the Department shall not authorize any task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund unless the Department determines, based on the scope of the work to be performed and the schedule of reasonable and necessary costs, that sufficient funds will be available in the Commercial Fund or the Noncommercial Fund, whichever applies, to pay or reimburse the cost of that task within 90 days after the Department determines that the owner, operator, or landowner has submitted a claim with documentation sufficient to establish that the claim is eligible to be paid under this Part.

(7) This subsection shall not be construed to establish a cause of action against the Commission or the Department for any failure to pay or reimburse any cost within any specific period of time. This subsection

shall not be construed to establish a defense to any action to enforce the requirements of either G.S. 143-215.84 or subsection (a) of this section.

(8) The Department may preapprove and authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund that has not been authorized pursuant to subdivisions (5) and (6) of this subsection if the owner, operator, or landowner specifically requests that the task be authorized and agrees that the claim for payment or reimbursement of the cost will not be paid until after the Department has paid all claims for payment or reimbursement of costs for tasks that the Department has authorized pursuant to subdivisions (5) and (6) of this subsection.

(9) The Department may preapprove and authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund that has not been authorized pursuant to subdivisions (5) and (6) of this subsection if the discharge or release creates an emergency situation. An emergency situation exists when a discharge or release of petroleum results in an imminent threat to human health or the environment. A claim for payment or reimbursement of costs for tasks that are authorized under this subdivision shall be paid or reimbursed on the same basis as tasks that are authorized under subdivisions (5) and (6) of this subsection.

(10) Each fiscal year, the Department may preapprove and authorize tasks, the cost of which is to be paid or reimbursed from the Commercial Fund and the sum total of which shall not exceed five hundred thousand dollars ($500,000), that have not been authorized pursuant to subdivisions (5) and (6) of this subsection for the purpose of completing risk-based management actions leading to no further action or closure. A claim for payment or reimbursement of costs for tasks that are authorized under this subdivision shall be paid or reimbursed on the same basis as tasks that are authorized under subdivisions (5) and (6) of this subsection.

(f) Repealed by Session Laws 2003-352, s. 6, effective July 27, 2003.

(f1) Any person seeking payment or reimbursement from the Commercial Fund shall certify to the Department that the costs to be paid or reimbursed by the Commercial Fund are not eligible to be paid or reimbursed by or from any other source, including any contract of insurance. If any cost paid or reimbursed by the Commercial Fund is eligible to be paid or reimbursed by or from another source, that cost shall not be paid from, or if paid shall be repaid to, the Commercial Fund. As used in this Part, the phrase "any other source including any contract of insurance" does not include self-insurance.

(g) No owner or operator shall be reimbursed pursuant to this section, and the Department shall seek reimbursement of the appropriate fund or of the Department for any monies disbursed from the appropriate fund or expended by the Department if any of the following apply:

(1) The owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases.

(2) The discharge or release is the result of the owner's or operator's willful or wanton misconduct.

(3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C.

(h) Subdivision (1) of subsection (g) of this section shall not be construed to limit the right of an owner or operator to contest notices of violation or orders issued by the Department. Subdivision (1) of subsection (g) of this section shall not apply to a payment or reimbursement pursuant to this section if, at the time of the discharge or release, the owner or operator holds a valid operating permit as required by G.S. 143-215.94U.

(i) Repealed by Session Laws 2005-365, s. 1, effective September 8, 2005.

(j) An owner, operator, or landowner shall request that the Department determine whether any of the costs of assessment and cleanup of a discharge or release from a petroleum underground storage tank are eligible to be paid or reimbursed from either the Commercial Fund within one year after completion of any task that is eligible to be paid or reimbursed under G.S. 143-215.94B(b) or 143-215.94B(b1).

(k) An owner, operator, or landowner shall request payment or reimbursement from the Commercial Fund for the cost of a task within one year after the completion of the task. The Department shall deny any request for payment or reimbursement of the cost of any task that would otherwise be eligible to be paid or reimbursed if the request is not received within 12 months after the later of the date on which the:

(1) Department determines that the cost is eligible to be paid or reimbursed.

(2) Task is completed. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 7, 16; 1991, c. 538, ss. 7, 22; 1991 (Reg. Sess., 1992), c. 817, s. 2; 1993, c. 400, s. 15; c. 402, s. 3; 1995, c. 377, s. 8; 1995 (Reg. Sess., 1996), c. 648, ss. 3, 4; 1998-161, ss. 4, 5, 8(a), (b), 11(b); 1998-215, s. 68; 2000-172, s. 7.1; 2003-352, ss. 6, 7; 2004-124, s. 30.10(d); 2005-365, ss. 1, 2; 2008-195, s. 2(a); 2010-154, ss. 5, 6; 2011- 398, s. 51; 2015-241, s. 14.16A(e), (i); 2016-94, s. 14.5.)

§ 143-215.94F. Limited amnesty.

Any owner or operator who reports a suspected discharge or release from an underground storage tank prior to 1 October 1989 shall not be liable for any civil penalty that might otherwise be imposed pursuant to G.S. 143-215.88A(a) for violations of G.S. 143-215.83(a) and G.S. 143-215.85. The limited amnesty provided by this section shall not apply upon a finding by the Commission that the discharge or release was the result of gross negligence or an intentional act. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 8.)

§ 143-215.94G. Authority of the Department to engage in cleanups; actions for fund reimbursement.

(a) The Department may use staff, equipment, or materials under its control or provided by other cooperating federal, State, or local agencies and may contract with any agent or contractor it deems appropriate to investigate a release, to develop and implement a cleanup plan, to provide interim alternative sources of drinking water to third parties, and to pay the initial costs for providing permanent alternative sources of drinking water to third parties, and shall pay the costs resulting from the Commercial Fund whenever there is a discharge or release of petroleum from any of the following:

(1) A noncommercial underground storage tank.

(2) An underground storage tank whose owner or operator cannot be identified or located.

(3) An underground storage tank whose owner or operator fails to proceed as required by G.S. 143-215.94E(a).

(4) A commercial underground storage tank taken out of operation prior to 1 January 1974 if, when the discharge or release is discovered, neither the owner nor operator owns or leases the land on which the underground storage tank is located.

(a1) Every State agency shall provide to the Department to the maximum extent feasible such staff, equipment, and materials as may be available and useful to the development and implementation of a cleanup program.

(a2) The cost of any action authorized under subsection (a) of this section shall be paid, to the extent funds are available, from the following sources in the order listed:

(1) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks, including, but not limited to, the Leaking Underground Storage Tank Trust Fund established pursuant to 26 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).

(2) The Commercial Fund.

(a3) Expired October 1, 2011, pursuant to Session Laws 2001-442, s. 8, as amended by Session Laws 2008-195, s. 11.

(b) Whenever the discharge or release of a petroleum product is from a commercial underground storage tank, the Department may supervise the cleanup of environmental damage required by G.S. 143-215.94E(a). If the owner or operator elects to have the Commercial Fund reimburse or pay for any costs allowed under subsection (b) or (b1) of G.S. 143-215.94B, the Department shall require the owner or operator to submit documentation of all expenditures claimed for the purposes of establishing that the owner or operator has spent the amounts required to be paid by the owner or operator pursuant to and in accordance with G.S. 143-215.94E(b). The Department shall allow credit for all expenditures that the Department determines to be reasonable and necessary. The Department may not pay for any costs for which the Commercial Fund was established until the owner or operator has paid the amounts specified in G.S. 143-215.94E(b).

(c) 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.

(d) The Secretary shall seek reimbursement through any legal means available, for:

(1) Any costs not authorized to be paid from the Commercial Fund;

(2) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank is later identified or located;

(3) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank failed to proceed as required by G.S. 143-215.94E(a);

(3a) The amounts provided for by G.S. 143-215.94B(b)(5) required to be paid by the owner or operator to third parties for the cost of providing interim alternative sources of drinking water to third parties and the initial cost of providing permanent alternative sources of drinking water to third parties;

(4) Any funds due under G.S. 143-215.94E(g); and

(5) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks; [and]

(6) The amounts provided for in G.S. 143-215.94B(b5) and G.S. 143-215.94D(b2).

(e) In the event that a civil action is commenced to secure reimbursement pursuant to subdivisions (1) through (4) of subsection (d) of this section, the Secretary may recover, in addition to any amount due, the costs of the action, including but not limited to reasonable attorney's fees and investigation expenses. Any monies received or recovered as reimbursement shall be paid into the appropriate fund or other source from which the expenditures were made.

(f) Repealed by Session Laws 2015-241, s. 14.16A(f), effective December 31, 2016.

(g) If the Department paid or reimbursed costs that are not authorized to be paid or reimbursed under G.S. 143-215.94B or G.S. 143-215.94D as a result of a misrepresentation by an agent who acted on behalf of an owner, operator, or landowner, the Department shall first seek reimbursement, pursuant to subdivision (1) of subsection (d) of this section, from the agent of monies paid to or retained by the agent.

(h) The Department shall take administrative action to recover costs or bring a civil action pursuant to subdivision (1) of subsection (d) of this section to seek reimbursement of costs in accordance with the time limits set out in this subsection.

(1) The Department shall take administrative action to recover costs or bring a civil action to seek reimbursement of costs that are not authorized to be paid from the Commercial Fund under subdivision (1), (2), or (3) of G.S. 143-215.94B(d) within five years after payment.

(2) The Department shall take administrative action to recover costs or bring a civil action to seek reimbursement of costs other than those described in subdivision (1) of this subsection within three years after payment.

(3) Notwithstanding the time limits set out in subdivisions (1) and (2) of this subsection, the Department may take administrative action to recover costs or bring a civil action to seek reimbursement of costs paid as a result of fraud or misrepresentation at any time.

(i) An administrative action or civil action that is not commenced within the time allowed by subsection (h) of this section is barred.

(j) Except with the consent of the claimant, the Department may not withhold payment or reimbursement of costs that are authorized to be paid from the Commercial Fund in order to recover any other costs that are in dispute unless the Department is authorized to withhold payment by a final decision of the Commission pursuant to G.S. 150B-36 or an order or final decision of a court. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652. ss. 9, 16; 1991, c. 538, ss. 8, 23; 1993, c. 400, s. 15; c. 402, s. 4; 1995, c. 377, s. 9; 2001-442, s. 3; 2008-195, ss. 3, 11; 2012-200, s. 13(c); 2015-241, s. 14.16A(f).)

§ 143-215.94H. Financial responsibility.

(a) The Department shall require each owner and operator of a petroleum underground storage tank who is required to demonstrate financial responsibility under rules promulgated by the United States Environmental Protection Agency pursuant to 42 U.S.C. § 6991b(d) to maintain evidence of financial responsibility that is the lesser of:

(1) The full amount of the financial responsibility that an owner or operator is required to demonstrate under rules promulgated by the United States Environmental Protection Agency pursuant to 42 U.S.C. § 6991b(d).

(2) The amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) per occurrence for costs described in G.S. 143-215.94B(b) and G.S. 143-215.94B(b1) if costs are eligible to be paid under those subsections.

(b) Financial responsibility may be established in accordance with rules adopted by the Commission which shall provide that financial responsibility may be established by either insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer, or any combination thereof. The compliance date schedule for demonstrating financial responsibility shall conform to the schedule adopted by the Environmental Protection Agency. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 10; 1993, c. 402, s. 5; 2008-195, s. 4; 2009-570, s. 19.)

§ 143-215.94I. Insurance pools authorized; requirements.

(a) As used in this section, "Commissioner" means the Commissioner of Insurance of the State of North Carolina.

(b) Owners and operators of underground storage tanks may demonstrate financial responsibility by establishing insurance pools which provide insurance coverage to pool members in at least the minimum amounts specified in G.S. 143-215.94H. Each such pool shall be operated by a board of trustees consisting of at least five persons who are elected or appointed officials of pool members. The board of trustees of each pool shall:

(1) Establish terms and conditions of coverage within the pool, including underwriting criteria, applicable deductible levels, the maximum level of claims that the pool will self-insure, and exclusions of coverage;

(2) Ensure that all valid claims are paid promptly;
(3) Take all necessary precautions to safeguard the assets of the pool;
(4) Maintain minutes of its meetings and make those minutes available to the Commissioner;
(5) Designate an administrator to carry out the policies established by the board of trustees and to provide continual management of the pool, and delineate in written minutes of its meetings the areas of authority it delegates to the pool's administrator;
(6) Establish the amount of insurance to be purchased by the pool to provide coverage over and above the claims that are not to be satisfied directly from the pool's resources;
(7) Establish the amount, if any, of aggregate excess insurance coverage to be purchased and maintained in the event that the pool's resources are exhausted in a given fiscal period; and
(8) Establish guidelines for membership in the pool, including the amount of money to be collected from each pool member to form and fund the pool.

(c) The board of trustees may not:
(1) Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the Commissioner; or
(2) Borrow any monies from the pool or in the name of the pool, except in the ordinary course of business, without first advising the Commissioner of the nature and purpose of the loan and obtaining prior approval from the Commissioner.

(d) A contract or agreement made pursuant to this section must contain provisions:
(1) For a system or program of loss control;
(2) For termination of membership including both:
a. Cancellation of individual membership in the pool by the pool; and
b. Election by an individual member of the pool to terminate its participation;
(3) That a pool or a terminating member must provide at least 90 days' written notice of cancellation or termination;
(4) Requiring the pool to pay all claims for which each member incurs liability during each member's period of membership, except:
a. Where a member has individually retained the risk;
b. Where the risk is not covered; or
c. For amounts of claims above the coverage provided by the pool;
(5) For the maintenance of claim reserves equal to known incurred losses and loss adjustment expenses and to an estimate of incurred but not reported losses;
(6) For compliance with any applicable federal requirements regarding financial responsibility for underground storage tanks;

(7) For a final accounting and settlement of the obligations of or refunds to a terminating member to occur when all incurred claims are concluded, settled, or paid;

(8) That the pool may establish offices where necessary in this State and employ necessary staff to carry out the purposes of the pool;

(9) That the pool may retain legal counsel, actuaries, claims adjusters, auditors, engineers, private consultants, and advisors, and other persons as the board of trustees or the administrator deems to be necessary;

(10) That the pool may make and alter bylaws and rules pertaining to the exercise of its purpose and powers;

(11) That the pool may purchase, lease, or rent real and personal property it deems to be necessary; and

(12) That the pool may enter into financial services agreements with financial institutions and that it may issue checks in its own name.

(e) In the event that either the pool or an individual pool member gives notice of an intent to cancel or terminate participation in the pool as provided by subdivision (4) of subsection (d) of this section, the pool shall so notify both the Commissioner and the Secretary within five business days of the issuance or receipt of such notice by the pool. In addition, the pool shall notify both the Commissioner and the Secretary within five business days of the date such cancellation or termination becomes effective, unless notice of cancellation or termination is rescinded.

(f) The formation and operation of an insurance pool under this section shall be subject to approval by the Commissioner who shall, after notice and hearing, establish reasonable requirements and rules for the approval and monitoring of such pools, including prior approval of pool administrators and provisions for periodic examinations of financial condition. The Commissioner may disapprove an application for the formation of an insurance pool, and may suspend or withdraw such approval whenever he finds that such applicant or pool:

(1) Has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the Commissioner or his representative;

(2) Has refused, or its officers, agents, or administrators have refused, to furnish satisfactory evidence of its financial and business standing or solvency;

(3) Is insolvent, or is in such condition that its further transaction of business in this State is hazardous to its members and creditors in this State and to the public;

(4) Has refused or neglected to pay a valid final judgment against it within 60 days after its rendition;

(5) Has violated any law of this State or has violated or exceeded the powers granted by its members;

(6) Has failed to pay any taxes, fees, or charges imposed in this State within 60 days after they are due and payable, or within 60 days after final disposition or any legal contest with respect to liability therefor; or

(7) Has been found insolvent by a court of any other state, by the insurance regulator or other proper officer or agency of any other state, and has been prohibited from doing business in such state.

(g) Each pool shall be audited annually at the expense of the pool by a certified public accounting firm, with a copy of the report available to the governing body or chief executive officer of each member of the pool and to the Commissioner. The board of trustees of the pool shall obtain an appropriate actuarial evaluation of the loss and loss adjustment expense reserves of the pool, including an estimate of losses and loss adjustment expenses incurred but not reported. The provisions of G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, and 58-6-5 apply to each pool and to persons that administer the pools. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year. All financial statements required by this section shall be prepared in accordance with generally accepted statutory accounting principles.

(h) If, as a result of the annual audit or an examination by the Commissioner, it appears that the assets of a pool are insufficient to enable the pool to discharge its legal liabilities and other obligations, the Commissioner shall notify the administrator and the board of trustees of the pool of the deficiency and his list of recommendations to abate the deficiency, including a recommendation not to add any new members until the deficiency is abated. If the pool fails to comply with the recommendations within 30 days after the date of the notice, the Commissioner may apply to the Superior Court of Wake County for an order requiring the pool to abate the deficiency and authorizing the Commissioner to appoint one or more special deputy commissioners, counsel, clerks, or assistants to oversee the implementation of the Court's order. The Commissioner has all of the powers granted to him under Article 17A of General Statute Chapter 58 relating to rehabilitation and liquidation of insurers; and the provisions of that Article apply to this section to the extent they are not in conflict with this section. The compensation and expenses of such persons shall be fixed by the Commissioner, subject to the approval of the Court, and shall be paid out of the funds or assets of the pool.

(i) Each pool contract shall provide that the members of the pool shall be assessed on a pro rata basis as calculated by the amount of each member's average annual contribution in order to satisfy the amount of any deficiency where a pool is determined to be insolvent, financially impaired, or is otherwise found to be unable to discharge its legal liabilities and other obligations.

(j) In the event that the Commissioner finds that a pool is insolvent, financially impaired, or otherwise, unable to discharge its legal liabilities or obligations, or if the Commissioner at any time has reason to believe that any owner or operator is unable to demonstrate financial responsibility as required by G.S. 143-215.94H and rules adopted by the Commission as a result of the financial condition of the pool or for any other reason, the Commissioner shall so notify the Secretary.

(k) The provisions of Article 48 of Chapter 58 do not apply to any risks retained by any pool.

(l) The Department of Insurance, in consultation with the Department of Environmental Quality, shall provide guidance and technical assistance for the formation of an insurance pool pursuant to G.S. 143-215.94I to any responsible entity that requests assistance. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 11; 1995, c. 193, s. 66; 1999-132, s. 11.11; 2008-195, s. 10; 2011-266, s. 1.20(c); 2015-241, s. 14.30(u).)

§ 143-215.94J. Limitation of liability of the State of North Carolina.

(a) No claim filed against the Commercial Fund shall be paid except from assets of the respective fund as provided for in this Part or as may otherwise be authorized by law.

(b) This Part shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this Part; nor shall it be construed to obligate the Secretary to take any action pursuant to this Part for which funds are not available from appropriations or otherwise.

(c) The Secretary may budget anticipated receipts as needed to implement this Part.

(d) Repealed by Session Laws 2015-241, s. 14.16A(g), effective December 31, 2016.

(e) If at any time the fund balance is insufficient to pay all valid claims against it, the claims shall be paid in full in the order in which they are finally determined. The Secretary may retain not more than five hundred thousand dollars ($500,000) in the Commercial Fund as a contingency reserve and not apply the reserve to the claims. The Department may use the contingency reserve to conduct cleanups in accordance with G.S. 143-215.94G when an imminent hazard poses a threat to human health or to significant natural resources. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 16; 1991, c. 538, s. 9; 1993, c. 400, s. 15; 2015-241, s. 14.16A(g).)

§ 143-215.94K. Enforcement.

The provisions of G.S. 143-215.94W through G.S. 143-215.94Y shall apply to this Part. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1993, c. 400, s. 15; 1995, c. 377, s. 10.)

§ 143-215.94L. Definitions.

(a) The Commission may adopt rules necessary to implement the provisions of this Part. Except as may be otherwise specifically provided, the provisions of Chapter 150B of the General Statutes apply to this Part.

(b) This Part shall be administered by the Department consistent with the provisions of Title VI, § 601 of the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, 42 U.S.C. § 6991 et seq., as amended. The provisions of 40 Code of Federal Regulations Part 280, Subpart I – Lender Liability (1 July 1997 Edition) apply to this Part and Part 2B of this Article.

(c) The provisions of this Part and of Part 2 of this Article are intended to be complementary. This Part shall not be construed to limit the liability under G.S. 143-215.84(a) of any person or to limit the authority of the Department to take any action pursuant to G.S. 143-215.84(b).

(d) This Part shall be known and may be cited as the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988.

(e) The Department of Environmental Quality shall establish a process to provide informal notice of any proposed policy change or rule interpretation that is not a rule, as defined in G.S. 150B-2, to interested parties. Except in a situation that requires immediate action, the Department shall receive and consider oral and written comment from interested parties before the Department implements the proposed policy change or rule interpretation. Except in a situation that requires immediate action, the Department shall provide written notice of a policy change or rule interpretation to interested parties at least 30 days prior to its implementation. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1991, c. 538, ss. 10, 16; 1993, c. 400, s. 15; 1998-161, s. 9; 2008-195, s. 9; 2015-241, s. 14.30(u).)

§ 143-215.94M. Reports.

(a) The Secretary shall present an annual report to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Fiscal Research Division, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources that shall include at least the following:

(1) A list of all discharges or releases of petroleum from underground storage tanks.

(2) Repealed by Session Laws 2015-241, s. 14.16A(h), effective December 31, 2016.

(3) A list of all cleanups undertaken by tank owners or operators and the status of these cleanups.

(4) A statement of receipts and disbursements for the Commercial Fund.

(5) A statement of all claims against the Commercial Fund, including claims paid, claims denied, pending claims, anticipated claims, and any other obligations.

(6) The adequacy of the Commercial Fund to carry out the purposes of this Part together with any recommendations as to measures that may be necessary to assure the continued solvency of the Commercial Fund.

(7) Repealed by Session Laws 2012-200, s. 23, effective August 1, 2012.

(b) The report required by this section shall be made by the Secretary on or before November 1 of each year. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 12, 16; 1991, c. 538, s. 11; 1993, c. 400, s. 15; c. 402, s. 6; 2002-148, s. 7; 2012-200, s. 23; 2015-241, s. 14.16A(h); 2017-57, s. 14.1(*l*).)

§ 143-215.94N. Applicability.

(a) The provisions of this Part as they relate to costs paid from the Commercial Fund apply only to discharges or releases that are discovered or reported on or after 30 June 1988 from a commercial underground storage tank.

(b) Repealed by Session Laws 2015-241, s. 14.16A(d), effective December 31, 2016. (1989, c. 652, ss. 13, 16; 1993, c. 400, s. 15; 1995, c. 377, s. 11; 2015-241, ss. 14.16A(c), (d).)

§ 143-215.94O: Repealed by Session Laws 2011-266, s. 1.20(a), effective July 1, 2011.

§ 143-215.94P. Groundwater Protection Loan Fund.

(a) There is established under the control and direction of the Department the Groundwater Protection Loan Fund. This Loan Fund shall be a nonreverting revolving fund consisting of any monies appropriated to it by the General Assembly or available to it from grants, and other monies paid to it or recovered on behalf of the Loan Fund. The Loan Fund shall be credited with interest on the Loan Fund by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(b) The Loan Fund shall be used to provide loans to the owners of commercial petroleum underground storage tanks who are creditworthy but may be unable to secure conventional loans to upgrade or replace commercial underground storage tanks in use on 1 July 1991 so as to meet the performance standards applicable to tanks installed after 22 December 1988 or the requirements that existing underground storage tanks must meet by 22 December 1998. All applications for loans under this section must be received by the Department prior to 1 January 1995.

(c) The Department shall adopt rules for use in managing the Loan Fund. Rules for managing the Loan Fund shall be based on generally accepted standards prevailing among commercial lending institutions with such modifications as may be necessary to achieve the purpose of this section to make loans available to creditworthy applicants. The Department shall administer the loan program through existing commercial lending institutions. In the event that the Department is unable to arrange for the administration of the loan program through existing commercial institutions in all or any part of the State, the Department may administer the loan program through the Office of State Budget and Management. Each commercial institution or agency that administers any part of the loan program shall collect all charges for securing and administering each loan, including but not limited to application fees, recording costs, collection costs, and attorneys' fees from the borrower. Receipt of a loan from the Loan Fund is not a right, duty, or privilege; therefore, Article 3 of Chapter 150B of the General Statutes does not apply to the grant or denial of a loan from the Loan Fund.

(d) Funds received in repayment of loans made from the Loan Fund shall be deposited into the Loan Fund until the proceeds of all approved loans are disbursed to the borrowers. Thereafter, funds received in repayment of loans made from the Loan Fund and any other funds remaining in the Loan Fund shall be deposited in the Commercial Fund.

(e) In the event of a default on a loan from the Loan Fund or a violation of a loan agreement, the Secretary may request the Attorney General to bring a civil action for collection of the amount owed or other appropriate relief. An action shall be filed in the superior court of the county where the loan recipient resides, where the loan recipient does business, or where the tanks replaced or upgraded by the loan are located. In an action, the Attorney General may recover all costs of litigation, including attorneys' fees.

(f) If the State incurs liability in extending credit from the Loan Fund and, as a result of the liability, the State is ordered to pay or, as part of a settlement agreement, agrees to pay damages or other costs, the State shall seek reimbursement for the amount of the damages or other costs from the following sources in the order listed:

(1) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks, including but not limited to the Leaking Underground Storage Tank Trust Fund established pursuant to 26 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).
(2) The Noncommercial Fund.
(3) The Commercial Fund. (1989, c. 652, s. 16; 1991, c. 538, ss. 13, 21; 1993, c. 400, s. 15; c. 402, s. 7; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

§§ 143-215.94Q through 143-215.94S. Reserved for future codification purposes.

Part 2B. Underground Storage Tank Regulation.

§ 143-215.94T. Adoption and implementation of regulatory program.

(a) The Commission shall adopt, and the Department shall implement and enforce, rules relating to underground storage tanks as provided by G.S. 143-215.3(a)(15) and G.S. 143B-282(a)(2)h. These rules shall include standards and requirements applicable to both existing and new underground storage tanks and tank systems, may include different standards and requirements based on tank capacity, tank location, tank age, and other relevant factors, and shall include, at a minimum, standards and requirements for:

(1) Design, construction, and installation, including monitoring systems.
(2) Notification to the Department, inspection, and registration.
(3) Recordation of tank location.
(4) Modification, retrofitting, and upgrading.
(5) General operating requirements.
(6) Release detection.
(7) Release reporting, investigation, and confirmation.
(8) Corrective action.
(9) Repair.
(10) Closure.
(11) Financial responsibility.
(12) Tank tightness testing procedures and certification of persons who conduct tank tightness tests.
(13) Secondary containment for all components of petroleum underground storage tank systems.

(b) Rules adopted pursuant to subsection (a) of this section that apply only to commercial underground storage tanks shall not apply to any:

(1) Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.
(2) Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored.
(3) Underground storage tank of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households.

(c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all components of underground storage tank systems, including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary containment requirements shall include standards for double wall tanks, piping, and fittings and for sump containment for pump heads and dispensers. The rules shall provide for monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any component of an underground storage tank system on or after that date. This section shall not be construed to limit the right of an owner or operator to repair any existing component of an underground storage tank system. If an existing underground storage tank is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced underground tank. Likewise, if existing piping is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced piping.

(d) The Department shall allow non-tank metallic components that are unprotected from corrosion, including flex connectors and other metal fittings and connectors at the ends of piping runs, to have corrosion protection added as an alternative to replacement of these components if the component does not have visible corrosion and passes a tightness test. (1989, c. 652, s. 14; 1998-161, s. 10; 1999-328, s. 4.12; 2003-352, s. 8; 2008-195, s. 5; 2009-570, s. 20; 2011-394, s. 11.4.)

§ 143-215.94U. Registration of petroleum commercial underground storage tanks; operation of petroleum underground storage tanks; operating permit required.

(a) The owner or operator of each petroleum commercial underground storage tank shall annually obtain an operating permit from the Department for the facility at which the tank is located. The Department shall issue an operating permit only if the owner or operator has done all of the following:

(1) Notified the Department of the existence of all tanks as required by 40 Code of Federal Regulations § 280.22 (1 July 1994 Edition) or 42 U.S.C. § 6991a, if applicable, at the facility.

(2) Paid all fees required under G.S. 143-215.94C for all commercial petroleum underground storage tanks located at the facility.

(3) Complies with applicable release detection, spill and overfill protection, and corrosion protection requirements set out in rules adopted pursuant to this Chapter, notifies the Department of the method or combination of methods of leak detection, spill and overfill protection, and corrosion protection in use, and certifies to the Department that all applicable release detection, spill and overfill protection, and corrosion protection requirements are being met for all petroleum underground storage tanks located at the facility.

(4) If applicable, complies with the Stage I vapor control requirements set out in 15A North Carolina Administrative Code 2D.0928, effective 1

March 1991, notifies the Department of the method or combination of methods of vapor control in use, and certifies to the Department that all Stage I vapor control requirements are being met for all petroleum underground storage tanks located at the facility.

(5) Substantially complied with the air quality, groundwater quality, and underground storage tank standards applicable to any activity in which 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. In determining substantial compliance, the compliance history of the owner or operator and any parent, subsidiary, or other affiliate of the owner, operator, or parent may be considered.

(6) Demonstrated financial responsibility as required by G.S. 143-215.94H.

(b) The operating permit shall be issued at the time the commercial underground storage annual tank operating fee required under G.S. 143-215.94C(a) is paid and shall be valid from the first day of the month in which the fee is due through the last day of the last month for which the fee is paid in accordance with the schedule established by the Department under G.S. 143-215.94C(b).

(c) No person shall place a petroleum product, and no owner or operator shall cause a petroleum product to be placed, into an underground storage tank at a facility for which the owner or operator does not hold a currently valid operating permit.

(d) The Department shall issue an operating permit certificate for each facility that meets the requirements of subsection (a) of this section. The operating permit certificate shall identify the number of tanks at the facility and shall conspicuously display the date on which the permit expires. Except for the owner or operator, no person shall be liable under subsection (c) of this section if an unexpired operating permit certificate is displayed at the facility, unless the person knows or has reason to know that the owner or operator does not hold a currently valid operating permit for the facility.

(e) The Department may revoke an operating permit only if the owner or operator fails to continuously meet the requirements set out in subsection (a) of this section. If the Department revokes an operating permit, the owner or operator of the facility for which the operating permit was issued shall immediately surrender the operating permit certificate to the Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator may challenge a decision by the Department to deny or revoke an operating permit by filing a contested case under Article 3 of Chapter 150B of the General Statutes. (1995, c. 377, s. 2; 1998-161, s. 6; 2008-195, s. 6; 2011-398, s. 52.)

§ 143-215.94V. Standards for petroleum underground storage tank cleanup.

(a) Legislative findings and intent.

(1) The General Assembly finds that:

a. The goals of the underground storage tank program are to protect human health and the environment. Maintaining the solvency of the Commercial Fund and the Noncommercial Fund is essential to these goals.

b. The sites at which discharges or releases from underground storage tanks occur vary greatly in terms of complexity, soil types, hydrogeology, other physical and chemical characteristics, current and potential future uses of groundwater, and the degree of risk that each site may pose to human health and the environment.

c. Risk-based corrective action is a process that recognizes this diversity and utilizes an approach where assessment and remediation activities are specifically tailored to the conditions and risks of a specific site.

d. Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics, and allowing no action or no further action at sites that pose little risk to human health or the environment.

e. A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.

(2) The General Assembly intends:

a. To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases from petroleum underground storage tanks. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based analysis to determine the appropriate cleanup levels and actions.

b. That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.

c. That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.

d. That these rules and decisions of the Commission and the Department in implementing these rules facilitate the completion of more cleanups in a shorter period of time.

e. That neither the Commercial Fund nor the Noncommercial Fund be used to clean up sites where the Commission has determined that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission.

f. Repealed by Session Laws 1998-161, s. 11(c), effective retroactively to January 1, 1998.

g. That the Commercial Fund and the Noncommercial Fund be used to perform the most cost-effective cleanup that addresses imminent threats to human health and the environment.

(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases from petroleum underground storage tanks. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment. Rules that use the distance between a source area of a confirmed discharge or release to a water supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk.

(c) The Commission may require an owner or operator or a landowner eligible for payment or reimbursement under subsections (b), (b1), (c), and (c1) of G.S. 143-215.94E to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge or release from a petroleum underground storage and to identify the most cost-effective cleanup that addresses imminent threats to human health and the environment.

(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify an owner, operator, or landowner who provides the information required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment. If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that requires further cleanup, the Commission shall notify the owner, operator, or landowner who provides the information required by subsection (c) of this section of the cleanup method approved by the Commission as the most cost-effective cleanup method for the site. This section shall not be construed to prohibit an owner, operator, or landowner from selecting a cleanup method other than the cost-effective cleanup method approved by the Commission so long as the Commission determines that the alternative cleanup method will address imminent threats to human health and the environment.

(e) If the Commission concludes under subsection (d) of this section that no cleanup, no further cleanup, or no further action will be required, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial or Noncommercial Fund, other than reasonable and necessary to conduct the risk assessment required by this section, unless:

(1) Cleanup is ordered or damages are awarded in a finally adjudicated judgment in an action against the owner or landowner. To be eligible for reimbursement of damages arising from a third-party claim for bodily injury or property damage awarded in a finally adjudicated judgment,

however, an owner or operator shall (i) notify the Department of any such claim; (ii) provide the Department with all pleadings and other related documents if a lawsuit has been filed; and (iii) provide the Department copies of any medical reports, statements, investigative reports, or certifications from licensed professionals necessary to determine that a claim for bodily injury or property damage is reasonable and necessary. Reimbursement of claims for damages arising from a third-party claim for bodily injury or property damage awarded in a finally adjudicated judgment shall be subject to the limitations set forth in G.S. 143-215.94B(b)(5) and G.S. 143-215.94D(b1)(2), as applicable, and any other provision governing third-party claims set forth in this Article.

(2) Cleanup is required or damages are agreed to in a consent judgment approved by the Department prior to its entry by the court.

(3) Cleanup is required or damages are agreed to in a settlement agreement approved by the Department prior to its execution by the parties.

(4) The payment or reimbursement is for costs that were incurred prior to or as a result of notification of a determination by the Commission that no cleanup, no further cleanup, or no action is required.

(5) The payment or reimbursement is for costs that were incurred as a result of a later determination by the Commission that the discharge or release poses a threat or potential threat to human health or the environment as provided in subsection (d) of this section.

(e1) If the Commission concludes under subsection (d) of this section that further cleanup is required and notifies the owner, operator, or landowner of the cleanup method approved by the Commission as the most cost-effective cleanup method for the site, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial Fund or Noncommercial Fund, other than those costs that are reasonable and necessary to conduct the risk assessment and to implement the cost-effective cleanup method approved by the Commission. If the owner, operator, or landowner selects a cleanup method other than the one identified by the Commission as the most cost-effective cleanup, the Department shall not pay or reimburse for costs in excess of the cost of implementing the approved cost-effective cleanup.

(f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a determination by the Commission under subsection (d) of this section as to whether cleanup, further cleanup, or further action will be required.

(g) Subsections (c) through (e1) of this section apply only to assessments and cleanups in progress or begun on or after 2 January 1998.

(h) If a discharge or release of petroleum from an underground storage tank results in contamination in soil or groundwater that becomes commingled with contamination that is the result of a discharge or release of petroleum from a source of contamination other than an underground storage tank, the cleanup of petroleum may proceed under rules adopted pursuant to this section. The Department shall not pay or reimburse any costs

associated with the assessment or remediation of that portion of contamination that results from a release or discharge of petroleum from a source other than an underground storage tank from either the Commercial Fund or the Noncommercial Fund. (1995, c. 377, s. 1; 1998-161, s. 11(c); 2003-352, s. 9; 2011-394, s. 11.5; 2015-263, s. 20(a).)

§ 143-215.94W. Enforcement procedures: civil penalties.

(a) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Secretary against any person who:

(1) Violates any provision of this Part or rule adopted pursuant to this Part.

(2) Fails to apply for or to secure a permit required by this Part.

(3) Violates or fails to act in accordance with the terms, conditions, or requirements of any permit issued pursuant to this Part.

(4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Part.

(5) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2 or fails to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11.

(6) Falsifies or tampers with any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.

(7) Knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.

(8) 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.

(9) Knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under this Part.

(10) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Part.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars ($10,000) per day for so long as the violation continues. A penalty for a continuous violation shall not exceed two hundred thousand dollars ($200,000) for each period of 30 days during which the violation continues.

(c) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt

of the notice of assessment. The Secretary shall make the final decision regarding assessment of a civil penalty under this section.

(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary 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, unless the violator contests the assessment as provided in subsection (d) of this section, or requests remission of the assessment in whole or in part as provided in subsection (e) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary 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.

(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 17.

(h) 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. (1995, c. 377, s. 3; 1995 (Reg. Sess., 1996), c. 743, s. 17; 1998-215, s. 69; 2002-90, s. 6.)

§ 143-215.94X. Enforcement procedures: criminal penalties.

(a) Any person who negligently commits any of the offenses set out in subdivisions (1) through (9) of G.S. 143-215.94W(a) shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues.

(b) Any person who knowingly and willfully commits any of the offenses set out in subdivisions (1) through (5) of G.S. 143-215.94W(a) 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. For the purposes of this subsection, 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.

(c)

(1) Any person who knowingly commits any of the offenses set out in subdivisions (1) through (5) of G.S. 143-215.94W(a) and who knows at that time that he thereby places another person in imminent danger of death or serious 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.

(d) 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.

(e) 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.

(f) 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. 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 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 at the time. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.

(6) Occasional, inadvertent, short-term violations causing no significant harm to the environment or risk to the public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(g) 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. (1995, c. 377, s. 3.)

§ 143-215.94Y. Enforcement procedures; injunctive relief.

Whenever the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part, any of the terms of any permit issued pursuant to this Part, or a rule implementing this Part or has failed to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11, the Department may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part, the rules of the Commission, or the failure to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11 has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Part or for failure to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11. (1995, c. 377, s. 3; 2002-90, s. 7.)

§ 143-215.94Z: Reserved for future codification purposes.

Part 2C. Offshore Oil and Gas Activities. Adverse Environmental Impact Protection.

§ 143-215.94AA. Declaration of public policy.

The General Assembly hereby finds and declares as follows:

(1) The traditional uses of the seacoast of the State are public and private recreation, commercial and sports fishing, and habitat for natural resources;

(2) The preservation of these uses is a matter of the highest urgency and priority, and such uses can only be preserved effectively by maintaining and enhancing the existing condition of the coastal waters, estuaries, wetlands, tidal flats, beaches, and public lands adjoining the seacoast;

(3) The coastal economy, including access to the coast of the State, depends, either directly or indirectly, upon a ready and continuous reserve of petroleum products and by-products, including that portion of the supply resulting from oil and gas activities on the Outer Continental Shelf;

(4) Offshore oil and natural gas exploration, production, processing, recovery, and transportation pose increased potential for damage to the State's coastal environment, to the traditional uses of the area, and to the beauty of the North Carolina coast;

(5) Spills, discharges, and escapes of pollutants occurring as a result of procedures involving offshore oil and natural gas related activities have occurred in the past, and future threats of potentially catastrophic proportions from such activities require adoption of this Part as mitigation against such events;

(6) The economic burdens imposed by the General Assembly upon those engaged in the offshore exploration, production, processing, recovery, and transportation of oil and natural gas are reasonable and necessary in light of the traditional uses and interests herein protected, which are expressly declared to be of grave public interest and concern to the State in promoting its general interest and welfare promoting the public health, preventing diseases, and providing for the public safety. (1989, c. 656, s. 5, c. 770, s. 75.5.)

§ 143-215.94BB. Definitions.

In addition to the definitions set out in G.S. 143-215.77, the following definitions shall apply to this Part:

(1) "Damages" are damages for any of the following:

a. Injury or harm to real or personal property, which includes the cost of restoring, repairing, or replacing any real or personal property damaged or destroyed by a discharge under this section, any income lost from the time such property is damaged to the time such property is restored, repaired, or replaced, and any reduction

in value of such property caused by such discharge by comparison with its value prior thereto.

b. Business loss, including loss of income or impairment of earning capacity due to damage to real or personal property or to damage or destruction of natural resources upon which such income or earning capacity is reasonably dependent.

c. Interest on loans obtained or other financial obligations incurred by an injured party for the purpose of ameliorating the adverse effects of a discharge pending the payment of a claim in full as provided by this Article.

d. Costs of cleanup, removal, or treatment of natural gas, oil, or drilling waste discharges.

e. Costs of restoration, rehabilitation, and, where possible, replacement of wildlife or other natural resources damaged as a result of a discharge.

f. When the injured party is the State or one of its political subdivisions, in addition to any injury described in subparagraphs (a) to (e), inclusive, damages include all of the following:

1. Injury to natural resources or wildlife, including recreational or commercial fisheries, and loss of use and enjoyment of public beaches and other public resources or facilities within the jurisdiction of the State or one of its political subdivisions.
2. Costs to assess damages to natural resources, wildlife, or habitat.
3. Costs incurred to monitor the cleanup of the natural gas, oil, or drilling waste spilled.
4. Loss of State or local government tax revenues resulting from damages to real or personal property proximately resulting from a discharge.

(2) For the purposes of this Part, "oil" and "drilling wastes" include, but are not limited to: petroleum, refined or processed petroleum, petroleum by-products, oil sludge, oil refuse, oil mixed with wastes and chemicals, or other materials used in the exploration, recovery, or processing of oil. "Oil" does not include oil carried in a vessel for use as fuel in that vessel.

(3) "Natural gas" includes natural gas, liquified natural gas, and natural gas by-products. "Natural gas" does not include natural gas carried in a vessel for use as fuel in that vessel.

(4) "Exploration" means undersea boring, drilling, soil sampling, and any other technique employed to assess and evaluate the presence of subterranean oil and natural gas deposits.

(5) "Injured party" means any person who suffers damages from natural gas, oil, or drilling waste which is discharged or leaks into marine waters, or from offshore exploration. The State, or a county or municipality, may be an injured party.

(6) "Responsible person" means any of the following:

a. The owner or transporter of natural gas, oil, or drilling waste which causes an injury covered by this Part.

b. The owner, operator, lessee of, or person who charters by demise, any offshore well, undersea site, facility, oil rig, oil platform, vessel, or pipeline which is the source of natural gas, oil, drilling waste, or is the source or location of exploration which causes an injury covered by this Part.

"Responsible party" does not include the United States, the State, any county, municipality or public governmental agency; however, this exception to the definition of "responsible person" shall not be read to exempt utilities from the provisions of this Part.

(7) "Offshore waters" shall include both the territorial sea extending seaward from the coastline of North Carolina or any other coastal state bordering the Atlantic Ocean, including the Gulf of Mexico, and the exclusive economic zone extending seaward from the territorial sea of each such state.

(8) "Natural resources" shall include "marine and estuarine resources" and "wildlife resources" as those terms are defined in G.S. 113-129(11) and G.S. 113-129(17), respectively.

(9) "Coastal fishing waters" has the same meaning as in G.S. 113-129.

(10) "Exclusive economic zone" has the same meaning as in section 1001(8) of the Oil Pollution Act of 1990, 33 U.S.C. § 2701(8). (1989, c. 656, s. 5; c. 770, s. 75.5; 2010-179, s. 1(b).)

§ 143-215.94CC. Liability under this section; exceptions.

(a) Any responsible person shall be strictly liable, notwithstanding any language of limitation found in G.S. 143-215.89, for all cleanup and removal costs and all direct or indirect damages incurred within the territorial jurisdiction of the State by any injured party that arise out of, or are caused by any of the following:

(1) The discharge, as defined in G.S. 143-215.77, of natural gas, oil, or drilling waste into or onto coastal fishing waters or offshore waters, from any of the following sources wherever located:

a. Any well or undersea site at which there is exploration for or extraction or recovery of natural gas or oil.

b. Any facility, oil rig, or oil platform at which there is exploration for, or extraction, recovery, processing, or storage of, natural gas or oil.

c. Any vessel in which natural gas, oil, or drilling waste is transported, processed or stored other than for purposes of fuel for the vessel carrying it.

d. Any pipeline in which natural gas, oil, or drilling waste is transported.

(2) Any exploration in or upon coastal fishing waters.

(3) Any technique or method used for cleanup and removal of any discharge of natural gas, oil, or drilling waste from any source listed in subdivision (1) of this subsection into or onto coastal fishing waters, including, but not limited to, chemical dispersants.

(b) A responsible person is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the State or a local government, caused solely by any act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages caused solely by the negligence or intentional malfeasance of that injured party.

(3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant. In any action arising under the provisions of this Article wherein this exception is raised as a defense to liability, the burden of proving that the alleged third-party intervention occurred in such a manner as to limit the liability of the person sought to be held liable shall be upon the person charged.

(4) Natural seepage not caused by a responsible person.

(5) Discharge of oil or natural gas from a private pleasure boat or commercial fishing vessel having a fuel capacity of less than 500 gallons.

(6) Damages which arise out of, or are caused by, a discharge that is authorized by and in compliance with a State or federal permit.

(7) Damages that could have been reasonably mitigated by the injured party in accordance with common law.

(c) A court of suitable jurisdiction in any action under this Part may award reasonable costs of the suit and attorneys' fees, and the costs of any necessary expert witnesses, to any prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any prevailing defendant only if the court finds that the plaintiff commenced or prosecuted the suit under this Part in bad faith or solely for purposes of harassing the defendant. (1989, c. 656, s. 5; c. 770, ss. 75.4, 75.5; 2010-179, s. 1(c).)

§ 143-215.94DD. Joint and several liability; damages; personal injury.

(a) Liability under this Part shall be joint and several. However, this section does not bar a cause of action that a responsible person has or would have, by reason of subrogation or otherwise, against any person.

(b) This section does not prohibit any person from bringing an action for damages caused by natural gas, oil or drilling waste, or by exploration, under any other provisions or principle of law, including, but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party for any loss or injury for which the party is or has been awarded damages under any other provisions or principles of law. G.S. 143-215.94CC(b) does not create

any defense not otherwise available regarding any action brought under any other provision or principle of law, including, but not limited to, common law.

(c) This section shall not apply to claims for damages for personal injury or wrongful death, and does not limit the right of any person to bring such an action under any provision or theory of law. (1989, c. 656, s. 5, c. 770, s. 75.5.)

§ 143-215.94EE. Removal of prohibited discharges.

(a) The Department shall be authorized and empowered to proceed with the cleanup of discharges covered under this Part pursuant to the authority granted to the Department in G.S. 143-215.84(b) and G.S. 143-215.94HH(b)(2).

(b) Any unexplained discharge of oil, natural gas or drilling wastes occurring in waters beyond the jurisdiction of the State that for any reason penetrates within State jurisdiction shall be removed by or under the direction of the Department. Except for any expenses incurred by the responsible person, should such person become known, all expenses incurred in the removal of such discharges shall be paid promptly by the State from the Oil or Other Hazardous Substances Pollution Protection Fund established pursuant to G.S. 143-215.87 or from any other available sources. In the case of unexplained discharges, the matter shall be referred by the Secretary to the North Carolina Attorney General for collection of damages pursuant to G.S. 143-215.94FF of this Part. At his discretion, the Attorney General may refer the matter to the State Bureau of Investigation or other appropriate State or federal authority to determine the identity of the responsible person.

(c) Nothing in this section is intended to preclude cleanup and removal by any person threatened by such discharges, who, as soon as is reasonably possible, coordinates and obtains approval for such actions with ongoing State or federal operations and appropriate State and federal authorities.

(d) No action taken by any person to contain or remove an unlawful discharge shall be construed as an admission of liability for said discharge. (1989, c. 656, s. 5, c. 770, s. 75.5; 1991, c. 342, s. 13.)

§ 143-215.94FF. Authorization of the Attorney General; citizens' suits.

(a) For any violation of this Part, the Attorney General may, on behalf of the State and on behalf of affected citizens of the State as a class, bring a civil action in the Superior Court of Wake County against the alleged responsible person. The action may seek:

(1) Injunctive relief; or
(2) Damages caused by the violation; or
(3) Both damages and injunctive relief; or
(4) Such other and further relief in the premises as the Court shall deem proper.

(b) Any injured party under this Part may bring a civil action for damages against the alleged responsible person. Civil actions under this subsection shall be brought in the superior court of the county in which the alleged injury occurred or in which the alleged damaged property is located, or in the county in which the injured party resided.

(c) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek injunctive or other relief. (1989, c. 656, s. 5, c. 770, s. 75.5.)

§ 143-215.94GG. Notification by persons responsible for discharge.

(a) Any person responsible for an offshore discharge under this Part shall immediately notify the Division of Emergency Management pursuant to rules established by the Secretary of Public Safety, if any, but in no case later than two hours after the discharge. Failure to so notify the Division of Emergency Management shall make the responsible person liable to the penalties set out in subsection (b) of this section. No penalty shall be imposed under this section when the owner or operator has promptly reported the discharge to federal authorities designated pursuant to 33 U.S.C. § 1321.

(b) The civil penalty for failure to immediately report a discharge under this Part shall be determined by the Commission. In determining the amount of a penalty for failure to report under this section, the Commission shall take into consideration such circumstances as the gravity of the violation, the previous record of the responsible person in complying with the terms of this Article, whether the violator reported the discharge and if so after what period of time following the spill, the size of the business of the responsible person and the effect of the penalty on the violator's ability to continue in business, and other relevant factors; provided that the penalty assessed under this section shall not exceed the following daily maximum amounts, based upon the quantity of oil spilled:

(1) Up to 50,000 gallons.....$ 50,000

(2) More than 50,000 gallons 250,000

For purposes of this section, each day or any part thereof during which a discharge goes unreported by the responsible person shall constitute a separate offense.

(c) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1989, c. 656, s. 5; c. 770, s. 75.5; 1998-215, s. 70; 2011-145, s. 19.1(g).)

§ 143-215.94HH. Oil spill contingency plan.

(a) The State Emergency Response Commission, in consultation with the Secretary of Administration or his designee in the Outer Continental Shelf Lands Office, shall develop a State oil spill contingency plan relating solely to the undersea exploration, extraction, production and transport of oil or natural gas in the marine environment off the North Carolina coast, including any such development on the Outer Continental Shelf seaward of the State's jurisdiction over its territorial waters.

(b) The Secretary of Public Safety or his designee shall establish, pursuant to such a plan, an emergency oil spill control network which shall be comprised of available equipment from appropriate State, county and municipal governmental agencies. Such network shall be employed to provide an immediate response to an oil discharge into the offshore marine environment which is reasonably likely to affect the State's coastal waters. Furthermore, such network shall be employed in conjunction with the cleanup operations under this Article or any applicable federal law, required of the owner or operator of the discharging operation, vessel, or facility, the Department of Environmental Quality, and any federal agency.

(1) The Secretary of Public Safety or his designee shall make an inventory, including its location and condition, of all equipment owned by the State,

its counties and municipalities, and private equipment that is available to the State for leasing in the case of an oil spill including costs of leasing, that would be capable of participating in discharge cleanup operations.

(2) The Secretary of Public Safety shall at his discretion have the power to deploy such equipment in participating in a discharge cleanup operation.

(3) The Secretary of Environmental Quality shall be authorized to reimburse such State agencies, counties, and municipalities for use of such equipment with such funds as may be available from the "Oil or Other Hazardous Substances Pollution Protection Fund" created pursuant to G.S. 143-215.87 or any other sources.

(4) The oil spill contingency plan and oil spill response network developed pursuant to this section shall be reviewed and evaluated for adequacy and continued feasibility every three years, or more often if deemed appropriate by the Secretary of Public Safety. (1989, c. 656, s. 5; c. 727, s. 218(111a); c. 770, s. 75.5; 1997-443, s. 11A.119(a); 2011-145, s. 19.1(g); 2015-241, ss. 14.30(u), (v).)

§ 143-215.94II. Emergency proclamation; Governor's powers.

(a) Whenever any emergency exists or appears imminent, arising from the discharge of oil or other pollutants within the marine environment, the Governor shall by proclamation declare a state of emergency in the appropriate sections of the State. Upon such proclamation, the Governor shall have all powers enumerated in G.S. 166A-19.30(c) subject to the limitations contained in that subsection.

(b) If the Governor is unavailable, the Lieutenant Governor shall, by proclamation, declare a state of emergency in the appropriate sections of the State.

(c) In performing his duties under this section, the Governor is authorized and directed to cooperate with all departments and agencies of the federal government, the offices and agencies of other states and foreign countries and the political subdivisions thereof, and private agencies in all matters pertaining to an emergency described herein.

(d) In addition to the powers enumerated in G.S. 166A-19.30(c), in the case of such an emergency described in subsection (a) of this section, the Governor is further authorized and empowered to transfer any funds available to him by statute for emergency use into the Oil or Other Hazardous Substances Pollution Protection Fund created pursuant to G.S. 143-215.87, to be utilized for the purposes specified therein. (1989, c. 656, s. 5; c. 770, s. 75.5; 1991, c. 342, s. 14; 2012-12, s. 2(ww).)

§ 143-215.94JJ. Federal law.

Nothing in this Part shall authorize State agencies to impose any duties or obligations in conflict with limitations on State authority established by federal law at the time such agency action is taken. Likewise, no additional liability is established by this Part to the extent that, at the time of the injury, federal law establishes limits on liability which preempt State law. The federal limits on liability established in the Oil Pollution Act of

1990, 33 U.S.C.A. §§ 2701 to 2762, shall not apply to discharges or pollution by oil within the territorial jurisdiction of the State. (1989, c. 656, s. 5; c. 770, s. 75.5; 2010-179, s. 1(d).)

§ 143-215.94KK: Reserved for future codification purposes.

§ 143-215.94LL: Reserved for future codification purposes.

§ 143-215.94MM: Reserved for future codification purposes.

Part 2D. Training of Underground Storage Tank Operators.

§ 143-215.94NN. Applicability.

The requirements of this Part apply to underground storage tank systems regulated under Subtitle I of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended, except those excluded by regulation at 40 Code of Federal Regulations 280.10(b) (July 1, 2009 Edition) and those deferred by regulation at 40 Code of Federal Regulations 280.10(c) (July 1, 2009 Edition). (2010-154, s. 2.)

§ 143-215.94OO. Definitions.

Unless a different meaning is required by the context, the definitions in G.S. 143-212 and G.S. 143-215.94A apply in this Part.

(1) "Emergency response operator" means an on-site person whose responsibilities include addressing emergencies presented by a spill or release, or responding to alarms or releases from an underground storage tank system. For an unmanned facility, "emergency response operator" means the person responsible for responding to emergencies or alarms or releases at the facility.

(2) "Primary operator" means a person having primary responsibility for the daily on-site operation and maintenance of an underground storage tank system.

(3) "Underground storage tank" means: (i) any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground; and (ii) to which this Part applies pursuant to G.S. 143-215.94NN.

(4) "Underground storage tank system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, dispenser, and containment system, if any. (2010-154, s. 2.)

§ 143-215.94PP. Designation of operators to be trained.

(a) The owner of an underground storage tank system shall designate the primary operator of the underground storage tank system. The person designated shall be the underground storage tank operator, as defined in 40 Code of Federal Regulations Part 280 (July 1, 2009 Edition), or an employee or agent of the underground storage tank operator. There shall be a designated primary operator of the underground storage tank system at all times, until the underground storage tank system has been permanently closed. If the owner fails to designate a primary operator, the owner shall be deemed to be the primary operator of the underground storage tank system for purposes of this Part.

(b) The primary operator shall designate one or more emergency response operators who are employees or agents of the primary operator and shall be on call to respond to emergencies or alarms at the facility. If an emergency response operator is not present at the facility at all times during which a regulated substance is being withdrawn from, or is capable of being withdrawn from, the underground storage tank system, the facility shall have an automated notification system in place that will alert the emergency response operator of an emergency or activated alarm at the facility. If the primary operator fails to designate one or more emergency response operators, the primary operator shall be deemed to be the emergency response operator of the underground storage tank system.

(c) A person may act as both the primary operator and the emergency response operator of the underground storage tank system. (2010-154, s. 2.)

§ 143-215.94QQ. Training requirements for primary operators.

(a) The Department shall develop and implement a training program for primary operators. The training program shall provide instruction on the proper operation and maintenance of the underground storage tank system at the facility, principles of construction and safety, and all regulatory requirements associated with the underground storage tank system. The training may consist of a combination of on-site instruction and on-site testing, as well as online instruction and online testing. In order to satisfactorily complete the training, a primary operator shall, at a minimum, demonstrate all of the following:

(1) Knowledge of the requirements for spill prevention, overfill prevention, release detection, corrosion protection, emergency response, and product compatibility.

(2) Site-specific knowledge of the equipment used at the facility and the components of the underground storage tank system, and the methods of release detection and release prevention associated with the underground storage tank components.

(3) Knowledge of the requirements for demonstrating financial responsibility.

(4) Understanding of notification requirements associated with the underground storage tank system, including requirements for reporting releases and suspected releases.

(5) Understanding of the requirements for the temporary and permanent closure of underground storage tank systems.

(6) Knowledge of the emergency response operator training requirements, and the actions to be taken in response to emergencies and alarms.

(b) A primary operator shall be retrained if an inspection at the facility reveals that the underground storage tank system is not in substantial compliance with the requirements for: release detection, release prevention, financial responsibility, emergency response, suspected release reporting and investigation, the proximity of the underground storage tank system to water supply wells and surface water, and permitting. A primary operator who is required to be retrained shall complete the retraining within a reasonable time as determined by the Department. The retraining shall include training in the areas for which the underground storage tank system was not in compliance. The retraining may consist of a combination of on-site instruction and on-site testing, as well as in-class instruction and in-class testing, and, if available, the Department shall offer online instruction and online testing in lieu of in-class instruction and in-class testing. In-class instruction shall be provided by the Department at least once each quarter in each one of the regional offices of the Department. An operator required to be retrained pursuant to this subsection shall only be required to attend in-class instruction and in-class testing at the regional office closest to the facility for which the operator is designated.

(c) The primary operator shall maintain documentation to show that the operator has satisfactorily completed all training required by this section. (2010-154, s. 2.)

§ 143-215.94RR. Training requirements for emergency response operators.

(a) The Department shall develop a training program for emergency response operators. In order to satisfactorily complete the training, an emergency response operator shall, at a minimum, demonstrate all of the following:

(1) General understanding of the underground storage tank system at the facility, and knowledge of the location and proper operation of the safety and emergency response equipment.

(2) Understanding of the actions to be taken in response to an emergency, including situations posing an immediate danger or threat to the public or to the environment and requiring immediate action.

(3) Understanding of leak detection alarms and preparations needed to respond to alarms before a release has occurred.

(4) Recognition of unusual operating conditions, equipment failures, or environmental conditions that may indicate a release, and knowledge of the steps to take in response to a suspected release.

(5) Knowledge of immediate steps to take in response to a confirmed release to stop further release and to contain spills before they reach the environment.

(b) The primary operator is responsible for implementing the training program developed by the Department for emergency response operators. The primary operator shall train each emergency response operator of the underground storage tank system at the facility. Prior to training an emergency response operator, the primary operator shall have satisfactorily completed all training required by this section. The primary operator shall

maintain documentation of training provided to emergency response operators. (2010-154, s. 2.)

§ 143-215.94SS. Tank systems for emergency power generators.

This section applies only to a facility that utilizes an underground storage tank system to store fuel solely for use by emergency power generators. A primary operator that has satisfactorily completed the training required by G.S. 143-215.94QQ at a facility shall be deemed trained as the primary operator at another facility that has identical spill prevention, overfill prevention, release detection, corrosion protection, emergency response, and product compatibility requirements as the facility for which the primary operator has satisfactorily completed training. (2010-154, s. 2.)

§ 143-215.94TT. Enforcement.

This Part may be enforced as provided in G.S. 143-215.94W, 143-215.94X, and 143-215.94Y. (2010-154, s. 2.)

§ 143-215.94UU. Effect on other laws.

The requirements of this Part are in addition to, and not in lieu of, any other requirements applicable to underground storage tank owners or operators, as defined in 40 Code of Federal Regulations Part 280 (July 1, 2009 Edition), under law. (2010-154, s. 2.)

§§ 143-215.94VV through 143-215.94ZZ: Reserved for future codification purposes.

Part 3. Oil Terminal Facilities.

§ 143-215.95. Duties of Secretary.

The Secretary shall administer the provisions for registration of oil terminal facilities contained in this Part. In addition, he shall engage in such study and research concerning oil terminal facilities and their regulation in this State and elsewhere as may be required to furnish the General Assembly with a thorough factual basis for his recommendations for further legislation pursuant to this Part. (1973, c. 534, s. 1; 1977, c. 771, s. 4; 1987, c. 827, s. 154(3).)

§ 143-215.96. Oil terminal facility registration.

(a) The owner or operator of every oil terminal facility in the State shall secure a registration certificate from the Secretary. The Secretary shall not issue a registration certificate until the owner or operator has furnished the following information:

(1) Complete name of the owner and operator of the oil terminal facility together with addresses and telephone numbers;

(2) Number of employees of the oil terminal facility and the principal officers;

(3) Maps or sketches, based on criteria developed by the Secretary, showing property lines of the oil terminal facility and location of nearby watercourses or bodies of water as specified by the Secretary; and

(4) Summary of present and proposed procedures, if any, for prevention of oil spills.

(b) The owner or operator of an oil terminal facility shall secure a registration certificate no later than 30 days after the oil terminal facility begins operation. (1973, c. 534, s. 1; 1995, c. 504, s. 11.)

§ 143-215.97. Rules.

The Secretary may adopt rules to implement this Part. (1973, c. 534, s. 1; 1975, 2nd Sess., c. 983, s. 82; 1977, c. 771, s. 4; 1987, c. 827, s. 199.)

§ 143-215.98. Violations.

Any person who shall be adjudged to have violated any provision of this Part or any rule of the Secretary adopted hereunder shall be guilty of a Class 3 misdemeanor. (1973, c. 534, s. 1; 1977, c. 771, s. 4; 1987, c. 827, ss. 154(3), 200; 1993, c. 539, s. 1024; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 143-215.99. Repealed by Session Laws 1975, c. 521, s. 1.

Part 4. Oil Refining Facility Permits.

§ 143-215.100. Oil refining facility permits.

No facility which is to be used or is capable of being used for the purpose of refining oil shall be initiated or constructed after July 1, 1975, without a permit from the Secretary. (1975, c. 521, s. 2; 1977, c. 771, s. 4; 1987, c. 827, s. 154.)

§ 143-215.101. Powers of the Secretary.

The Secretary has the power to:

(1) Adopt rules implementing this Part. Rules adopted under this Part may include the following matters:
   a. Requirements for submission of engineering reports, plans and specifications for the location and construction of oil terminal facilities.
   b. Establishment of procedures and methods of reporting discharges and other occurrences prohibited by this Article.
   c. Establishment of procedures, methods, means, and equipment to be used in the removal of oil pollutants.

(2) To deny the issuance of a permit upon a finding that:
   a. The installation will have substantial adverse effects on wildlife or on fresh water, estuarine or marine fisheries; or
   b. The operation of the installation will violate standards of air or water quality promulgated or administered by the Commission; or
   c. The installation will have a substantial adverse effect on a publicly owned park, forest, or recreation area.

(3) To grant permits for the operation of existing or proposed oil refining facilities and to impose such terms and conditions therein as it shall deem necessary and appropriate to effectuate the purposes of this Article.

(4) To require the installation of such facilities and the employment of such protective measures and operating procedures as are deemed necessary to

prevent, insofar as possible, any oil discharges to the waters or lands of the State.

(5) Repealed by Session Laws 1987, c. 827, s. 201. (1975, c. 521, s. 2; 1987, c. 827, ss. 154, 201.)

§ 143-215.102. Penalties.

(a) Civil Penalty. – Any person who violates any provision of this Part, or any rule, regulation or order made pursuant to this Part, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not to exceed ten thousand dollars ($10,000) for every such violation, the amount to be determined by the Secretary after taking into consideration the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143-215.6 and G.S. 143B-282.1 shall apply to civil penalties assessed under this section. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Commission describing the violation with reasonable particularity and advising such person that the penalty is due. A person may contest a penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after receiving notice of the penalty. If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary 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, unless the violator contests the assessment, or requests remission of the assessment in whole or in part as provided in G.S. 143-215.6. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary 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.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Criminal Penalties. – Any person who intentionally or knowingly or willfully violates any provision of this Part, or any rule, regulation or order made pursuant to this Part shall be guilty of a Class 2 misdemeanor which may include a fine to be not more than ten thousand dollars ($10,000). No proceeding shall be brought or continued under this subsection for or on account of a violation by any person who has previously been convicted of a federal violation or a local ordinance violation based upon the same set of facts. (1975, c. 521, s. 2; 1987, c. 827, s. 202; 1989 (Reg. Sess., 1990), c. 1036, s. 7; 1993, c. 539, s. 1025; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 71.)

Part 5. Limitation On Liability For Hazardous Materials Abatement.

§ 143-215.103. Definitions.

As used in this Part, unless the context otherwise requires:

(1) "Discharge" shall mean leakage, seepage, or other release.

(2) "Hazardous materials" shall mean oil, low-level radioactive waste, and all materials and substances which are now or hereafter defined as toxic or hazardous by any State or federal law or by the regulations of any State or federal government agency.

(3) "Person" shall mean any individual, partnership, corporation, association, or other entity or employee thereof. (1987, c. 269, s. 1.)

§ 143-215.104. Limited liability for volunteers in hazardous material abatement.

Any person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of any such discharge, when the reasonably apparent circumstances indicate the need for prompt decisions and action, shall not be subject to civil liabilities of any type, unless:

(1) Prior to providing assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge or in preventing, cleaning up, or disposal of or in attempting to prevent cleanup or disposal of any such discharge, he had incurred liability for the actual or threatened discharge;

(2) He receives compensation other than reimbursement for out-of-pocket expenses for his services in rendering assistance or advice, except that an individual receiving compensation for employment from his regular employer for services performed in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of a discharge shall not be deemed to have received compensation if his employer is entitled to the protection afforded by this Part; or

(3) His act or omission led to damages resulting from his gross negligence, or from his reckless, wanton, or intentional misconduct.

The limited immunity provided herein shall not be applicable to any act or omission or occurrence involving the operation of a motor vehicle. The limited immunity provided herein is waived to the extent of any indemnification by insurance for damages caused by such volunteer. (1987, c. 269, s. 1.)

Part 6. Dry-Cleaning Solvent Cleanup.

§ 143-215.104A. (See note for repeal of Part 6) Title; sunset.

This part is the "Dry-Cleaning Solvent Cleanup Act of 1997" and may be cited by that name. Except as otherwise provided in this section, this part expires 1 January 2022. [However:]

(1) G.S. 143-215.104K is not repealed to the extent that it applies to liability arising from dry-cleaning solvent contamination described in a Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement entered into by the Environmental Management Commission pursuant to G.S. 143-215.104H and G.S. 143-215.104I.

(2) Any Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement in force as of 1 January 2012 shall continue to be governed by the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes as though those provisions had not been repealed.

(3) G.S. 143-215.104D(b)(2) is not repealed; rules adopted by the Environmental Management Commission pursuant to G.S. 143-215.104D(b)(2) shall continue in effect; and those rules may be enforced pursuant to G.S. 143-215.104P, 143-215.104Q, and 143-215.104R, which shall remain in effect for that purpose. (1997-392, s. 1; 2009-483, ss. 5, 7.)

§ 143-215.104B. (Expires January 1, 2022 – see notes) 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. 143-215.77, 130A-2, and 130A-290 apply throughout this Part.

(b) Unless a different meaning is required by the context, the following definitions apply in this Part. The definitions set out in this subsection apply only to the implementation of this Part and do not define or limit the scope of any other remedial program:

(1) "Abandoned dry-cleaning facility site" or "abandoned site" means any real property or individual leasehold space on which a dry-cleaning facility or wholesale distribution facility formerly operated.

(2) "Affiliate" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(3) "Commission" means the Environmental Management Commission.

(4) "Contaminant" means a regulated substance released into the environment.

(5) Renumbered.

(6) "Disposal" shall have the meaning ascribed to it in G.S. 130A-290.

(7) "Dry-cleaning facility" means a place of business located in this State and engaged in on-site dry-cleaning operations, other than a commercial uniform service or commercial linen supply facility.

(8) "Dry-cleaning operations" means cleaning of apparel and household fabrics by using one or more dry-cleaning solvents instead of water.

(9) "Dry-cleaning solvent" means any hydrocarbon or halogenated hydrocarbon used as a solvent in a dry-cleaning operation or the degradation products from these solvents.

(10) "Dry-cleaning solvent assessment agreement" or "assessment agreement" means an agreement between the Commission and a potentially responsible party who desires an assessment of whether a release of dry-cleaning solvents at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility may be eligible for remediation under this Part and whether any other contaminants that are identified in the agreement may require remediation under other remedial programs operated or administered by the Department.

(11) "Dry-cleaning solvent contamination" means the presence of dry-cleaning solvent in the waters or surface or subsurface soils of the

State, the bedrock or other rock formations, or buildings in a concentration above the level requiring remediation pursuant to the rules implementing Article 21A of Chapter 143.

(12) "Dry-cleaning solvent remediation agreement" or "remediation agreement" means an agreement between the Commission and a potentially responsible party who desires the cleanup of dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility under this Part and any other contaminants that are identified in the agreement under other remedial programs operated or administered by the Department.

(13) "Facility" means a dry-cleaning facility or a wholesale distribution facility.

(14) "Fund" means the Dry-Cleaning Solvent Cleanup Fund.

(14a) "Halogenated hydrocarbon" means any hydrocarbon where at least one hydrogen atom is substituted by a halogen atom.

(15) "Hazardous waste" has the same meaning as in G.S. 130A-290.

(15a) "Hydrocarbon" means any linear, branched, saturated, or unsaturated compound whose molecules contain only carbon and hydrogen atoms.

(16) "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.

(17) "Local government" means a town, city, or county.

(18) "Operator" means any person operating a dry-cleaning facility or wholesale distribution facility, whether by lease, contract, or any other form of agreement.

(19) "Parent" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(20) Repealed by Session Laws 2000, ch. 19, s. 3, effective on and after April 1, 1998.

(21) "Potentially responsible party" means any person who may have liability for assessment, monitoring, treatment, mitigation, or remediation of dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility.

(22) "Public health" means public health as the term is used in Article 9 of Chapter 130A of the General Statutes and "human health" as the term is used in Articles 21 and 21A of Chapter 143 of the General Statutes.

(23) "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 other than Part 2A of Article 21A of Chapter 143 of the General Statutes.

(24) "Release" means any spillage, leakage, pumping, placement, emptying, or dumping of dry-cleaning solvents resulting from a dry-cleaning operation or the operation of a wholesale distribution facility.

(25) "Remedial program" means a program implemented by the Department for the remediation of any contaminant, including the programs implemented under Article 9 of Chapter 130A of the General Statutes and the Oil Pollution and Hazardous Substances Control Act of 1978 under Part 2 of Article 21A of Chapter 143 of the General Statutes but not the remedial program implemented under Part 2A of Article 21A of Chapter 143 of the General Statutes.

(26) "Remediation" means action to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transporting, or further release of a contaminant into the environment in order to protect public health or the environment.

(27) "Response costs" means costs incurred in connection with a certified facility or abandoned site that the Commission determines are reasonably necessary and consistent with the applicable requirements of the Commission and any applicable dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement.

(28) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(29) "Treatment" shall have the meaning ascribed to it in G.S. 130A-290.

(29a) "Unrestricted use standards" when used in connection with "cleanup," "remediated", or "remediation" means that cleanup or remediation of contamination complies with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the Commission, the Commission for Public Health, or the Department instead of the risk-based standards established by the Commission pursuant to this Part.

(30) "Waters" means any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, waterway, wetlands, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, that is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction.

(31) "Wholesale distribution facility" means a place of business located in this State and engaged in the storage, distribution, or sale of dry-cleaning solvents for use in dry-cleaning facilities.

(32) "Wholesale distributor" means a person who operates a wholesale distribution facility. (1997-392, s. 1; 2000-19, s. 3; 2001-384, s. 11; 2007-182, s. 2; 2007-530, s. 1.)

§ 143-215.104C. (Expires January 1, 2022 – see notes) Dry-Cleaning Solvent Cleanup Fund.

(a) Creation. – The Dry-Cleaning Solvent Cleanup Fund is established as a special revenue fund to be administered by the Commission. Accordingly, revenue in the Fund at the end of a fiscal year does not revert. The Fund is created to provide revenue to implement this Part.

(b) Sources of Revenue. – The following revenue is credited to the Fund:

(1) Dry-cleaning solvent taxes collected under Article 5D of Chapter 105 of the General Statutes.

(2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-215.104O.

(3) Gifts and grants made to the Fund.

(4) Revenues credited to the Fund under G.S. 105-164.44E.

(5) Application fees pursuant to G.S. 143-215.104F(a1).

(c) Disbursements. – A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall obligate monies to facilities or sites with higher priority before facilities or sites of lower priority, and facilities or sites with equal priority in the order in which the facilities or sites were prioritized until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to twenty percent (20%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities.

(d) Up to one percent (1%) of the amount of the Fund balance may be used by the Department in each fiscal year for investigation of inactive hazardous substance disposal sites that the Department reasonably believes to be contaminated by dry-cleaning solvent. If the contamination is determined to originate from a dry-cleaning facility, a potentially responsible party may petition for certification of the facility or abandoned facility site. Acceptance of a petition shall be conditioned upon the written acceptance by the petitioner of responsibility for the costs of investigation incurred by the Department pursuant to this subsection. Costs of investigation that are recovered pursuant to this subsection shall not exceed, and shall be credited toward, the financial responsibility of the petitioner pursuant

to G.S. 143-215.104F(f). If a potentially responsible party does not petition for certification of the facility or abandoned facility site, the Commission may request the Attorney General to commence a civil action to secure reimbursement of costs incurred under this subsection. (1997-392, s. 1; 2000-19, ss. 2, 5, 5.1-5.3; 2007-530, s. 2; 2014-100, s. 14.21(c).)

§ 143-215.104D. (Expires January 1, 2022 – see notes) Powers of the Commission.

(a) Administrative Functions. – The Commission may delegate any or all of the powers enumerated in this subsection to the Department. The Commission shall:

(1) Accept petitions for certification and petitions to enter into dry-cleaning solvent assessment agreements or remediation agreements under this Part.

(2) Prioritize certified dry-cleaning facilities, certified wholesale distribution facilities, or certified abandoned dry-cleaning facility sites for the initiation of assessment or remediation activities.

(3) Repealed by Session Laws 2007-530, s. 3, effective August 31, 2007.

(4) Schedule funding of assessment and remediation activities.

(5) Determine whether assessment or remediation is necessary at a site at which dry-cleaning solvent contamination has occurred.

(5a) Enter into contracts with private contractors for assessment and remediation activities at certified dry-cleaning facilities, certified wholesale distribution facilities, and certified abandoned dry-cleaning facility sites.

(6) Determine that all necessary assessment and remediation has been completed at a contamination site.

(7) Make payments from the Fund for the costs of assessment and remediation.

(b) Rule making. – The Commission shall adopt rules as are necessary to implement the provisions of this Part. Rules adopted by the Commission shall be consistent with and shall not duplicate, but may incorporate by reference, the rules adopted by the Commission for Health Services pursuant to Article 9 of Chapter 130A of the General Statutes. The Commission shall not delegate the rule-making powers provided in this subsection.

(1) The Commission may adopt rules governing:

a. Repealed by Session Laws 2007-530, s. 3, effective August 31, 2007.

b. The certification and decertification of facilities or abandoned sites.

c. The prioritization of facilities or abandoned sites and scheduling of funding for assessment and remediation activities. These rules shall provide for:

1. Consideration of the degree of harm or risk to public health and the environment.

2. Consideration of the order in which certification is issued for the facility or abandoned site.

3. Consideration of the relative cost of assessment and remediation activities.
4. Use of the Fund so as to maximize the reduction of harm or risk posed by certified facilities, certified abandoned sites, uncertified facilities and uncertified sites.

d. The disbursement of revenue from the Fund for payment of approved assessment or remediation costs.
e. The determination whether assessment or remediation is necessary at a contamination site.
f. The determination that all necessary assessment and remediation has been completed at a contamination site.
g. The terms and conditions of dry-cleaning solvent assessment agreements and remediation agreements.
h. The determination whether additional assessment or remediation is necessary at a contamination site previously closed under this Part.

(2) **(See editor's note)** The Commission may adopt rules establishing minimum management practices for handling of dry-cleaning solvent at dry-cleaning facilities and wholesale distribution facilities. The rules may:

a. Require that all perchloroethylene dry-cleaning machines installed at a dry-cleaning facility after the effective date of the rule or temporary rule meet air emission standards that equal or exceed the standards that apply to comparable dry-to-dry perchloroethylene dry-cleaning machines with integral refrigerated condensation.
b. Prohibit the discharge of dry-cleaning solvents or water that contains dry-cleaning solvents into sanitary sewers, septic systems, storm sewers, or waters of the State.
c. Require spill containment structures around dry-cleaning machines, filters, stills, vapor adsorbers, solvent storage areas, and waste solvent storage areas.
d. Require floor sealants for cleaning room areas if the Commission finds the sealants to be effective.
e. Require, by 1 January 2002, the use of improved solvent transfer systems to prevent releases at the time of delivery of solvents to a dry-cleaning facility.
f. Require any other solvent-handling practices the Commission may find necessary and appropriate to minimize the risk of releases at dry-cleaning facilities or wholesale distribution facilities.

(3) The Commission shall adopt rules establishing a risk-based approach applicable to the assessment, prioritization, and remediation of dry-cleaning solvent contamination resulting from releases at facilities or

abandoned sites certified pursuant to G.S. 143-215.104G. The rules shall address, at a minimum:

a. Criteria and methods for determining remediation requirements, including the level of remediation necessary to assure adequate protection of public health and the environment.

b. The circumstances under which information specific to the dry-cleaning solvent contamination site should be considered and required.

c. The circumstances under which restrictions on the future use of any remediated dry-cleaning solvent contamination site should be considered and required as a means of achieving and maintaining an adequate level of protection for public health and the environment.

d. Strategies for the assessment and remediation of dry-cleaning solvent contamination, including presumptive remedial responses sufficient to provide an adequate level of protection as described under sub-subdivision a. of this subdivision.

(c) All rules adopted by the Commission shall be applicable to all dry-cleaning facilities, wholesale distribution facilities, and abandoned dry-cleaning facilities in the State and shall, to the maximum extent practicable, be cost-effective and technically feasible while protecting public health and the environment from the release of dry-cleaning solvents.

(d) Unless otherwise provided in this Part, the Commission may delegate any of its rights, duties, and responsibilities under this Part to the Department. (1997-392, s. 1; 2000-19, s. 6; 2007-182, s. 2; 2007-530, s. 3.)

§ 143-215.104E: Repealed by Session Laws 2000-19, s. 3.

§ 143-215.104F. (Expires January 1, 2022 – see notes) Requirements for certification, assessment agreements, and remediation agreements.

(a) General Requirements. – Any person petitioning for certification of a facility or an abandoned site pursuant to G.S. 143-215.104G, for a dry-cleaning solvent assessment agreement pursuant to G.S. 143-215.104H, or for a dry-cleaning solvent remediation agreement pursuant to G.S. 143-215.104I, shall meet the requirements set out in this section and any other applicable requirements of this Part.

(a1) Application Fees. – Each person petitioning or co-petitioning for certification of a facility or an abandoned site pursuant to G.S. 143-215.104G shall pay an application fee of one thousand dollars ($1,000) to the Commission.

(b) Requirements for Potentially Responsible Persons Generally. – Every petitioner shall provide the Commission with:

(1) Any information that the petitioner possesses relating to the contamination at the facility or abandoned site described in the petition.

(2) Information necessary to demonstrate the person's ability to incur the response costs specified in subsection (f) of this section.

(3) Repealed by Session Laws 2000, c. 19, s. 3, effective on and after April 1, 1998.

(4) Information necessary to demonstrate that the petitioner, and any parent, subsidiary, or other affiliate of the petitioner, has substantially complied with:

a. The terms of any dry-cleaning solvent assessment agreement, dry-cleaning solvent remediation agreement, brownfields agreement, or other similar agreement to which the petitioner or any parent, subsidiary, or other affiliate of the petitioner has been a party.

b. The requirements applicable to any remediation in which the petitioner has previously engaged.

c. Federal and State laws, regulations, and rules for the protection of the environment.

(5) Evidence demonstrating that a release of dry-cleaning solvent has occurred at the facility or abandoned site and that the release has resulted in dry-cleaning solvent contamination.

(c) Requirement for Property Owners. – In addition to the information required by subsection (b) of this section, a petitioner who is the owner of the property on which the dry-cleaning solvent contamination identified in the petition is located shall provide the Commission a written agreement authorizing the Commission, its agent, and its private contractor to have access to the property for purposes of conducting assessment or remediation activities or determining whether assessment or remediation activities are being conducted in compliance with this Part and any assessment agreement or remediation agreement.

(c1) Costs incurred by the petitioner for activities to obtain certification of a facility or abandoned site shall not be reimbursable from the Fund.

(d) The Commission may reject any petition made pursuant to this Part in any of the following circumstances:

(1) The petitioner is an owner or operator of the facility described in the petition and the facility was not being operated in compliance with minimum management practices adopted by the Commission pursuant to G.S. 143-215.104D(b)(2) at the time the contamination was discovered.

(2) The petitioner is an owner or operator of the facility described in the petition and the petitioner owed delinquent taxes under Article 5D of Chapter 105 of the General Statutes at the time the dry-cleaning solvent contamination was discovered.

(3) Repealed by Session Laws 2000, c. 19, s. 3, effective on and after April 1, 1998.

(4) The petitioner fails to provide the information required by subsection (b) of this section.

(5) The petitioner falsified any information in its petition that was material to the determination of the priority ranking, the nature, scope and extent of contamination to be assessed or remediated, or the appropriate means to contain and remediate the contaminants.

(e) Repealed by Session Laws 2007-530, s. 4, effective August 31, 2007.

(f) Financial Responsibility Requirements. – Each potentially responsible person who petitions the Commission to certify a facility or abandoned site shall accept written responsibility in the amount specified in this section for the assessment or remediation of the dry-cleaning solvent contamination identified in the petition. If two or more potentially responsible persons petition the Commission jointly, the requirements below shall be the aggregate requirements for the financial responsibility of all potentially responsible persons who are party to the petition. Unless an alternative arrangement is agreed to by co-petitioners, the financial responsibility requirements of this section shall be apportioned equally among the co-petitioners. The financial responsibility required shall be as follows:

(1) For dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, one percent (1%) of the costs of assessment or remediation not exceeding one million dollars ($1,000,000).

(2) For abandoned dry-cleaning facility sites and for dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, one and one-half percent (1.5%) of the costs of assessment or remediation not exceeding one million dollars ($1,000,000).

(3) For wholesale distribution facilities and for dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, two percent (2%) of the costs of assessment or remediation not exceeding one million dollars ($1,000,000).

(4) Repealed by Session Laws 2007-530, s. 4, effective retroactively to August 1, 2001, and applicable to assessment agreements and remediation agreements entered into on or after that date.

(g) Repealed by Session Laws 2000, c. 19, s. 3, effective on and after April 1, 1998. (1997-392, s. 1; 2000-19, ss. 3, 4, 7; 2007-530, s. 4.)

§ 143-215.104G. (Expires January 1, 2022 – see notes) Certification of facilities and abandoned sites.

(a) A potentially responsible party may petition the Commission to certify a facility or abandoned site where a release of dry-cleaning solvent has occurred. The Commission shall certify the facility or abandoned site if the petitioner meets the applicable requirements of G.S. 143-215.104F. Upon its decision to certify a facility or abandoned site, the Commission shall inform the petitioner of its decision and of the initial priority ranking of the facility or site.

(b) Repealed by Session Laws 2000, c. 19, s. 8.

(c) A potentially responsible party who petitions for certification of a facility or abandoned site shall provide the Commission with either of the following:

(1) A written statement of the petitioner's intent to enter into an assessment agreement or remediation agreement.

(2) A written statement of the petitioner's intent to conduct assessment and remediation activities pursuant to subsection (d) of this section.

(d) A person who has access to property that is contaminated by dry-cleaning solvent and who has successfully petitioned for certification of the facility or abandoned site from which the contamination is believed to have resulted may undertake assessment or remediation of dry-cleaning solvent contamination located on the property consistent with the standards established by the Commission pursuant to G.S. 143-215.104D(b)(3) without first entering into a dry-cleaning solvent assessment agreement or a dry-cleaning solvent remediation agreement. No assessment or remediation activities undertaken pursuant to this subsection shall rely on standards that require the creation of land-use restrictions. A person who undertakes assessment or remediation activities pursuant to this subsection shall provide the Commission prior written notice of the activity. Costs associated with assessment or remediation activities undertaken pursuant to this subsection shall not be eligible for reimbursement from the Fund.

(e) The rejection of any petition filed pursuant to this section shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The rejection of a petition or the decertification of a facility or abandoned site may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site. (1997-392, s. 1; 2000-19, s. 8.)

§ 143-215.104H. (Expires January 1, 2022 – see notes) Dry-Cleaning Solvent Assessment Agreements.

(a) Assessment Agreements. – One or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent assessment agreement regarding a facility or abandoned site that has been certified pursuant to G.S. 143-215.104G. The Commission may, in its discretion, enter into an assessment agreement with any potentially responsible party who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single assessment agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into an assessment agreement pursuant to this section. The Commission may require the petitioners to provide the Commission with any information necessary to demonstrate:

(1) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission.

(2) through (4a) Repealed by Session Laws 2007-530, s. 5, effective August 31, 2007.

(5) The petitioner has and will continue to have available the financial resources necessary to pay the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(6) The permits or other authorizations required to conduct the assessment activities and to lawfully dispose of any hazardous substances or wastes generated by the assessment activities have been or can be obtained.

(7) The assessment activities will not increase the existing level of public exposure to health or environmental hazards at the contamination site.

(8) Repealed by Session Laws 2007-530, s. 5, effective August 31, 2007.

(9) The petitioner has obtained the consent of other property owners to enter into their property for the purpose of conducting assessment activities specified in the assessment agreement.

(b) The terms and conditions of an assessment agreement regarding dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the disbursement authorities and limitations set out in this Part. An assessment agreement shall, subject to the availability of monies from the Fund:

(1) Repealed by Session Laws 2000, ch. 19, s. 9, effective June 26, 2000.

(1a) Require that the petitioner shall be liable to the Fund for an amount equal to the difference, if any, between the applicable amount for which the petitioner is responsible under G.S. 143-215.104F and the amount reasonably paid by the petitioner for assessment or remediation activities of the type specified in G.S. 143-215.104N(a)(1) through (7) and that are otherwise consistent with the requirements of this Part.

(2) Repealed by Session Laws 2007-530, s. 5, effective August 31, 2007.

(c) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement with any petitioner if:

(1) The petitioner will not accept financial responsibility for the petitioner's share of the response costs required by G.S. 143-215.104F.

(2) Repealed by Session Laws 2007-530, s. 5, effective August 31, 2007.

(3) The petitioner fails to provide any information required by subsection (a) of this section.

(d) The refusal of the Commission to enter into a dry-cleaning solvent assessment agreement with any petitioner shall not affect the rights of any other petitioner under this Part, except that the refusal may be the basis for rejection of a petition by any parent, subsidiary or other affiliate of the petitioner for the facility or abandoned site.

(e) If the Commission determines from an assessment prepared pursuant to this Part that the degree of risk to public health or the environment resulting from dry-cleaning solvent contamination otherwise subject to assessment or remediation under this Part and Article 9 of Chapter 130A is acceptable in light of the criteria established pursuant to G.S. 143-215.104D(b)(3) and Article 9 of Chapter 130A, the Commission shall issue a written statement of its determination and notify the owner or operator of the facility or abandoned site responsible for the contamination that no cleanup, no further cleanup, or no further action is required in connection with the contamination.

(f) If the Commission determines that no remediation or further action is required in connection with dry-cleaning solvent contamination otherwise subject to assessment or remediation pursuant to this Part and Article 9 of Chapter 130A, the Commission shall not pay any costs otherwise payable under this Part from the Fund other than costs reasonable and necessary to conduct the risk assessment pursuant to this section and in compliance with a dry-cleaning solvent assessment agreement. (1997-392, s. 1; 2000-19, s. 9; 2007-530, s. 5.)

§ 143-215.104I. (Expires January 1, 2022 – see notes) Dry-Cleaning solvent remediation agreements.

(a) Upon the completion of assessment activities required by a dry-cleaning solvent assessment agreement, one or more potentially responsible parties may petition the Commission

to enter into a dry-cleaning solvent remediation agreement for any contamination requiring remediation. The Commission may, in its discretion, enter into a remediation agreement with any petitioner who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single remediation agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into a remediation agreement pursuant to this section. The Commission may, in its discretion, enter into a remediation agreement that includes the assessment described in G.S. 143-215.104H. Petitioners shall provide the Commission with any information necessary to demonstrate:

(1) Repealed by Session Laws 2000, c. 19, s. 10, effective June 26, 2000.

(2) As a result of the remediation agreement, the contamination site will be suitable for the uses specified in the remediation agreement while fully protecting public health and the environment from dry-cleaning solvent contamination and any other contaminants included in the remediation agreement.

(3) There is a public benefit commensurate with the liability protection provided under this Part.

(4) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

(5) The petitioner has complied with or will comply with all applicable procedural requirements.

(6) The remediation agreement will not cause the Department to violate the terms and conditions under which the Department operates and administers remedial programs, including the programs established or operated pursuant to Article 9 of Chapter 130A of the General Statutes, by delegation or similar authorization from the United States or its departments or agencies, including the United States Environmental Protection Agency.

(7) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the priority ranking that the petitioner agrees to accept is consistent with the rules adopted by the Commission.

(8) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

(9) The petitioner will continue to have available the financial resources necessary to satisfy the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(10) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

(11) The consent of other property owners to enter into their property for purposes of conducting remediation activities specified in the remediation agreement.

(b) In negotiating a remediation agreement, parties may rely on land-use restrictions that will be included in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M. A remediation agreement may provide for remediation in accordance with standards that are based on those land-use restrictions.

(b1) For contaminated properties that are located in the area of a contamination site, in lieu of land-use restrictions authorized by subsection (b) of this section, parties may rely on other State or local land-use controls in negotiating a remediation agreement. Any land-use controls used shall adequately protect human health and the environment, both currently and in the future, from exposure to dry-cleaning solvent contamination. If controls are used in lieu of land-use restrictions, then a Notice of Dry-Cleaning Solvent Remediation shall be prepared in accordance with the provisions set forth in subdivisions (1) through (4) of G.S. 143-215.104M(b) and filed in accordance with subsections (c) through (g) of G.S. 143-215.104M. In the event that the owner of the property fails to submit and file the required Notice within the time specified, the Commission may prepare and file the Notice. This subsection shall not apply to properties on which a dry-cleaning facility is or was located which is the source of the contamination.

(c) A dry-cleaning solvent remediation agreement shall contain a description of the contamination site that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

(1) Any remediation, including remediation of contaminants other than dry-cleaning solvents, 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. Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.
    d. A schedule of remediation activities.
    e. Applicable remediation standards. Applicable remediation standards for dry-cleaning solvent contamination shall not exceed the requirements adopted by the Commission pursuant to G.S. 143-104D(b)(3).
    f. A schedule and the method or methods for evaluating the remediation.
(2) Any land-use restrictions and State and local land-use controls that will apply to the contamination site or other property.
(3) The desired results of any remediation, land-use restrictions, or State or local land-use controls with respect to the contamination site.
(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.
(6) The priority ranking of the facility or abandoned site.
(7) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

(d) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with any petitioner if the petitioner fails to provide any information that is necessary to demonstrate the facts required to be shown by subsection (a) of this section.

(e) In addition to the basis set forth in subsection (d) of this section, the Commission may refuse to enter into a dry-cleaning solvent remediation agreement with an owner of the property on which a contamination site is located if the owner refuses to accept limitations on the future use of the property and to give notice of these limitations pursuant to G.S. 143-215.104M.

(f) The refusal of the Commission to enter into a dry-cleaning remediation agreement with any petitioner shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The refusal of the Commission to enter into a remediation agreement may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site.

(g) The terms and conditions of a dry-cleaning solvent remediation agreement concerned with dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the disbursement authorities and limitations set out in this Part. A remediation agreement shall provide that the Commission's private contractor conduct assessment and remediation activities at the facility or abandoned site.

(h) Any failure of a petitioner or the petitioner's agents or employees to comply with the dry-cleaning solvent remediation agreement constitutes a violation of this Part by the petitioner. (1997-392, s. 1; 2000-19, ss. 10, 11, 13; 2007-530, s. 6; 2009-483, s. 1.)

§ 143-215.104J. (Expires January 1, 2022 – see notes) Decertification; termination of assessment agreements and remediation agreements.

(a) The Commission may decertify a facility or abandoned site or renegotiate or terminate an assessment agreement or remediation agreement with respect to any party thereto in the following circumstances:

(1) The owner or operator of the facility, at any time subsequent to the certification of the facility, violates any of the minimum management requirements adopted by the Commission pursuant to G.S. 143-215.104D(b)(2).

(2) In the case of dry-cleaning contamination on property that is owned by a petitioner, the petitioner fails to file a Notice of Dry-Cleaning Solvent Remediation, if required, as provided in G.S. 143-215.104M.

(3) The potentially responsible persons who are parties to a dry-cleaning solvent assessment agreement are unable to reach an agreement with the Commission to enter into a dry-cleaning solvent remediation agreement within the time specified in the assessment agreement.

(4) The payment of taxes assessed to the facility under Article 5D of Chapter 105 of the General Statutes is delinquent.

(5) Repealed by Session Laws 2000, ch. 19, s. 3, effective on or after April 1, 1998.

(6) The owner or operator fails to comply with all applicable requirements of this Part or fails to comply with all applicable requirements of an assessment agreement or remediation agreement.

(7) The owner or operator of a facility for which an assessment or remediation activity is scheduled or in progress transfers the ownership or operation of the facility or abandoned site to another person without the prior consent of the Commission and the execution of a substitute assessment agreement or remediation agreement.

(8) The standards applied to the dry-cleaning solvent contamination remediation or containment under the provisions of this Part and the

dry-cleaning solvent remediation agreement will, or are likely to, cause the Department to fail to comply with the terms and conditions under which it operates and administers a remediation program by delegation or similar authorization from the United States or one of its departments or agencies, including the Environmental Protection Agency.

(9) A petitioner fails to pay the Commission any amounts for which a petitioner is responsible pursuant to G.S. 143-215.104F.

(b) Prior to decertifying any facility or abandoned site or renegotiating or terminating any assessment agreement or remediation agreement, the Commission shall give the petitioners notice and opportunity for hearing. The Commission is not required to give the petitioners notice and opportunity for hearing when the Commission reasonably takes an emergency action to abate an imminent hazard caused by or arising from assessment or remediation activities at a contamination site whether the Commission issues a special order pursuant to G.S. 143-215.2 or takes other action.

(c) Decertification of any facility or abandoned site or renegotiation or termination of any assessment agreement or remediation agreement pursuant to this section shall not affect the rights of any petitioner, other than a petitioner whose violation of the provisions of subsection (a) of this section was the basis for the decertification, renegotiation, or termination and any parent, subsidiary, or other affiliate of that petitioner. If the Commission decertifies a facility or abandoned site or terminates an assessment agreement or remediation agreement with any party to the agreement pursuant to subsection (a) of this section, the Commission shall use its best efforts to negotiate a substitute agreement with any remaining parties to the agreement. (1997-392, s. 1; 2000-19, s. 3; 2007-530, s. 7.)

§ 143-215.104K. (Expires January 1, 2022 – see notes) Liability protection.

(a) A potentially responsible party who enters into an assessment agreement or remediation agreement with the Commission and who is complying with the agreement shall not be held liable for assessment or remediation of areas of contamination identified in the agreement except as specified in the assessment agreement or remediation agreement, so long as any activities conducted at the contamination site by or under the control or direction of the petitioner do not increase the risk of harm to public health or the environment and the petitioner 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 the petitioner, 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) Repealed by Session Laws 2007-503, s. 8, effective August 31, 2007.

(2) Any future owner of the contamination site.

(3) A person who occupies the contamination site.

(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 to the petitioner to pay the petitioner's financial obligations under G.S. 143-215.104F.

(b) A person who conducts an environmental assessment or transaction screen on contamination resulting from a release at a certified facility or certified abandoned site consistent with a dry-cleaning solvent assessment agreement, if any was required under this Part, 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 a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M is violated, the owner of the contamination site 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 contamination site in violation of a land-use restriction shall be liable for remediation of all contaminants to unrestricted use standards. A petitioner who completes the remediation required under a dry-cleaning solvent remediation agreement or other person who receives liability protection under this Part shall not be required to undertake additional remediation unless:

(1) The petitioner knowingly or recklessly provides false information that forms a basis for the remediation agreement or that is offered to demonstrate compliance with the remediation agreement or fails to disclose relevant information about contamination related to a facility or abandoned site.

(2) New information indicates the existence of previously unreported dry-cleaning solvent contaminants or any other contaminants to be remediated under the remediation agreement, or an area of previously unreported contamination by contaminants addressed in the remediation agreement is discovered to be associated with the facility or abandoned site and has not been remediated to unrestricted use standards, unless the remediation agreement is amended to include any previously unreported contaminants and any additional area of contamination. If the remediation 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 remediation agreement.

(3) The level of risk to public health and the environment from contaminants is unacceptable at or in the vicinity of the contamination site due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants at or in the vicinity of the contamination site; (ii) the failure of remediation to mitigate risks to the extent required to make the contamination site fully protective of public health and the environment as planned in the remediation agreement; or (iii) removal of a State or local land-use control.

(4) The Commission obtains new information about a contaminant to be remediated under the remediation agreement and associated with the facility or abandoned site or exposures at or around the contamination site that raises the risk to public health or the environment associated with the contamination site beyond an acceptable range and in a manner or to a degree not anticipated in the remediation agreement. Any person whose use, including any change in use, of the contamination site causes an unacceptable risk to public health or the environment may be required by the Commission to undertake additional remediation measures under the provisions of this Part.

(5) A petitioner fails to file a timely and proper Notice of Dry-Cleaning Solvent Remediation under this Part.

(6) A facility or abandoned site loses its certification before the assessment and any remediation required under the provisions of this Part and the dry-cleaning solvent remediation agreement are completed to the satisfaction of the Department.

(7) The remediation required in the remediation agreement has resulted in notification from the United States or its departments and agencies, including the Environmental Protection Agency, that the Department will violate the terms and conditions under which it operates and administers remedial programs by delegation or similar authorization. (1997-392, s. 1; 2001-384, s. 11; 2007-530, s. 8; 2009-483, s. 2.)

§ 143-215.104L. (Expires January 1, 2022 – see notes) Public notice and community involvement.

(a) If a petitioner desires to enter into a dry-cleaning solvent remediation agreement based on remediation standards that rely on the creation of land-use restrictions, or on the use of State or local land-use controls, the Commission or the Commission's private contractor on behalf of the petitioner shall notify the public and the community in which the facility or abandoned site is located of the planned remediation activities. On behalf of the petitioner, the Commission or the Commission's private contractor shall prepare a Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or Abandoned Site and a summary of the Notice of Intent. The Notice of Intent shall provide, to the extent known, a legal description of the location of the contamination site, a map showing the location of the contamination site, a description of the contaminants involved and their concentrations in the media of the contamination site, a description of the future use of the contamination site, any proposed investigation and remediation, and a description of any land-use restrictions and State and local land-use controls that will be used. 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 dry-cleaning solvent remediation 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 Commission, the Commission or the Commission's private contractor shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the contamination site. The Commission or Commission's private contractor shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which

the contamination is located and shall mail a copy of the summary to each owner of property located within the contamination site and to each owner of property that is contiguous to the contamination site. The Commission or the Commission's private contractor shall also conspicuously post a copy of the summary of the Notice of Intent at the contamination site.

(b) Publication of the approved summary of the Notice of Intent in a newspaper of general circulation shall begin a public comment period of at least 30 days from the date of publication. During the public comment period, members of the public, residents of the community in which the contamination site is located, and local governments having jurisdiction over the contamination site may submit comment on the proposed dry-cleaning solvent remediation 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 dry-cleaning solvent remediation agreement shall submit a written request for a public meeting to the Commission within 30 days after the public comment period begins. The Commission shall consider all requests for a public meeting and shall hold a public meeting if the Commission determines that there is significant public interest in the proposed remediation agreement. If the Commission decides to hold a public meeting, the Commission shall, at least 30 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Commission shall also publish, at least 30 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 the county where the contamination site is located. In any county in which there is more than one newspaper having general circulation, the Commission shall publish a copy of the notice in as many newspapers having general circulation in the county as the Commission in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Commission shall prescribe the form and content of the notice to be published. The Commission shall prescribe the procedures to be followed in the public meeting. The Commission shall take detailed minutes of the meeting. The minutes shall include any written comments received during the public meeting. The Commission shall take into account the comment received during the comment period and at the public meeting if the Commission holds a public meeting. The Commission shall incorporate into the remediation agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Commission shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis. (1997-392, s. 1; 2007-530, s. 9; 2009-483, s. 3.)

§ 143-215.104M. (Expires January 1, 2022 – see notes) Notice of Dry-Cleaning Solvent Remediation; land-use restrictions in deeds.

(a) Land-Use Restriction. – In order to reduce or eliminate the danger to public health or the environment posed by a dry-cleaning solvent contamination site, the owner of property upon which dry-cleaning solvent contamination has been discovered may file a Notice of Dry-Cleaning Solvent Remediation approved by the Commission identifying the site on which the contamination has been discovered and providing for current or future restrictions on the use of the property. If a petitioner requests that a contamination site be remediated to standards that require land-use restrictions, the owner of the property must file a Notice of Dry-Cleaning Solvent Remediation for the remediation agreement to become effective.

(b) Notice of Restriction. – A Notice of Dry-Cleaning Solvent Remediation shall include:

(1) A survey plat of the contamination site that has been prepared and certified by a professional land surveyor and that meets the requirements of G.S. 47-30.

(2) A legal description of the property that would be sufficient as a description in an instrument of conveyance.

(3) A description of the location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(4) The type, location, and quantity of dry-cleaning solvent contamination known to exist on the property.

(5) Any restrictions on the current or future use of the property or other property that are necessary to assure adequate protection of public health and the environment as provided in rules adopted pursuant to G.S. 143-215.104D(b)(3). 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 contamination site encompasses more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded.

(c) Recordation of Notice. – After the Commission approves and certifies the Notice of Dry-Cleaning Solvent Remediation under subsection (a) of this section, a certified copy of a Notice of Dry-Cleaning Solvent Remediation shall be filed in the office of the register of deeds of the county or counties in which the property described is located. The owner of the property shall file the Notice of Dry-Cleaning Solvent Remediation within 15 days of the property owner's receipt of the Commission's approval of the notice or the effective date of the dry-cleaning solvent remediation agreement, whichever is later.

(d) Notice of Transfer. – When property for which a Notice of Dry-Cleaning Solvent Remediation has been filed 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 contaminated with dry-cleaning solvent and, if appropriate, cleaned up under this Part.

(e) Cancellation of Notice. – A Notice of Dry-Cleaning Solvent Remediation filed pursuant to this Part may, at the request of the owner of the property subject to the Notice of Dry-Cleaning Solvent Remediation, be canceled by the Secretary after the risk to public health and the environment associated with the dry-cleaning solvent contamination and any other contaminants included in the dry-cleaning solvent remediation agreement has been eliminated as a result of remediation of the property. The Secretary shall forward notice of cancellation to the register of deeds of the county or counties where the Notice of Dry-Cleaning Solvent Remediation is recorded and request that the Notice of Dry-Cleaning Solvent Remediation be canceled. The notice of cancellation shall contain the names of the landowners as shown in the Notice of Dry-Cleaning Solvent Remediation.

(f) Enforcement. – Any restriction on the current or future use of property subject to a Notice of Dry-Cleaning Solvent Remediation filed pursuant to this section shall be enforced by any owner of the property or by any other potentially responsible party. Any land-use restriction may also be enforced by the Commission through the remedies provided in this Part or by means of a civil action in the superior court. The Commission may enforce any land-use restriction without first having exhausted any available administrative remedies. Restrictions also may be enforced by any unit of local government having jurisdiction over any part of the 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 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 privity 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. Failure to submit an annual certification that land-use restrictions are properly recorded and followed shall result in a notice from the Commission to the property owner. The notice shall inform the person of the actions that need to be taken in order for the person to come into compliance and specify a date by which the person must comply, which shall not be less than 30 calendar days from the date the notice is mailed. Any person who fails to comply within the time specified shall then be subject to enforcement procedures as provided in this Part.

(g) Relation to Brownfields Notice. – Unless the Commission decertifies a previously certified facility or a previously certified abandoned site, this section shall apply in lieu of the provisions of Article 9 of Chapter 130A of the General Statutes and Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes for properties remediated under this Part. (1997-392, s. 1; 1997-443, s. 11A.119(b); 2007-530, s. 10; 2011-186, s. 6; 2012-18, s. 1.21.)

§ 143-215.104N. (Expires January 1, 2022 – see notes) Disbursement of dry-cleaning solvent assessment and remediation costs; limitations; cost recovery.

(a) Allowable Costs. – To the extent monies are available in the Fund, the Commission shall pay for reasonable and necessary assessment and remediation activities at a contamination site associated with a certified facility or a certified abandoned site pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement for the following assessment and remediation response costs, for which appropriate documentation is submitted:

(1) Costs of assessment with respect to dry-cleaning solvent contamination.
(2) Costs of treatment or replacement of potable water supplies affected by the contamination.
(3) Costs of remediation of affected soil, groundwater, surface waters, bedrock or other rock formations, or buildings.
(4) Monitoring of the contamination.
(5) Inspection and supervision of activities described in this subsection.

(6) Reasonable costs of restoring property as nearly as practicable to the conditions that existed prior to activities associated with assessment and remediation conducted pursuant to this Part.

(7) Other activities reasonably required to protect public health and the environment.

(b) Limitations. – Notwithstanding subsection (a) of this section, the Commission shall not make any disbursement from the Fund:

(1) For costs incurred in connection with facilities or abandoned sites not certified pursuant to G.S. 143-215.104G.

(2) For costs not incurred pursuant to a dry-cleaning solvent assessment agreement or a dry-cleaning solvent remediation agreement.

(3) Repealed by Session Laws 2007-530, s. 11, effective August 31, 2007.

(4) For costs at a contamination site that has been identified by the United States Environmental Protection Agency as a federal Superfund site pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996 Edition), except that the Commission may authorize distribution of the required State match in an amount not to exceed two hundred thousand dollars ($200,000) per year per site. The Commission shall not delegate its authority to disburse funds pursuant to this subdivision.

(5) For remediation beyond the level required under the Commission's risk-based criteria for determining the appropriate level of remediation.

(6) For assessment or remediation response costs incurred in connection with any individual dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement in excess of five hundred thousand dollars ($500,000) per year. However, that the Commission may disburse up to one million dollars ($1,000,000) per year for assessment and remediation costs incurred in connection with a facility or an abandoned site if the facility or abandoned site has been certified and poses an imminent hazard.

(7) That would result in a diminution of the Fund balance below one hundred thousand dollars ($100,000), unless an emergency exists in connection with a dry-cleaning solvent contamination abandoned site that constitutes an imminent hazard.

(8) For any costs incurred in connection with dry-cleaning solvent contamination from a facility located on a United States military base or owned by the United States or a department or agency of the United States.

(9) For any costs incurred in connection with dry-cleaning solvent contamination from a facility or abandoned site owned by the State or a department or agency of the State, unless the contamination at the State-owned site was not caused by the State, but was caused by another person.

(c) Repealed by Session Laws 2007-530, s. 11, effective August 31, 2007.

(d) If, at any time, the Commission determines that the cost of assessment and remediation activities incurred pursuant to existing dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements equals or exceeds the total revenues expected to be credited to the Fund over the life of the Fund, the Commission shall publish notice of the determination in the North Carolina Register. Following the publication of a notice pursuant to this section, the Commission may continue to enter into dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements until the day of adjournment of the first regular session of the General Assembly that begins after the date the notice is published, but shall have no authority to enter into additional dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements after that date unless the Commission first determines either (i) that revenues will be available from the Fund to pay the costs of assessment and remediation activities expected to be incurred pursuant to the agreements, or (ii) that assessment and remediation activities undertaken pursuant to the agreements will be paid entirely from sources other than the Fund. For the purposes of this subsection, the term "day of adjournment" shall mean: (i) in the case of a regular session held in an odd-numbered year, the day the General Assembly adjourns by joint resolution for more than 10 days, and (ii) in the case of a regular session held in an even-numbered year, the day the General Assembly adjourns sine die.

(e) If the cleanup of the contamination site is not completed through fault of the petitioner as required by the remediation agreement, the petitioner shall reimburse the Fund for any response costs previously disbursed from the fund for the cleanup, with interest. The Commission shall request the Attorney General to commence a civil action to secure repayment of response costs and interest of the costs. (1997-392, s. 1; 2000-19, ss. 12, 14(a), (b); 2007-530, s. 11; 2009-483, s. 4.)

§ 143-215.104O. (Expires January 1, 2022 – see notes) Remediation of uncertified sites.

(a) In the event the owner or operator of a facility or the current owner of an abandoned site cannot be identified or located, unreasonably refuses to enter into either an assessment agreement or remediation agreement or cannot be made to comply with the provisions of an assessment agreement or remediation agreement between the petitioner and the Commission, the Commission may direct the Department or a private contractor engaged by the Commission to use staff, equipment, or materials under the control of the Department or contractor or provided by other cooperating federal, State, or local agencies to develop and implement a plan for abatement of an imminent hazard, or to provide interim alternative sources of drinking water to third parties affected by dry-cleaning solvent contamination resulting from a release at the facility or abandoned site. The cost of any of these actions shall be paid from the Fund. The Department or private contractor shall keep a record of all expenses incurred for personnel and for the use of equipment and materials and all other expenses of developing and implementing the remediation plan.

(b) The Commission shall request the Attorney General to commence a civil action to secure reimbursement of costs incurred under this section.

(c) In the event a civil action is commenced pursuant to this Part to recover monies paid from the Fund, the Commission may recover, in addition to any amount due, the costs of the action, including reasonable attorneys' fees and investigation expenses. Any monies received or recovered as reimbursement shall be paid into the Fund or other source from which the expenditures were made. (1997-392, s. 1; 2000-19, s. 15.)

§ 143-215.104P. (Expires January 1, 2022 – see notes) Enforcement procedures; civil penalties.

(a) The Secretary may assess a civil penalty of not more than ten thousand dollars ($10,000) or, if the violation involves a hazardous waste, as defined in G.S. 130-290, of not more than twenty-five thousand dollars ($25,000) against any person who:

(1) Repealed by Session Laws 2000, ch. 19, s. 3, effective on and after April 1, 1998.

(2) Engages in dry-cleaning operations using dry-cleaning solvent for which the appropriate sales or use tax has not been paid.

(3) Fails to comply with rules adopted by the Commission pursuant to this Part.

(4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Part.

(5) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.

(6) Falsifies or tampers with any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.

(7) Knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.

(8) 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 rule implementing this Part.

(9) Knowingly makes a false statement of material fact in a rule-making proceeding or contested case under this Part.

(10) Refuses access to the Commission or its duly designated representative to any premises for purposes of conducting a lawful inspection provided for in this Part or rule implementing this Part.

(b) If any action or failure to act for which a penalty may be assessed under subsection (a) of this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars ($10,000) per day or, if the violation involves a hazardous waste, as defined in G.S. 130-290, not exceed twenty-five thousand dollars ($25,000) per day. A penalty for a continuous violation shall not exceed two hundred thousand dollars ($200,000) for each period of 30 days during which the violation continues.

(c) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty for the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment.

(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver the remission request and the recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or the violator's principal place of business is located in order to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (d) of this section or requests remission of the assessment in whole or in part as provided in subsection (e) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or the violator's principal place of business is located to recover the amount of the assessment. A civil action must be filed within three years of the date the final agency decision or court order was served on the violator. (1997-392, s. 1; 2000-19, s. 3; 2011-398, s. 53.)

§ 143-215.104Q. (Expires January 1, 2022 – see notes) Enforcement procedures; criminal penalties.

(a) Any person who negligently commits any of the offenses set out in subdivisions (1) through (10) of G.S. 143-215.104P(a) shall be guilty of a Class 2 misdemeanor, which may include a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that the fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues.

(b) Any person who knowingly and willfully commits any of the offenses set out in subdivisions (1) through (10) of G.S. 143-215.104P(a) 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 the violation continues. For the purposes of this subsection, 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.

(c) (1) Any person who knowingly commits any of the offenses set out in subdivisions (3) through (10) of G.S. 143-215.104P(a) and who knows at that time that he thereby places another person in imminent danger of death or serious 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 the 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.

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, the following should be considered 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 profession, or of medical treatment or medical or scientific experimentation conducted by professionally approved methods, and the 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.

(d) 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.

(e) 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.

(f) 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 that 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. 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 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 causing no significant harm to the environment or risk to 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 at the time. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.

(6) Occasional, inadvertent, short-term violations causing no significant harm to the environment or risk to public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(g) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under law 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 light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in light of reason and experience.

(h) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under law 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 light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in light of reason and experience.

(i) For purposes of this section, the term "person" means, in addition to the definition contained in G.S. 143-212, any responsible corporate or public office or employee. If a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State and the vote on the referendum is against the means or machinery for carrying out the intent and purpose, then this section shall not apply to elected officials or to any responsible appointed officials or employees of the county, city, town, or other political subdivision. (1997-392, s. 1.)

§ 143-215.104R. (Expires January 1, 2022 – see notes) Enforcement procedures; injunctive relief.

Whenever the Commission has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part or rule implementing this Part, the Commission may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Commission for injunctive relief to restrain the violation or threatened violation

and for other and further relief in the premises as the court shall deem proper. The Attorney General may institute an action in the superior court of the county in which the violation occurred or may occur or, in the Attorney General's discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has a principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part or the rules of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to the proceedings from any penalty prescribed for violation of this Part. In the event a civil action is commenced pursuant to this section, the Commission may recover the costs of the action, including attorneys' fees and investigation expenses. All monies received or recovered shall be paid into the Fund or other source from which the expenditures were made. (1997-392, s. 1.)

§ 143-215.104S. (Expires January 1, 2022 – see notes) Appeals.

Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104F through G.S. 143-215.104O may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated within the allotted time period, the Commission's decision shall be final and not subject to review. Notwithstanding the provisions of G.S. 6-19.1, no party seeking to compel remediation of dry-cleaning solvent contamination in excess of that required by a dry-cleaning solvent remediation agreement approved by the Commission shall be eligible to recover attorneys' fees. (1997-392, s. 1; 2000-19, s. 16; 2002-165, s. 1.5; 2011-398, s. 54.)

§ 143-215.104T. (Expires January 1, 2022 – see notes) Construction of this Part.

(a) This Part is not intended to 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 contamination site and any land-use restrictions in the dry-cleaning solvent remediation 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 law relating to civil and criminal penalties or enforcement actions and remedies available to the Department, except as may be provided in a dry-cleaning solvent remediation 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 at a facility or abandoned site.

(5) Affect the right of any person to seek any relief available against any party to the dry-cleaning solvent remediation agreement who may have liability with respect to the facility or abandoned site, except that this Part does limit the relief available against any party to a remediation agreement with respect to assessment or remediation of the contamination site to the assessment remediation required under the remediation agreement.

(6) Affect the right of any person who may have liability with respect to the facility or abandoned site to seek contribution from any other person who may have liability with respect to the facility or abandoned site 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 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 from the pollution of the land, air, or waters of this State on a facility or abandoned site.

(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 provision 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 into, implementing, monitoring, or enforcing a dry-cleaning solvent assessment agreement, a dry-cleaning solvent remediation agreement, or a Notice of Dry-Cleaning Solvent Remediation under this Part or any other action implementing this Part. (1997-392, s. 1; 2007-530, s. 12.)

§ 143-215.104U. (Expires January 1, 2022 – see notes) Reporting requirements.

(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 at least the following:

(1) A list of all dry-cleaning solvent contamination reported to the Department.

(2) A list of all facilities and abandoned sites certified by the Commission and the status of contamination associated with each facility or abandoned site.

(3) An estimate of the cost of assessment and remediation required in connection with facilities or abandoned sites certified by the Commission and an estimate of assessment and remediation costs expected to be paid from the Fund.

(4) A statement of receipts and disbursements for the Fund.

(5) A statement of all claims against the Fund, including claims paid, claims denied, pending claims, anticipated claims, and any other obligations.

(6) The adequacy of the Fund to carry out the purposes of this Part together with any recommendations as to measures that may be necessary to assure the continued solvency of the Fund.

(b) Repealed by Session Laws 2017-10, s. 4.14(e), effective May 4, 2017. (1997-392, s. 1; 2017-10, s. 4.14(e).)

Part 7. Risk-based remediation for petroleum releases from aboveground storage tanks and other sources.

§ 143-215.104AA. Standards for petroleum releases from aboveground storage tanks and other sources.

(a) Legislative Findings and Intent.

(1) The General Assembly finds the following:

a. Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics and allowing no action or no further action at sites that pose little risk to human health or the environment.

b. A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.

c. Risk-based corrective action has successfully been used to clean up contamination from petroleum underground storage tanks, as well as contamination at sites governed by other environmental programs.

(2) The General Assembly intends the following:

a. To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases of petroleum from aboveground storage tanks and other sources. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based analysis to determine the appropriate cleanup levels and actions.

b. That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.

c. That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.

d. That these rules, and decisions of the Commission and the Department in implementing these rules, facilitate the completion of more cleanups in a shorter period of time.

(b) The Commission shall adopt rules to establish a risk-based approach for the cleanup of discharges and releases of petroleum from aboveground storage tanks and other sources. At a minimum, the rules shall address all of the following:

(1) The circumstances where site-specific information should be considered.

(2) Criteria for determining acceptable cleanup levels.

(3) The acceptable level or range of levels of risk to human health and the environment. Rules that use the distance between a source area of a confirmed discharge or release to a water supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk.

(4) Remediation standards and processes.

(5) Requirements for financial assurance, where the Commission deems it necessary.

(6) Appropriate fees to be applied to persons who undertake remediation of environmental contamination under site-specific remediation pursuant to this Part to pay for administrative and operating expenses necessary to implement this Part and rules adopted to implement this Part.

(c) The Commission may require an owner, operator, or landowner to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge or release of petroleum from an aboveground storage tank or other source.

(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify an owner, operator, or landowner who provides the information required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment. If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that requires further cleanup, the Commission shall notify the owner, operator, or landowner who provides the information required by subsection (c) of this section of the cleanup method approved by the Commission. This section shall not be construed to prohibit an owner, operator, or landowner from selecting a cleanup method other than the cleanup method approved by the Commission so long as the Commission determines that the alternative cleanup method will address imminent threats to human health and the environment.

(e) Remediation of sites with off-site migration shall be subject to the following provisions:

(1) Contaminated sites at which contamination has migrated to off-site properties may be remediated pursuant to this Part if either of the following occur:

a. The person who proposes to conduct the remediation pursuant to this Part remediates the contaminated off-site property to unrestricted use standards.

b. 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 subdivision (2) of this subsection 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.

(2) 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.

(3) If, after issuance of a no further action determination, the Department determines that additional remedial action is required for a contaminated off-site property, the responsible party shall be liable for the additional remediation deemed necessary.

(4) Nothing in this subsection shall be construed to preclude or impair any person from obtaining any and all other remedies allowed by law.

(f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a determination by the Commission under subsection (d) of this section as to whether

cleanup, further cleanup, or further action will be required. Notwithstanding any authority provided under this section to the Commission and the Department allowing use of a risk-based approach for the cleanup of discharges and releases of petroleum from aboveground storage tanks and other sources, a responsible party shall, at a minimum, do all of the following:

(1) Perform initial abatement actions to (i) measure for the presence of a release where contamination is most likely to be present and to confirm the precise source of the release; (ii) determine the possible presence of free product and to begin free product removal immediately; (iii) continue to monitor and mitigate any additional fire, vapor, or explosion hazards posed by vapors or by free product; and (iv) submit a report summarizing these initial abatement actions within 20 days after a discharge or release. For purposes of this subdivision, the term "free product" means a non-aqueous phase liquid which may be present within the saturated zone or in surface water.

(2) Remove, or in situ remediate, contaminated soil or free product that would act as a continuing source of contamination to groundwater. Actions conducted in conformance with this subdivision shall require approval by the Department.

(g) This section shall apply to discharges of petroleum from aboveground storage tanks and other sources not otherwise governed by the provisions of G.S. 143-215.94V. (2015-286, s. 4.7(b).)

Article 21B.

Air Pollution Control.

§ 143-215.105. Declaration of policy; definitions.

The declaration of public policy set forth in G.S. 143-211, the definitions in G.S. 143-212, and the definitions in G.S. 143-213, applicable to the control and abatement of air pollution, shall be applicable to this Article. (1973, c. 821, s. 6; 1987, c. 827, s. 203.)

§ 143-215.106. Administration of air quality program.

The Department shall administer the air quality program of the State. (1973, c. 821, s. 6; c. 1262, s. 23; 1977, c. 771, s. 4; 1987, c. 827, s. 204.)

§ 143-215.106A. Assessments to establish Title V program.

(a) The holders of permits issued by the Commission for the control of sources of air pollution are assessed Title V program implementation fees on an annual basis in accordance with the schedule established in this section. The assessments are in addition to any other fees required to be paid by the permit holders in conjunction with the permits. The assessments shall be credited to the Title V Account. The Secretary shall issue annual notices of the assessments to permit holders on or before 1 July of each fiscal year. Each notice of assessment shall include a summary of the data on which the assessment is based. Assessments shall be payable 30 days after receipt

of notice. Failure to make timely payment within 90 days shall be grounds to revoke the permit and to institute a collection action against the permit holder by the Attorney General.

(b) Assessments are made in accordance with the following schedule:

(1) Sources emitting at least 100 tons and less than 500 tons per year, two thousand dollars ($2,000) for fiscal year 1991-92 and two thousand five hundred dollars ($2,500) for each year thereafter;

(2) Sources emitting at least 500 tons and less than 1,000 tons per year, four thousand dollars ($4,000) for fiscal year 1991-92 and twelve thousand five hundred dollars ($12,500) for each year thereafter;

(3) Sources emitting at least 1,000 tons and less than 5,000 tons per year, six thousand dollars ($6,000) for fiscal year 1991-92, and twenty-five thousand dollars ($25,000) for each year thereafter; and

(4) Sources emitting at least 5,000 tons per year, six thousand dollars ($6,000) for fiscal year 1991-92, and one hundred thousand dollars ($100,000) for each year thereafter.

(c) Notices of assessment shall not be issued for any fiscal year in which the permit fees for the Title V program adopted by the Commission pursuant to G.S. 143-215.3(a)(1d) are in effect. Should a Title V program permit fee become due and payable during a fiscal year when the permit holder has paid an assessment, the Title V program permit fee shall be reduced in an amount equal to the pro rata share of the assessment for the months remaining in the fiscal year. The pro rata share is determined by dividing the assessment into 12 equal parts and multiplying that sum by the number of months remaining in the fiscal year. (1991, c. 552, s. 10; 1991 (Reg. Sess., 1992), c. 1039, s. 17.)

§ 143-215.107. Air quality standards and classifications.

(a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

(1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.

(2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.

(3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.

(4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning

location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. The Department shall implement rules adopted pursuant to this subsection as follows:

a. Except as provided in sub-subdivision b. of this subdivision, rules adopted pursuant to this subdivision that control emissions of toxic air pollutants shall not apply to an air emission source that is any of the following:

1. Subject to an applicable requirement under 40 C.F.R. Part 61, as amended.
2. An affected source under 40 C.F.R. Part 63, as amended.
3. Subject to a case-by-case maximum achievable control technology (MACT) permit requirement issued by the Department pursuant to 42 U.S.C. § 7412(j), as amended.

b. Upon receipt of a permit application for a new source or facility, or for the modification of an existing source or facility, that would result in an increase in the emission of toxic air pollutants, the Department shall review the application to determine if the emission of toxic air pollutants from the source or facility would present an unacceptable risk to human health. Upon making a written finding that a source or facility presents or would present an unacceptable risk to human health, the Department shall require the owner or operator of the source or facility to submit a permit application for any or all emissions of toxic air pollutants from the facility that eliminates the unacceptable risk to human health. The written finding may be based on modeling, epidemiological studies, actual monitoring data, or other information that indicates an unacceptable health risk. When the Department requires the owner or operator of a source or facility to submit a permit application pursuant to this sub-subdivision, the Department shall report to the Chairs of the Environmental Review Commission on the circumstances surrounding the permit requirement, including a copy of the written finding.

(6) To adopt motor vehicle emissions standards; to adopt, when necessary and practicable, a motor vehicle emissions inspection and maintenance program to improve ambient air quality; to require manufacturers of motor vehicles to furnish to the Equipment and Tool Institute and, upon request and at a reasonable charge, to any person who maintains or repairs

a motor vehicle, all information necessary to fully make use of the on-board diagnostic equipment and the data compiled by that equipment; to certify to the Commissioner of Motor Vehicles that ambient air quality will be improved by the implementation of a motor vehicle emissions inspection and maintenance program in a county. The Commission shall implement this subdivision as provided in G.S. 143-215.107A.

(7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas.

(8) To develop and adopt standards and plans necessary to implement programs to control acid deposition and to regulate the use of sulfur dioxide (SO2) allowances and oxides of nitrogen (NOx) emissions in accordance with Title IV and implementing regulations adopted by the United States Environmental Protection Agency.

(9) To regulate the content of motor fuels, as defined in G.S. 105-449.60, to require use of reformulated gasoline as the Commission determines necessary, to implement the requirements of Title II and implementing regulations adopted by the United States Environmental Protection Agency, and to develop standards and plans to implement this subdivision. Rules may authorize the use of marketable oxygen credits for gasoline as provided in federal requirements.

(10) Except as provided in subsection (h) of this section, to develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency.

(11) To develop and adopt economically feasible standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B.

(12) To develop and adopt a program of incentives to promote voluntary reductions of emissions of air contaminants, including, but not limited to, emissions banking and trading and credit for voluntary early reduction of emissions.

(13) To develop and adopt rules governing the certification of persons who inspect vehicle-mounted tanks used to transport motor fuel and to require that inspection of these tanks be performed only by certified personnel.

(14) To develop and adopt rules governing the sale and service of mobile source exhaust emissions analyzers and to require that vendors of these analyzers provide adequate surety to purchasers for the performance of the vendor's contractual or other obligations related to the sale and service of analyzers.

(b) Criteria for Standards. – In developing air quality and emission control standards, motor vehicle emissions standards, motor vehicle emissions inspection and maintenance requirements, rules governing the content of motor fuels or requiring the use

of reformulated gasoline, and other standards and plans to improve ambient air quality, the Commission shall consider varying local conditions and requirements and may prescribe uniform standards and plans throughout the State or different standards and plans for different counties or areas as may be necessary and appropriate to improve ambient air quality in the State or within a particular county or area, achieve attainment or preclude violations of state or national ambient air quality standards, meet other federal requirements, or achieve the purposes of this Article and Article 21.

(c) Chapter 150B of the General Statutes governs the adoption and publication of rules under this Article.

(d), (e) Repealed by Session Laws 1987, c. 827, s. 205.

(f), (g) Repealed by Session Laws 1995, c. 507, s. 27.

(h) With respect to any regulation adopted by the United States Environmental Protection Agency limiting emissions from wood heaters and adopted after May 1, 2014, neither the Commission nor the Department shall do any of the following:

(1) Issue rules limiting emissions from wood heaters to implement the federal regulations described in this subsection.

(2) Enforce against a manufacturer, distributor, or consumer the federal regulations described in this subsection. (1973, c. 821, s. 6; c. 1262, s. 23; 1975, c. 784; 1979, c. 545, s. 1; c. 931; 1987, c. 827, ss. 154, 205; 1989, c. 132; c. 168, s. 48; 1991, c. 403, s. 3; c. 552, s. 9; c. 761, s. 40; 1991 (Reg. Sess., 1992), c. 889, s. 3; 1993, c. 400, s. 7; 1993 (Reg. Sess., 1994), c. 686, s. 6; 1995, c. 123, s. 9; c. 507, s. 27.8(s); 1997-458, s. 3.1; 1999-328, s. 3.12; 2000-134, s. 1; 2002-4, s. 3; 2002-165, s. 1.7; 2012-91, s. 1; 2015-286, s. 4.3(a).)

§ 143-215.107A. Motor vehicle emissions testing and maintenance program.

(a) General Provisions. –

(1) G.S. 143-215.107(a)(6) shall be implemented as provided in this section.

(2) Motor vehicle emissions inspections shall be performed by a person who holds an emissions inspection mechanic license issued as provided in G.S. 20-183.4A(c) at a station that holds an emissions inspection station license issued under G.S. 20-183.4A(a) or at a place of business that holds an emissions self-inspector license issued as provided in G.S. 20-183.4A(d). Motor vehicle emissions inspections may be performed by a decentralized network of test-and-repair stations as described in 40 Code of Federal Regulations § 51.353 (1 July 1998 Edition). The Commission may not require that motor vehicle emissions inspections be performed by a network of centralized or decentralized test-only stations.

(b) Repealed by Session Laws 2000-134, s. 2, effective July 14, 2000.

(c) **(Effective until contingency met – see note)** Counties Covered. – Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Catawba, Chatham,

Cleveland, Craven, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Granville, Guilford, Harnett, Haywood, Henderson, Iredell, Johnston, Lee, Lenoir, Lincoln, Mecklenburg, Moore, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Robeson, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Union, Wake, Wayne, Wilkes and Wilson.

(c) **(Contingent effective date – see note)** Counties Covered. – Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Buncombe, Cabarrus, Cumberland, Davidson, Durham, Forsyth, Franklin, Gaston, Guilford, Iredell, Johnston, Lee, Lincoln, Mecklenburg, New Hanover, Onslow, Randolph, Rockingham, Rowan, Union, and Wake.

(d) Repealed by Session Laws 2012-200, s. 12(a), effective August 1, 2012. (1999-328, ss. 3.1, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 ; 2000-134, ss. 2, 3; 2004-203, s. 5(*l*); 2012-200, s. 12(a); 2017-10, s. 3.5(a).)

§ 143-215.107B: Repealed by Session Laws 2017-10, s. 4.4(b), effective May 4, 2017.

§ 143-215.107C. State agency goals, plans, duties, and reports.

(a) As used in this section, alternative-fueled vehicle means a motor vehicle capable of operating on electricity; natural gas; propane; hydrogen; reformulated gasoline; ethanol; other alcohol fuels, separately or in mixtures of eighty-five percent (85%) or more of alcohol by volume; or fuels, other than alcohol, derived from biological materials. For purposes of this section, a vehicle that has been converted to operate on a fuel other than the fuel for which it was originally designed is not a new or replacement vehicle.

(b) It shall be the goal of the State that on and after 1 January 2004 at least seventy-five percent (75%) of the new or replacement light duty cars and trucks purchased by the State will be alternative-fueled vehicles or low emission vehicles. The Department of Administration, the Department of Transportation, and the Department of Environmental Quality shall jointly develop a plan to achieve this goal and to fuel and maintain these vehicles. For purposes of this section, a light duty car or truck is one that is rated at 8,500 pounds or less Gross Vehicle Weight Rating (GVWR).

(c) Repealed by Session Laws 2006-79, s. 13, effective July 10, 2006.

(d), (e) Repealed by Session Laws 2017-10, s. 4.4(a), effective May 4, 2017.

(f) The Office of State Human Resources shall implement a policy that promotes telework/telecommuting for State employees as recommended by the report of the State Auditor entitled "Establishing a Formal Telework/telecommuting Program for State Employees" and dated October 1997. It shall be the goal of the State to reduce State employee vehicle miles traveled in commuting by twenty percent (20%) without reducing total work hours or productivity. (1999-328, ss. 4.1, 4.2, 4.5, 4.6, 4.7, 4.8; 2004-195, s. 2.4; 2005-386, s. 2.2; 2006-79, s. 13; 2013-382, s. 9.1(c); 2015-241, s. 14.30(u); 2017-10, s. 4.4(a).)

§ 143-215.107D. Emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) from certain coal-fired generating units.

(a) As used in this section:

(1) "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.

(2) "Investor-owned public utility" means an investor-owned public utility, as defined in G.S. 62-3.

(b) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted more than 75,000 tons of oxides of nitrogen (NOx) in calendar year 2000:

(1) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 35,000 tons of oxides of nitrogen (NOx) in any calendar year beginning 1 January 2007.

(2) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 31,000 tons of oxides of nitrogen (NOx) in any calendar year beginning 1 January 2009.

(c) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted 75,000 tons or less of oxides of nitrogen (NOx) in calendar year 2000 shall not collectively emit from the coal-fired generating units that it owns or operates more than 25,000 tons of oxides of nitrogen (NOx) in any calendar year beginning 1 January 2007.

(d) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted more than 225,000 tons of sulfur dioxide (SO2) in calendar year 2000:

(1) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 150,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2009.

(2) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 80,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2013.

(e) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted 225,000 tons or less of sulfur dioxide (SO2) in calendar year 2000:

(1) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 100,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2009.

(2) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 50,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2013.

(f) Each investor-owned public utility to which this section applies may determine how it will achieve the collective emissions limitations imposed by this section. Compliance with the emissions limitations set out in this section does not alter the obligation of any person to comply with any other federal or State law, regulation, or rule

related to air quality or visibility. This subsection shall not be construed to limit the authority of the Commission to impose specific limitations on the emission of oxides of nitrogen (NOx) and sulfur dioxide (SO2) from an individual coal-fired generating unit owned or operated by an investor-owned public utility.

(g) A coal-fired generating unit that is subject to the collective emissions limitations set out in this section on 1 July 2002 shall remain subject to the collective emissions limitations whether or not it thereafter continues to be owned or operated by an investor-owned public utility.

(h) The Commission shall require that any permit or modified permit issued for a coal-fired generating unit that is subject to this section include conditions that provide for testing, monitoring, record keeping, and reporting adequate to assure compliance with the requirements of this section.

(i) The Governor may enter into an agreement with an investor-owned public utility under which the investor-owned public utility voluntarily agrees to transfer to the State any emissions allowances acquired or that may be acquired by the investor-owned public utility pursuant to 42 U.S.C. §§ 7651-7651o, as implemented by 40 Code of Federal Regulations §§ 73.1 through 73.90 (1 July 2001 Edition); 42 U.S.C. 7410(a)(2)(D)(i)(I), as implemented by 40 Code of Federal Regulations § 51.121 (1 July 2001 Edition), related federal regulations, and the associated State Implementation Plan; 42 U.S.C. § 7426, as implemented by 40 Code of Federal Regulations § 52.34 (1 July 2001 Edition) and related federal regulations; or any similar program established under federal law that result from compliance with the emissions limitations set out in this section. An agreement entered into pursuant to this subsection shall be binding and shall be enforceable by specific performance. If the Governor enters into an agreement that provides for the transfer of emissions allowances to the State, the Governor shall file verified copies of the agreement with the Attorney General, the Secretary of State, the State Treasurer, the Secretary of Environmental Quality, and the Utilities Commission. The State Treasurer shall hold all emissions allowances that are transferred to the State as provided in this subsection in trust for the people of this State and shall sell, trade, transfer, or otherwise dispose of the emissions allowances only as the General Assembly shall provide by law.

(j) An investor-owned public utility that is subject to the emissions limitations set out in this section shall submit to the Utilities Commission and to the Department on or before 1 April of each year a verified statement pursuant to subsection (i) of G.S. 62-133.6. (2002-4, s. 1; 2015-241, s. 14.30(v).)

§ 143-215.108. Control of sources of air pollution; permits required.

(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities that contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained a permit for the activity from the Commission and has complied with any conditions of the permit:

(1) Establish or operate any air contaminant source, except as provided in G.S. 143-215.108A.

(2) Build, erect, use, or operate any equipment that may result in the emission of an air contaminant or that is likely to cause air pollution, except as provided in G.S. 143-215.108A.

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted.

(4) Repealed by Session Laws 2003-428, s. 1, effective August 19, 2003.

(a1) The Commission may by rule establish procedures that meet the requirements of section 502(b)(10) of Title V (42 U.S.C. § 7661a(b)(10)) and 40 Code of Federal Regulations § 70.4(b)(12) (1 July 1993 Edition) to allow a permittee to make changes within a permitted facility without requiring a revision of the permit.

(a2) The Commission may adopt rules that provide for a minor modification of a permit. At a minimum, rules that provide for a minor modification of a permit shall meet the requirements of 40 Code of Federal Regulations § 70.7(e)(2) (1 July 1993 Edition). If the Commission adopts rules that provide for a minor modification of a permit, a permittee shall not make a change in the permitted facility while the application for the minor modification is under review unless the change is authorized under the rules adopted by the Commission.

(b) The Commission shall act upon all applications for permits so as to effectuate the purposes of this Article by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air from any additional or enlarged sources.

(c) The Commission shall have the power:

(1) To grant and renew a permit with any conditions attached that the Commission believes necessary to achieve the purposes of this Article or the requirements of the Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency;

(2) To grant and renew any temporary permit for such period of time as the Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;

(3) To terminate, modify, or revoke and reissue any permit upon not less than 60 days' written notice to any person affected;

(3a) To suspend any permit pursuant to the provisions of G.S. 150B-3(c);

(4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;

(5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit;

(5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and

b. Has substantially complied with the air quality and emission control standards applicable to any activity in which 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 used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations 240.12b-2 (1 April 1990 Edition);

(6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in writing;

(7) To prohibit any stationary source within the State from emitting any air pollutant in amounts that will prevent attainment or maintenance by any other state of any national ambient air quality standard or that will interfere with measures required to be included in the applicable implementation plan for any other state to prevent deterioration of air quality or protect visibility; and

(8) To designate certain classes of activities for which a general permit may be issued, after considering the environmental impact of an activity, the frequency of the activity, the need for individual permit oversight, and the need for public review and comment on individual permits.

(d) (1) The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. A permit application may not be deemed complete unless it is accompanied by a copy of the request for determination as provided in subsection (f) of this section that bears a date of receipt entered by the clerk of the local government and until the 15-day period for issuance of a determination has elapsed.

(2) The Commission shall adopt rules specifying the times within which it must act upon applications for permits required by Title V and other permits required by this section. The times specified shall be extended for the period during which the Commission is prohibited from issuing a permit under subdivisions (3) and (4) of this subsection. The Commission shall inform a permit applicant as to whether or not the application is complete within the time specified in the rules for action on the application. If the Commission fails to act on an application for a permit required by Title V or this section within the time period specified, the failure to act on the application constitutes a final agency decision to deny the permit. A permit applicant, permittee, or other person aggrieved, as defined in G.S. 150B-2, may seek judicial review of a failure to act on the application as provided in G.S. 143-215.5 and Article 4 of Chapter 150B

of the General Statutes. Notwithstanding the provisions of G.S. 150B-51, upon review of a failure to act on an application for a permit required by Title V or this section, a court may either: (i) affirm the denial of the permit or (ii) remand the application to the Commission for action upon the application within a specified time.

(3) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V within 45 days after the Administrator receives the proposed permit and the required portions of the permit application, the Commission shall not issue the permit until the Commission revises the proposed permit to meet all objections noted by the Administrator or otherwise satisfies all objections consistent with Title V and implementing regulations adopted by the United States Environmental Protection Agency.

(4) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V after the expiration of the 45-day review period specified in subdivision (3) of this subsection as a result of a petition filed pursuant to section 505(b)(2) of Title V (42 U.S.C. § 7661d(b)(2)) and prior to the issuance of the permit by the Commission, the Commission shall not issue the permit until the Commission revises the proposed permit to meet all objections noted by the Administrator or otherwise satisfies all objections consistent with Title V and implementing regulations adopted by the United States Environmental Protection Agency.

(d1) No Title V permit issued pursuant to this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section shall be issued for a term of eight years.

(e) A permit applicant or permittee who is dissatisfied with a decision of the Commission on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review. The filing of a petition under this subsection will stay the Commission's decision until resolution of the contested case.

(e1) A person other than a permit applicant or permittee who is a person aggrieved by the Commission's decision on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission provides notice of its decision on a permit application, as provided in G.S. 150B-23(f), or by posting the decision on a publicly available Web site. The filing of a petition under this subsection does not stay the Commission's decision except as ordered by the administrative law judge under G.S. 150B-33(b).

(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the land on which the facility and its appurtenances are

to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility or expansion would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission 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. If a local government determines that the new facility or the expansion of an existing facility is inconsistent with a zoning or subdivision ordinance, and unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of construction or operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. 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.

(g) Repealed by Session Laws 2014-120, s. 38(c), effective September 18, 2014.

(h) Expedited Review of Applications Certified by a Professional Engineer. – The Commission shall adopt rules governing the submittal of permit applications certified by a professional engineer, including draft permits, that can be sent to public notice and hearing upon receipt and subjected to technical review by personnel within the Department. These rules shall specify, at a minimum, any forms to be used; a checklist for applicants that lists all items of information required to prepare a complete permit application; the form of the certification required on the application by a professional engineer; and the information that must be included in the draft permit. The Department shall process an application that is certified by a professional engineer as provided in subdivisions (1) through (7) of this subsection.

(1) Initiation of Review. – Upon receipt of an application certified by a professional engineer in accordance with this subsection and the rules

adopted pursuant to this subsection, the Department shall determine whether the application is complete as provided in subdivision (2) of this subsection. Within 30 days after the date on which an application is determined to be complete, the Department shall:

a. Publish any required notices, using the draft permit included with the application;

b. Schedule any required public meetings or hearings on the application and permit; and

c. Initiate any and all technical review of the application in a manner to ensure substantial completion of the technical review by the time of any public hearing on the application, or if there is no hearing, by the close of the notice period.

(2) Completeness Review. – Within 10 working days of receipt of the permit application certified by a professional engineer under this subsection, the Department shall determine whether the application is complete for purposes of this subsection. The Department shall determine whether the permit application certified by a professional engineer is complete by comparing the information provided in the application with the checklist contained in the rules adopted by the Commission pursuant to this subsection.

a. If the application is not complete, the Department shall promptly notify the applicant in writing of all deficiencies of the application, specifying the items that need to be included, modified, or supplemented in order to make the application complete, and the 10-day time period is suspended after this request for further information. If the applicant submits the requested information within the time specified, the 10-day time period shall begin again on the day the additional information was submitted. If the additional information is not submitted within the time periods specified, the Department shall return the application to the applicant, and the applicant may treat the return of the application as a denial of the application or may resubmit the application at a later time.

b. If the Department fails to notify the applicant that an application is not complete within the time period set forth in this subsection, the application shall be deemed to be complete.

(3) Time for Permit Decision. – For any application found to be complete under subdivision (2) of this subsection, the Department shall issue a permit decision within 30 days of the last day of any public hearing on the application, or if there is no hearing, within 30 days of the close of the notice period.

(4) Rights if Permit Decision Not Made in Timely Fashion. If the Department fails to issue a permit decision within the time periods specified in subdivision (3) of this subsection, the applicant may:

a. Take no action, thereby consenting to the continued review of the application; or

b. Treat the failure to issue a permit decision as a denial of the application and appeal the denial as provided in subdivision (2) of subsection (d) of this section.

(5) Power to Halt Review. – At any time after the permit application certified by a professional engineer has been determined to be complete under subdivision (2) of this subsection, the Department may immediately terminate review of that application, including technical review and any hearings or meetings scheduled on the application, upon a determination of one of the following:

a. The permit application is not in substantial compliance with the applicable rules; or

b. The applicant failed to pay all permit application fees.

(6) Rights if Review Halted. – If the Department terminates review of an application under subdivision (5) of this subsection, the applicant may take any of the following actions:

a. Revise and resubmit the application; or

b. Treat the action as a denial of the application and appeal the denial under Article 3 of Chapter 150B of the General Statutes.

(7) Option; No Additional Fee. – The submittal of a permit application certified by a professional engineer to be considered under this subsection shall be an option and shall not be required of any applicant. The Department shall not impose any additional fees for the receipt or processing of a permit application certified by a professional engineer.

(i) Rules for Review of Applications Other Than Those Certified by a Professional Engineer. – The Commission shall adopt rules governing the times of review for all permit applications submitted pursuant to this section other than those certified by a professional engineer pursuant to subsection (h) of this section. Those rules shall specify maximum times for, among other things, the following actions in reviewing the permit applications covered by this subsection:

(1) Determining that the permit application is complete;

(2) Requesting additional information to determine completeness;

(3) Determining that additional information is needed to conduct a technical review of the application;

(4) Completing all technical review of the permit application;

(5) Holding and completing all public meetings and hearings required for the application;

(6) Completing the record from reviewing and acting on the application; and

(7) Taking final action on the permit, including granting or denying the application.

(j) No Power to Regulate Residential Combustion. – Nothing in this section shall be interpreted to give the Commission or the Department the power to regulate the emissions from any combustion heater, appliance, or fireplace in private dwellings, except to the extent required by federal law. For purposes of this subsection, "combustion heater, appliance, or fireplace" means any heater, appliance, or fireplace that burns combustion fuels, including, but not limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal, for heating, cooking, drying, or decorative purposes. (1973, c. 821, s. 6; c. 1262, s. 23; 1979, c. 545, ss. 2, 3; 1987, c. 461, s. 2; c. 827, ss. 154, 206; 1989, c. 168, s. 30; c. 492; 1989 (Reg. Sess., 1990), c. 1037, s. 2; 1991, c. 552, s. 5; c. 629, s. 1; c. 761, s. 27(a)-(c); 1993, c. 400, s. 8; 1995, c. 484, s. 2; 1995 (Reg. Sess., 1996), c. 728, s. 1; 2002-4, s. 2; 2003-340, s. 1.8(b); 2003-428, ss. 1, 2; 2011-398, s. 60(a); 2013-413, s. 29; 2014-115, s. 17; 2014-120, ss. 24(g), 38(c); 2015-286, s. 4.17(a).)

§ 143-215.108A. Control of sources of air pollution; construction of new facilities; alteration or expansion of existing facilities.

(a) New Facilities. – A person may not, without obtaining a permit under G.S. 143-215.108, construct or operate an air contaminant source, equipment, or associated air cleaning device at a site or facility where, at the time of the construction, there is no other air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108. A person may, however, undertake the following activities prior to obtaining a permit if the person complies with the requirements of this section:

(1) Clearing and grading.
(2) Construction of access roads, driveways, and parking lots.
(3) Construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities.
(4) Construction of ancillary structures, including fences and office buildings, that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108.

(b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108 may apply to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of air contaminants. The permittee may not operate the altered, expanded, or additional air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of any air contaminant without obtaining a permit modification under G.S. 143-215.108. A permittee may, however, alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device at a facility permitted under G.S. 143-215.108 if the permittee complies with the requirements of this section. At least 15 days prior to commencing alteration or expansion under this subsection, the permittee shall give notice by publication and shall submit to the Commission a notice of the permittee's intent to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device. Notice by publication shall be in a newspaper having general circulation in the county or counties where the facility is to be

located; shall be at the permittee's own expense; shall include a statement that written comment may be submitted to the Commission, that the Commission will consider any comment that it receives, and the Commission's address for submission of written comment; and shall include all the information required by subdivisions (1) through (6) of this subsection. The permittee shall submit a proof of publication of the notice to the Commission within 15 days of the date of publication. The notice of intent to the Commission shall include all of the following:

(1) The name and location of the facility and the name and address of the permittee.

(2) The permit number of each permit issued under G.S. 143-215.108 for the facility.

(3) The nature of the air contaminant sources and equipment associated with the proposed modification of the permit.

(4) An estimate of total regulated air contaminant emissions associated with the proposed modification of the permit.

(5) The air cleaning devices that are to be employed to address each of the air contaminant sources associated with the modification of the permit.

(6) The schedule for alteration or expansion of the facility associated with the proposed modification of the permit.

(7) An acknowledgment by the permittee that the air contaminant sources, equipment, and associated air cleaning devices may not be operated in a manner that alters the emission of any air contaminant until the permittee has obtained a modified permit under G.S. 143-215.108.

(8) An acknowledgment by the permittee that any alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device prior to the modification of a permit under G.S. 143-215.108 is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a modification of the permit under G.S. 143-215.108 without regard to the permittee's financial investment or alteration or expansion of the facility.

(9) A certification under oath that all of the information contained in the notice of intent is complete and accurate to the best of the permittee's knowledge and ability, executed by the permittee or, if the permittee is a corporation, by the appropriate officers of the corporation.

(c) Review and Determination by the Commission. –

(1) Upon receipt of a complete notice of intent required under subsection (b) of this section, the Commission shall determine whether:

a. The permittee is and has been in substantial compliance with other permits issued the permittee.

b. The facility will be altered or expanded so that it will be used for either the same or a similar use as the use already permitted.

c. The alteration or expansion will not result in a disproportionate increase in the size of the facility already permitted.

d. The alteration or expansion will result in the same or substantially similar emissions as that of the facility already permitted.

e. The alteration or expansion will not have a significant effect on air quality.

f. The Commission is likely to issue the permit modification.

(2) Within 15 days after the Commission receives a complete notice of intent required under subsection (b) of this section, the Commission shall notify the permittee of its determination as to whether each of the conditions set out in subdivision (1) of this subsection has or has not been met. If the Commission finds that all of the conditions have been met, the notice shall state that the alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device may begin. If the Commission finds that one or more of the conditions has not been met, the notice shall state that the alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device may not begin.

(d) Order to Cease Construction, Alteration, or Expansion. – If at any time during the construction, alteration, or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device, the Commission determines that the permittee will not qualify for a permit or permit modification under G.S. 143-215.108, the Commission may order that the construction, alteration, or expansion cease until the Commission makes a decision on the application for a permit or permit modification. If the Commission orders that construction, alteration, or expansion cease, then construction, alteration, or expansion may resume only if the Commission either makes a subsequent determination that the circumstances that resulted in the order to cease construction, alteration, or expansion have been adequately addressed or if the Commission issues a permit or permit modification under G.S. 143-215.108 that authorizes construction, alteration, or expansion to resume.

(e) Evaluation of Permit Applications; Administrative and Judicial Review of Permit Decisions. – The Commission shall evaluate an application for a permit or permit modification under G.S. 143-215.108 and make its decision on the same basis as if the construction, alteration, or expansion allowed under this section had not occurred. The Commission shall consider any written comment that it receives in response to a notice by publication given pursuant to subsection (b) of this section. No evidence regarding any contract entered into, financial investment made, construction, alteration, or expansion undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under G.S. 143-215.108 is admissible in any contested case or judicial proceeding involving any permit required under G.S. 143-215.108. No evidence as to any determination or order by the Commission pursuant to subsection (c) or (d) of this section shall be admissible in any contested case or judicial proceeding related to any permit required under G.S. 143-215.108.

(f) State, Commission, and Employees Not Liable. – Every person, permittee, and owner of a facility who proceeds under this section shall hold the State, the Commission, and the officials, agents, and employees of the State and the Commission harmless and not liable for any loss resulting from any contract entered into, financial investment made, construction, alteration, or expansion undertaken, or economic loss incurred by any person, permittee, or owner of any facility pursuant to this section.

(g) Local Zoning Ordinances Not Affected. – This section 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.

(h) Compliance With Other State Laws Not Affected. – This section does not relieve any person of the obligation to comply with any other requirement of State law, including any

requirement to obtain any other permit or approval prior to undertaking any activity associated with preparation of the site or the alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device at a facility for which a permit is required under G.S. 143-215.108.

(i) Federal Air Quality Programs Not Affected. – This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply to any construction, alteration, or expansion that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112.

(j) Fee. – A permittee who submits a notice of intent under subsection (b) of this section shall pay a fee of two hundred dollars ($200.00) for each notice of intent submitted to cover a portion of the administrative costs of implementing this section. (2003-428, s. 3.)

§ 143-215.109. Control of complex sources.

(a) The Commission may by rule establish criteria for controlling the effects of complex sources on air quality. The rules shall set forth such basic minimum criteria or standards under which the Commission shall approve or disapprove any such construction or modification. The rules shall further provide for the submission of plans, specifications and such other information as may be necessary for the review and evaluation of proposed or modified complex sources.

(b) If the Commission shall determine that the construction or modification of any complex sources will result in a violation of ambient air quality standards or interfere with the attainment of such standards in any area where an air pollution abatement control program has been established, the Commission shall have authority to disapprove such construction or modification or to approve such construction or modification under such conditions as the Commission shall deem necessary or appropriate.

(c) Repealed by Session Laws 1987, c. 827, s. 207. (1973, c. 821, s. 6; c. 1262, s. 23; 1987, c. 827, ss. 154, 207; 2013-413, s. 27.)

§ 143-215.110. Special orders.

(a) Issuance. – The Commission is hereby empowered, after the effective date of standards and classifications adopted pursuant to G.S. 143-215.107, to issue (and from time to time to modify or revoke) a special order or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the air within the area for which standards have been established. Such an order or instrument may direct such person to take or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Commission deems necessary and

feasible in order to alleviate or eliminate such pollution. The Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the air, subject to the provisions of subsection (a1) of this section regarding proposed orders, and such consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission issued pursuant to hearing.

(a1) Public Notice and Review of Consent Orders.

(1) The Commission shall give notice of a proposed consent order to the proper State, interstate, and federal agencies, to interested persons, and to the public. The Commission may also provide any other data it considers appropriate to those notified. The Commission shall prescribe the form and content of the notice. The notice shall be given at least 30 days prior to any final action regarding the consent order. Public notice shall be given by publication of the notice for 30 days on the regulatory agency Web site.

(2) Any person who desires a public meeting on any proposed consent order may request one in writing to the Commission within 30 days following date of the notice of the proposed consent order. The Commission shall consider all such requests for meetings. If the Commission determines that there is significant public interest in holding a meeting, the Commission shall schedule a meeting and shall give notice of such meeting at least 30 days in advance to all persons to whom notice of the proposed consent order was given and to any other person requesting notice. At least 30 days prior to the date of meeting, the Commission shall also have a copy of the notice of the meeting published for 30 days on the regulatory agency Web site. The Commission shall prescribe the form and content of notices under this subsection.

(3) The Commission shall prescribe the procedures to be followed in such meetings. If the meeting is not conducted by the Commission, detailed minutes of the meeting shall be kept and shall be submitted, along with any other written comment, exhibits or other documents presented at the meeting, to the Commission for its consideration prior to final action granting or denying the consent order.

(4) The Commission shall take final action on a proposed consent not later than 60 days following notice of the proposed consent order or, if a public meeting is held, within 90 days following such meeting.

(b) Procedure to Contest Certain Orders. – A special order that is issued without the consent of the person affected may be contested by that person by filing a petition for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the person affected does not file a petition within the required time, the order is final and is not subject to review.

(c) Repealed by Session Laws 1987, c. 827, s. 208.

(d) Effect of Compliance. – Any person who installs an air-cleaning device for purpose of alleviating or eliminating air pollution in compliance with the terms of, or as result of the conditions specified in, a permit issued pursuant to G.S. 143-215.108, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Commission or a court, rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of air pollution, for a period to be fixed by the Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date such special order, consent special order, assurance of voluntary compliance, other document or decision, or the conditions of such permit become finally effective, if:

(1) The air-cleaning devices result in the elimination or alleviation of air pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance, or other document or decision and complies with any other terms thereof; and

(2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance.

(e) Compliance Bonds. – A special order or other instrument authorized by this section may provide that a bond or other surety be posted to ensure compliance. In determining the amount of such bond the Commission shall consider the degree and extent of harm which may result if the person to whom the special order is directed fails to comply with the terms of the order, the cost of rectifying such harm, the economic consequences to the person to whom the special order is directed if the special order is issued as compared to the consequences of a denial, suspension, or revocation of the special order or permit, and the person's history of compliance with pollution control requirements, other special orders, history of payment of any penalties which may have been previously assessed by the Commission. In the event of noncompliance with the special order or other instrument, the bond shall be forfeited and the clear proceeds of the bond shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 821, s. 6; c. 1262, s. 23; 1987, c. 827, ss. 154, 208; 1989, c. 133; c. 766, s. 2; 1998-215, s. 72; 2015-286, s. 4.27.)

§ 143-215.111. General powers of Commission; auxiliary powers.

In addition to the specific powers prescribed elsewhere in this Article and the applicable general powers prescribed in G.S. 143-215.3, and for the purpose of carrying out its duties, the Commission shall have the power:

(1) To make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of the State and the several areas thereof, and make recommendations to the General Assembly and other appropriate public and private bodies for the control of such air contaminants.

(2) To consult, upon request, with any person proposing to construct, install, or otherwise acquire an air pollution source or air-cleaning device for the control of air contaminants concerning the efficacy of such device, or the air problem which may be related to such source, or device; provided, however, that nothing in any such consultation shall be construed to relieve any person from compliance with this Article and Article 21, rules adopted pursuant thereto, or any other provision of law.

(3) To encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis, and to provide such local units technical and consultative assistance to the maximum extent possible.

(4) To establish procedures providing for public notice, public comment, and public hearings on applications for permits required by Title V to meet the requirements of Title V and implementing regulations adopted by the United States Environmental Protection Agency.

(5) To establish procedures providing for notice to the Administrator of the United States Environmental Protection Agency and affected states of proposals to issue permits required by Title V and allowing affected states the opportunity to submit written comment as required by section 505(a) of Title V (42 U.S.C. § 7661d) and implementing regulations adopted by the United States Environmental Protection Agency. (1973, c. 821, s. 6; c. 1262, s. 23; 1987, c. 827, ss. 154, 209; 1993, c. 400, s. 9.)

§ 143-215.112. Local air pollution control programs.

(a) The Commission is authorized and directed to review and have general oversight and supervision over all local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this Article and Article 21 of this Chapter and any applicable standards and rules adopted pursuant thereto. The Commission shall certify any local program which:

(1) Provides by ordinance or local law for requirements compatible with those imposed by the provisions of this Article and Article 21 of this Chapter, and the standards and rules issued pursuant thereto; provided, however, the Commission upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards or rules promulgated by the Commission;

(2) Provides for the adequate enforcement of such requirements by appropriate administrative and judicial process;

(3) Provides for an adequate administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its programs; and

(4) Is approved by the Commission as adequate to meet the requirements of this Article and any applicable rules pursuant thereto.

(b) No municipality, county, local board or commission or group of municipalities and counties may establish and administer an air pollution control program unless such program meets the requirements of this section and is so certified by the Commission.

(c) (1) The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article and Article 21, subject to the approval of the Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

a. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;

b. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;

c. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;

d. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules and standards duly adopted by the Commission; and administration of such rules and standards in accordance with provisions of this section.

e. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;

f. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.

(2) Subject to the approval of the Commission as provided in this Article and Article 21, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by any of the following methods:

a. Establishing a program under the administration of the duly elected governing body of the county or municipality.

b. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term "governing body" is referred to in this section, it shall

include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board.

c. Appointing an air pollution control board as provided in this subdivision, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution control board.

d. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.

(2a) Any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Clean Air Act and any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers shall be adequately disclosed.

(3) If the Commission finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the Commission may determine the boundaries within which such program is necessary and require such area-wide program as the only acceptable alternative to direct State administration. Subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Commission, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and comprise the total area contained in any region designated by the Commission for an area-wide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's

representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term "governing body" is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a local health department as its administrative agent.

(4) Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the Commission and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit to do or carry out specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.

(5) No permit required by section 305(e) of Title III (42 U.S.C. § 7429(e)) for a solid waste incineration unit combusting municipal waste shall be issued by a local air pollution control program that is administered by the governing body of a unit of local government that is responsible, in whole or in part, for the design, construction, or operation of the unit.

(6) No local air pollution control program may limit or otherwise regulate any combustion heater, appliance, or fireplace in private dwellings. For purposes of this subdivision, "combustion heater, appliance, or fireplace"

means any heater, appliance, or fireplace that burns combustion fuels, including, but not limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal, for heating, cooking, drying, or decorative purposes.

(d) (1) Violation of any ordinances, resolutions, rules or regulations duly adopted by a governing body are punishable as provided in G.S. 143-215.114B.

(1a) Each governing body, or its authorized agent, shall have the power to assess civil penalties under G.S. 143-215.114A. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the governing body or its authorized agent within 30 days after receipt of notice, or such longer period not to exceed 180 days as the governing body or its authorized agent may specify, the governing body may institute a civil action in the superior court of the county in which the violation occurred, to recover the amount of the assessment. If any action or failure to act for which a penalty may be assessed under this section is continuous, the governing body or its authorized agent may assess a penalty not to exceed twenty-five thousand dollars ($25,000) per day for so long as the violation continues. In determining the amount of the penalty, the governing body or its authorized agent shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and the amount of money the violator saved by not having made the necessary expenditures to comply with the appropriate pollution control requirements.

(2) Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations and for such other relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article and Article 21 for any violation of same.

(d1) (1) The governing body responsible for each local air pollution control program shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V (42 U.S.C. § 7661a(b)(3)(A)) and G.S. 143-215.3(a)(1d). Fees collected pursuant to this subdivision shall be used solely to cover all reasonable direct and indirect costs required to develop and administer the Title V permit program.

(2) Each governing body is authorized to expend tax funds, nontax funds, or any other funds available to it to finance an air pollution control program and such expenditures are hereby declared to be for a public purpose and a necessary expense.

(d2) (1) Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Article 4 of Chapter 150B of the General Statutes, and "administrative agency" or "agency" as used therein shall mean and include for this purpose the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.

(2) A local air pollution control program shall inform a permit applicant as to whether or not the application is complete within the time specified in the rules for action on the application. If a local air pollution program fails to act on an application for a permit required by Title V or this Article within the time periods specified by the Commission under G.S 143-215.108(d)(2), the failure to act on the application constitutes a final agency decision to deny the permit. A permit applicant, permittee, or other person aggrieved, as defined in G.S. 150B-2, may seek judicial review of a failure to act on the application as provided in G.S. 143-215.5 and Article 4 of Chapter 150B of the General Statutes. Notwithstanding the provisions of G.S. 150B-51, upon review of a failure to act on an application for a permit required by Title V or this Article, a court may either: (i) affirm the denial of the permit or (ii) remand the application to the local air pollution control program for action upon the application within a specified time.

(e) (1) If the Commission has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirement of this Article, the Commission shall, upon due notice, conduct a hearing on the matter.

(2) If, after such hearing, the Commission determines that an existing local air pollution control program or one which has been certified by the Commission is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Article, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.

(3) If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Commission shall rescind any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this Article and Article 21. Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements in the affected jurisdiction.

(4) If the Commission finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this subdivision may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(5) Any municipality or county in which the Commission administers its air pollution control program pursuant to subdivision (3) of this subsection may, with the approval of the Commission, establish or resume a municipal, county, or local air pollution control program which meets the requirements for certification by the Commission.

(6) Repealed by Session Laws 1993, c. 400, s. 10.

(7) Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is established or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Commission. The Commission shall approve any such application if it is consistent with this Article, Article 21 and other applicable requirements of law.

(8) Notwithstanding any other provision of this section, if the Commission determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Commission, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emission of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary. (1973, c. 821, s. 6; c. 1262, s. 23; c. 1331, s. 3; 1979, c. 545, s. 7; 1987, c. 748, s. 1; c. 827, ss. 1, 154, 210; 1989, c. 135, s. 7; 1993, c. 400, s. 10; 1997-496, s. 6; 2010-180, s. 6; 2014-120, s. 24(f).)

§ 143-215.113: Repealed by Session Laws 1987, c. 827, s. 211.

§ 143-215.114: Recodified as §§ 143-215.114A through 143-215.114C.

(a) Recodified as G.S. 143-215.114A by Session Laws 1989 (Reg. Sess., 1990), c. 1045, s. 4.

(b) Recodified as G.S. 143-215.114B by Session Laws 1989 (Reg. Sess., 1990), c. 1045, s. 5.

(c) Recodified as G.S. 143-215.114C by Session Laws 1989 (Reg. Sess., 1990), c. 1045, s. 6.

§ 143-215.114A. Enforcement procedures: civil penalties.

(a) A civil penalty of not more than twenty-five thousand dollars ($25,000) may be assessed by the Secretary against any person who:

(1) Violates any classification, standard or limitation established pursuant to G.S. 143-215.107.

(2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.

(3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110.

(4) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or Parts 1 or 7 of Article 21 of this Chapter.

(5) Violates a rule of the Commission or a local governing body implementing this Article or Parts 1 or 7 of Article 21.

(6) Violates the offenses set out in G.S. 143-215.114B.

(7) Violates the emissions limitations set out in G.S. 143-215.107D.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed twenty-five thousand dollars ($25,000) per day for so long as the violation continues.

(b1) The Secretary may assess a civil penalty of not more than twenty-five thousand dollars ($25,000) per day for a violation of the emissions limitations set out in G.S. 143-215.107D as provided in this subsection. If at the end of any calendar year, an investor-owned public utility has violated an emissions limitation set out in G.S. 143-215.107D, the violation shall be considered to be continuous from the day that the collective emissions first exceeded the emissions limitation set out in G.S. 143-215.107D through the end of the calendar year and the Secretary may assess a separate civil penalty for each day.

(c) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment.

Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary 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, unless the violator contests the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (5) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary 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.

(g) Repealed by Session Laws 1996, Second Extra Session c. 18, s. 27.34(f).

(h) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 821, s. 6; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 19, s. 53; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 545, ss. 4-6; 1987, c. 748, s. 2; c. 827, ss. 154, 212; 1989, c. 135, s. 8; 1989 (Reg. Sess., 1990), c. 1036, s. 8; c. 1045, s. 4; 1991, c. 552, s. 4; c. 725, s. 7; 1991 (Reg. Sess., 1992), c. 890, s. 18; 1996, 2nd Ex. Sess., c. 18, s. 27.34(f); 1997-496, s. 7; 1998-215, s. 73; 2002-4, ss. 4, 5; 2002-165, s. 1.12; 2007-296, s. 1.)

§ 143-215.114B. Enforcement procedures: criminal penalties.

(a) For purposes of this section, the term "person" shall mean, in addition to the definition contained in G.S. 143-212, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this section shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(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. 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 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 to develop or use written civil enforcement guidelines.

(6) Occasional, inadvertent, short-term violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(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 negligently violates any classification, standard or limitation established pursuant to G.S. 143-215.107 or by G.S. 143-215.107D any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or other appropriate document issued pursuant to G.S. 143-215.110 or any rule of the Commission implementing any of the said section, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues.

(g) Any person who knowingly and willfully violates any classification, standard, or limitation established in the rules of the Commission pursuant to G.S. 143-215.107; the emissions limitations set out in G.S. 143-215.107D; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108; or of a special order or other appropriate document issued pursuant to G.S. 143-215.110, shall be guilty of a Class H 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. For the purposes of this subsection, 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.

(h) (1) Any person who knowingly violates any classification, standard, or limitation established in the rules of the Commission pursuant to G.S. 143-215.107; the emissions limitations set out in G.S. 143-215.107D; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108; or of a special order or other appropriate document issued pursuant to G.S. 143-215.110 and who knows at that time that he thereby places another person in imminent danger of death or serious 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.

(i) 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 Article or Article 21, or a rule implementing this Article or Article 21; or who knowingly makes a false statement of a material fact in a rulemaking or contested case under this Article or Article 21; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or Article 21 or rules of the Commission implementing this Article or Article 21, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed ten thousand dollars ($10,000).

(j) Repealed by Session Laws 1993, c. 539, s. 1320. (1973, c. 821, s. 6; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 19, s. 53; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 545, ss. 4-6; 1987, c. 748, s. 2; c. 827, ss. 154, 212; 1989, c. 135, s. 8; 1989 (Reg. Sess., 1990), c. 1004, s. 49; c. 1045, s. 5; 1993, c. 539, ss. 1026, 1027, 1318, 1319, 1320; 1994, Ex. Sess., c. 24, s. 14(c); 2002-4, ss. 6-8.)

§ 143-215.114C. Enforcement procedures: injunctive relief.

Whenever the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article or Article 21 of this Chapter or a rule implementing this Article or Article 21 of this Chapter, the Department, either before or after the institution of any other action or proceeding authorized by this Article or Article 21 of this Chapter, may request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the violation occurred or may occur. Upon a determination by the court that the alleged violation of the provisions of this Article or Article 21 of this Chapter or the regulation of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Article or Article 21 of this Chapter. (1973, c. 821, s. 6; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 19, s. 53; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 545, ss. 4-6; 1987, c. 748, s. 2; c. 827, ss. 154, 212; 1989, c. 135, s. 8; 1989 (Reg. Sess., 1990), c. 1045, s. 6.)

Article 21C.

Permitting of Wind Energy Facilities.

§ 143-215.115. Definitions.

In addition to the definitions set forth in G.S. 143-212, the following definitions apply to this Article:

(1) "Major military installation" means Fort Bragg, Pope Army Airfield, Marine Corps Base Camp Lejeune, New River Marine Corps Air Station, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the United States Coast Guard Air Station at Elizabeth City, Naval Support Activity Northwest, Air Route Surveillance Radar (ARSR-4) at Fort Fisher, and Seymour Johnson Air Force Base, in its own right and as the responsible entity for the Dare County Bombing Range, and any facility located within the State that is subject to the installations' oversight and control.

(2) "Wind energy facility" means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of one megawatt or more of energy.

(3) "Wind energy facility expansion" means any activity that (i) adds or substantially modifies turbines or transmission facilities, including increasing the height of such equipment, over that which was initially permitted or (ii) increases the footprint of the wind energy facility over that which was initially permitted. (2013-51, s. 1.)

§ 143-215.116. Permit to site wind energy facilities.

No person shall undertake construction, operation, or expansion activities associated with a wind energy facility in this State without first obtaining a permit from the Department. (2013-51, s. 1.)

§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication package requirements.

(a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility, a person shall request a preapplication site evaluation meeting to be held between the applicant and the Department. The preapplication site evaluation meeting shall be held no less than 120 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility and may be used by the participants to:

(1) Conduct a preliminary evaluation of the site or sites for the proposed wind energy facility or wind energy facility expansion. The preliminary evaluation of the proposed wind energy facility or proposed wind energy facility expansion shall determine if the site or sites:

a. Pose serious risk to civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.

b. Pose serious risk to natural resources and uses, including to species of concern or their habitats.

(2) Identify areas where proposed construction or expansion activities pose minimal risk of interference with civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.

(3) Identify areas where proposed construction or expansion activities pose minimal risk to natural resources and uses, including avian, bat, and endangered and threatened species.

(b) Permit Preapplication Package. – No less than 45 days prior to the date of the permit preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section, the applicant for a wind energy facility or wind energy facility expansion shall submit a preapplication package to the Department. To the extent that any documents contain trade secrets or confidential business information, those portions of the documents shall not be subject to disclosure under the North Carolina Public Records Act. The preapplication package shall include all of the following:

(1) A narrative description of the proposed wind energy facility or proposed wind energy facility expansion, including (i) the approximate number, type, and height of wind turbines to be constructed; (ii) the total planned capacity of the facility; and (iii) a description of any ancillary facilities.

(2) A map showing the approximate location of the proposed wind energy facility or proposed wind energy facility expansion.

(3) A description of any known potential impacts of the proposed wind energy project location on civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations. The applicant may use data made available by the Department pursuant to G.S. 143-215.123 to satisfy this requirement.

(4) A description of species of concern, habitats that support species of concern, critical areas of wildlife congregation, and protected lands, as those species, habitats, and critical areas are referenced in the March 23, 2012, United States Fish and Wildlife Service Land-Based Wind Energy Guidelines (OMB Control No. 1018-0148) that are or believed to be present at the site of the proposed wind energy facility or proposed wind energy facility expansion. The applicant may use data made available by the North Carolina Wildlife Resources Commission, the Department, or other governmental agency to satisfy this requirement.

(5) A list of the federal, State, and local agencies from which approvals will be obtained and the name of those approvals required in order to authorize the construction, operation, or expansion of the proposed wind energy facility.

(6) A schedule showing the anticipated dates for commencement of construction, testing, and commercial operation of the proposed wind energy facility or proposed wind energy facility expansion.

(c) Notice to Interested Parties. – No less than 21 days prior to the date of the permit preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section, the Department shall provide written notice of the meeting to the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the commanding military officer or the commanding military officer's designee of any potentially affected major military installation, and any other party that the Department deems relevant. The notice shall include an invitation to participate in the permit preapplication site evaluation meeting. (2013-51, s. 1.)

§ 143-215.118. Permit application scoping meeting and notice.

(a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion, the applicant shall request the scheduling of a scoping meeting between the applicant and the Department. The scoping meeting shall be held no less than 30 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy

facility expansion. The applicant and the Department shall review the permit for the proposed wind energy facility or proposed facility expansion at the scoping meeting.

(b) Notice of Scoping Meeting. – No less than 21 days prior to the scheduled permit application scoping meeting with an applicant, the Department shall provide written notice of the meeting to the commanding military officer of each major military installation, or the commanding military officer's designee, the Federal Aviation Administration, the North Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or proposed wind energy facility expansion is proposed to be located, and those local governments with jurisdictions over areas in which a major military installation is located. The notice shall include an invitation to participate in the scoping meeting. (2013-51, s. 1.)

§ 143-215.119. Permit application requirements; fees; notice of receipt of completed permit; public hearing; public comment.

(a) Permit Requirements. – A person applying for a permit for a proposed wind energy facility or proposed wind energy facility expansion shall include all of the following in an application for the permit:

(1) A narrative description of the proposed wind energy facility or proposed wind energy facility expansion.

(2) A map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that identifies the specific location of each turbine.

(3) A copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to construct, expand, or otherwise develop a wind energy facility on the property.

(4) Identification by name and address of property owners adjacent to the proposed wind energy facility or proposed wind energy facility expansion. The applicant shall notify every property owner identified pursuant to this subdivision by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall include all of the following:

a. The location of the proposed wind energy facility or proposed wind energy facility expansion and the specific location of each turbine proposed to be located within one-half mile of the boundary of the adjacent property owner.

b. A description of the proposed wind energy facility or proposed wind energy facility expansion.

(5) A description of civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other military operations that may be affected by the construction or operation of the proposed wind energy facility or proposed wind energy facility expansion.

(6) Documentation that addresses any potential adverse impact on military operations and readiness as identified by the Department of Defense Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.

(7) Documentation that the applicant has either (i) submitted Federal Aviation Administration Form 7460-1 for the turbines associated with the proposed wind energy facility or proposed wind energy facility expansion or (ii) initiated an informal review by the Department of Defense Siting Clearinghouse of the proposed wind energy facility or proposed wind energy facility expansion. If the applicant has submitted Federal Aviation Administration Form 7460-1 in order to fulfill the requirements of this subdivision, the applicant shall provide any determination reached by the Federal Aviation Administration at the time the application is submitted to the Department. If the Federal Aviation Administration has not made a determination at the time the application is submitted to the Department, the application shall include a description of the status of the applicant's engagement with the Federal Aviation Administration and the Department of Defense Siting Clearinghouse.

(8) A study of the noise impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion.

(9) A study on shadow flicker impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion, unless the turbines will be located in a sound or in offshore waters.

(10) A study of the impact of the proposed wind energy facility or proposed wind energy facility expansion on natural resources and uses, including avian, bat, and endangered and threatened species.

(11) An explanation of how the proposed wind energy facility or proposed wind energy facility expansion would be consistent with the criteria in subsection (a) of G.S. 143-215.120.

(12) The application fee required by subsection (c) of this section.

(13) A plan regarding the action to be taken upon the decommissioning and removal of the wind energy facility. The plan shall include an estimate of the cost to decommission and remove the wind energy facility. The plan shall also include the anticipated life of the project, an estimate of the cost to decommission and remove the wind energy facility, a description of the manner in which the facility will be decommissioned, and a description of the expected condition of the site once the wind energy facility has been decommissioned and removed.

(14) Other data or information the Department may reasonably require.

(b) Confidentiality of Trade Secrets and Business Information. – To the extent that any documents included in the permit application contain trade secrets or confidential business information, those portions of the documents shall not be subject to disclosure under the North Carolina Public Records Act.

(c) Fees. – An applicant for a permit for a proposed wind energy facility or proposed wind energy facility expansion under this section shall submit with the application required pursuant to subsection (a) of this section, an application fee of three thousand five hundred dollars ($3,500).

(d) Notice of Receipt of Complete Permit Application. – Within 10 days of receipt of a complete permit application for a proposed wind energy facility or proposed wind energy facility expansion submitted pursuant to subsection (a) of this section, the Department shall provide notice of the permit application to (i) the commanding military officer of all major military installations, (ii) the commanding military officer of any military installation located outside the State that is located within 50 nautical miles of the location of the proposed wind energy facility or proposed wind energy facility expansion, and (iii) the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or wind energy facility expansion is proposed to be located. The notice shall include:

(1) A copy of the map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that includes the specific locations of wind turbines.

(2) A written request to the commanding military officer of a major military installation or the commanding military officer's designee, for technical information related to any adverse impact on the installation's operations, training, or mission, including military air navigation routes, air traffic control areas, military training routes, special-use air space, radar or other military operations that may be affected.

(3) A written request for information related to potential adverse impacts of the proposed wind energy facility or proposed wind energy facility expansion on local governments from the board of commissioners for each county and the governing body of each municipality.

(e) Provision of Permit Application to Affected Entities. – Except as provided by G.S. 143-215.124, within 10 days of receipt of a written request from the commanding military officer of any major military installation or the commanding military officer's designee, the board of commissioners for any county in which the site is proposed to be located or the governing body of any municipality in which the site is proposed to be located, the Department shall provide a copy of a permit application filed pursuant to subsection (a) of this section, in addition to any supplements, changes, or amendments to the permit application to the requesting commanding military officer or local government.

(f) Public Hearing and Comment. – The Department shall hold a public hearing in each county in which the wind energy facility or wind energy facility expansion is proposed to be located within 75 days of receipt of a completed permit application. The Department shall provide notice including the time and location of the public hearing in a newspaper

of general circulation in each applicable county. The notice of public hearing shall be published for at least two consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing. The notice shall provide that any comments on the proposed wind energy facility or proposed wind energy facility expansion should be submitted to the Department by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after distribution of the mailed notice, whichever is later. No less than 30 days prior to the scheduled public hearing, the Department shall provide written notice of the hearing to:

(1) The North Carolina Utilities Commission.
(2) The Office of the Attorney General of North Carolina.
(3) The commanding military officer of any potentially affected major military installation or the commanding military officer's designee.
(4) The board of commissioners for each county and the governing body of each municipality with jurisdictions over areas in which a potentially affected major military installation is located. (2013-51, s. 1.)

§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other approvals required.

(a) Permit Approval. – The Department shall approve an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion unless the Department finds any one or more of the following:

(1) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would be inconsistent with or violate rules adopted by the Department or any other provision of law.
(2) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any major military installation or branch of military in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Department may consider whether the proposed wind energy facility or proposed wind energy facility expansion would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on information submitted by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department pursuant to subdivision (2) of subsection (d) of G.S. 143-215.119.
(3) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance; including 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 designated by the Marine Fisheries Commission and the Wildlife Resources Commission, and critical fisheries habitat identified pursuant to the Coastal Habitat Protection Plan.

(4) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on fish or wildlife.

(5) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.

(6) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would obstruct major navigation channels or create a significant obstacle to navigation in coastal waters, as determined by the United States Army Corps of Engineers and the United States Coast Guard.

(7) A permit for a proposed wind energy facility or proposed wind energy facility expansion would be denied under any other criteria set out in G.S. 113A-120.

(8) Construction of the proposed wind energy facility or proposed wind energy facility expansion would be prohibited under Article 14 of Chapter 113A of the General Statutes, the Mountain Ridge Protection Act of 1983.

(9) The applicant is not in compliance with all applicable federal, State, or local permit requirements, licenses, or approvals, including local zoning requirements.

(b) Permit Decision. – The Department shall make a final decision on a permit application within 90 days following receipt of a completed application, except that the Department shall not be required to make a final decision until the Department has received a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition). If the Department requests additional information following the receipt of a completed application, the Department shall make a final decision on a permit application within 30 days of receipt of the requested information. If the Department determines that an application for a wind energy facility or a wind energy facility expansion fails to meet the requirements for a permit under this section, the Department shall deny the application, and the application shall be returned to the applicant accompanied by a written statement of the reasons for the denial and any modifications to the permit application that would make the application acceptable. If the Department fails to act within the time period set forth in this subsection, the applicant may treat the failure

to act as a denial of the permit and may challenge the denial as provided under Chapter 150B of the General Statutes.

(c) Permit Conditions. – The Department (i) may include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder obtain a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind energy facility or wind energy facility expansion shall become effective until the Department has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration for the facility. If the specific location of a turbine authorized to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the configuration of the wind energy facility varies from the information submitted by the applicant upon which the Department has made its permit decision, the Department may reevaluate the permit application and require the applicant to submit any additional information the Department deems necessary to approve or deny a permit for the facility as reconfigured.

(d) Other Approvals Required. – The issuance of a permit under this section shall not obviate the need for the applicant to obtain any and all other applicable local, State, or federal permits, licenses, or approvals. Furthermore, nothing in this Article shall be interpreted to limit, as applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to facilities permitted under this section, including the permitting requirements of G.S. 113A-118, (ii) the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes, or (iii) the applicable requirements of Chapter 62 of the General Statutes. (2013-51, s. 1.)

§ 143-215.121. Financial assurance requirements.

The applicant for a permit or a permit holder for a wind energy facility shall establish financial assurance that will ensure that sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site, even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State. To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder for a wind energy 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. (2013-51, s. 1.)

§ 143-215.122. Monitoring and reporting.

The applicant shall annually submit copies to the Department of any post-construction monitoring, such as reports on the impacts on wildlife in the location of and in the area proximate to the wind energy facility or wind energy facility expansion and any impacts on military operations that are required by the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina Utilities Commission, or any other government agency. (2013-51, s. 1.)

§ 143-215.123. Annual review of military presence.

The Department shall consult with representatives of the major military installations to review information regarding military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations at least once per year. The Department shall provide relevant information on civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations to permit applicants as requested. (2013-51, s. 1.)

§ 143-215.124. Record keeping.

The Department shall serve as the custodian of all data, information, and records received from a permit applicant or a major military installation pursuant to this Article and shall ensure that information provided to the Department that constitutes trade secrets, as that term is defined in G.S. 66-152, and that is designated as confidential or as a trade secret under G.S. 132-1.2, is limited only to the Department, State employees, and other persons who have executed a confidentiality agreement with the owner of such information. Information designated as confidential or as a trade secret under G.S. 132-1.2 shall not be subject to disclosure pursuant to G.S. 132-6. (2013-51, s. 1.)

§ 143-215.125. Rule making.

The Environmental Management Commission shall adopt any rules necessary for the implementation of this Article. In adopting rules, the Commission shall consult with the Coastal Resources Commission to ensure that the development of statewide permitting requirements is consistent with and in consideration of the characteristics unique to the coastal area of the State to the maximum extent practicable. (2013-51, s. 1.)

§ 143-215.126. Civil penalties.

(a) The Secretary of Environmental Quality may impose an administrative penalty on a person who constructs a wind energy facility or wind energy facility expansion without obtaining a permit under this Article or who constructs or operates a wind energy facility in violation of its permit terms and conditions. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ten thousand dollars ($10,000) per day.

(b) The Secretary of Environmental Quality, irrespective of all other remedies at law, may institute an action for injunctive relief against a person who constructs a wind

energy facility without first obtaining a permit under this Article or who constructs or operates a wind energy facility or wind energy facility expansion in violation of its permit terms and conditions. (2013-51, s. 1; 2015-241, s. 14.30(v).)

Article 22.

State Ports Authority.

§§ 143-216 through 143-228.1: Recodified as §§ 143B-452 to 143B-467 by Session Laws 1977, c. 198, s. 9.

Article 22A.

Agency Review of Engineering Work.

§ 143-228.10. (See Editor's note) Definitions.

The following definitions apply in this Article:

(1) Practice of Engineering. – As defined in G.S. 89C-3.

(2) Professional Engineer. – As defined in G.S. 89C-3.

(3) Regulatory Authority. – The Department of Environmental Quality, the Department of Health and Human Services, and any unit of local government operating a program (i) that grants permits, licenses, or approvals to the public and (ii) that is either approved by or delegated from the Department of Environmental Quality or the Department of Health and Human Services.

(4) Regulatory Submittal. – An application or other submittal to a Regulatory Authority for a permit, license, or approval. In the case of a unit of local government, Regulatory Submittal shall mean an application or submittal submitted to a program approved by or delegated from the Department of Environmental Quality or the Department of Health and Human Services.

(5) Submitting Party. – The person submitting the Regulatory Submittal to the Regulatory Authority.

(6) Working Job Title. – The job title a Regulatory Authority uses to publicly identify an employee with job duties that include the review of Regulatory Submittals. Working Job Title does not mean job titles that are used by the human resources department of a Regulatory Authority to classify jobs containing technical aspects related to the Practice of Engineering. (2014-120, s. 29(a); 2015-241, s. 14.30(u); 2015-264, s. 18.)

§ 143-228.11. Standardize certain regulatory review procedures.

No later than December 1, 2014, each Regulatory Authority shall review and, where necessary, revise its procedures for review of Regulatory Submittals to accomplish the following:

(1) Standardize the provision of review and comments on Regulatory Submittals so that revisions or requests for additional information that are required by the Regulatory Authority in order to proceed with the permit, license, or approval are clearly delineated from revisions or requests for additional information that constitute suggestions or recommendations by the Regulatory Authority. For purposes of this subdivision, "suggestions or recommendations by the Regulatory Authority" means comments made by the reviewer of the Regulatory Submittal to the Submitting Party that make a suggestion or recommendation for consideration by the Submitting Party but that are not required by the Regulatory Authority in order to proceed with the permit, license, or approval.

(2) With respect to revisions or requests for additional information that are required by the Regulatory Authority in order to proceed with the permit, license, or approval, the Regulatory Authority shall identify the statutory or regulatory authority for the requirement. (2014-120, s. 29(b).)

§ 143-228.12. Informal review; scope; annual report.

(a) Informal Review. – No later than December 1, 2014, each Regulatory Authority shall create a process for each regulatory program administered by the Regulatory Authority for an informal internal review at the request of the Submitting Party in each of the following circumstances:

(1) The inclusion in a Regulatory Submittal of a design or practice sealed by a Professional Engineer but not included in the Regulatory Authority's existing guidance, manuals, or standard operating procedures. This review should first be conducted by the reviewing employee's supervisor or, in the case of a Regulatory Authority that is a unit of local government, either the reviewing employee's supervisor or the delegating or approving State agency. If this initial review was not conducted by a Professional Engineer, then the Submitting Party may request review by (i) a Professional Engineer on the staff of the Regulatory Authority or (ii) the delegating or approving State agency in the case of a Regulatory Authority that is a unit of local government. If the Regulatory Authority or delegating or approving State agency does not employ a Professional Engineer qualified and competent to perform the review, it may provide for review by a consulting Professional Engineer selected from a list developed and maintained by the Regulatory Authority. The Regulatory Authority may charge the Submitting Party for the costs of the review by the consulting Professional Engineer. Nothing in this subdivision is intended to limit the authority of the Regulatory Authority to make a final decision with regard to a Regulatory Submittal following the reviews described in this subdivision.

(2) A disagreement between the reviewer of the Regulatory Submittal and the Submitting Party regarding whether the statutory or regulatory

authority identified by the Regulatory Authority for revisions or requests for additional information designated as "required" under the procedures set forth in G.S. 143-228.11 justifies a required change.

(b) Scope. – Nothing in subsection (a) of this section shall limit or abrogate any rights available under Chapter 150B of the General Statutes to any Submitting Party.

(c) Repealed by Session Laws 2017-10, s. 4.10, effective May 4, 2017. (2014-120, ss. 29(c), (d), (j); 2017-10, s. 4.10.)

§ 143-228.13. Procedure to develop list of consulting professional engineers.

Regulatory Authorities shall develop formal written procedures to prepare and maintain a list of consulting Professional Engineers required pursuant to G.S. 143-228.12(a)(1). (2014-120, s. 29(e).)

Article 23.

Armories.

§ 143-229. Repealed by Session Laws 1975, c. 604, s. 1.

§§ 143-230 through 143-231. Repealed by Session Laws 1973, c. 620, s. 9.

§§ 143-232 through 143-236.1. Repealed by Session Laws 1975, c. 604, s. 1.

Article 23A.

Stadium Authority.

§§ 143-236.2 through 143-236.28. Repealed by Session Laws 1971, c. 882, s. 2.

Article 24.

Wildlife Resources Commission.

§ 143-237. Title.

This Article shall be known and may be cited as the North Carolina Wildlife Resources Law. (1947, c. 263, s. 1.)

§ 143-238. Definitions.

As used in this Article unless the context clearly requires otherwise:

(1) The word "Commission" shall mean the North Carolina Wildlife Resources Commission.

(2) The word "Director" shall mean the Executive Director of the North Carolina Wildlife Resources Commission.

(3) The terms "wildlife resources" and "wildlife" shall be defined in accordance with the definitions in G.S. 113-129. (1947, c. 263, s. 2; 1965, c. 957, s. 12.)

§ 143-239. Statement of purpose.

The purpose of this Article is to create a separate State agency to be known as the North Carolina Wildlife Resources Commission, the function, purpose, and duty of which shall be to manage, restore, develop, cultivate, conserve, protect, and regulate the wildlife resources of the State of North Carolina, and to administer the laws relating to game, game and freshwater fishes, and other wildlife resources enacted by the General Assembly to the end that there may be provided a sound, constructive, comprehensive, continuing, and economical game, game fish, and wildlife program directed by qualified, competent, and representative citizens, who shall have knowledge of or training in the protection, restoration, proper use and management of wildlife resources. (1947, c. 263, s. 3; 1965, c. 957, s. 13.)

§ 143-240. Creation of Wildlife Resources Commission; districts; qualifications of members.

(a) There is hereby created the Wildlife Resources Commission of the Department of Environmental Quality which shall consist of 19 citizens of North Carolina who shall be appointed as is provided in G.S. 143-241.

Each member of the Commission shall be an experienced hunter, fisherman, farmer, or biologist, who shall be generally informed on wildlife conservation and restoration problems.

Members of the Commission 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 as the case may be, which shall be paid from fees collected by the Wildlife Resources Commission.

(b) There are established the following geographical wildlife districts:

First district to be composed of the following counties: Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Tyrrell, Washington.

Second district to be composed of the following counties: Beaufort, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Pitt.

Third district to be composed of the following counties: Edgecombe, Franklin, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wayne, Wilson.

Fourth district to be composed of the following counties: Bladen, Brunswick, Columbus, Cumberland, Harnett, Hoke, Robeson, Sampson, Scotland.

Fifth district to be composed of the following counties: Alamance, Caswell, Chatham, Durham, Granville, Guilford, Lee, Orange, Person, Randolph, Rockingham.

Sixth district to be composed of the following counties: Anson, Cabarrus, Davidson, Mecklenburg, Montgomery, Moore, Richmond, Rowan, Stanly, Union.

Seventh district to be composed of the following counties: Alexander, Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Watauga, Wilkes, Yadkin.

Eighth district to be composed of the following counties: Avery, Burke, Caldwell, Catawba, Cleveland, Gaston, Lincoln, McDowell, Mitchell, Rutherford, Yancey.

Ninth district to be composed of the following counties: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Swain, Transylvania. (1947, c. 263, s. 4; 1961, c. 737, s. 11/2; 1965, c. 859, s. 2; 1971, c. 285; 1977, c. 771, s. 4;

c. 906, s. 1; 1981 (Reg. Sess., 1982), c. 1191, s. 79; 1989, c. 68, s. 1; c. 727, s. 218(112); 1993 (Reg. Sess., 1994), c. 684, s. 13; 1997-443, s. 11A.119(a); 2001-486, s. 2.11(a); 2015-241, s. 14.30(u).)

§ 143-241. Appointment and terms of office of Commission members; filling of vacancies.

The members of the North Carolina Wildlife Resources Commission shall be appointed as follows:

The Governor shall appoint one member each from the first, fourth, and seventh wildlife districts to serve six-year terms;

The Governor shall appoint one member each from the second, fifth, and eighth wildlife districts to serve two-year terms;

The Governor shall appoint one member each from the third, sixth, and ninth wildlife districts to serve four-year terms;

The Governor shall also appoint two at-large members to serve four-year terms.

The General Assembly shall appoint eight members of the Commission to serve two-year terms, four upon the recommendation of the Speaker of the House, four upon the recommendation of the President Pro Tempore of the Senate, in accordance with G.S. 120-121. Of the members appointed upon the recommendation of the Speaker of the House and upon the recommendation of the President Pro Tempore of the Senate, at least one of each shall be a member of the political party to which the largest minority of the members of the General Assembly belongs.

Thereafter as the terms of office of the members of the Commission appointed by the Governor from the several wildlife districts expire, their successors shall be appointed for terms of six years each. As the terms of office of the members of the Commission appointed by the General Assembly expire, their successors shall be appointed for terms of two years each. All members appointed by the Governor serve at the pleasure of the Governor that appointed them and they may be removed by that Governor at any time. A successor to the appointing Governor may remove a Commission member only for cause as provided in G.S. 143B-13. Members appointed by the General Assembly serve at the pleasure of that body and may be removed by law at any time. In the event that a Commission member is removed, the member appointed to replace the removed member shall serve only for the unexpired term of the removed member. (1947, c. 263, s. 5; 1961, c. 737, s. 1; 1965, c. 859, s. 3; 1973, c. 825, s. 2; 1977, c. 906, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 80; 1989, c. 68, s. 3; 1993 (Reg. Sess., 1994), c. 684, s. 14; 1995, c. 490, s. 64; 2001-486, s. 2.11(b).)

§ 143-242. Vacancies by death, resignation or otherwise.

Appointments to fill vacancies of gubernatorial appointees on the Commission occurring by reason of death, disability, resignation or otherwise shall be made by the Governor for the balance of the unexpired terms by appointment of a member from the State at large, or from the appropriate district in accordance with the procedure set out in G.S. 143-241. Appointments to fill vacancies of those members of the Commission appointed by the General Assembly shall be made under G.S. 120-122. The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance. (1947, c. 263, s. 6; 1973, c. 825, s. 3; 1977, c. 906, s. 3; 1981 (Reg. Sess., 1982), c. 1191, s. 81.)

§ 143-243. Organization of the Commission; election of officers; Robert's Rules of Order.

The Commission shall hold at least two meetings annually, one in January and one in July, and seven members of the Commission shall constitute a quorum for the transaction of business. Additional meetings may be held at such other times within the State as may be deemed necessary for the efficient transaction of the business of the Commission. The Commission may hold additional or special meetings at any time at the call of the chairman or on call of any five members of the Commission. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Article, and shall have an official seal, which shall be judicially noticed.

At the first scheduled meeting of the Commission after July 1, 1977, and on July 1 of each odd-numbered year thereafter, the Commission shall select from among its membership a chairman and a vice-chairman who shall serve for terms of two years or until their successors are elected and qualified. The Secretary of Environmental Quality or his designee shall serve as secretary of the Commission.

The chairman shall guide and coordinate the official actions and official activities of the Commission in fulfilling its program responsibility for (i) the appointment and separation of the executive director of the Commission, (ii) organizing the personnel of the Commission, (iii) setting the statewide policy of the Commission, (iv) budgeting and planning the use of the Wildlife and Motorboat Funds, subject to the approval of the General Assembly, (v) holding public hearings, and (vi) adopting rules as authorized by law. The chairman shall report to and advise the Governor on the official actions and work of the Commission and on all wildlife conservation and boating safety matters that affect the interest of the people of the State.

Meetings of the Commission shall be conducted pursuant to Robert's Rules of Order. (1947, c. 263, s. 7; 1973, c. 825, s. 4; 1977, c. 771, s. 4; c. 906, s. 4; 1983, c. 717, ss. 71, 72; 1987, c. 827, s. 213; 1989, c. 727, s. 218(113); 1997-443, s. 11A.119(a); 1997-456, s. 27; 2015-241, s. 14.30(v).)

§ 143-244. Location of offices.

The Board of Public Buildings and Grounds shall provide the Commission with offices in the city of Raleigh, North Carolina. (1947, c. 263, s. 8.)

§ 143-245. Repealed by Session Laws 1977, c. 906, s. 5.

§ 143-246. Executive Director; appointment, qualifications and duties.

The North Carolina Wildlife Resources Commission as soon as practicable after its organization shall select and appoint a competent person qualified as hereinafter set forth as Executive Director of the North Carolina Wildlife Resources Commission. The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Commission and shall serve as the chief administrative officer of the said Commission. Subject to the approval of the Commission and the Director of the Budget, he is hereby authorized to employ such clerical and other assistants as may be deemed necessary. The person selected as Executive Director shall have had training and experience in conservation, protection and management of wildlife resources. The salary of such Director shall be fixed by the Wildlife Resources Commission, in an amount at least equal to the salary of the Director of the Division of Marine Fisheries. The Director

shall be allowed actual expenses incurred while on official duties away from resident headquarters. The salary and expenses of the Director shall be paid from the Wildlife Resources Fund subject to the provisions of the Executive Budget Act. The term of office of the Executive Director shall be at the pleasure of the Commission. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1947, c. 263, s. 10; 1957, c. 541, s. 17; 1969, c. 844, s. 5; 1979, c. 830, s. 7; 1981, c. 884, s. 11; 1983, c. 717, s. 73; 1985, c. 479, s. 221; 1998-212, s. 28.19(a).)

§ 143-247. Transfer of powers, duties, jurisdiction, and responsibilities.

All duties, powers, jurisdiction, and responsibilities now vested by statute in and heretofore exercised by the Department of Conservation and Development, the Board of Conservation and Development, the Director of Conservation and Development, the Division of Game and Inland Fisheries, the Commissioner of Game and Inland Fisheries, or any predecessor organization, board, commission, commissioner or official relating to or pertaining to the wildlife resources of North Carolina, subject to the provisions of Subchapter IV of Chapter 113 of the General Statutes, are hereby transferred to and vested by law in the North Carolina Wildlife Resources Commission hereby created, subject to the provisions of this Article. The powers, duties, jurisdiction, and responsibilities hereby transferred shall be vested in the Commission immediately upon its organization under the provisions of this Article. Provided however, that no provision of this Article shall be construed as transferring to or conferring upon the North Carolina Wildlife Resources Commission, herein created, jurisdiction over the administration of any laws regulating the pollution of streams or public waters in North Carolina. (1947, c. 263, s. 11; 1965, c. 957, s. 14.)

§ 143-247.1. Commission may accept gifts.

The Wildlife Resources Commission is hereby authorized and empowered to accept gifts, donations or contributions from any source, which funds shall be held in a separate account and used solely for the purposes of wildlife conservation and management. Such funds shall be administered by the Wildlife Resources Commission and shall be used for wildlife conservation and management in a manner consistent with wildlife conservation management principles. (1971, c. 388.)

§ 143-247.2. Wildlife Conservation Account; emblems for those who donate to the Account.

(a) Account. – The Wildlife Conservation Account is established within the Wildlife Resources Fund and is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Revenue is credited to the Account from donations of income tax refunds, from other donations, from revenue derived from the sale of wildlife resources license plates, and from interest earned on the Account balance. The Commission may use revenue in the Account only for the following purposes:

(1) To manage, preserve, or protect wildlife species that are endangered, threatened, or of special concern and are included on the State's protected animal lists.

(2) To manage, preserve, or protect nongame wildlife species that are not on the State's protected animal lists.

(3) To administer and enforce nongame wildlife programs under the jurisdiction of the Commission.

(b) Emblems. – The Commission may issue and sell appropriate emblems by which to identify recipients of the emblems as contributors to the Wildlife Conservation Account. Emblems of different size, shape, type, or design may be used to recognize contributions in different amounts. The Commission may not issue an emblem for a contribution of less than five dollars ($5.00). (1975, c. 77; 1993, c. 257, s. 14; c. 543, s. 7; 1995, c. 509, s. 81; 2007-448, s. 1.)

§ 143-248. Transfer of lands, buildings, records, equipment, and other properties.

There is hereby transferred to the North Carolina Wildlife Resources Commission all lands, buildings, structures, records, reports, equipment, vehicles, supplies, materials, and other properties, and the possession and use thereof, which have heretofore been acquired or obtained and now remain in the possession of, or which are now and heretofore have been used or intended for use by the Department of Conservation and Development, the Director of Conservation and Development, the Division of Game and Inland Fisheries, and the Commission of Game and Inland Fisheries, and any predecessor organization or division or official of either, for the purpose of protecting, propagating, and developing game, fur-bearing animals, game fish, inland fisheries, and all other wildlife resources which heretofore have been used or held by them in connection with any program conducted for said purposes, whether said lands or properties were acquired, purchased, or obtained by deed, gift, grant, contract, or otherwise; the said lands and other properties hereby transferred, subject to the limitations hereinafter set forth to the said Wildlife Resources Commission shall be held and used by it subject to the provisions of this Article and other provisions of law in furtherance of the intents, purposes, and provisions of this Article and other provisions of law in such manner and for such purposes as may be determined by the Commission. In the event that there shall arise any conflict in the transfer of any properties or functions as herein provided, the Governor of the State is hereby authorized and empowered to issue such executive order, or orders, as may be necessary clarifying and making certain the issue, or issues, thus arising: Provided, further, nothing herein contained shall be construed to transfer any of the State parks or State forests to the North Carolina Wildlife Resources Commission: Provided, further, title to the property transferred by virtue of the provisions of this Article shall be held by the State of North Carolina for the use and benefit of the North Carolina Wildlife Resources Commission and the use, control and sale of any of such property shall be governed by the general law of the State affecting such matters. (1947, c. 263, s. 12; 1965, c. 957, s. 15.)

§ 143-249. Transfer of personnel.

Upon July 1, 1947, the Division of Game and Inland Fisheries of the North Carolina Department of Conservation and Development shall cease to exist and all employees of said Division shall continue as employees of the Commission at their option or until further action by the Commission. (1947, c. 263, s. 13.)

§ 143-249.1. Operating budget.

No more than twenty-five percent (25%) of the certified operating budget of the Wildlife Resources Commission shall be allowed to accumulate in a cash balance. It is the intent of the General Assembly to implement in any subsequent fiscal year a nonrecurring reduction in an amount equal to the cash balance that exceeds twenty-five percent (25%) of the authorized operating budget in the prior fiscal year. (2013-283, s. 18.)

§ 143-250. Wildlife Resources Fund.

All moneys in the game and fish fund or any similar State fund when this Article becomes effective shall be credited forthwith to a special fund in the office of the State Treasurer, and the State Treasurer shall deposit all such moneys in said special fund, which shall be known as the Wildlife Resources Fund.

All unexpended appropriations made to the Department of Conservation and Development, the Board of Conservation and Development, the Division of Game and Inland Fisheries or to any other State agency for any purpose pertaining to wildlife and wildlife resources shall also be transferred to the Wildlife Resources Fund.

Except as otherwise specifically provided by law, all moneys derived from hunting, fishing, trapping, and related license fees, exclusive of commercial fishing license fees, including the income received and accruing from the investment of license revenues, and all funds thereafter received from whatever sources shall be deposited to the credit of the Wildlife Resources Fund and made available to the Commission until expended subject to the provisions of this Article. License revenues include the proceeds from the sale of hunting, fishing, trapping, and related licenses, from the sale, lease, rental, or other granting of rights to real or personal property acquired or produced with license revenues, and from federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is being made. For purposes of this section, real property includes lands, buildings, minerals, energy resources, timber, grazing rights, and animal products. Personal property includes equipment, vehicles, machines, tools, and annual crops. The Wildlife Resources Fund herein created shall be subject to the provisions of the State Budget Act, Chapter 143C of the General Statutes of North Carolina as amended, and the provisions of the General Statutes of North Carolina as amended, and the provisions of the Personnel Act, Chapter 143, Article 2 of the General Statutes of North Carolina as amended.

All moneys credited to the Wildlife Resources Fund shall be made available to carry out the intent and purposes of this Article in accordance with plans approved by the North Carolina Wildlife Resources Commission, and all such funds are hereby appropriated, reserved, set aside and made available until expended, for the enforcement and administration of this Article, Chapter 75A, Article 1, and Chapter 113, Subchapter IV of the General Statutes of North Carolina. No later than October 1 of each year, the Wildlife Resources Commission shall report to the Joint Legislative Commission on Governmental Operations on the expenditures from the Wildlife Resources Fund during the fiscal year that ended the previous July 1 of that year and on the planned expenditures for the current fiscal year.

In the event any uncertainty should arise as to the funds to be turned over to the North Carolina Wildlife Resources Commission the Governor shall have full power and authority to determine the matter and his recommendation shall be final and binding to all parties concerned. (1947, c. 263, s. 14; 1965, c. 957, s. 16; 1981, c. 482, s. 2; 1982 (Reg. Sess., 1982), c. 1182, s. 1; 1987, c. 816; 1991, c. 689, s. 167(a); 2006-203, s. 92; 2011-145, s. 13.28(a).)

§ 143-250.1. Wildlife Endowment Fund.

(a) Recognizing the inestimable importance to the State and its people of conserving the wildlife resources of North Carolina, and for the purpose of providing the opportunity for citizens and residents of the State to invest in the future of its wildlife resources, there is created the North Carolina Wildlife Endowment Fund, the income and principal of which shall be used only for the purpose of supporting wildlife conservation programs of the State in accordance with this section. This fund shall also be known as the Eddie Bridges Fund.

(b) There is created the Board of Trustees of the Wildlife Endowment Fund of the Wildlife Resources Commission, with full authority over the administration of the Wildlife Endowment Fund, whose ex officio chairman, vice-chairman, and members shall be the chairman, vice-chairman, and members of the Wildlife Resources Commission. The State Treasurer shall be the custodian of the Wildlife Endowment Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

(c) The assets of the Wildlife Endowment Fund shall be derived from the following:

(1) The proceeds of any gifts, grants and contributions to the State which are specifically designated for inclusion in the fund;

(2) The proceeds from the sale of lifetime sportsman combination licenses issued pursuant to G.S. 113-270.1D;

(3) The proceeds from the sale of lifetime hunting and lifetime fishing licenses pursuant to G.S. 113-270.2(c)(2) and G.S. 113-271(d)(3);

(4) The proceeds of lifetime subscriptions to the magazine Wildlife in North Carolina at such rates as may be established from time to time by the Wildlife Resources Commission;

(5) Any amount in excess of the statutory fee for a particular lifetime license or lifetime subscription shall become an asset of the fund and shall qualify as a tax exempt donation to the State;

(5a) The proceeds from the sale of lifetime combination hunting and fishing licenses for disabled residents pursuant to G.S. 113-270.1C(b)(4);

(6) Such other sources as may be specified by law.

(d) The Wildlife Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the fund. In recognition of such special trust, the following limitations and restrictions are placed on expenditures from the funds:

(1) Any limitations or restrictions specified by the donors on the uses of the income derived from gifts, grants and voluntary contributions shall be respected but shall not be binding.

(2) No expenditures or disbursements from the income from the proceeds derived from the sale of Infant Lifetime Sportsman or Youth Lifetime Sportsman Licenses pursuant to G.S. 113-270.1D(b)(1) or (2) shall be made for any purpose until the respective holders of such licenses attain the age of 16 years. The State Treasurer, as custodian of the fund, shall determine actuarially from time to time the amount of income within the fund which remains encumbered by and which is free of this restriction. For such purpose, the executive director shall cause deposits of proceeds

from Infant Lifetime Sportsman Licenses to be distinguished and deposits of proceeds from Youth Lifetime Sportsman Licenses to be accompanied by information as to the ages of the license recipients.

(3) No expenditure or disbursement shall be made from the principal of the Wildlife Endowment Fund except as otherwise provided by law.

(4) The income received and accruing from the investments of the Wildlife Endowment Fund must be spent only in furthering the conservation of wildlife resources and the efficient operation of the North Carolina Wildlife Resources Commission in accomplishing the purposes of the agency as set forth in G.S. 143-239.

(e) The Board of Trustees of the Wildlife Endowment Fund may accumulate the investment income of the fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget of the Wildlife Resources Commission. After that time the trustees, in their sole discretion and authority, may direct expenditures from the income of the fund for the purposes set out in division (4) of subsection (d).

(f) Expenditure of the income derived from the Wildlife Endowment Fund shall be made through the State budget accounts of the Wildlife Resources Commission in accordance with the provisions of the Executive Budget Act. The Wildlife Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(f1) At all times during which the cash balance in the Wildlife Endowment Fund is equal to or greater than the sum of one hundred million dollars ($100,000,000), the Wildlife Resources Commission shall budget at least twenty-five percent (25%) of the annual expendable interest from the Fund, as determined by the Board of Trustees of the Fund, to implement the conservation goals set forth in the Wildlife Resource Commission's strategic plan.

(g) The Wildlife Endowment Fund and the income therefrom shall not take the place of State appropriations or agency receipts placed in the Wildlife Resources Fund, or any part thereof, but any portion of the income of the Wildlife Endowment Fund available for the purpose set out in division (4) of subsection (d) shall be used to supplement other income of and appropriations to the Wildlife Resources Commission to the end that the Commission may improve and increase its services and become more useful to a greater number of people.

(h) In the event of a future dissolution of the Wildlife Resources Commission, such State agency as shall succeed to its budgetary authority shall, ex officio, assume the trusteeship of the Wildlife Endowment Fund and shall be bound by all the limitations and restrictions placed by this section on expenditures from the fund. No repeal or modification of this section or of G.S. 143-239 shall alter the fundamental purposes to which the Wildlife Endowment Fund may be applied. No future dissolution of the Wildlife Resources Commission or substitution of any agency in its stead shall invalidate any lifetime license issued in accordance with G.S. 113-270.1D(b), 113-270.2(c)(2), or 113-271(d)(3). (1981, c. 482, s. 1; 1993, c. 257, s. 15; 1993 (Reg. Sess., 1994), c. 684, ss. 10-12; 1997-326, s. 4; 2013-283, s. 19; 2017-57, s. 13A.2(a).)

§ 143-251. Cooperative agreements.

In furtherance of the purposes of this Article the Commission is hereby authorized and empowered to enter into cooperative agreements pertaining to the management and development of the wildlife resources with federal, State, and other agencies, or governmental subdivisions. (1947, c. 263, s. 15.)

§ 143-252. Article subject to Chapter 113.

Nothing in this Article shall be construed to affect the jurisdictional division between the North Carolina Wildlife Resources Commission and the Department of Environmental Quality contained in Subchapter IV of Chapter 113 of the General Statutes, or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter. (1947, c. 263, s. 16; 1965, c. 957, s. 17; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 166; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

§ 143-253. Jurisdictional questions.

In the event of any questions arising between the Department of Environmental Quality and the North Carolina Wildlife Resources Commission as to any duty or responsibility or authority imposed upon either of said bodies by law, or in case of any conflicting rules or administrative practices adopted by said bodies, such questions or matters shall be determined by the Governor and his determination shall be binding on each of said bodies. (1947, c. 263, s. 17; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 167; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

§ 143-254: Repealed by Session Laws, 1987, c. 827, s. 214.

§ 143-254.1. Repealed by Session Laws 1979, c. 830, s. 8.

§ 143-254.2. Enforcement of local laws.

(a) It shall be the duty and responsibility of the North Carolina Wildlife Resources Commission to enforce all local acts heretofore or hereinafter enacted respecting game animals, fur-bearing animals and birds, including local acts which prohibit or restrict hunting from, to or across public roads and highways and including local acts which prohibit or restrict the taking of specified animals or birds.

Provided, however, that the provisions of this section shall not apply on the lands of the Eastern Band of Cherokee Indians.

(b) The provisions of this section shall not be construed to require the hiring of additional personnel by the North Carolina Wildlife Resources Commission. (1977, c. 120, ss. 1-3.)

§ 143-254.5. Disclosure of personal identifying information.

Social security numbers and identifying information obtained by the Commission shall be treated as provided in G.S. 132-1.10. For purposes of this section, "identifying information" also includes a person's mailing address, residence address, e-mail address, Commission-issued customer identification number, date of birth, information subject to G.S. 106-24.1 transferred to the Commission from the Department of Agriculture and

Consumer Services, and telephone number. (2005-455, s. 1.17; 2006-255, s. 11.1; 2017-10, s. 2.1(a); 2017-211, s. 2.)

Article 25.

National Park, Parkway and Forests Development Commission.

§§ 143-255 through 143-257. Repealed by Session Laws 1973, c. 1262, s. 86.

§ 143-258: Repealed by Session Laws 2002-165, s. 1.8, effective October 23, 2002.

§§ 143-259 through 143-260. Repealed by Session Laws 1973, c. 1262, s. 86.

Article 25A.

Historic Sites Commission; Historic and Archeological Sites.

§§ 143-260.1 through 143-260.5. Repealed by Session Laws 1955, c. 543, s. 5.

Article 25B.

State Nature and Historic Preserve Dedication Act.

§ 143-260.6. Short title.

This Article shall be known and may be cited as the State Nature and Historic Preserve Dedication Act. (1973, c. 443, s. 1.)

§ 143-260.7. Purpose.

It is the purpose of this Article to prescribe the conditions and procedures under which properties may be specially dedicated for the purposes enumerated by Article XIV, Sec. 5 of the North Carolina Constitution ("Conservation of Natural Resources"), accepted by the General Assembly for said purposes, and thereby constituted part of the State Nature and Historic Preserve. (1973, c. 443, s. 2.)

§ 143-260.8. Procedures.

(a) Within the meaning of this section:

(1) "Local governing body" means, as the case may be, the board of commissioners of a county, the city council (or equivalent legislative body) of a city, or the board of aldermen or board of commissioners (or equivalent legislative body) of a town.

(2) "Local government" means a county, city or town.

(3) "Properties" include any properties or interest in properties acquired by purchase or gift.

(b) The Council of State may petition the General Assembly to enact a law pursuant to Article XIV, Sec. 5 of the North Carolina Constitution, accepting any properties owned by the State of North Carolina (or proposed for gift to or purchase by the State) and designated in the petition for inclusion in the State Nature and Historic Preserve.

(c) The governing body of any local government, or any combination of two or more such bodies may petition the General Assembly to enact a law pursuant to Article XIV, Sec. 5 of the North Carolina Constitution, accepting any properties owned by the local government (or proposed for gift to or purchase by the local government) and designated in the petition for inclusion in the State Nature and Historic Preserve.

(d) The petition referred to in subsections (a) and (b) of this section shall identify the properties sought to be included in the Preserve. The General Assembly may then enact a law to accept the designated properties in the Preserve and enactment of the law by the General Assembly shall constitute the special dedication and acceptance of the designated properties in the State Nature and Historic Preserve contemplated by Article XIV, Sec. 5 of the North Carolina Constitution.

(e) In order to provide accessible information to the public concerning the State Nature and Historic Preserve, every law accepting or removing properties in the Preserve shall be codified in the General Statutes. A certified copy of every law accepting or removing properties in the Preserve shall be transmitted by the Secretary of State to the register of deeds in each county wherein these properties, or any part of them, are located, for filing and indexing in the grantor index.

(f) This Article shall constitute an exclusive procedure only for placing properties in the State Nature and Historic Preserve, and shall not preclude the dedication of properties by other means for purposes identical or similar to those enumerated by Article XIV, Sec. 5 of the North Carolina Constitution.

(g) It is the intent of this Article to complement any applicable provisions of federal and State law and regulations relating to dedication or acceptance of properties for purposes similar to those enumerated by Article XIV, Sec. 5 of the North Carolina Constitution. The Council of State is hereby authorized to adopt rules and regulations to implement the provisions of this Article, including rules and regulations consistent with this Article to comport with applicable federal and State law and regulations. A copy of this Article, and of any rules affecting properties owned by local governments shall be filed by the Council of State with the chairman of the local governing body of every county, city and town within 30 days after ratification. (1973, c. 443, s. 3; 1999-268, s. 6; 2003-234, s. 3.)

§ 143-260.9. Dedication shall not affect maintenance and improvement of existing structures or facilities.

The dedication of property to the State Nature and Historic Preserve shall not prevent the administering State agency or local governing body from carrying out normal maintenance and improvement of existing structures or facilities that are appropriate to, and consistent with, the purpose for which the property in question was obtained by the State agency or local governing body. (1973, c. 443, s. 4.)

§ 143-260.10. Components of State Nature and Historic Preserve.

The following are components of the State Nature and Historic Preserve accepted by the North Carolina General Assembly pursuant to G.S. 143-260.8:

(1) All lands and waters within the boundaries of the following units of the State Parks System as of May 2, 2017: Baldhead Island State Natural Area, Bay Tree Lake State Natural Area, Bear Paw State Natural Area, Beech Creek Bog State Natural Area, Bullhead Mountain State Natural

Area, Bushy Lake State Natural Area, Carolina Beach State Park, Carvers Creek State Park, Cliffs of the Neuse State Park, Chowan Swamp State Natural Area, Deep River State Trail, Dismal Swamp State Park, Elk Knob State Park, Fort Fisher State Recreation Area, Fort Macon State Park, Goose Creek State Park, Grandfather Mountain State Park, Haw River State Park, Hammocks Beach State Park, Jones Lake State Park, Lake Norman State Park, Lea Island State Natural Area, Medoc Mountain State Park, Merchants Millpond State Park, Mount Mitchell State Park, Occoneechee Mountain State Natural Area, Pettigrew State Park, Pilot Mountain State Park, Pineola Bog State Natural Area, Raven Rock State Park, Run Hill State Natural Area, Sandy Run Savannas State Natural Area, Singletary Lake State Park, Sugar Mountain State Natural Area, Theodore Roosevelt State Natural Area, Weymouth Woods-Sandhills State Natural Area, and Yellow Mountain State Natural Area.

(2) All lands and waters within the boundaries of William B. Umstead State Park as of May 2, 2017, with the exception of Tract Number 65, containing 22.93140 acres as shown on a survey prepared by John S. Lawrence (RLS) and Bennie R. Smith (RLS), entitled "Property of The State of North Carolina William B. Umstead State Park", dated January 14, 1977 and filed in the State Property Office, which was removed from the State Nature and Historic Preserve by Chapter 450, Section 1 of the 1985 Session Laws. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 143B-135.54. The State of North Carolina may only exchange this land for other land for the expansion of William B. Umstead State Park or sell and use the proceeds for that purpose. The State of North Carolina may not otherwise sell or exchange this land.

(3) Repealed by Session Laws 1999-268, s. 2.

(4) All lands within the boundaries of Morrow Mountain State Park as of May 2, 2017, with the exception of the following tract: That certain tract or parcel of land at Morrow Mountain State Park in Stanly County, North Albemarle Township, containing 0.303 acres, more or less, as surveyed and platted by Thomas W. Harris R.L.S., on a map dated August 27, 1988, and filed in the State Property Office, reference to which is hereby made for a more complete description.

(5) Repealed by Session Laws 1999-268, s. 2.

(6) All land within the boundaries of Crowders Mountain State Park as of May 2, 2017, with the exception of the following tracts. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 143B-135.54. The State of North Carolina may only exchange this land for other land for the expansion of Crowders Mountain State Park or

sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

a. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, Crowders Mountain Township, described in Deed Book 1939, page 800, and containing 757.28 square feet and as shown in a survey by Tanner and McConnaughey, P.A. dated July 22, 1988 and filed in the State Property Office.

b. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, east of and including the right-of-way along and across Old Peach Orchard Road, as shown in a survey by the City of Gastonia, File No. 400-194, dated November 23, 1998, and filed in the State Property Office.

c. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Cleveland County, described in Deed Book 1286, Page No. 85, located on the north side of SR 2245 (Bethlehem Road) and containing 14,964 square feet as shown on the survey entitled "Survey for Crowders Mountain State Park, Deed Book 1103-107, Township 4 Kings Mountain, Cleveland County, N.C." by David W. Dickson, P.A. dated February 28, 2008.

d. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Cleveland County, described in Deed Book 1286, Page 85, and containing 0.06 acres and 0.515 acres as shown on the survey entitled "Boundary Survey for the State of N.C. Department of Administration, Township No. Four Cleveland County, N.C." by Carolinas Design Group, PLLC, dated November 6, 2007.

e. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, described in Deed Book 2829, page 518, and containing 0.15 acres as shown on the survey entitled "Survey Made at Request of Larry Hyde, Park Superintendent, Crowders Mountain State Park" by Gray Surveying Co., Inc., dated September 12, 2012.

(7) All lands owned in fee simple by the State within the boundaries of New River State Park as of May 2, 2017, with the exception of the following tracts: The portion of that certain tract or parcel of land at New River State Park in Ashe County, Chestnut Hill Township, described in Deed Book 432, Page 724, and containing 44,033 square feet as shown on the survey prepared by Thomas Herman Company, PLLC and entitled "Survey for State of North Carolina, Division of Parks and Recreation; Harold Davis; and Joe Davis" dated March 24, 2017, and on file with the State Property Office.

(8) All lands and waters within the boundaries of Stone Mountain State Park as of May 2, 2017, with the exception of the following tracts: The portion of that certain tract or parcel of land at Stone Mountain State Park in Wilkes County, Traphill Township, described as parcel 33-02 in Deed Book 633-193, and more particularly described as all of the land in this parcel lying to the west of the eastern edge of the Air Bellows Road, as shown on the National Park Service Land Status Map 33 dated March 24, 1981 and filed in the State Property Office, containing approximately 72 acres. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 143B-135.54.

(9) All lands and waters located within the boundaries of the following State Historic Sites as of May 2, 2017: Alamance Battleground, Charles B. Aycock Birthplace, Historic Bath, Bennett Place, Bentonville Battleground, Brunswick Town/Fort Anderson, C.S.S. Neuse and Governor Caswell Memorial, Charlotte Hawkins Brown Memorial, Duke Homestead, Historic Edenton, Fort Dobbs, Fort Fisher, Historic Halifax, Horne Creek Living Historical Farm, House in the Horseshoe, North Carolina Transportation Museum, President James K. Polk, Reed Gold Mine, Somerset Place, Historic Stagville, State Capitol, Town Creek Indian Mound, Tryon Palace Historic Sites & Gardens, Zebulon B. Vance Birthplace, Endor Iron Furnace, and Thomas Wolfe Memorial.

(10), (11) Repealed by Session Laws 2001-217, s. 2, effective June 15, 2001.

(12) All lands and waters located within the boundaries of Hanging Rock State Park as of May 2, 2017, with the exception of the following tract: The portion of that tract or property at Hanging Rock State Park in Stokes County, Danbury Township, described in Deed Book 360, Page 160, for a 30-foot wide right-of-way beginning approximately 183 feet south of SR 1001 and extending in a southerly direction approximately 1,479 feet to the southwest corner of the Bobby Joe Lankford tract and more particularly shown on a survey entitled, "J. Spot Taylor Heirs Survey, Danbury Township, Stokes County, N.C.", by Grinski Surveying Company, dated June 1985, and filed in the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 143B-135.54.

(13) All lands and waters located within the boundaries of South Mountains State Park as of May 2, 2017, with the exception of the following tracts. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 143B-135.54.

a, b. Repealed by Session Laws 2007-307, s. 1, effective July 28, 2007.

c. The portions of land at South Mountains State Park that lie south of the centerline of the CCC road as shown on the drawing entitled "Land Trade between South Mountains State Park and Adjacent Game Lands along CCC Road" prepared by the Wildlife Resources Commission in January 2013 and filed in the State Property Office and that lie within: (i) the tract or property in Burke County, Lower Fork Township, described in Deed Book 495, Page 501; (ii) the tract or property in Burke County, Lower Fork and Upper Fork Townships, described in Deed Book 715, Page 719; (iii) within the tracts or property in Burke County, Upper Fork Township, described in Deed Book 860, Page 341, and Deed Book 884, Page 1640; (iv) within that tract or property in Burke County, Silver Creek Township, described in Deed Book 1847, Page 287; (v) within that tract or property in Burke County, Upper Creek Township, described in Deed Book 882, Page 2347; (vi) within that tract or property in Burke County, Upper Creek Township, described in Deed Book 882, Page 2352; (vii) within that tract or property in Burke County, Upper Fork Township, described in Deed Book 886, Page 1964; (viii) within that tract or property in Burke County, Upper Fork Township, Deed Book 767, Page 1360; (ix) within that tract or property in Burke County, Upper Fork Township, Deed Book 884, Page 1648; or (x) within that tract or property in Burke County, Upper Fork Township, Book 886, Page 2228. The State of North Carolina may only exchange this land for other land for the expansion of South Mountains State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

d. Repealed by Session Laws 2007-307, s. 1, effective July 28, 2007.

(14) Repealed by Session Laws 2003-234, s. 1, effective June 19, 2003.

(15) All lands and waters within the boundaries of Jockey's Ridge State Park as of May 2, 2017, with the exception of the following tracts: The portion of those certain tracts or parcels of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 227, Page 499, and Deed Book 227, Page 501, and containing 33,901 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 13 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 222, Page 726, and containing 42,909 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 14 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare

County, Nags Head Township, described in Deed Book 224, Page 790, and Deed Book 224, Page 794, and containing 34,471 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 15 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; and the portion of those certain tracts or parcels of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 227, Page 501, and Deed Book 230, Page 525, and containing 12,655 square feet as shown on the preliminary plat entitled "Easement Survey for Town of Nags Head" prepared by Seaboard Surveying & Planning, Inc., dated August 29, 2012.

(16) All lands and waters located within the boundaries of Mount Jefferson State Natural Area as of May 2, 2017. With respect to the communications tower site on the top of Mount Jefferson and located on that certain tract or parcel of land at Mount Jefferson State Natural Area in Ashe County, West Jefferson Township, described in Deed Book F-3, Page 94, the State may provide space at the communications tower site to State public safety and emergency management agencies for the placement of antennas, repeaters, and other communications devices for public communications purposes. In conformance with G.S. 146-29.2, the State may lease space at the communications tower site to local governments in Ashe County for the placement of antennas, repeaters, and other communications devices for public communications purposes. State agencies and local governments that are authorized to place communications devices at the communications tower site pursuant to this subdivision may also locate at or near the communications tower site communications equipment that is necessary for the proper operation of the communications devices. The use of the communications tower site pursuant to this subdivision is authorized by the General Assembly as a purpose other than the public purposes specified in Article XIV, Section 5, of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Part 32 of Article 7 [Article 2] of Chapter 143B of the General Statutes.

(17) All lands and waters within the Eno River State Park as of May 2, 2017, with the exception of the following tracts:

a. The portion of that certain tract or parcel of land at Eno River State Park in Durham County, Durham Outside Township, described in Deed Book 435, Page 673, and Plat Book 87, Page 66, containing 11,000 square feet and being the portion of Lot No. 2 shown as the existing scenic easement hereby removed on the drawing prepared by Sear-Brown entitled "Recombination Plat Eno Forest Subdivision" bearing the preparer's file name 00-208-07.dwg, and filed with State Property Office. The tract excluded from the State

Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 143B-135.54. The State of North Carolina may only exchange this land for other land for the expansion of Eno River State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

b. The portion of that certain tract or parcel of land at Eno River State Park in Orange County, described in Deed Book 3878, Page 461, and Plat Book 98, Page 11, containing 5,313 square feet and required for the permanent easements for bridge replacement project B-4216 on SR 1002 (St. Mary's Road), as shown in the drawing entitled "Preliminary Plans, Project Reference No. B-4216" prepared for North Carolina Department of Transportation by Mulkey Engineers and Consultants dated March 10, 2009, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this section are deleted from the State Parks System pursuant to G.S. 143B-135.54. The State of North Carolina may only exchange this land for other land for the expansion of Eno River State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(18) All land and waters within the boundaries of Hemlock Bluffs State Natural Area as of May 2, 2017, with the exception of the following tracts: The portion of that certain tract or parcel of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461, Page 037, containing 2,025 square feet and being the portion of this tract shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 1 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office; and the portion of those certain tracts or parcels of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 4670, Page 420, containing 24,092 square feet and being the portion of these tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 3 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System pursuant to G.S. 143B-135.54. The State of North Carolina may only exchange

this land for other land for the expansion of Hemlock Bluffs State Natural Area or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(19) All lands and waters within the boundaries of Lake James State Park as of May 2, 2017, with the exception of the following tracts:

a. The portion of that certain tract or parcel of land at Lake James State Park containing 13.85 acres, and being 100 feet to the east and 150 feet to the west of a centerline shown on a survey by Witherspoon Surveying PLLC, dated February 9, 2007, and filed in the State Property Office. The State of North Carolina may grant a temporary easement to Duke Energy Corporation across this tract to facilitate the Catawba Dam Embankment Seismic Stability Improvements Project. The grant of the easement within Lake James State Park to Duke Energy Corporation under this sub-subdivision constitutes authorization by the General Assembly that the described tract of land may be used for a purpose other than the public purposes specified in Article XIV, Section 5, of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Part 32 of Article 7 [Article 2] of Chapter 143B of the General Statutes. The State of North Carolina may use the proceeds from the easement only for the expansion or improvement of Lake James State Park or another State park. The State may not otherwise sell or exchange this land.

b. The portion of that certain tract or parcel of land at Lake James State Park in McDowell County, Nebo Township, described in Deed Book 377, Page 423, and also shown as Tract B on the plat of survey prepared by Kenneth D. Suttles, RLS, dated December 4, 1987, entitled "Lake James State Park," Sheet 1 of 2, recorded in Plat Book 4, Page 275 of the McDowell County Registry, for a 40-foot right-of-way beginning at the southwest corner of Tract B and continuing along the southern boundary 86 38' 51" E for 400 feet to the now or former John D. Walker property. The State of North Carolina may grant an easement across this tract to extinguish prescriptive easements on Tract B to improve management of the State park property. The State may not otherwise sell or exchange this land. The easement excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 143B-135.54.

c. That portion of that certain tract or parcel of land at Lake James State Park in Burke County, Linville Township, described in Deed Book 1431, Page 859, and shown on the survey prepared by Suttles Surveying, PA dated May 2, 2014, entitled "Survey for

State of North Carolina," containing 3.41 acres and on file with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 143B-135.54. The State of North Carolina may only exchange this land for other land for the expansion of Lake James State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(20) All lands and waters within the boundaries of Lake Waccamaw State Park as of May 2, 2017, with the exception of the following tracts: The portions of that certain tract or parcel of land at Lake Waccamaw State Park in Columbus County described in Deed Book 835, Page 590, containing 48,210 square feet and being the portion of this tract shown as new R/W and permanent utility easement on drawing prepared by State of North Carolina Department of Transportation entitled "Map of Proposed Right of Way Property of State of North Carolina (Parks and Recreation) Columbus County" for Tip B-3830 on SR 1947 (Bella Coola Road) done by John E. Kaukola, PLS No. 3999 and compiled 1-18-2008, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this section are deleted from the State Parks System pursuant to G.S. 143B-135.54. The State of North Carolina may only exchange this land for other land for the expansion of Lake Waccamaw State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(21) All lands and waters within the boundaries of Chimney Rock State Park as of May 2, 2017, with the exception of the following tracts:

a. The portion of that certain tract or parcel of land at Chimney Rock State Park in Rutherford County being a portion of Parcel 2 as described in Deed Book 933, Page 598, containing 346 square feet and being shown as proposed right-of-way for bridge replacement project B-4258 on U.S. 64 over the Broad River on drawing prepared by Kimley-Horn and Associates for the North Carolina Department of Transportation and revised October 26, 2007, and filed with the State Property Office. The portion of that certain tract or parcel of land at Chimney Rock State Park in Polk County, Cooper Gap Township, Deed Book 393, Page 1402, containing 6.5 acres more or less and shown on the survey entitled "Plat of Survey for The State of North Carolina" prepared by Stacy Kent Rhodes dated May 15, 2014, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this section are deleted from the State Parks System pursuant to G.S. 143B-135.54. The State of North Carolina may only exchange this land for other land for the expansion of Chimney

Rock State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

b. With respect to the communications tower site on Chimney Rock Mountain located on a portion of that certain tract or parcel of land at Chimney Rock State Park in Rutherford County, Chimney Rock Township, described in Deed Book 933, Page 598, the State may provide space at the communications tower site to State public safety, emergency management, local governments in Rutherford County, and public television agencies for the placement of antennas, repeaters, and other communications devices for public communications purposes. State agencies and local governments that are authorized to place communications devices at or near the communications tower site pursuant to this subdivision may also locate at or near the communications tower site communications equipment necessary for the proper operation of the communications devices. The use of the communications tower site pursuant to this subdivision is authorized by the General Assembly as a purpose other than the public purposes specified in Section 5 of Article XIV of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2 of Chapter 143B of the General Statutes.

(22) All State-owned land and waters within the boundaries of the Mountains-to-Sea Trail as of May 2, 2017, with the exception of the following tract: The portion of that certain tract or parcel in Johnston County described in Deed Book 3634, Page 278, containing 4.72 acres and being described as proposed easement area for Piedmont Natural Gas Company transmission line on drawing entitled "Easement Survey Prepared for Piedmont Natural Gas Company, Line 142, Easement to be Acquired from the State of North Carolina" by McKim & Creed and dated July 31, 2008, and revised March 11, 2009. The State of North Carolina may grant an easement to Piedmont Natural Gas Company across this tract to facilitate the transmission of natural gas. The grant of the easement within the Mountains-to-Sea Trail to Piedmont Natural Gas Company under this section constitutes authorization by the General Assembly that the described tract of land may be used for a purpose other than the public purposes specified in Section 5 of Article XIV of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Part 32 of Article 7 [Article 2] of Chapter 143B of the General Statutes. The State of North Carolina may use the proceeds from the easement only for the expansion or improvement of the Mountains-to-Sea Trail or another State park. The State may not otherwise sell or exchange this land.

(23) All State-owned land and waters within the boundaries of Gorges State Park as of May 2, 2017, with the exception of the following tracts: The portions of that certain tract or parcel of land in Transylvania County, described in Deed Book 267, Page 838, containing a total of 7.26 acres for the North Carolina Department of Transportation project TIP R-2409C US 64 Safety Improvements. As shown on right-of-way drawing from the North Carolina Department of Transportation dated May 22, 2014, for TIP R-2409C, Parcel 002, on file with the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 143B-135.54. The State of North Carolina may only exchange this land for other land for the expansion of Gorges State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(24) All State-owned land and waters within the boundaries of Lower Haw State Natural Area as of May 2, 2017, with the exception of the following tract: the portion of that certain tract or parcels in Chatham County, described in Deed Book 1319, Page 1047, containing 12,501 square feet and shown on a survey entitled "Recombination Survey for the North Carolina Division of Parks and Recreation and PK Ventures I LTD Partnership" prepared by S.D. Puckett and Associates dated April 22, 2014, and on file with the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 143B-135.54. The State of North Carolina may only exchange this land for other land for the expansion of Lower Haw State Natural Area or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(25) All State-owned land and waters within the boundaries of Lumber River State Park as of May 2, 2017, with the exception of the following tracts:

a. The portions of those certain tracts or parcels of land in Robeson County, described in Deed Book 919, Page 862, Deed Book 1097, Page 837, Deed Book 935, Page 170, Deed Book 1125, Page 562, and Deed Book 1117, Page 680, containing a total of 3.39 acres for the North Carolina Department of Transportation secondary road project 6C.078030 SR 2245 (VC Britt Road) and shown on the survey entitled "Survey of Tracts 1A and 1B, VC Britt Rd, Orrum NC" prepared by the North Carolina Department of Transportation. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 143B-135.54. The State of North Carolina may only exchange this land for other land for the expansion of Lumber River State Park or sell this land and use the

proceeds for that purpose. The State may not otherwise sell or exchange this land.

b. The portions of that certain tract or parcel of property at Lumber River State Park in Robeson County, described in Deed Book 575, Page 523, and containing approximately 1.08 acre (Tract A) and 0.12 acre (Tract C) as shown in a survey by Jerry W. Lee entitled "Survey for State of North Carolina" dated June 28, 2016. The land described in this sub-subdivision is deleted from the State Park System in accordance with G.S. 143B-135.54. The State of North Carolina may only exchange this land for other land for the expansion of Lumber River State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

c. The portion of those certain tracts or parcels of land at Lumber River State Park in Robeson County, Pembroke Township, described in Deed Book 575, Page 523 and Deed Book 931, Page 415 and containing a total of approximately 2.12 acres as shown in surveys prepared by McKim and Creed and labeled Drawing Number 2017-041 and 2017-042 dated April 24, 2017, and on file with the State Property Office.

(26) All State-owned land and waters within the boundaries of Mitchells Millpond State Natural Area as of May 2, 2017, with the exception of the following tract: the portions of that certain tract or parcel in Wake County, described in Deed Book 2445, Page 62, containing approximately 0.215 acres as shown on the right-of-way plan for SR 2224 (Mitchell Mill Road) bridge No. 162 replacement project and on file with the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 143B-135.54. The State of North Carolina may only exchange this land for other land for the expansion of the State Parks system or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(27) All lands and waters within the boundaries of Carvers Creek State Park as of May 2, 2017, with the exception of the following tract: the portion of that certain tract or parcel of land at Carvers Creek State Park in Cumberland County, described in Deed Book 8466, Page 67, and containing 0.33 acres, more or less, as shown on the survey entitled "Ingress-Egress Easement for Stone Mountain Farm, LLC & William C. Elliott, Estate & The State of North Carolina" by George L. Lott, PLS, dated November 2013, and revised in May 2015 and filed with the State Property Office.

(28) All lands and waters within the boundaries of Mayo River State Park as of May 2, 2017, with the exception of the following tracts, to allow

construction of an access bridge from a tract or parcel of land owned by the State of North Carolina over the Mayo River, which bridge shall be of sufficient width to allow emergency vehicle and State Park vehicle access for the purpose of addressing public safety issues and service vehicle access to monitor, maintain, repair, or replace the existing sewer line traversing portions of Mayo River State Park:

a. The portion of that certain tract or parcel of land at Mayo River State Park in Rockingham County described in Deed Book 1244, Page 1392, and containing 6.62 acres.
b. The portion of that certain tract or parcel of land at Mayo River State Park in Rockingham County described in Deed Book 1244, Page 1390, and containing.62 acres.
c. The portion of that certain tract or parcel of land at Mayo River State Park in Rockingham County described in Deed Book 1353, Page 2214, and containing.61 acres.
d. The portion of that certain tract or parcel of land at Mayo River State Park in Rockingham County described in Deed Book 1353, Page 2216, and containing.52 acres.
e. The portion of that certain tract or parcel of land at Mayo River State Park in Rockingham County described in Deed Book 1353, Page 2216, and containing 1.54 acres. (1979, c. 498; 1989, Joint Res. 23; c. 146, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 30; 1999-268, s. 2; 2001-217, s. 2; 2002-149, s. 1; 2003-234, s. 1; 2004-25, s. 2; 2007-307, s. 1; 2008-11, s. 1; 2009-503, s. 1; 2014-62, s. 1; 2015-241, s. 14.30(z), (aa); 2015-268, s. 5.4(f); 2017-113, s. 1.)

§§ 143-260.10A through 143-260.10B: Repealed by Session Laws 1989, c. 146, ss. 3, 4.

§ 143-260.10C. Removal of land in Hemlock Bluffs from the State Nature and Historic Preserve.

Notwithstanding the provisions of G.S. 143-260.10(1), the tract identified as a portion of the property legally described in Deed Book 3135, Page 937, Wake County Registry, containing 14.4 acres, as shown on a survey prepared by A. Roger Barnes (RLS) and entitled "Proposed Exchange of 14.4 Acres From the State of North Carolina to the Town of Cary," dated August 19, 1988, is removed from the State Nature and Historic Preserve.

The State of North Carolina may only exchange this land for other land to expand Hemlock Bluffs Natural Area or sell the land and use the proceeds for that purpose. The State of North Carolina may not otherwise sell or exchange this land.

The removal of the portion of Hemlock Bluffs under this section achieves the requirements and purposes of Part 32 of Article 7 [Article 2] of Chapter 143B of the General Statutes and constitutes a deletion from the State Parks System as required by G.S. 143B-135.54. (1989, c. 384, s. 1; 2015-241, s. 14.30(z), (aa); 2015-268, s. 5.4(f).)

§ 143-260.10D. Removal of land at Hammocks Beach State Park from the State Nature and Historic Preserve.

Notwithstanding the provisions of G.S. 143-260.10(1), the tract identified as a portion of the property legally described in Deed Book 414, Page 607, Onslow County Registry, containing 0.063 acres; beginning at a point located S 25°19'50" W, 60.86 feet, thence S 02°10'40" E, 33.61 feet from the southeast corner of above reference property, proceeding from said beginning point S 02°10'40" E, 32.73 feet, thence S 69°12'45" W, 176.47 feet to a point, thence N 59°47'25" E, 189.47 feet to the point of beginning; as shown on a survey prepared by John P. McLean Engineering Associates and entitled "Exhibit Map Showing Land Swap Between N.C. Park Service and Hammocks Point" dated June 29, 1990, is removed from the State Nature and Historic Preserve.

The State of North Carolina may only exchange this land for other land for inclusion in Hammocks Beach State Park or sell the land and use the proceeds for that purpose. The State of North Carolina may not otherwise sell or exchange this land.

The removal of the portion of Hammocks Beach State Park under this section achieves the requirements and purposes of Part 32 of Article 7 [Article 2] of Chapter 143B of the General Statutes and constitutes a deletion from the State Parks System as required by G.S. 143B-135.54. (1991, c. 318, s. 1; 2015-241, s. 14.30(z), (aa); 2015-268, s. 5.4(f).)

§ 143-260.10E. Utility easement at William B. Umstead State Park.

(a) The State of North Carolina may grant a utility easement to Carolina Power and Light Company across a tract of land within William B. Umstead State Park. The easement shall be 100 feet wide, extending 50 feet on each side of the following-described survey line: Lying and being in Leesville township, Wake County, North Carolina; BEGINNING at point B2 as shown on the Drawing hereinafter referred to, the point B2 being located in a southern property line of Raleigh Durham Airport Authority (formerly Continental Mortgage Investors) and a northern property line of the State of North Carolina; the point B2 also being located North 87 degrees 01 minute 31 seconds West 834.04 feet from a concrete monument making a southeastern corner of Raleigh Durham Airport Authority (formerly Continental Mortgage Investors); and runs thence South 02 degrees 01 minute 53 seconds East 3508.00 feet to point A2 on the Drawing, the location of Point A2 having North Carolina Coordinates Y=773, 193.769 and X=2,069,162.420, the Point A2 being located at the terminus of Carolina Power and Light Company's existing 100 foot wide right-of-way strip, as shown and described on Carolina Power and Light Company Drawing No. RW-A-5246, dated September 1977, which Drawing also shows the respective complementing sidelines going to make up the easement.

(b) The State of North Carolina may only use the proceeds from the easement described in subsection (a) of this section to acquire property at any State park.

(c) The grant of the easement within William B. Umstead State Park to Carolina Power and Light Company under this section constitutes authorization by the General Assembly that the described tract of land may be used for a utility easement, which is a purpose other than the public purposes as specified in Article XIV, Section 5, of the

Constitution, Article 25B of Chapter 143 of the General Statutes, and Part 32 of Article 7 [Article 2] of Chapter 143B of the General Statutes. (1991 (Reg. Sess., 1992), c. 907, s. 1; 2015-241, s. 14.30(z).)

§ 143-260.10F. Road right-of-way; Pilot Mountain State Park.

(a) Notwithstanding the provisions of G.S. 143-260.10, the State of North Carolina may convey a road right-of-way to the Department of Transportation across lands within Pilot Mountain State Park. The right-of-way for the road shall begin 71.9 feet S 70° 41' 12" E of park corner number 94 as shown on the June 1, 1968, Pilot Mountain State Park survey by Southern Mapping & Engineering Company. From point of beginning N 70° 41' 12" W for 71.9 feet, then following the centerline of the existing road SR 2068 N 02° 31' 21" E for 24.13 feet, then N 25° 17' 28" E for 225.06 feet, then N 35° 31'48" E for 139.35 feet, then with the northern boundary of the park S 55° 48' 51" E for 30.0 feet, then along new right-of-way line for approximately 350 feet as shown on Department of Transportation Plat of SR 2068, Shoals Road – McKinney Cut, Surry County, W.O. 6.742488 dated August 28, 1992, to point of beginning. The area of this right-of-way is approximately 17,850 square feet.

(b) The property described in subsection (a) of this section is removed from the State Nature and Historic Preserve and deleted from the State Parks System.

(c) The State shall only use the proceeds from this right-of-way to acquire lands for the expansion of Pilot Mountain State Park. (1993, c. 457.)

§ 143-260.10G. Removal of land in Crowders Mountain State Park from the State Nature and Historic Preserve.

(a) Notwithstanding the provisions of G.S. 143-260.10(6), the portion of that certain tract or parcel of property at Crowders Mountain State Park in Gaston County, Crowders Mountain Township, described in Deed Book 1240, Page 451, and containing 225 square feet and as shown in a survey by R&W Engineering and Surveying entitled "Conveyance of 0.0052 acres owned by Crowders Mountain State Park, Gaston Co., NC" and dated January 18, 1995, is removed from the State Nature and Historic Preserve.

(b) The property described in subsection (a) of the section is deleted from the State Parks System pursuant to G.S. 143B-135.54.

(c) The State may only exchange this property for other property for the expansion of Crowders Mountain State Park or sell this land and use the proceeds for that purpose. The State shall not otherwise sell or exchange this land. (1995, c. 131, s. 1; 2015-241, s. 14.30(aa); 2015-268, s. 5.4(f).)

§ 143-260.10H. Removal of land in Gorges State Park from the State Nature and Historic Preserve.

(a) Notwithstanding the provisions of G.S. 143-260.10(23), the portion of that certain tract or parcel of property at Gorges State Park in Transylvania County, described in Deed Book 153, Page 083, and containing approximately 4.2 acres as shown as Tract "A" in a survey by E. Roger Raxter, Inc., entitled State of North Carolina and Blue Ridge Mountains RV Resort Property Owners' Association, Inc., and dated March 20, 2016, is removed from the State Nature and Historic Preserve.

(b) The property described in subsection (a) of this section is deleted from the State Parks System pursuant to G.S. 143B-135.54.

(c) The State may only exchange this property for other property for the expansion of Gorges State Park or sell this land and use the proceeds for that purpose. The State shall not otherwise sell or exchange this land. (2016-100, s. 11(a).)

§ 143-260.10I. Removal of land in Jockey's Ridge State Park from the State Nature and Historic Preserve.

Notwithstanding the provisions of G.S. 143-260.10(15), the portion of that certain tract or parcel of property at Jockey's Ridge State Park in Dare County, described in Deed Book 222, Page 732, and Deed Book 227, Page 501, and containing 0.6 acres as shown in a survey by Timmons Group entitled Plat Showing a Proposed Dominion North Carolina Power Easement Across the Properties of the State of North Carolina (Jockey's Ridge State Park) and dated December 18, 2014, is removed from the State Nature and Historic Preserve. (2016-100, s. 11(a).)

§ 143-260.10J. Removal of land in Mitchell's Millpond State Natural Area from the State Nature and Historic Preserve.

(a) Notwithstanding the provisions of G.S. 143-260.10(26), the portion of that certain tract or parcel of property at Mitchell's Millpond State Natural Area in Wake County, described in Deed Book 4186, Page 756, and containing 0.08 acres as shown in a survey by the North Carolina Department of Transportation, Right-of-Way Branch, entitled State of North Carolina, Parcel 002, and dated March 11, 2015, is removed from the State Nature and Historic Preserve.

(b) The property described in subsection (a) of this section is deleted from the State Parks System pursuant to G.S. 143B-135.54.

(c) The State may only exchange this property for other property for the expansion of Mitchell's Millpond State Natural Area or sell this land and use the proceeds for that purpose. The State shall not otherwise sell or exchange this land. (2016-100, s. 11(a).)

Article 26.

State Education Commission.

§§ 143-261 through 143-266: Repealed by Session Laws 2014-120, s. 1(e), effective September 18, 2014.

Article 27.

Settlement of Affairs of Certain Inoperative Boards and Agencies.

§ 143-267. Release and payment of funds to State Treasurer; delivery of other assets to Secretary of Administration.

Whenever the statutes creating, or granting authority to, any licensing, regulatory, or examining board or agency have been or are hereafter repealed, or declared unconstitutional or invalid by the Supreme Court of North Carolina, every officer or other person responsible for or having control or custody of any funds, records, equipment or any other assets held or owned by any such board or agency which was theretofore authorized by any such statute to exercise licensing or regulatory powers or conduct examinations in respect to the right to practice any profession or engage in any trade, business, craft or calling, shall forthwith release and deliver all such funds to the State Treasurer of North Carolina, and shall forthwith release and deliver all other assets of every nature whatsoever to the Secretary of Administration for the State of North Carolina. (1949, c. 740, s. 1; 1975, c. 879, s. 46.)

§ 143-268. Official records turned over to Department of Natural and Cultural Resources; conversion of other assets into cash; allocation of assets to State agency or department.

The Secretary of Administration shall receive all such assets so delivered and, after they have served their purpose in the liquidation of the affairs of such board or agency, shall turn over all official records of such board or agency to the Department of Natural and Cultural Resources to be held pursuant to the statutes relating to such Department. The Secretary of Administration shall proceed to convert all other such assets into cash by public sale to the highest bidder, and shall deposit the net proceeds of any such sale with the State Treasurer: Provided, that the Secretary of Administration, in his discretion, may allocate to any State agency or department, the whole or any part of such assets, the sale of which is not required to discharge the obligations of the board or agency being liquidated. (1949, c. 740, s. 2; 1973, c. 476, s. 48; 1975, c. 879, s. 46; 2015-241, s. 14.30(s).)

§ 143-269. Deposit of funds by State Treasurer.

The State Treasurer shall receive all funds delivered to him under this Article and shall deposit the same in a special fund for the account of the board or agency whose affairs are being liquidated, to be held and applied as hereinafter provided. (1949, c. 740, s. 3.)

§ 143-270. Statement of claims against board or agency; time limitation on presentation.

Any person having any claim or cause of action against any board or agency whose affairs are being liquidated under this Article, may present a verified statement of the same to the Secretary of Administration, who shall investigate and approve or disapprove such claim; any claim not presented to the Secretary of Administration within one year from the time such board or agency becomes inoperative by law shall be barred, and no claim shall be approved or paid which is barred by any statute of limitation or any statutory prohibition in respect to the payment of any claim, or the refund of any deposit, dues, assessment, or examination or license fee. (1949, c. 740, s. 4; 1975, c. 879, s. 46.)

§ 143-271. Claims certified to State Treasurer; payment; escheat of balance to University of North Carolina.

The Secretary of Administration shall certify to the State Treasurer a schedule of all claims approved or disapproved, and after one year from the time at which the board or agency became inoperative under the law, the State Treasurer shall, out of the funds in his hands for the account

of such board or agency, pay all approved claims in full, or if such funds are insufficient for full payment, then he shall equally prorate said claims and make partial payment insofar as funds are available. Should any balance remain in the hands of the Treasurer after the payment of all approved claims, such balance shall escheat and be paid over to the University of North Carolina, to be held in accordance with the statutes governing escheats. (1949, c. 740, s. 5; 1975, c. 879, s. 46.)

§ 143-272. Audit of affairs of board or agency; payment for audit and other expenses.

Irrespective of the provisions of G.S. 143-271 of this Article, the State Treasurer is specifically authorized, in his discretion, to cause an audit to be made of the affairs of any such board or agency, and to immediately pay the cost of such audit, together with the expenses of transferring records and assets, and other necessary costs of liquidation, out of the first funds coming into his hands for the account of such board or agency. (1949, c. 740, s. 6.)

Article 28.

Communication Study Commission.

§§ 143-273 to 143-278. Expired.

Article 29.

Commission to Study the Care of the Aged and Handicapped.

§ 143-279. Establishment and designation of Commission.

A Commission is hereby established for the study of the problems relating to the care of the aged with especial reference to those failing mentally and the intellectually or physically handicapped of all ages and this Commission shall be known as "the Commission for the Study of Problems of the Care of the Aged and Intellectually or Physically Handicapped." (1949, c. 1211, s. 1.)

§ 143-280. Membership.

The Commission shall consist of three members from the Department of Health and Human Services, one member from the boards of county commissioners, one county superintendent of social services, one local health director, one clerk of the superior court. (1949, c. 1211, s. 2; 1957, c. 1357, s. 12; 1963, c. 1166, s. 10; 1969, c. 982; 1973, c. 476, ss. 128, 133, 138; 1997-443, s. 11A.95.)

§ 143-281. Appointment and removal of members.

The Governor shall appoint the members of this Commission, and may remove any member; he shall not be required to give any reason for the removal of any member. (1949, c. 1211, s. 3.)

§ 143-282. Duties of Commission; recommendations.

This Commission shall study the problems relating to the care of the aged with special reference to those failing mentally and shall inquire into the methods of meeting and handling this problem in other states. It shall make a similar study of the problem of the

care of individuals with an intellectual disability, with special attention to those requiring custodial care. It shall make a study of the problems relating to the care of individuals with a physical disability with a special reference to those whose physical disability renders them incapable of self-support and shall inquire into the methods of meeting and handling this problem in other states.

It shall make recommendations to the Governor offering plans for dealing with the problem of the care needed for this group, and means of clarification of the responsibility of the State and respective counties. (1949, c. 1211, s. 4; 2018-47, s. 11.)

§ 143-283. Compensation.

The members of the Commission shall receive for each day in actual performance of duties under this Article, a per diem of seven dollars ($7.00), and necessary travel and subsistence expenses, to be paid out of the contingency and emergency fund. (1949, c. 1211, s. 5.)

Article 29A.

Governor's Council on Employment of the Handicapped.

§ 143-283.1. Short title.

This Article may be cited as "The Governor's Council on Employment of the Handicapped Act." (1961, c. 981; 1973, c. 476, s. 179.)

§ 143-283.2. Purpose of Article; cooperation with President's Committee.

The purpose of this Article is to carry on a continuing program to promote the employment of the physically, mentally, emotionally, and otherwise handicapped citizens of North Carolina by creating statewide interest in the rehabilitation and employment of the handicapped, and by obtaining and maintaining cooperation with all public and private groups and individuals in this field. The Governor's Council shall work in close cooperation with the President's Committee on Employment of the Physically Handicapped to more effectively carry out the purpose of this Article, and with State and federal agencies having responsibilities for employment and rehabilitation of the handicapped. (1961, c. 981; 1973, c. 476, s. 179.)

§ 143-283.3. Celebration of National Employ the Physically Handicapped Week.

The Governor's Council shall, by proclamation, designate the first full week in October of each year as "National Employ the Physically Handicapped Week." The committee shall promote and encourage the holding of appropriate ceremonies throughout the State during said week, the purpose of which ceremonies shall be to enlist public support for and interest in the employment of the physically handicapped. The Governor shall, in his proclamation designating National Employ the Physically Handicapped Week, invite the mayors of all cities, heads of other instrumentalities of government, leaders of industry and business, educational and religious groups, labor, veterans, women, farm, scientific and professional, and all other organizations and individuals having an interest to participate in said ceremonies. (1961, c. 981; 1973, c. 476, s. 179.)

§§ 143-283.4 through 143-283.6. Repealed by Session Laws 1973, c. 476, s. 179.

§ 143-283.7: Repealed by Session Laws 1991, c. 45, s. 25.

§ 143-283.8. Governor's Council nonpartisan and nonprofit.

The Governor's Council shall be nonpartisan, nonprofit, and shall not be used for the dissemination of partisan principles, nor for the promotion of the candidacy of any person seeking public office or preferment. (1961, c. 981; 1973, c. 476, s. 179.)

§§ 143-283.9 through 143-283.10. Repealed by Session Laws 1973, c. 476, s. 179.

Article 29B.

Governor's Coordinating Council on Aging.

§§ 143-283.11 through 143-283.23. Repealed by Session Laws 1973, c. 476, s. 173.

Article 29C.

Youth Councils Act.

§§ 143-283.24 through 143-283.30. Repealed by Session Laws 1975, c. 879, s. 30.

§ 143-283.31. Repealed by Session Laws 1973, c. 797, s. 1.

§ 143-283.32. Repealed by Session Laws 1975, c. 879, s. 30.

§§ 143-283.33 through 143-283.40. Reserved for future codification purposes.

Article 29D.

Manpower Council.

§§ 143-283.41 through 143-283.48. Repealed by Session Laws 1975, c. 879, s. 42.

Article 30.

Nutbush Conservation Area.

§§ 143-284 through 143-286. Repealed by Session Laws 1973, c. 1262, s. 76.

§ 143-286.1. Nutbush Conservation Area.

The Department of Environmental Quality is hereby authorized to enter into lease agreements with the proper agencies of the federal government covering the marginal land area of the John H. Kerr Reservoir or so much thereof as may be necessary or desirable in order to develop said area for park purposes and to carry on a program of conservation, forestry development and wildlife protection. The area so obtained shall be known as the Nutbush Conservation Area. The Department of Environmental Quality is hereby authorized to control and develop the area so leased and to enter into sublease agreements

on terms as may be authorized in the original lease agreement. All proceeds obtained from any sublease agreement shall be used exclusively for the further development of the Nutbush Conservation Area. (1953, c. 1312, s. 4; 1963, c. 612, s. 2; 1973, c. 1262, ss. 28, 76; 1977, c. 771, s. 4; 1989, c. 727, s. 218(114); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

§§ 143-287 through 143-288. Repealed by Session Laws 1973, c. 1262, s. 76.

§ 143-289. Contributions from certain counties and municipalities authorized; other grants or donations.

The boards of county commissioners of the Counties of Granville, Vance and Warren and the municipalities within these counties are authorized and empowered in their discretion to make annual contributions to the Department of Environmental Quality for the purpose of defraying the necessary expenses of operation and the Department of Environmental Quality is authorized and empowered to accept grants or donations from any interested citizens or from any State or federal agency. (1951, c. 444, s. 6; 1973, c. 1262, s. 76; 1977, c. 771, s. 4; 1989, c. 727, s. 218(115); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

§§ 143-290 through 143-290.1: Repealed by Session Laws 1973, c. 1262, s. 76.

Article 31.

Tort Claims against State Departments and Agencies.

§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages; liability insurance in lieu of obligation under Article.

(a) The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority that was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages that the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of damages as provided in subsection (a1) of this section, but in no event shall the amount of damages awarded exceed the amounts authorized in G.S. 143-299.2 cumulatively to all claimants on account of injury and damage to any one person arising out of a single occurrence. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article. The

fact that a claim may be brought under more than one Article under this Chapter shall not increase the foregoing maximum liability of the State.

(a1) The unit of State government that employed the employee at the time the cause of action arose shall pay the first one hundred fifty thousand dollars ($150,000) of liability, and the balance of any payment owed shall be paid in accordance with G.S. 143-299.4.

(b) If a State agency, otherwise authorized to purchase insurance, purchases a policy of commercial liability insurance providing coverage in an amount at least equal to the limits of the State Tort Claims Act, such insurance coverage shall be in lieu of the State's obligation for payment under this Article.

(c) The North Carolina High School Athletic Association, Inc., is a State agency for purposes of this Article, and its liability in tort shall be only under this Article. This subsection does not extend to any independent contractor of the Association. The Association shall be obligated for payments under this Article, through the purchase of commercial insurance or otherwise, in lieu of any responsibility of the State or The University of North Carolina for this payment. The Association shall be similarly obligated to reimburse or have reimbursed the Department of Justice for any expenses in defending any claim against the Association under this Article.

(d) Liability in tort of the State Health Plan for Teachers and State Employees for noncertifications as defined under G.S. 58-50-61 shall be only under this Article. (1951, c. 1059, s. 1; 1953, c. 1314; 1955, c. 400, s. 1; c. 1102, s. 1; c. 1361; 1957, c. 65, s. 11; 1965, c. 256, s. 1; 1967, c. 1206, s. 1; 1971, c. 893, s. 1; 1973, c. 507, s. 5; c. 1225, s. 1; 1977, c. 464, s. 34; c. 529, ss. 1, 2; 1979, c. 1053, s. 1; 1987, c. 684, s. 1; 1987 (Reg. Sess., 1988), c. 1087, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 19.33(a); c. 777, s. 5(a); 2000-67, ss. 7A(a), 7A(b); 2001-446, s. 5(f); 2007-323, s. 28.22A(o); 2007-345, s. 12.)

§ 143-291.1. Costs.

The Industrial Commission is authorized by such order to tax the costs against the loser in the same manner as costs are taxed by the superior court in civil actions. When a State department, institution, or agency appeals the decision rendered by the hearing commissioner to the full Commission, the State department, institution or agency shall furnish a copy of the transcript of the hearing to the appellee without cost therefor. The State department, institution or agency concerned is authorized and directed to pay such costs as may be taxed against it, including all costs heretofore taxed against such department, agency or institution. (1955, c. 1102, s. 2; 1971, c. 58.)

§ 143-291.2. Costs and fees.

(a) The Industrial Commission may by order tax the costs against the losing party in the same amount and the same manner as costs are taxed in the General Court of Justice. When a State department, institution, or agency appeals to the full commission the decision rendered by a hearing commissioner, the State department, institution, or agency shall furnish a copy of the transcript of the hearing to the appellee without cost. The State department, institution, or agency concerned may pay the costs taxed against it. When costs are not paid by a party from whom they are due, the Industrial Commission shall issue an execution for the costs and attach a bill of costs to each execution. The Sheriff shall levy upon the execution as provided in Chapter 6 of the General Statutes in civil actions.

(b) The Industrial Commission shall charge a filing fee for each affidavit initiating a claim filed under this Article in an amount equal to the filing fee charged for civil actions in the Superior Court Division of the General Court of Justice. No filing fee shall be required of indigent persons, provided each claim by an indigent complies with all statutory and administrative requirements applicable to the filing of civil actions by indigents in the Superior Court Division of the General Court of Justice. (1987 (Reg. Sess., 1988), c. 1087, s. 2.)

§ 143-291.3. Counterclaims by State.

The filing of a claim under this Article shall constitute consent by the plaintiff to the jurisdiction of the Industrial Commission to hear and determine any counterclaim of the maximum amount authorized for a claim in G.S. 143-299.2 or less that may be filed on behalf of a State department, institution or agency, or a county or city board of education. A final award of the Industrial Commission awarding damages on a counterclaim shall be filed with the clerk of the superior court of the county where the case was heard. These awards shall be docketed and shall be enforceable in the same manner as judgments of the General Court of Justice. Notwithstanding the provisions of Rule 12 of the Rules of Civil Procedure, nothing in this section shall require the filing of a counterclaim. (1987 (Reg. Sess., 1988), c. 1087, s. 3; 1995, c. 509, s. 82; 2000-67, s. 7A(c).)

§ 143-292. Notice of determination of claim; appeal to full Commission.

Upon determination of said claim the Commission shall notify all parties concerned in writing of its decision and either party shall have 15 days after receipt of such notice within which to file notice of appeal with the Industrial Commission. Such appeal, when so taken, shall be heard by the Industrial Commission, sitting as a full Commission, on the basis of the record in the matter and upon oral argument of the parties, and said 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 said claim by the Industrial Commission, sitting as a full Commission, the Commission shall notify all parties concerned in writing of its decision. Such determination by the Industrial Commission, sitting as a full Commission, upon claims in an amount of five hundred dollars ($500.00) or less, shall be final as to the State or any of its departments, institutions or agencies, and no appeal shall lie therefrom by the State or any of its departments, institutions or agencies. (1951, c. 1059, s. 2; 1955, c. 770; 1979, c. 581.)

§ 143-293. Appeals to Court of Appeals.

Either the claimant or the State may, within 30 days after receipt of the decision and order of the full Commission, to be sent by registered or certified mail, but not thereafter, appeal from the decision of the Commission to the Court of Appeals. Such appeal shall be for errors of law only under the same terms and conditions as govern appeals in ordinary civil actions, and the findings of fact of the Commission shall be conclusive if there is any competent evidence to support them. The appellant shall cause to be prepared a statement of the case as required by the rules of the Court of Appeals. A copy of this statement shall be served on the respondent within 45 days from the entry of the appeal taken; within 20 days after such service, the respondent shall return the copy with his approval or specified amendments endorsed or attached; if the case be approved by the respondent, it shall be filed with the clerk of the Court of Appeals as a part of the record; if not returned with objections within the time prescribed, it shall be deemed approved. The chairman of the Industrial Commission shall have the power, in the exercise of his discretion, to enlarge the

time in which to serve statement of case on appeal and exceptions thereto or counterstatement of case.

If the case on appeal is returned by the respondent with objections as prescribed, or if a countercase is served on appellant, the appellant shall immediately request the chairman of the Industrial Commission to fix a time and place for settling the case before him. If the appellant delays longer than 15 days after the respondent serves his countercase or exceptions to request the chairman to settle the case on appeal, and delays for such period to mail the case and countercase or exceptions to the chairman, then the exceptions filed by the respondent shall be allowed; or the countercase served by him shall constitute the case on appeal; but the time may be extended by agreement of counsel.

The chairman shall forthwith notify the attorneys of the parties to appear before him for that purpose at a certain time and place, which time shall not be more than 20 days from the receipt of the request. At the time and place stated, the chairman of the Industrial Commission or his designee shall settle and sign the case and deliver a copy to the attorneys of each party. The appellant shall within five days thereafter file it with the clerk of the Court of Appeals, and if he fails to do so the respondent may file his copy.

No appeal bond or supersedeas bond shall be required of State departments or agencies. (1951, c. 1059, s. 3; 1967, c. 655, s. 1; 1987 (Reg. Sess., 1988), c. 1087, s. 4.)

§ 143-294. Appeal to Court of Appeals to act as supersedeas.

The appeal from the decision of the Industrial Commission to the Court of Appeals shall act as a supersedeas, and the State department, institution or agency shall not be required to make payment of any judgment until the questions at issue therein shall have been finally determined as provided in this Article. (1951, c. 1059, s. 4; 1967, c. 655, s. 2.)

§ 143-295. Settlement of claims.

(a) Any claims except claims of minors pending or hereafter filed against the various departments, institutions and agencies of the State may be settled upon agreement between the claimant and the Attorney General for an amount not in excess of twenty-five thousand dollars ($25,000), without the approval of the Industrial Commission. The Attorney General may also make settlements by agreement for claims in excess of twenty-five thousand dollars ($25,000) and claims of infants or persons **non sui juris**, provided such claims have been subject to review and approval by the Industrial Commission.

(b) In settlements under twenty-five thousand dollars ($25,000), agreed upon between the Attorney General and the claimant, the filing of an affidavit as set forth in G.S. 143-297 shall not be required.

(c) Transfer of title of a motor vehicle acquired in behalf of the State in settlement of claim pursuant to the provisions of this Article may be transferred by the Attorney General in the same manner as provided for such transfer by an insurance company under the provisions of G.S. 20-75. (1951, c. 1059, s. 5; 1971, c. 1103, s.1; 1973, c. 699; 1975, c. 756; 1979, c. 877; 1981, c. 166; 1985, c. 693; 1989, c. 228, ss. 1, 2.)

§ 143-295.1. Settlement of small claims against institutions of the Department of Health and Human Services.

When the property of a resident of a State institution under the Department of Health and Human Services is lost, destroyed, or otherwise damaged through negligent handling by the

institution, and the amount of damages is less than five hundred dollars ($500.00), the institution may make direct payment or provide replacement of the item to the resident without recourse to the procedures otherwise provided by this Article. (2003-285, s. 1.)

§ 143-296. Powers of Industrial Commission; deputies.

The members of the Industrial Commission, or a deputy thereof, shall have power to issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders, opinions, and awards based thereon, punish for contempt, and issue writs of habeas corpus ad testificandum pursuant to G.S. 97-101.1. The Industrial Commission is authorized to appoint deputies and clerical assistants to carry out the purpose and intent of this Article, and such deputy or deputies are hereby vested with the same power and authority to hear and determine tort claims against State departments, institutions, and agencies as is by this Article vested in the members of the Industrial Commission. Such deputy or deputies shall also have and are hereby vested with the same power and authority to hear and determine cases arising under the Workers' Compensation Act when assigned to do so by the Industrial Commission. The Commission may order parties to participate in mediation, under rules substantially similar to those approved by the Supreme Court for use in the Superior Court division, except the Commission shall determine the manner in which payment of the costs of the mediated settlement conference is assessed. (1951, c. 1059, s. 6; 1979, c. 714, s. 2; 1993, c. 399, s. 2; c. 321, s. 25(b); 1995, c. 358, s. 8(a); c. 437, s. 6(a); c. 467, s. 5(a); c. 507, s. 25.13; 1998-217, s. 31.1(b).)

§ 143-297. Affidavit of claimant; docketing; venue; notice of hearing; answer, demurrer or other pleading to affidavit.

In all claims listed in Section 13 of Chapter 1059 of the Session Laws of 1951, and all claims which may hereafter be filed against the various departments, institutions, and agencies of the State, the claimant or the person in whose behalf the claim is made shall file with the Industrial Commission an affidavit in duplicate, setting forth the following information:

(1) The name of the claimant;
(2) The name of the department, institution or agency of the State against which the claim is asserted, and the name of the State employee upon whose alleged negligence the claim is based;
(3) The amount of damages 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.

Upon receipt of such affidavit in duplicate, the Industrial Commission shall enter the case upon its hearing docket and shall hear and determine the matter in the county where the injury occurred unless the parties agree or the Industrial 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 docketing the case, the Industrial Commission shall forward one copy of plaintiff's affidavit to the office of the Attorney General of North Carolina if the claim is asserted against any department, institution, or agency of the State.

The department, institution or agency of the State against whom the claim is asserted shall file answer, demurrer or other pleading to the affidavit within 30 days after receipt of copy of same setting forth any defense it proposes to make in the hearing or trial, and no defense may be asserted

in the hearing or trial unless it is alleged in such answer, except such defenses as are not required by the Code of Civil Procedure or other laws to be alleged. (1951, c. 1059, s. 9; 1963, c. 1063; 1971, c. 893, s. 2; c. 1103, s. 2.)

§ 143-298. Duty of Attorney General; expenses; subpoenas.

It shall be the duty of the Attorney General to represent all departments, institutions, and agencies of the State in connection with claims asserted against them and to attend all hearings in connection therewith where the amount of the claim, in the opinion of the Attorney General, is of sufficient import to require and justify such appearance. In the event the amount appropriated to the Attorney General's office for travel and subsistence is insufficient to take care of the additional expense incident to attending these hearings, the Governor and Council of State are authorized to pay such additional travel expenses from the Contingency and Emergency Fund.

Subpoenas for any purpose authorized by G.S. 1A-1, Rule 45 may be issued by an Attorney of Record for either party in all proceedings under the State Tort Claims Act and served by the means specified in the North Carolina Rules of Civil Procedure or served by registered or certified mail, and service shall be proved by filing of the return receipt. (1951, c. 1059, s. 10; 1971, c. 1103, s. 3; 1987 (Reg. Sess., 1988), c. 1087, s. 5.)

§ 143-299. Limitation on claims.

All claims against any and all State departments, institutions, and agencies shall henceforth be forever barred unless a claim be filed with the Industrial Commission within three years after the accrual of such claim, or if death results from the accident, the claim for wrongful death shall be forever barred unless a claim be filed by the personal representative of the deceased with the Industrial Commission within two years after such death. (1951, c. 1059, s. 11; 1973, c. 659.)

§ 143-299.1. Contributory negligence a matter of defense; burden of proof.

Contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted shall be deemed to be a matter of defense on the part of the State department, institution or agency against which the claim is asserted, and such State department, institution or agency shall have the burden of proving that the claimant or the person in whose behalf the claim is asserted was guilty of contributory negligence. (1955, c. 400, s. 1 1/4.)

§ 143-299.1A. Limit use of public duty doctrine as an affirmative defense.

(a) Except as provided in subsection (b) of this section, the public duty doctrine is an affirmative defense on the part of the State department, institution, or agency against which a claim is asserted if and only if the injury of the claimant is the result of any of the following:

(1) The alleged negligent failure to protect the claimant from the action of others or from an act of God by a law enforcement officer as defined in subsection (d) of this section.

(2) The alleged negligent failure of an officer, employee, involuntary servant or agent of the State to perform a health or safety inspection required by statute.

(b) Notwithstanding subsection (a) of this section, the affirmative defense of the public duty doctrine may not be asserted in any of the following instances:

(1) Where there is a special relationship between the claimant and the officer, employee, involuntary servant or agent of the State.
(2) When the State, through its officers, employees, involuntary servants or agents, has created a special duty owed to the claimant and the claimant's reliance on that duty is causally related to the injury suffered by the claimant.
(3) Where the alleged failure to perform a health or safety inspection required by statute was the result of gross negligence.

(c) This section does not apply to a unit of local government or its officers, employees, or agents.

(d) For purposes of this section, "law enforcement officer" means a full-time or part-time employee or agent of a State department, institution, or agency or an agent of the State operating under an agreement with a State department, institution, or agency of the State who is any of the following:

(1) Actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes.
(2) Possesses the power of arrest by virtue of an oath administered under the authority of the State.
(3) Is a juvenile justice officer, chief court counselor, or juvenile court counselor.
(4) Is a correctional officer performing duties of custody, supervision, and treatment to control and rehabilitate criminal offenders.
(5) Is a firefighter as defined in G.S. 106-955(1).
(6) Is a probation officer appointed under Article 20 of Chapter 15 of the General Statutes. (2008-170, s. 1; 2008-187, s. 47; 2009-570, s. 21.)

§ 143-299.2. Limitation on payments by the State.

(a) The maximum amount that the State may pay cumulatively to all claimants on account of injury and damage to any one person arising out of any one occurrence, whether the claim or claims are brought under this Article, or Article 31A or Article 31B of this Chapter, shall be one million dollars ($1,000,000), less any commercial liability insurance purchased by the State and applicable to the claim or claims under G.S. 143-291(b), 143-300.6(c), or 143-300.16(c).

(b) The fact that a claim or claims may be brought under more than one Article under this Chapter shall not increase the above maximum liability of the State. (1987 (Reg. Sess., 1988), c. 1087, s. 6; 1995, c. 509, s. 83; 2000-67, s. 7A(d); 2007-452, s. 1.)

§ 143-299.3. Use of State vehicles by North Carolina Amateur Sports; State to incur no liability.

(a) Notwithstanding G.S. 14-247 and G.S. 143-341(8)i, the Department of Administration or any other department of State government may allow North Carolina Amateur Sports to have the use of State trucks and vans for the 1989 and the 1990 State Games of North Carolina. There will not be any charge for use of vehicles under this section.

(b) The State of North Carolina shall incur no liability for any damages resulting from use of vehicles under this section and North Carolina Amateur Sports shall carry liability insurance of not less than $500,000 covering such vehicles while in its use. (1989, c. 242, s. 1(a), (b); 1991, c. 636, s. 17; 1993, c. 553, s. 5.)

§ 143-299.4. Payment of State excess liability.

For each claim payable during any fiscal year in excess of one hundred fifty thousand dollars ($150,000) per claim arising under this Article, or Article 31A or 31B of this Chapter, on account of injury or damage to any one person, each State agency shall transfer to the Office of State Budget and Management its proportionate share of that agency's estimated lapsed salaries, as determined by the Director of the Budget, and the Director of the Budget shall use these transferred funds to pay the balance of that claim in excess of one hundred fifty thousand dollars ($150,000). However, if the Director of the Budget determines that the agency liable for the claim has the resources to pay the full claim even though it exceeds one hundred fifty thousand dollars ($150,000), then the Director of the Budget may, in the Director's discretion, require the agency to pay the full claim. Additionally, the Director of the Budget may, in the Director's discretion, limit the number of agencies required to transfer funds to the agency liable for the claim to pay the balance of the claim. (2000-67, s. 7A(e); 2000-140, s. 93.1(i); 2001-424, s. 12.2(b); 2002-159, s. 43.)

§ 143-300. Rules and regulations of Industrial Commission; destruction of records.

The Industrial Commission is hereby authorized and empowered to adopt such rules and regulations as may, in the discretion of the Commission, be necessary to carry out the purpose and intent of this Article. The North Carolina Rules of Civil Procedure and Rules of Evidence, insofar as they are not in conflict with the provisions of this Article, shall be followed in proceedings under this Article. When any case or claim under this Article has been closed by proper order or award, all records concerning such case or claim may, after five years, in the discretion of the Industrial Commission with and by the authorization of the Department of Natural and Cultural Resources, be destroyed by burning or otherwise; provided, that no record pertaining to a case or claim of a minor shall be destroyed until the expiration of three years after such minor attains the age of 18 years. (1951, c. 1059, s. 12; 1957, c. 311; 1971, c. 1231, s. 1; 1973, c. 476, s. 48; 1987 (Reg. Sess., 1988), c. 1087, s. 7; 2015-241, s. 14.30(s).)

§ 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.

(a) The North Carolina Industrial Commission shall have jurisdiction to hear and determine tort claims against any county board of education or any city board of education, which claims arise as a result of any alleged mechanical defects or other defects which may affect the safe operation of a public school bus or school transportation service vehicle resulting from an alleged negligent act of maintenance personnel or as a result of any alleged negligent act or omission of the driver, transportation safety assistant, or monitor of a public school bus or school transportation service vehicle when:

(1) The driver is an employee of the county or city administrative unit of which that board is the governing body, and the driver is paid or authorized to be paid by that administrative unit,

(1a) The monitor was appointed and acting in accordance with G.S. 115C-245(d),

(1b) The transportation safety assistant was employed and acting in accordance with G.S. 115C-245(e), or

(2) The driver is an unpaid school bus driver trainee under the supervision of an authorized employee of the Department of Transportation, Division of Motor Vehicles, or an authorized employee of that board or a county or city administrative unit thereof,

and which driver was at the time of the alleged negligent act or omission operating a public school bus or school transportation service vehicle in accordance with G.S. 115C-242 in the course of his employment by or training for that administrative unit or board, which monitor was at the time of the alleged negligent act or omission acting as such in the course of serving under G.S. 115C-245(d), or which transportation safety assistant was at the time of the alleged negligent act or omission acting as such in the course of serving under G.S. 115C-245(e). The liability of such county or city board of education, the defenses which may be asserted against such claim by such board, the amount of damages which may be awarded to the claimant, and the procedure for filing, hearing and determining such claim, the right of appeal from such determination, the effect of such appeal, and the procedure for taking, hearing and determining such appeal shall be the same in all respects as is provided in this Article with respect to tort claims against the State Board of Education except as hereinafter provided. Any claim filed against any county or city board of education pursuant to this section shall state the name and address of such board, the name of the employee upon whose alleged negligent act or omission the claim is based, and all other information required by G.S. 143-297 in the case of a claim against the State Board of Education. Immediately upon the docketing of a claim, the Industrial Commission shall forward one copy of the plaintiff's affidavit to the superintendent of the schools of the county or city administrative unit against the governing board of which such claim is made, one copy of the plaintiff's affidavit to the State Board of Education and one copy of the plaintiff's affidavit to the office of the Attorney General of North Carolina. All notices with respect to tort claims against any such county or city board of education shall be given to the superintendent of schools of the county or city administrative unit of which such board is a governing board, to the State Board of Education and also to the office of the Attorney General of North Carolina.

(b) The Attorney General shall be charged with the duty of representing the city or county board of education in connection with claims asserted against them pursuant to this section where the amount of the claim, in the opinion of the Attorney General, is of sufficient import to require and justify such appearance.

(c) In the event that the Industrial Commission awards damages against any county or city board of education under this section, the Attorney General shall draw a voucher for the amount required to pay the award. The funds necessary to cover the first one hundred fifty thousand dollars ($150,000) of liability per claim for claims against county and city boards of education for accidents involving school buses and school transportation service vehicles shall be made available from funds appropriated to the State Board of Education. The balance of any liability owed shall be paid in accordance with G.S. 143-299.4. Neither the county or city boards of education, or the county or city administrative unit shall be liable for the payment of any award made pursuant to

the provisions of this section in excess of the amount paid upon a voucher by the Attorney General. Settlement and payment may be made by the Attorney General as provided in G.S. 143-295.

(d) Except as otherwise provided in this subsection, the Attorney General may, upon the request of an employee or former employee, defend any civil action brought against the driver, transportation safety assistant, or monitor of a public school bus or school transportation service vehicle or school bus maintenance mechanic when the driver or mechanic is employed and paid by the local school administrative unit, when the monitor is acting in accordance with G.S. 115C-245(d), when the transportation safety assistant is acting in accordance with G.S. 115C-245(e), or when the driver is an unpaid school bus driver trainee under the supervision of an authorized employee of the Department of Transportation, Division of Motor Vehicles, or an authorized employee of a county or city board of education or administrative unit. The Attorney General may afford this defense through the use of a member of his staff or, in his discretion, employ private counsel. The Attorney General is authorized to pay any judgment rendered in the civil action not to exceed the limit provided under the Tort Claims Act. The funds necessary to cover the first one hundred fifty thousand dollars ($150,000) of liability per claim shall be made available from funds appropriated to the State Board of Education. The balance of any liability owed shall be paid in accordance with G.S. 143-299.4. The Attorney General may compromise and settle any claim covered by this section to the extent that he finds the same to be valid, up to the limit provided in the Tort Claims Act, provided that the authority granted in this subsection shall be limited to only those claims that would be within the jurisdiction of the Industrial Commission under the Tort Claims Act.

The Attorney General shall refuse to provide for the defense of a civil action or proceeding brought against an employee or former employee if the Attorney General determines that:

(1) The act or omission was not within the scope and course of his employment as a State employee; or

(2) The employee or former employee acted or failed to act because of actual fraud, corruption, or actual malice on his part; or

(3) Defense of the action or proceeding by the State would create a conflict of interest between the State and the employee or former employee; or

(4) Defense of the action or proceeding would not be in the best interests of the State. (1955, c. 1283; 1961, c. 1102, ss. 1-3; 1967, c. 1032, s. 1; 1975, c. 589, s. 1; c. 916, ss. 1, 2; 1977, c. 935, s. 1; 1979, 2nd Sess., c. 1332, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 30; 1998-212, s. 9.17(b); 2000-67, ss. 7A(f), 7A(g); 2001-424, s. 6.18.)

§ 143-300.1A. (See Editor's note on condition precedent) Claims arising from certain smallpox vaccinations of State employees.

The North Carolina Industrial Commission shall have jurisdiction to hear and determine claims in accordance with the procedures set forth in this Article made against the State by a person who is permanently or temporarily living in the home of a State employee who receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)) when the person contracts an infection with smallpox or an infection with vaccinia or has any adverse medical reaction due to the vaccination received by the employee. A person covered by this section shall be entitled to recover from the State damages incurred by the person that are directly attributable to the vaccination of the employee

under this section. No showing of negligence is required under this section. The provisions of G.S. 143-299.1 shall not apply to claims made under this section, and contributory negligence is not a defense for claims under this section. Damages awarded under this section shall be paid in accordance with G.S. 143-291(a1) and shall be subject to the same limits as those which apply to tort claims under this Article. (2003-169, s. 3.)

Article 31A.

Defense of State Employees, Medical Contractors and Local Sanitarians.

§ 143-300.2. Definitions.

Unless the context otherwise requires, the definitions contained in this section govern the construction of this Article.

(1) "Civil or criminal action or proceeding" includes any case, prosecution, special proceedings, or administrative proceeding in or before any court or agency of this State or any other state or the United States.

(2) "Employee" includes an officer, agent, or employee but does not include an independent contractor.

(3) "Employment" includes office, agency, or employment.

(4) "The State" includes all departments, agencies, boards, commissions, institutions, bureaus, and authorities of the State. Community colleges, technical colleges, and occupational licensing boards regulated by Chapter 93B of the General Statutes shall be deemed State agencies for purposes of this Article. (1967, c. 1092, s. 1; 1987, c. 684, s. 2; 2002-168, s. 2.)

§ 143-300.3. Defense of State employees.

Except as otherwise provided in G.S. 143-300.4, upon request of an employee or former employee, the State may provide for the defense of any civil or criminal action or proceeding brought against him in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of his employment as a State employee. (1967, c. 1092, s. 1.)

§ 143-300.4. Grounds for refusal of defense.

(a) The State shall refuse to provide for the defense of a civil or criminal action or proceeding brought against an employee or former employee if the State determines that:

(1) The act or omission was not within the scope and course of his employment as a State employee; or

(2) The employee or former employee acted or failed to act because of actual fraud, corruption, or actual malice on his part; or

(3) Defense of the action or proceeding by the State would create a conflict of interest between the State and the employee or former employee; or

(4) Defense of the action or proceeding would not be in the best interests of the State.

(b) The determinations required by subsection (a) of this section shall be made by the Attorney General. The Attorney General may delegate his authority to make these determinations to the chief administrative authority of any agency, institution, board, or commission whose employees are to be defended as provided by subdivision (3) or (4) of G.S. 143-300.5. Approval

of the request by an employee or former employee for provision of defense shall raise a presumption that the determination required by this section had been made and that no grounds for refusal to defend were discovered. (1967, c. 1092, s. 1.)

§ 143-300.5. Regulations for providing defense counsel.

The Governor may issue regulations for the defense of employees or former employees of the State pursuant to this Article through one or more of the following methods as may be appropriate to the employee or class of employees in question:

(1) By the Attorney General;
(2) By employing other counsel for this purpose as provided in G.S. 147-17;
(3) By authorizing the purchase of insurance which requires that the insurer provide or underwrite the cost of the defense; or
(4) By authorizing defense by counsel assigned to or employed by the department, agency, board, commission, institution, bureau, or authority which employed the person requesting the defense. (1967, c. 1092, s. 1.)

§ 143-300.6. Payments of judgments; compromise and settlement of claims.

(a) Payment of Judgments and Settlements. In an action to which this Article applies, the State shall pay (i) a final judgment awarded in a court of competent jurisdiction against a State employee or (ii) the amount due under a settlement of the action under this section. The unit of State government that employed the employee shall pay the first one hundred fifty thousand dollars ($150,000) of liability, and the balance of any payment owed shall be paid in accordance with G.S. 143-299.4. This section does not waive the sovereign immunity of the State with respect to any claim. A payment of a judgment or settlement of a claim against a State employee or several State employees as joint tort-feasors may not exceed the amount payable for one claim under the Tort Claims Act.

(b) Settlement of Claims. The Attorney General may compromise and settle any claim covered by this section to the extent he finds the claim valid. A settlement in excess of the limit provided in subsection (a) must be approved by the employee. In an action in which the Attorney General has stated in writing that private counsel should be provided the employee because of a conflict of interest between the employee and the State, a settlement in excess of the limit provided in subsection (a) must be approved by the private counsel.

(c) Other Insurance. The coverage afforded employees and former employees under this Article shall be excess coverage over any commercial liability insurance, other than insurance written under G.S. 58-32-15, up to the limit provided in subsection (a). (1973, c. 1372; 1975, c. 209, ss. 1, 2; 1979, c. 886; 1981, c. 1109, s. 2; 1991, c. 674, s. 2; 2000-67, s. 7A(h).)

§ 143-300.7. Defense of medical contractors.

Notwithstanding any other provisions of this Article, any person or professional association who at the request of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety provides medical and dental services to inmates in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety and who is sued pursuant to the Federal Civil Rights Act of 1871 may be defended by the Attorney General and shall be protected from liability for violations of civil rights in accordance with the provisions of this Article. (1979, c. 1053, s. 2; 2011-145, s. 19.1(h); 2017-186, s. 2(dddddd).)

§ 143-300.8. Defense of local sanitarians.

Any local health department sanitarian enforcing rules of the Commission for Public Health under the supervision of the Department of Health and Human Services pursuant to G.S. 130A-4 shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Public Health. The Department of Health and Human Services shall pay any judgment against the sanitarian, or any settlement made on his behalf, subject to the provisions of G.S. 143-300.6. (1987, c. 654, s. 2; 1989, c. 727, s. 219(36); 1997-443, s. 11A.96; 2006-202, s. 7; 2007-182, s. 2; 2011-145, s. 13.3(k); 2011-391, s. 27(b).)

§ 143-300.9. Payment of excess damages relating to unconstitutional taxes.

In an action to which this Article applies, the State shall pay the excess amount of a judgment or settlement under G.S. 143-300.6 for damages against a State employee for collecting or administering a tax that is held unconstitutional. The excess amount is the amount of the judgment or settlement over (i) the limit provided in G.S. 143-300.6(a) and (ii) any coverage under G.S. 58-32-15. This section does not waive the sovereign immunity of the State with respect to any claim. (1991, c. 674, s. 1.)

§ 143-300.10. Payment of excess damages relating to unconstitutional goals program.

In an action to which this Article applies, the State shall pay the excess amount of a judgment or settlement under G.S. 143-300.6 for damages against a State employee or member of a State board or commission for enforcing or administering a goals program promoting participation by disadvantaged businesses, minority businesses, and women businesses, in contracts let by a State department or agency that is held unconstitutional. The excess amount is the amount of the judgment or settlement over (i) the limit provided in G.S. 143-300.6(a) and (ii) any coverage under G.S. 58-32-15. This section does not waive the sovereign immunity of the State with respect to any claim. (1991 (Reg. Sess. 1992), c. 1044, s. 39(a).)

§ 143-300.11. Reserved for future codification purposes.

§ 143-300.12. Reserved for future codification purposes.

Article 31B.

Defense of Public School Employees.

§ 143-300.13. Definition of public school employee.

For the purpose of this Article, a public school employee is a person whose major responsibility is to teach or directly supervise teaching and who is employed in either a full-time or part-time capacity, including, but not limited to, the superintendent, assistant or associate superintendent, principal, assistant principal, classroom teacher, substitute teacher, supervisor, teacher aide, student teacher, or school nurse. (1979, c. 971, s. 2.)

§ 143-300.14. Defense of public school employees.

Except as provided in G.S. 143-300.15, the State shall provide defense counsel for the employee against whom a claim is made or civil action is commenced for personal injury on account of an act done or omission made in the course of the employee's duties under G.S. 115-146.1; provided that, no later than 30 days after the employee is notified of a claim or 10 days after the employee is served with complaint of the injured party, the employee gives written notice of the claim or action to the Attorney General which notice shall include:

(1) The name and address of the claimant and his attorney;
(2) A concise statement of the basis of the claim;
(3) The name and address of any other employees involved; and
(4) A copy of any correspondence received by the employee and legal documents served on the employee pertaining to the claim or civil action. (1979, c. 971, s. 2.)

§ 143-300.15. Refusal of defense.

The Attorney General may refuse to defend an employee for any of the reasons listed in G.S. 143-300.4(a). (1979, c. 971, s. 2.)

§ 143-300.16. Payment of judgments and settlement of claims.

(a) Any final judgment awarded against an employee in an action that meets the requirements of G.S. 143-300.14, or any amount payable under a settlement of the action, shall be paid the State. The first one hundred fifty thousand dollars($150,000) of liability shall be paid from funds appropriated to the State Board of Education for the payment of State Tort Claims. The balance of any payment owed shall be paid in accordance with G.S. 143-299.4. No payment shall be made from either funds appropriated to the State Board of Education or funds transferred from State agencies under G.S. 143-299.4 for any judgment for punitive damages. Nothing in this section shall be deemed to waive the sovereign immunity of the State with respect to a claim covered under this section or authorize the payment of any judgment or settlement against a public school employee in excess of the limit provided in the Tort Claims Act.

(b) The Attorney General may settle any claim to which this Article applies which he finds valid. In any case in which the Attorney General has stated in writing that private counsel ought to be provided because of a conflict with the interests of the State, any settlement shall be approved by the private counsel and the Attorney General.

(c) The coverage afforded an employee under this Article is excess coverage over any commercial insurance liability that the employee may have. (1979, c. 971, s. 2; 2000-67, s. 7A(i).)

§ 143-300.17. Employee's obligation for attorney fees.

If any employee has been defended by the Attorney General, or if the State has provided private counsel for an employee, and judgment rendered on the claim establishes that the act or omission complained of did not meet the requirements of G.S. 115-146.1, the judgment against the employee may provide for payment to the State of its costs including a reasonable attorney fee. (1979, c. 971, s. 2.)

§ 143-300.18. Protection is additional.

The protection to employees provided in this Article is in addition to any other protection provided in the General Statutes. (1979, c. 971, s. 2.)

§§ 143-300.19 through 143-300.29. Reserved for future codification purposes.

Article 31C.

Service on Certification Entity.

§ 143-300.30. Service on National Tobacco Grower Settlement Trust.

(a) (1) Philip Morris, Inc., Brown and Williamson Tobacco Corporation, Lorillard Tobacco Company, and R.J. Reynolds Tobacco Company (hereinafter, the "tobacco companies") have proposed to create a National Tobacco Grower Settlement Trust under which the tobacco companies will pay, during a 12-year period, a base amount of approximately five billion one hundred fifty million dollars ($5,150,000,000) into a trust to provide payments to tobacco growers and allotment holders in 14 grower states, including North Carolina, for the purposes of ameliorating potential adverse economic consequences of likely changes in the tobacco market on grower states.

(2) The tobacco companies desire that the money paid into the trust be divided among tobacco producers and allotment holders in accordance with a plan designed and approved by a certification entity in each state.

(3) The tobacco companies desire that in larger grower states, including North Carolina, the certification entity be a nonprofit corporation governed by a board of directors consisting of the following public officials and persons appointed by public officials: the Governor, who shall serve as chair of the board of directors; the Commissioner of Agriculture, who shall serve as vice-chair; the Attorney General, who shall serve as secretary; a State Senator appointed by the President Pro Tempore of the Senate; a State Representative appointed by the Speaker of the House of Representatives; two members of the North Carolina congressional delegation selected by the delegation; and four to seven citizens appointed by the Governor.

(4) It is in the public interest that these officials and citizens serve on the board of directors and determine the distribution of these private trust funds to tobacco producers and allotment holders in North Carolina.

(b) The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate are authorized to appoint members of the board of directors of the certification entity as provided in Section 1.(a)(3), and the public officials referred to in Section 1.(a)(3) are authorized to serve on that board.

(c) No member of the certification entity for the National Tobacco Grower Trust Fund is subject to civil liability for any act or omission arising out of the performance of the member's duties as a member or officer of the certification entity. This section does not apply to liability arising from willful or wanton misconduct, intentional wrongdoing, or the operation of a motor vehicle. (1999-333, s.1.)

§§ 143-300.31 through 143-300.34. Reserved for future codification purposes.

Article 31D.

State Employee Federal Remedy Restoration Act.

§ 143-300.35. State Employee Federal Remedy Restoration Act.

(a) The sovereign immunity of the State is waived for the limited purpose of allowing State employees, except for those in exempt policy-making positions designated pursuant to G.S. 126-5(d), to maintain lawsuits in State and federal courts and obtain and satisfy judgments against the State or any of its departments, institutions, or agencies under:

(1) The Fair Labor Standards Act, 29 U.S.C. § 201, et seq.

(2) The Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq.

(3) The Family and Medical Leave Act, 29 U.S.C. § 2601, et seq.

(4) The Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.

(b) The amount of monetary relief a State employee receives under subsection (a) of this section shall not exceed the amounts authorized under G.S. 143-299.2 or the amounts authorized under the applicable federal law under this section, whichever is less. (2001-467, s. 1.)

Article 32.

Payroll Savings Plan for State Employees.

§ 143-301: Repealed by Session Laws 2011-210, s. 1, effective June 23, 2011.

§ 143-302: Repealed by Session Laws 2011-210, s. 1, effective June 23, 2011.

§ 143-303: Repealed by Session Laws 2011-210, s. 1, effective June 23, 2011.

§ 143-304: Repealed by Session Laws 2011-210, s. 1, effective June 23, 2011.

§ 143-305: Repealed by Session Laws 2011-210, s. 1, effective June 23, 2011.

Article 33.

Judicial Review of Decisions of Certain Administrative Agencies.

§§ 143-306 through 143-316. Repealed by Session Laws 1973, c. 1331, s. 2, as amended by Session Laws 1975, c. 69, s. 4.

Article 33A.

Rules of Evidence in Administrative Proceedings before State Agencies.

§§ 143-317 through 143-318. Repealed by Session Laws 1973, c. 1331, s. 2, as amended by Session Laws 1975, c. 69, s. 4.

Article 33B.

Meetings of Governmental Bodies.

§§ 143-318.1 through 143-318.8. Repealed by Session Laws 1979, c. 655, s. 1.

Article 33C.

Meetings of Public Bodies.

§ 143-318.9. Public policy.

Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly. (1979, c. 655, s. 1.)

§ 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, 143-318.14A, and 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, "public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, "public body" means the governing board of a "public hospital" as defined in G.S. 159-39 and the governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(c) "Public body" does not include (i) a meeting solely among the professional staff of a public body, or (ii) the medical staff of a public hospital or the medical staff of a hospital that has been sold or conveyed pursuant to G.S. 131E-8.

(d) "Official meeting" means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session. (1979, c. 655, s. 1; 1985 (Reg. Sess., 1986), c. 932, s. 4; 1991, c. 694, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 570, s. 1; 1995, c. 509, s. 135.2(p); 1997-290, s. 1; 1997-456, s. 27; 2011-326, s. 8.)

§ 143-318.11. Closed sessions.

(a) Permitted Purposes. – It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

(1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.

(2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.

(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.

(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations, or to discuss matters

relating to military installation closure or realignment. Any action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.

(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.

(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

(7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

(8) To formulate plans by a local board of education relating to emergency response to incidents of school violence or to formulate and adopt the school safety components of school improvement plans by a local board of education or a school improvement team.

(9) To discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity.

(10) To view a recording released pursuant to G.S. 132-1.4A.

(b) Repealed by Session Laws 1991, c. 694, s. 4.

(c) Calling a Closed Session. – A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

(d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 570, s. 2. (1979, c. 655, s. 1; 1981, c. 831; 1985 (Reg. Sess., 1986), c. 932, s. 5; 1991, c. 694, ss. 3, 4; 1993 (Reg. Sess., 1994), c. 570, s. 2; 1995, c. 509, s. 84; 1997-222, s. 2; 1997-290, s. 2; 2001-500, s. 2; 2003-180, s. 2; 2013-360, s. 8.41(b); 2014-79, s. 9(a); 2016-88, s. 3.)

§ 143-318.12. Public notice of official meetings.

(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

(1) For public bodies that are part of State government, with the Secretary of State;

(2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;

(3) For the governing board and each other public body that is part of a city government, with the city clerk;

(4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in subdivisions (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

(1) If a public body recesses a regular, special, or emergency meeting held pursuant to public notice given in compliance with this subsection, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required.

(2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting stating its purpose (i) to be posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (ii) to be mailed, e-mailed, or delivered to each newspaper, wire service, radio station, and television station that has filed a written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. The public body shall also cause notice to be mailed, e-mailed, or delivered to any person, in addition to the representatives of the media listed above, who has filed a written request with the clerk, secretary, or other person designated by the public body. This notice shall be posted and mailed, e-mailed, or delivered at least 48 hours before the time of the meeting. The notice required to be posted on the principal bulletin board or at the door of its usual meeting room shall be posted on the door of the building or on the building in an

area accessible to the public if the building containing the principal bulletin board or usual meeting room is closed to the public continuously for 48 hours before the time of the meeting. The public body may require each newspaper, wire service, radio station, and television station submitting a written request for notice to renew the request annually. The public body shall charge a fee to persons other than the media, who request notice, of ten dollars ($10.00) per calendar year, and may require them to renew their requests quarterly. No fee shall be charged for notices sent by e-mail.

(3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by e-mail, by telephone, or by the same method used to notify the members of the public body and shall be given immediately after notice has been given to those members. This notice shall be given at the expense of the party notified. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.

(c) Repealed by Session Laws 1991, c. 694, s. 6.

(d) If a public body has a Web site and has established a schedule of regular meetings, the public body shall post the schedule of regular meetings to the Web site.

(e) If a public body has a Web site that one or more of its employees maintains, the public body shall post notice of any meeting held under subdivisions (b)(1) and (b)(2) of this section prior to the scheduled time of that meeting.

(f) For purposes of this section, an "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body. (1979, c. 655, s. 1; 1991, c. 694, ss. 5, 6; 2009-350, s. 1.)

§ 143-318.13. Electronic meetings; written ballots; acting by reference.

(a) Electronic Meetings. – If a public body holds an official meeting by use of conference telephone or other electronic means, it shall provide a location and means whereby members of the public may listen to the meeting and the notice of the meeting required by this Article shall specify that location. A fee of up to twenty-five dollars ($25.00) may be charged each such listener to defray in part the cost of providing the necessary location and equipment.

(b) Written Ballots. – Except as provided in this subsection or by joint resolution of the General Assembly, a public body may not vote by secret or written ballot. If a public body decides to vote by written ballot, each member of the body so voting shall sign his or her ballot; and the minutes of the public body shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the clerk or secretary to the public body immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

(c) Acting by Reference. – The members of a public body shall not deliberate, vote, or otherwise take action upon any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the public body to understand what is being deliberated, voted, or acted upon. However, this subsection does not prohibit a public body from deliberating, voting, or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted, or acted upon, are available for public inspection at the meeting. (1979, c. 655, s. 1.)

§ 143-318.14. Broadcasting or recording meetings.

(a) Except as herein below provided, any radio or television station is entitled to broadcast all or any part of a meeting required to be open. Any person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open.

(b) A public body may regulate the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting, so as to prevent undue interference with the meeting. However, the public body must allow such equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of such equipment shall not be declared to constitute undue interference; provided, however, that if the public body, in good faith, should determine that the size of the meeting room is such that all the members of the public body, members of the public present, and the equipment and personnel necessary for broadcasting, photographing, filming, and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public body, acting in good faith and consistent with the purposes of this Article, may require the pooling of such equipment and the personnel operating it; and provided further, if the news media, in order to facilitate news coverage, request an alternate site for the meeting, and the public body grants the request, then the news media making such request shall pay any costs incurred by the public body in securing an alternate meeting site. (1979, c. 655, s. 1.)

§ 143-318.14A. Legislative commissions, committees, and standing subcommittees.

(a) Except as provided in subsection (e) below, all official meetings of commissions, committees, and standing subcommittees of the General Assembly (including, without limitation, joint committees and study committees), shall be held in open session. For the purpose of this section, the following also shall be considered to be "commissions, committees, and standing subcommittees of the General Assembly":

(1) The Legislative Research Commission;
(2) The Legislative Services Commission;
(3) Repealed by Session Laws 2006-203, s. 93, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.
(4) Repealed by Session Laws 2011-291, s. 2.50, effective June 24, 2011;
(5) The Joint Legislative Commission on Governmental Operations;
(6) The Joint Legislative Commission [Committee] on Local Government;
(7) Repealed by Session Laws 1997, c. 443, s. 12.30, effective August 28, 1997.

(8) Repealed by Session Laws 2011-291, s. 2.50, effective June 24, 2011;
(9) The Environmental Review Commission;
(10) The Joint Legislative Transportation Oversight Committee;
(11) The Joint Legislative Education Oversight Committee;
(12) Repealed by Session Laws 2011-266, s. 1.28(b), effective July 1, 2011 and Session Laws 2011-291, s. 2.50, effective June 24, 2011;
(13) The Commission on Children with Special Needs;
(14) Repealed by Session Laws 2011-291, s. 2.50, effective June 24, 2011;
(15) The Agriculture and Forestry Awareness Study Commission; and
(16) Repealed by Session Laws 2011-291, s. 2.50, effective June 24, 2011;
(17) The standing Committees on Pensions and Retirement.

(b) Reasonable public notice of all meetings of commissions, committees, and standing subcommittees of the General Assembly shall be given. For purposes of this subsection, "reasonable public notice" includes, but is not limited to:

(1) Notice given openly at a session of the Senate or of the House; or
(2) Notice mailed or sent by electronic mail to those who have requested notice, and to the Legislative Services Office, which shall post the notice on the General Assembly web site.

G.S. 143-318.12 shall not apply to meetings of commissions, committees, and standing subcommittees of the General Assembly.

(c) A commission, committee, or standing subcommittee of the General Assembly may take final action only in an open meeting.

(d) A violation of this section by members of the General Assembly shall be punishable as prescribed by the rules of the House or the Senate.

(e) The following sections shall apply to meetings of commissions, committees, and standing subcommittees of the General Assembly: G.S. 143-318.10(e) and G.S. 143-318.11, G.S. 143-318.13 and G.S. 143-318.14, G.S. 143-318.16 through G.S. 143-318.17. (1991, c. 694, s. 7; 1991 (Reg. Sess., 1992), c. 785, s. 4; c. 1030, s. 42; 1993, c. 321, s. 169.2(f); 1997-443, s. 12.30; 2003-374, s. 1; 2006-203, s. 93; 2011-266, s. 1.28(b); 2011-291, s. 2.50.)

§ 143-318.15: Repealed by Session Laws 2006-203, s. 94, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

§ 143-318.16. Injunctive relief against violations of Article.

(a) The General Court of Justice has jurisdiction to enter mandatory or prohibitory injunctions to enjoin (i) threatened violations of this Article, (ii) the recurrence of past violations of this Article, or (iii) continuing violations of this Article. Any person may bring an action in the appropriate division of the General Court of Justice seeking such an injunction; and the plaintiff need not allege or prove special damage different from that suffered by the public at large. It is not a defense to such an action that there is an adequate remedy at law.

(b) Any injunction entered pursuant to this section shall describe the acts enjoined with reference to the violations of this Article that have been proved in the action.

(c) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 932, s. 3, effective October 1, 1986. (1979, c. 655, s. 1; 1985 (Reg. Sess., 1986), c. 932, s. 3.)

§ 143-318.16A. Additional remedies for violations of Article.

(a) Any person may institute a suit in the superior court requesting the entry of a judgment declaring that any action of a public body was taken, considered, discussed, or deliberated in violation of this Article. Upon such a finding, the court may declare any such action null and void. Any person may seek such a declaratory judgment, and the plaintiff need not allege or prove special damage different from that suffered by the public at large. The public body whose action the suit seeks to set aside shall be made a party. The court may order other persons be made parties if they have or claim any right, title, or interest that would be directly affected by a declaratory judgment voiding the action that the suit seeks to set aside.

(b) A suit seeking declaratory relief under this section must be commenced within 45 days following the initial disclosure of the action that the suit seeks to have declared null and void; provided, however, that any suit for declaratory judgment brought pursuant to this section that seeks to set aside a bond order or bond referendum shall be commenced within the limitation periods prescribed by G.S. 159-59 and G.S. 159-62. If the challenged action is recorded in the minutes of the public body, its initial disclosure shall be deemed to have occurred on the date the minutes are first available for public inspection. If the challenged action is not recorded in the minutes of the public body, the date of its initial disclosure shall be determined by the court based on a finding as to when the plaintiff knew or should have known that the challenged action had been taken.

(c) In making the determination whether to declare the challenged action null and void, the court shall consider the following and any other relevant factors:

(1) The extent to which the violation affected the substance of the challenged action;

(2) The extent to which the violation thwarted or impaired access to meetings or proceedings that the public had a right to attend;

(3) The extent to which the violation prevented or impaired public knowledge or understanding of the people's business;

(4) Whether the violation was an isolated occurrence, or was a part of a continuing pattern of violations of this Article by the public body;

(5) The extent to which persons relied upon the validity of the challenged action, and the effect on such persons of declaring the challenged action void;

(6) Whether the violation was committed in bad faith for the purpose of evading or subverting the public policy embodied in this Article.

(d) A declaratory judgment pursuant to this section may be entered as an alternative to, or in combination with, an injunction entered pursuant to G.S. 143-318.16.

(e) The validity of any enacted law or joint resolution or passed simple resolution of either house of the General Assembly is not affected by this Article. (1985 (Reg. Sess., 1986), c. 932, s. 1; 1991, c. 694, s. 8.)

§ 143-318.16B. Assessments and awards of attorneys' fees.

When an action is brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A, the court may make written findings specifying the prevailing party or parties, and may award the prevailing party or parties a reasonable attorney's fee, to be taxed against the losing party or parties as part of the costs. The court may order that all or any portion of any fee as assessed be paid personally by any individual member or members of the public body found by the court to have knowingly or intentionally committed the violation; provided, that no order against any individual member shall issue in any case where the public body or that individual member seeks the advice of an attorney, and such advice is followed. (1985 (Reg. Sess., 1986), c. 932, s. 2; 1993 (Reg. Sess., 1994), c. 570, s. 3.)

§ 143-318.16C. Accelerated hearing; priority.

Actions brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts. (1993 (Reg. Sess., 1994), c. 570, s. 4.)

§ 143-318.16D. Local acts.

Any reference in any city charter or local act to an "executive session" is amended to read "closed session". (1993 (Reg. Sess., 1994), c. 570, s. 4.)

§ 143-318.17. Disruptions of official meetings.

A person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting is guilty of a Class 2 misdemeanor. (1979, c. 655, s. 1; 1993, c. 539, s. 1028; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 143-318.18. Exceptions.

This Article does not apply to:

(1) Grand and petit juries.

(2) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.

(3) The Judicial Standards Commission.

(3a) The North Carolina Innocence Inquiry Commission.

(4) Repealed by Session Laws 1991, c. 694, s. 9.

(4a) The Legislative Ethics Committee.

(4b) A conference committee of the General Assembly.

(4c) A caucus by members of the General Assembly; however, no member of the General Assembly shall participate in a caucus which is called for the purpose of evading or subverting this Article.

(5) Law enforcement agencies.

(6) A public body authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or certificates, (i) while preparing, approving, administering, or grading examinations or (ii) while meeting

with respect to an individual applicant for or holder of such a license or certificate. This exception does not amend, repeal, or supersede any other statute that requires a public hearing or other practice and procedure in a proceeding before such a public body.

(7) Any public body subject to the State Budget Act, Chapter 143C of the General Statutes and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.

(8) The boards of trustees of endowment funds authorized by G.S. 116-36 or G.S. 116-238.

(9) Repealed by Session Laws 1991, c. 694, s. 9.

(10) Repealed by Session Laws 2013-234, s. 10, effective July 3, 2013.

(11) The General Court of Justice. (1979, c. 655, s. 1; 1985, c. 757, s. 206(e); 1991, c. 694, s. 9; 2006-184, s. 6; 2006-203, s. 95; 2010-171, s. 5; 2013-234, s. 10.)

Article 34.

Local Affairs.

§ 143-319: Repealed by Session Laws 1973, c. 1262, s. 51.

§ 143-320. Definitions.

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

(1) "Department" means the Department of Environmental Quality.

(2) "Secretary" means the Secretary of Environmental Quality.

(3) "Recreation" means those interests that are diversionary in character and that aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural developments and experiences of a leisure nature, and includes all governmental, private nonprofit and commercial recreation forms of the recreation field and includes parks, conservation, recreation travel, the use of natural resources, wilderness and high density recreation types and the variety of recreation interests in areas and programs which are incorporated in this range. (1969, c. 1145, s. 1; 1973, c. 1262, s. 51; 1977, c. 771, ss. 4, 8; 1989, c. 727, s. 168; 1997-443, s. 11A.119(a); 2015-241, ss. 14.30(u), (v).)

§§ 143-321 through 143-322. Repealed by Session Laws 1973, c. 1262, s. 51.

§ 143-323. Functions of Department of Environmental Quality.

(a) Recreation. – The Department of Environmental Quality shall have the following powers and duties with respect to recreation:

(1) To study and appraise the recreation needs of the State and to assemble and disseminate information relative to recreation.

(2) To cooperate in the promotion and organization of local recreation systems for counties, municipalities, and other political subdivisions of the State, to aid them in the administration, finance, planning, personnel, coordination and cooperation of recreation organizations and programs.

(3) To aid in recruiting, training, and placing recreation workers, and to promote recreation institutes and conferences.

(4) To establish and promote recreation standards.

(5) To cooperate with appropriate State, federal, and local agencies and private membership groups and commercial recreation interests in the promotion of recreation opportunities, and to represent the State in recreation conferences, study groups, and other matters of recreation concern.

(6) To accept gifts, devises, and endowments. The funds, if given as an endowment, shall be invested in securities designated by the donor, or if there is no such designation, in securities in which the State sinking fund may be invested. All such gifts and devises and all proceeds from such invested endowments shall be used for carrying out the purposes for which they were made.

(7) To advise agencies, departments, organizations and groups in the planning, application and use of federal and State funds which are assigned or administered by the State for recreation programs and services on land and water recreation areas and on which the State renders advisory or other recreation services or upon which the State exercises control.

(8) To act jointly, when advisable, with any other State, local or federal agency, institution, private individual or group in order to better carry out the Department's objectives and responsibilities.

(b) Repealed by Session Laws 1977, c. 70, s. 32.

(c) Repealed by Session Laws 1989, c. 751, s. 5.

(d) Federal Assistance. – The Department, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual, and may comply with the terms, conditions, and limitations of the grant, in order to accomplish any of the purposes of the Department. Grant funds shall be expended pursuant to the Executive Budget Act.

(e) General. – The Department shall have the following general powers and duties.

(1) To study and to sponsor research on all aspects of local government and of relationships between the federal government, the State and local governments in North Carolina.

(2) To collect, collate, analyze, publish, and disseminate information necessary for the effective operation of the Department and useful to local government.

(3) To maintain an inventory of data and information, and to act as a clearinghouse of information and as a referral agency with respect to

State, federal, and private services and programs available to local government; and to facilitate local participation in those programs by furnishing information, education, guidance, and technical assistance with respect to those programs.

(4) To assist in coordinating State and federal activities relating to local government.

(5) To assist local governments in the identification and solution of their problems.

(6) To assist local officials in bringing specific governmental problems to the attention of the appropriate State, federal, and private agencies.

(7) To advise and assist local governments with respect to intergovernmental contracts, joint service agreements, regional service arrangements, and other forms of intergovernmental cooperation.

(8) To inform and advise the Governor on the affairs and problems of local government and on the need for the administrative and legislative action with respect to local government. (1969, c. 1145, s. 1; 1973, c. 1262, s. 51; 1977, c. 70, s. 32; c. 771, s. 4; 1989, c. 727, s. 218(116); c. 751, s. 5; 1997-443, s. 11A.119(a); 2011-284, s. 92; 2015-241, s. 14.30(u).)

§ 143-324. Repealed by Session Laws 1973, c. 1262, s. 51.

§ 143-325. Functions of committees.

(a) Repealed by Session Laws 1973, c. 1262, s. 51.

(b) Committee on Law and Order. – The Committee on Law and Order shall have policy-making and supervisory authority over the policies, programs, and activities of the Department in the field of the administration of criminal justice in assisting and participating with State and local law-enforcement agencies, at their request, to improve law enforcement and the administration of criminal justice.

(c) Repealed by Session Laws 1973, c. 1262, s. 51. (1969, c. 1145, s. 1; 1973, c. 1262, s. 51.)

§ 143-326. Transfer of functions, records, property, etc.

(a) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the North Carolina Recreation Commission are transferred to the Department of Local Affairs, effective July 1, 1969. All statutory references to the "North Carolina Recreation Commission" or the "Recreation Commission" are amended to read "North Carolina Department of Local Affairs."

(b) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Governor's Committee on Law and Order are transferred to the Department of Local Affairs, effective July 1, 1969. All statutory references to the "Governor's Committee on Law and Order" are amended to read "North Carolina Department of Local Affairs."

(c) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Division of Community Planning of the Department of Conservation and Development are transferred to the Department of Local Affairs.

(d) Such portion of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the State Planning Task Force Division of the Department of Administration as the Governor may designate is transferred to the Department of Local Affairs, effective July 1, 1969.

(e) The transfers directed by subsections (a) through (d), above shall be made under the supervision of the Governor, and he shall be the final arbiter of all differences or disputes arising incident to those transfers.

(f) No transfer of functions to the Department of Local Affairs provided for in this Article shall affect any action, suit, proceeding, prosecution, contract, lease, agreement, or other business transaction involving any of those functions that was initiated, undertaken, or entered into prior to or pending the time of the transfer, except that the Department shall be substituted for the agency from which the function was transferred, and as far as practicable the procedure provided for in this Article shall be employed in completing or disposing of the matter. All rules, regulations, and policies of the agencies from which powers, duties, and functions are herein transferred to the Department of Local Affairs shall continue in force as rules, regulations, and policies of the Department of Local Affairs until altered pursuant to G.S. 143-320(9). (1969, c. 1145, s. 1; 1973, c. 1262, s. 51.)

§ 143-327. Repealed by Session Laws 1973, c. 1262, s. 51.

§ 143-328. Reserved for future codification purposes.

Article 35.

Youth Service Commission.

§ 143-329: Expired.

§ 143-330: Expired.

§ 143-331: Expired.

§ 143-332: Expired.

§ 143-333: Expired.

Article 36.

Department of Administration.

Part 1. General Provisions.

§ 143-334. Short title.

This Article may be cited as the Department of Administration Act. (1957, c. 269, s. 1; 2000-140, s. 76(h).)

§ 143-335. Department of Administration created.

There is hereby created the Department of Administration. (1957, c. 269, s. 1.)

§ 143-336. Definitions.

As used in this Article:

"Agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.

"Community college buildings" means all buildings, utilities, and other property developments located at a community college, which is defined in G.S. 115D-2(2).

"Department" means the Department of Administration, unless the context otherwise requires.

"Public buildings" means all buildings owned or maintained by the State in the City of Raleigh, but does not mean any building which a State agency other than the Department of Administration is required by law to care for and maintain.

"Public buildings and grounds" means all buildings and grounds owned or maintained by the State in the City of Raleigh, but does not mean any building or grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

"Public grounds" means all grounds owned or maintained by the State in the City of Raleigh, but does not mean any grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

"Secretary" means the Secretary of Administration, unless the context otherwise requires.

"State buildings" mean all State buildings, utilities, and other property developments except the State Legislative Building, railroads, highway structures, bridge structures, and any buildings, utilities, or property owned or leased by the North Carolina Global TransPark Authority.

But under no circumstances shall this Article or any part thereof apply to the judicial or to the legislative branches of the State. (1957, c. 215, s. 2; c. 269, s. 1; 1963, c. 1, s. 6; 1971, c. 1097, s. 1; 1975, c. 879, s. 46; 1989, c. 58, s. 1; 1991, c. 749, s. 5; 1993 (Reg. Sess., 1994), c. 777, s. 4(h); 2001, c. 442, ss. 5, 8.)

§§ 143-337 through 143-339. Repealed by Session Laws 1975, c. 879, s. 46.

§ 143-340. Powers and duties of Secretary.

The Secretary of Administration has the following powers and duties:

(1) To establish the State Employee Suggestion Program pursuant to Article 36A of this Chapter, with the authority to adopt all rules necessary to implement the program. The Secretary shall serve ex officio on all program committees and shall designate an executive secretary to administer the program.

(2) through (9) Repealed by Session Laws 1975, c. 879, s. 46.

(10) To require reports from any State agency at any time upon any matters within the scope of the responsibilities of the Secretary or the Department.

(11) Repealed by Session Laws 1975, c. 879, s. 46.

(12) To enter the premises of any State agency; to inspect its property; and to examine its books, papers, documents, and all other agency records and copy any of them; and any State agency shall permit such entry, examination, and copying, and upon demand shall produce without unnecessary delay all books, papers, documents, and other records in its office and furnish information respecting its records and other matters pertaining to that agency and related to the responsibilities of the Department.

(13) Repealed by Session Laws 1975, c. 879, s. 46.

(14) Repealed by Session Laws 1989, c. 239, s. 1.

(15), (16) Repealed by Session Laws 1975, c. 879, s. 46.

(17) To supervise the work of janitors appointed by the General Assembly to perform services in connection with the sessions of the General Assembly.

(18) To adopt reasonable rules and regulations with respect to the parking of automobiles on all public grounds, subject to the approval of the Governor and Council of State, and to enforce those rules and regulations. Any person who violates a rule or regulation concerning parking on public grounds is guilty of a Class 1 misdemeanor. Upon the allocation of parking spaces to any agency pursuant to such rules and regulations, the agency shall adopt written guidelines governing the individual assignment of such parking spaces by the agency. Such guidelines shall give first priority treatment to the physically handicapped and to carpoolers and vanpoolers, however, first priority shall be given to those on call for duty at a time other than normal working hours. A copy of said guidelines shall be made available for inspection by any person upon request.

(18a) To allocate to the General Assembly, upon 30 days' written notice, the number of parking spaces requested by the Legislative Services Commission Officer in Lot 7 of the State Government Parking Complex. The allocation of parking spaces under this subdivision is not subject to the approval of the Governor and the Council of State.

(19) Any motor vehicle parked in a State-owned parking lot, when such lot is clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance thereto, in violation of the "Rules and Regulations Governing State-Owned Parking Lots" dated September, 1968 or as amended, may be removed from such lot to a place of storage and the registered owner of that vehicle shall become liable for removal and storage charges. Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages. Any motor vehicle parked without authorization on State-owned public grounds under the control of the Department of Administration other than a designated parking area may be removed from that property to a storage area and the registered owner of the vehicle shall be liable for removal and storage fees.

(20) To use at all times such means as, in his opinion, may be effective in protecting all public buildings and grounds from fire.

(21), (22) Repealed by Session Laws 2009-451, s. 17.3(b), effective July 1, 2009.

(23) Repealed by Session Laws 1975, c. 879, s. 46.

(24) To perform such additional duties as the Governor may direct.

(25) Repealed by Session Laws 1991, c. 542, s. 9.

(26) To establish the State Employees Combined Campaign in the Department of Administration to allow State employees the opportunity to contribute to charitable nonpartisan organizations in an orderly and uniform process, with the authority to adopt all rules necessary to implement the campaign.

(1957, c. 215, s. 2; c. 269, s. 1; 1969, c. 627; c. 1267, s. 4; 1971, c. 280; c. 1097, s. 2; 1975, c. 204; c. 879, s. 46; 1977, c. 119; c. 288, s. 2; 1979, c. 901, ss. 1, 2; c. 930; 1981, c. 696; 1981 (Reg. Sess., 1982), c. 1239, s. 4; 1983, c. 406; c. 420, s. 7; 1987, c. 274; 1989, c. 239, s. 1; c. 644, s. 5; 1991, c. 542, s. 9; 1993, c. 539, s. 1029; 1994, Ex. Sess., c. 24, s. 14(c); 1997-513, s. 3; 1999-250, s. 1; 2001-424, s. 7.2(a); 2009-451, s. 17.3(b); 2010-96, s. 41.3; 2017-199, s. 2.)

§ 143-341. Powers and duties of Department.

The Department of Administration has the following powers and duties:

(1) Repealed by Session Laws 1979, 2nd Session, c. 1137, s. 38.

(2) Purchase and Contract:

a. To exercise those powers and perform those duties which were, at the time of the ratification of this Article, conferred by statute upon the former Division of Purchase and Contract.

(3) Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of:

1. All State buildings or buildings located on State lands, except those buildings over which a local building code inspection department has and exercises jurisdiction; and

2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

a1. To organize and schedule, within three weeks of designer selection and before the design contract is let, a meeting of the stakeholders for each State capital improvement project to discuss plan review requirements and to define the terms of the memorandum of understanding developed by the State Building Commission pursuant to G.S. 143-135.26(2). The stakeholders shall include the funded agency, each State agency having plan review responsibilities for the project, and the selected designer. Notwithstanding the foregoing, the meeting need not be scheduled if the funded agency so requests.

b. To assist, as necessary, all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

b1. To certify that a statement of needs pursuant to G.S. 143C-3-3, other than for a project of The University of North Carolina for which advance planning has not been completed, is feasible. For purposes of this sub-subdivision, "feasible" means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars ($100,000).

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college

buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; to act as the appropriate official inspector or inspection department for purposes of G.S. 143-143.2; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

e. To require all State agencies to use existing plans and specifications for construction projects, where feasible. Prior to designing a project, State agencies shall consult with the Department of Administration on the availability of appropriate existing plans and specifications and the feasibility of using them for a project.

f. To provide written allocation of the deduction allowed under section 179D of the Code, as defined in G.S. 105-228.90, for designing energy efficient commercial building property that is installed on or in property owned by the State. The allocation must be made in accordance with section 179D of the Code.

Except for sub-subdivisions b., b1., e., and f. of this subdivision, this subdivision does not apply to either (i) the design, construction, or renovation of projects by The University of North Carolina pursuant to G.S. 116-31.11 or (ii) the North Carolina Zoological Park Council and the Department of Natural and Cultural Resources, with respect to projects at the North Carolina Zoological Park pursuant to G.S. 143B-135.214.

(4) Real Property Control:

a. To prepare and keep current a complete and accurate inventory of all land owned or leased by the State or by any State agency. This inventory shall show the location, including the latitude and longitude of the center of the property, acreage, description, source of title and current use of all land (including swamplands or marshlands) owned by the State or by any State agency, and the agency to which each tract is currently allocated. Surveys may be made where necessary to obtain information for the purposes of this inventory. Accurate plats or maps of all such land may be prepared, or copies obtained where such maps or plats are available.

b. To prepare and keep current a complete and accurate database of all buildings owned or leased (in whole or in part) by the State or by any State agency. This database shall serve as the State

inventory and shall include all of the following information and floor plans of every such building shall be prepared or copies obtained where such floor plans are available, where needed for use in the allocation of space therein:

1. The building's location, including the latitude and longitude of the center of the building.
2. A description of the operations supported by the building.
3. The agency or agencies that occupy the building.
4. Ownership information for the building.
5. The size of the building in terms of both gross and usable square feet.
6. A description of the building.
7. The building's condition assessment, including the estimated cost to make needed repairs and renovations as well as the date that the last condition assessment was completed.
8. The building's annual operating costs.
9. The building's annual maintenance costs.
10. The number of usable workspaces contained in the building.
11. The number of full-time equivalent positions assigned to the building by each agency occupant.
12. The amount of the building that is utilized, measured in accordance with the procedures developed pursuant to G.S. 143-341.2(a)(3).
13. Maintenance record, including replacement and maintenance schedules for all major mechanical systems.
14. Parking and employee facilities.
15. Any other information deemed relevant by the Department of Administration.

b1. The Department of Administration shall develop procedures that ensure that the data included in the inventories required by sub-subdivisions a. and b. of this subdivision is collected and displayed in a consistent manner across State agencies and land and building types.

b2. The Department of Administration shall use the North Carolina Identity Management service, or a similar successor program when updating the inventories required by sub-subdivisions a. and b. of this subdivision.

b3. Nothing in this sub-subdivision shall be construed to require the release or display of floor plans except upon request by a unit of the executive, legislative, or judicial branch of State government, such as a department, an institution, a division, a commission, a board, a council, or The University of North Carolina.

c. To obtain and deposit with the Secretary of State the originals of all deeds and other conveyances of real property to the State or to any State agency, copies of all leases wherein the State or any State

agency is lessor or lessee, and certified copies of wills, judgments, and other instruments whereby the State or any State agency has acquired title to real property. Where an original of a deed, lease, or other instrument cannot be found, but has been recorded in the registry of office of the clerk of superior court of any county, a certified copy of such deed, conveyance, or instrument shall be obtained and deposited with the Secretary of State.

d. To acquire, whether by purchase, exercise of the power of eminent domain, lease, or rental, all land, buildings, and space in buildings for all State agencies, subject to the approval of the Governor and Council of State in each instance. The Governor, acting with the approval of the Council of State, may adopt rules (i) exempting from any or all of the requirements of this paragraph such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any contract entered into or any proceeding instituted contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

d1. To require all State departments, institutions, and agencies to use State-owned office space instead of negotiating or renegotiating leases for rental of office space. In investigating the availability of office space already owned by the State or by a State agency which might meet the requirements of the requesting agency, the Department of Administration shall review the utilization information maintained in the real property database pursuant to this subdivision. Any lease entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and the Council of State.

The Department of Administration shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division no later than May 1 of each year on leased office space.

d2. To purchase or finance the purchase of buildings, utilities, structures, or other facilities or property developments, including streets and landscaping, the acquisition of land, equipment, machinery, and furnishings in connection therewith; additions, extensions, enlargements, renovations, and improvements to

existing buildings, utilities, structures, or other facilities or property developments, including streets and landscaping; land or any interest in land; other infrastructure; furniture, fixtures, equipment, vehicles, machinery, and similar items; or any combination of the foregoing, through installment-purchase, lease-purchase, or other similar type installment financing agreements in the manner and to the extent provided in Article 9 of Chapter 142 of the General Statutes. Any contract entered into or any proceeding instituted contrary to the provisions of this paragraph is voidable in the discretion of the Council of State.

e. To make all sales of real property (including marshlands or swamplands) owned by the State or by any State agency, with the approval of the Governor and Council of State in each instance. All conveyances in fee by the State shall be executed in accordance with the provisions of G.S. 146-74 through 146-78. Any conveyance of land made or contract to convey land entered into without the approval of the Governor and Council of State is voidable in the discretion of the Governor and Council of State. The proceeds of all sales of swamplands or marshlands shall be dealt with in the manner required by the Constitution and statutes.

f. With the approval of the Governor and Council of State, to make all leases and rentals of land or buildings owned by the State or by any State agency, and to sublease land or buildings leased by the State or by any State agency from another owner, where such land or building owned or leased by the State or by any State agency is not needed for current use. The Governor, acting with the approval of the Council of State, may adopt rules (i) exempting from any or all of the requirements of this paragraph such classes of lease or rental transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any lease or rental agreement entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

g. To allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State; provided that if the proposed reallocation is of land with an appraised value of at least twenty-five thousand dollars ($25,000), the reallocation

may only be made after consultation with the Joint Legislative Commission on Governmental Operations. The authority granted in this paragraph shall not apply to the State Legislative Building and grounds or to the Legislative Office Building and grounds.

h. To require any State agency to make reports regarding the land and buildings owned by it or allocated to it at such times and in such form as the Department may deem necessary.

i. To determine whether all deeds, judgments, and other instruments whereby title to real estate has been or may be acquired by the State or by any State agency have been properly recorded in the county wherein the real property is situated, and to make or cause to be made proper recordation of such instruments. The Department may have previously recorded instruments which conveyed title to or from the State or any State agency or officer reindexed, where necessary, to show the State of North Carolina or grantor or grantee, as the case may be, and the cost of such reindexing shall be paid from the State Land Fund.

j. To call upon the Attorney General for advice and assistance in the performance of any of the foregoing duties.

k. None of the provisions of this subdivision apply to highway or railroad rights-of-way or other interests or estates in land held for the same or similar purposes, or to the acquisition or disposition of such rights-of-way, interests, or estates in land.

l. To manage and control the vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands of the State, pursuant to Chapter 146 of the General Statutes.

m. To contract for or approve all contracts for all appraisals and surveys of real property for all State agencies; provided, however, this provision shall not apply to appraisals and surveys obtained in connection with the acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation.

n. To petition for the annexation of state-owned lands into any municipality.

o. To provide that no fee, other than reimbursement of actual costs incurred and actual revenues lost by the State, shall be charged when State buildings are made available to a production company for a production. As used in this subdivision, the term "production company" has the meaning provided in G.S. 105-164.3.

(5) Administrative Analysis:

a. To study the organization, methods, and procedures of all State agencies, to formulate plans for improvements in the organization, methods, and procedures of any agency studied, and to advise and assist any agency studied in effecting improvements in its organization, methods, and procedures.

b. To report to the Governor its findings and recommendations concerning improvements in the organization, methods, and procedures of any State agency, when such improvements cannot be effected by the cooperative efforts of the Department and the agency concerned.

c. To submit to the Governor for transmittal to the General Assembly recommended legislation where such legislation is necessary to effect improvements in the organization, methods, and procedures of any State agency.

(6) State and Regional Planning:

a. To assist the Director of the Budget in reviewing the capital improvements needs and requests of all State agencies, and in preparing a coordinated biennial capital improvements budget and longer range capital improvements programs.

b. In cooperation with State agencies and other public and private agencies, to collect, analyze, and keep up-to-date a comprehensive collection of economic and social data pertinent to State planning, which shall be available to State and local governmental agencies and private agencies.

c. To coordinate and review all planning activity relative to federal government requirements for general statewide or regional comprehensive program planning.

d. To make economic analyses, studies, and projections and to advise the Governor on courses of action desirable for the maintenance of a sound economy.

e. To encourage and assist in the development of the planning process within State and local governmental agencies.

f. To assist State agencies by providing them with basic information and technical assistance needed in preparing their short-range and long-range programs.

g. To develop and maintain liaison and cooperative arrangements with federal, interstate, State, and private agencies and organizations in the interest of obtaining information and assistance with respect to State and regional planning.

h. To develop and maintain a comprehensive plan for the development of the State, representing the coordinated efforts and contributions of all participating planning groups.

i. In cooperation with the counties, the cities and towns, the federal government, multi-state commissions and private agencies and organizations, to develop a system of multi-county, regional planning districts to cover the entire State, and to assist in preparing for those districts comprehensive development plans coordinated with the comprehensive development plan for the State.

(7) Development Programs:

a. To participate in development programs, to enter into contracts, formulate plans and to do all things necessary to implement development programs in any area of the State.

b. To accept, receive and disburse, in furtherance of its functions, any funds, grants and services made available by the federal government and its agencies, any county, municipality, private or civic sources.

(8) General Services:

a. To locate, maintain and care for public buildings and grounds; to establish, locate, maintain, and care for walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers, and tablets on public grounds; and to beautify the public grounds.

b. To provide necessary and adequate cleaning and janitorial service, elevator operation service, and other operation or maintenance services for the public buildings and grounds.

c. To provide necessary night watchmen for the public buildings and grounds.

d. To make prompt repair of all public buildings and the equipment, furniture, and fixtures thereof; and to establish and operate shops for that purpose.

e. To keep in repair, out of funds appropriated for that purpose, the furniture of the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks, and other employees of the General Assembly.

f. Struck out by Session Laws 1959, c. 68, s. 3.

g. To establish and operate a mail service center that shall be used by all State agencies other than the Division of Employment Security (DES) of the Department of Commerce, and in connection therewith and in the discretion of the Secretary, to do all things necessary in connection with the maintenance of the mail service center. The Secretary shall allocate and charge against the respective departments and agencies their proportionate parts of the cost of the maintenance of the mail service center. The Secretary shall develop a plan for the efficient operation of the

center that meets the needs of State agencies, ensures timely delivery of mail, and ensures no loss of federal funds.

h. To provide necessary and adequate messenger service for the State agencies served by the Department. However, this may not be construed as preventing the employment and control of messengers by any State agency when those messengers are compensated out of the funds of the employing agency.

i. To establish and operate a central motor fleet and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.

2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor fleet.

2a. Every new motor vehicle transferred to or purchased by the Department that is designed to operate on diesel fuel shall be covered by an express manufacturer's warranty that allows the use of B-20 fuel, as defined in G.S. 143-58.4. This sub-sub-subdivision does not apply if the intended use, as determined by the Department, of the new motor vehicle requires a type of vehicle for which an express manufacturer's warranty allows the use of B-20 fuel is not available.

2b. As used in this sub-sub-subdivision, "fuel economy" and "class of comparable automobiles" have the same meaning as in Part 600 of Title 40 of the Code of Federal Regulations (July 1, 2008 Edition). As used in this sub-sub-subdivision, "passenger motor vehicle" has the same meaning as "private passenger vehicle" as defined in G.S. 20-4.01. Notwithstanding the requirements of sub-sub-subdivision 2a. of this sub-subdivision, every request for proposals for new passenger motor vehicles to be purchased by the Department shall state a preference for vehicles that have a fuel economy for the new vehicle's model year that is in the top fifteen percent (15%) of its class of comparable automobiles. The award for every new passenger motor vehicle that is purchased by the Department shall be based on the Department's evaluation of the best value for the State, taking into account fuel economy ratings and life cycle cost that reasonably consider both projected fuel costs and acquisition costs. This sub-sub-subdivision does not apply to vehicles used in law enforcement, emergency medical response, and firefighting.

2c. To participate in the energy credit banking and selling program under G.S. 143-58.4. The Division of Motor Fleet Management of the Department of Administration is eligible to receive proceeds from the Alternative Fuel Revolving Fund under G.S. 143-58.5 to purchase alternative fuel, develop alternative fuel refueling infrastructure, or purchase AFVs as defined in G.S. 143-58.4.

3. To require on a schedule determined by the Department all State agencies to transfer ownership, custody or control of any or all passenger motor vehicles within the ownership, custody or control of that agency to the Department, except those motor vehicles under the ownership, custody or control of the Highway Patrol, the State Bureau of Investigation, the Samarcand Training Academy, or the constituent institutions of The University of North Carolina which are used primarily for law-enforcement purposes.

4. To maintain, store, repair, dispose of, and replace state-owned motor vehicles under the control of the Department, using best management practices. The Department shall ensure that state-owned vehicles are replaced when most cost effective using a replacement formula developed by the Department and reviewed periodically for appropriateness of use. The Department shall report semiannually to the cochairs of the Joint Appropriations Subcommittee on General Government, on or before October 15 and March 15, on the effect of any new or revised replacement formula on the cost of operating the central motor fleet, including the amount of any savings from use of any new or revised replacement formula.

5. Upon proper requisition, proper showing of need for use on State business only, and proper showing of proof that all persons who will be driving the motor vehicle have valid drivers' licenses, to assign economically suitable transportation, either on a temporary or permanent basis, to any State employee or agency. An agency assigned a motor vehicle may not allow a person to operate that motor vehicle unless that person displays to the agency and allows the agency to copy that person's valid driver's license. Notwithstanding G.S. 20-30(6), persons or agencies requesting assignment of motor vehicles may photostat or otherwise reproduce drivers' licenses for purposes of complying with this subpart.

As used in this subpart, "economically suitable transportation" means the most cost-effective standard vehicle in the State motor fleet, unless special towing provisions are required by the agency. The Department may not assign any employee or agency a motor vehicle that is not economically suitable. The Department shall not approve requests for vehicle

assignment or reassignment when the purpose of that assignment or reassignment is to provide any employee with a newer or lower mileage vehicle because of his or her rank, management authority, or length of service or because of any non-job-related reason. The Department shall not assign "special use" vehicles, such as four-wheel drive vehicles or law enforcement vehicles, to any agency or individual except upon written justification, verified by historical data, and accepted by the Secretary. The Department may provide law enforcement vehicles only to those agencies which have statutory pursuit authority.

6. To allocate and charge against each State agency to which transportation is furnished its proportionate part of the cost of maintenance and operation of the motor fleet.

The amount allocated and charged by the Department of Administration to State agencies to which transportation is furnished shall take into account all of the following: (i) vehicle replacement cost, (ii) maintenance cost, (iii) insurance, (iv) use of telematics devices, and (v) the Department's administration cost.

7. To adopt, with the approval of the Governor, reasonable rules for the efficient and economical operation, maintenance, repair, and replacement, as limited by sub-sub-subdivision 4. of sub-subdivision i. of this subdivision, of all state-owned motor vehicles under the control of the Department, and to enforce those rules; and to adopt, with the approval of the Governor, reasonable rules regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules. The Department, with the approval of the Governor, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Department the duty of enforcing the rules adopted by the Department pursuant to this sub-sub-subdivision. Any person who violates a rule adopted by the Department and approved by the Governor is guilty of a Class 1 misdemeanor. Nothing in this sub-subdivision shall be construed as prohibiting the Department from contracting with private vendors for short-term rental motor vehicles to be used by officers and employees of State agencies for State business.

7a. To adopt with the approval of the Governor and to enforce rules and to coordinate State policy regarding (i) the permanent assignment of state-owned passenger motor vehicles and (ii) the use of and reimbursement for those vehicles for the limited commuting permitted by this subdivision. For the purpose of this subdivision 7a., "state-owned passenger motor vehicle" includes any state-owned passenger motor vehicle, whether or not owned, maintained or controlled by the Department of Administration,

and regardless of the source of the funds used to purchase it. Notwithstanding the provisions of G.S. 20-190 or any other provisions of law, all state-owned passenger motor vehicles are subject to the provisions of this subdivision 7a.; no permanent assignment shall be made and no one shall be exempt from payment of reimbursement for commuting or from the other provisions of this subdivision 7a. except as provided by this subdivision 7a. Commuting, as defined and regulated by this subdivision, is limited to those specific cases in which the Secretary has received and accepted written justification, verified by historical data. The Department shall not assign any state-owned motor vehicle that may be used for commuting other than those authorized by the procedure prescribed in this subdivision.

A State-owned passenger motor vehicle shall not be permanently assigned to an individual who is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless (i) the individual's duties are routinely related to public safety or (ii) the individual's duties are likely to expose the individual routinely to life-threatening situations. A State-owned passenger motor vehicle shall also not be permanently assigned to an agency that is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless the agency can justify to the Division of Motor Fleet Management the need for permanent assignment because of the unique use of the vehicle. Each agency, other than the Department of Transportation, that has a vehicle assigned to it or has an employee to whom a vehicle is assigned shall submit a quarterly report to the Division of Motor Fleet Management on the miles driven during the quarter by the assigned vehicle. The Division of Motor Fleet Management shall review the report to verify that each motor vehicle has been driven at the minimum allowable rate. If it has not and if the department by whom the individual to which the car is assigned is employed or the agency to which the car is assigned cannot justify the lower mileage for the quarter, the permanent assignment shall be revoked immediately. The Department of Transportation shall submit an annual report to the Division of Motor Fleet Management on the miles driven during the year by vehicles assigned to the Department or to employees of the Department. If a vehicle included in this report has not been driven at least 12,600 miles during the year, the Department of Transportation shall review the reasons for the lower mileage and decide whether to terminate the assignment. The Division of Motor Fleet Management may not revoke the assignment of a vehicle to the Department of Transportation or an employee of that

Department for failure to meet the minimum mileage requirement unless the Department of Transportation consents to the revocation.

Every individual who uses a State-owned passenger motor vehicle, pickup truck, or van to drive between the individual's official work station and his or her home, shall reimburse the State for these trips at a rate computed by the Department. This rate shall approximate the benefit derived from the use of the vehicle as prescribed by federal law. Reimbursement shall be for 20 days per month regardless of how many days the individual uses the vehicle to commute during the month. Reimbursement shall be made by payroll deduction. Funds derived from reimbursement on vehicles owned by the Motor Fleet Management Division shall be deposited to the credit of the Division; funds derived from reimbursements on vehicles initially purchased with appropriations from the Highway Fund and not owned by the Division shall be deposited in a Special Depository Account in the Department of Transportation, which shall revert to the Highway Fund; funds derived from reimbursement on all other vehicles shall be deposited in a Special Depository Account in the Department of Administration which shall revert to the General Fund. Commuting, for purposes of this sub-sub-subdivision, does not include those individuals whose office is in their home, as determined by the Department of Administration, Division of Motor Fleet Management. Also, this sub-sub-subdivision does not apply to the following vehicles: (i) clearly marked police and fire vehicles, (ii) delivery trucks with seating only for the driver, (iii) flatbed trucks, (iv) cargo carriers with over a 14,000 pound capacity, (v) school and passenger buses with over 20 person capacities, (vi) ambulances, (vii) [Repealed]. (viii) bucket trucks, (ix) cranes and derricks, (x) forklifts, (xi) cement mixers, (xii) dump trucks, (xiii) garbage trucks, (xiv) specialized utility repair trucks (except vans and pickup trucks), (xv) tractors, (xvi) unmarked law-enforcement vehicles that are used in undercover work and are operated by full-time, fully sworn law-enforcement officers whose primary duties include carrying a firearm, executing search warrants, and making arrests, and (xvii) any other vehicle exempted under Section 274(d) of the Internal Revenue Code of 1954, and Federal Internal Revenue Service regulations based thereon. The Department of Administration, Division of Motor Fleet Management, shall report quarterly to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on individuals who use State-owned passenger motor vehicles, pickup trucks, or vans

between their official work stations and their homes, who are not required to reimburse the State for these trips.

The Department of Administration shall revoke the assignment or require the Department owning the vehicle to revoke the assignment of a State-owned passenger motor vehicle, pickup truck or van to any individual who:

I. Uses the vehicle for other than official business except in accordance with the commuting rules;

II. Fails to supply required reports to the Department of Administration, or supplies incomplete reports, or supplies reports in a form unacceptable to the Department of Administration and does not cure the deficiency within 30 days of receiving a request to do so;

III. Knowingly and willfully supplies false information to the Department of Administration on applications for permanent assignments, commuting reimbursement forms, or other required reports or forms;

IV. Does not personally sign all reports on forms submitted for vehicles permanently assigned to him or her and does not cure the deficiency within 30 days of receiving a request to do so;

V. Abuses the vehicle; or

VI. Violates other rules or policy promulgated by the Department of Administration not in conflict with this act.

A new requisition shall not be honored until the Secretary of the Department of Administration is assured that the violation for which a vehicle was previously revoked will not recur.

The Department of Administration, with the approval of the Governor, may delegate, or conditionally delegate, to the respective heads of agencies which own passenger motor vehicles or to which passenger motor vehicles are permanently assigned by the Department, the duty of enforcing all or part of the rules adopted by the Department of Administration pursuant to this subdivision 7a. The Department of Administration, with the approval of the Governor, may revoke this delegation of authority.

Notwithstanding the provisions of this section and G.S. 14-247, the Department of Administration may allow the organization sanctioned by the Governor's Council on Physical Fitness to conduct the North Carolina State Games to use State trucks and vans for the State Games of North Carolina. The Department of Administration shall not charge any fees for the use of the vehicles for the State Games. The State shall incur no liability for any damages resulting from the use of vehicles under this provision. The organization that conducts the State Games

shall carry liability insurance of not less than one million dollars ($1,000,000) covering such vehicles while in its use and shall be responsible for the full cost of repairs to these vehicles if they are damaged while used for the State Games.

8. To adopt and administer rules for the control of all state-owned passenger motor vehicles and to require State agencies to keep all records and make all reports regarding motor vehicle use as the Secretary deems necessary.
9. To acquire motor vehicle liability insurance on all State-owned motor vehicles under the control of the Department.
10. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Secretary, of prison labor for use in connection with the operation of a central motor fleet and related activities.
11. To report annually to the General Assembly on any rules adopted, amended or repealed under sub-sub-subdivisions 3., 7., or 7a. of this sub-subdivision.

j. To establish and operate central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Secretary may allocate and charge against the respective agencies their proportionate part of the cost of maintenance and operation of the central services which are established, in accordance with the rules adopted by him and approved by the Governor and Council of State pursuant to paragraph k, below. Upon the establishment of central mimeographing and duplicating services, the Secretary may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the Department ownership, custody, and control of any or all mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency.

k. To require the State agencies and their officers and employees to utilize the central facilities and services which are established; and to adopt, with the approval of the Governor and Council of State, reasonable rules and procedures requiring the utilization of such central facilities and services, and governing their operation and the charges to be made for their services.

l. To provide necessary information service for visitors to the Capitol.

m. To perform such additional duties and exercise such additional powers as may be assigned to it by statute or by the Governor.

(9) Repealed by Session Laws 1989, c. 239, s. 2.

(10) Block Grants. – To establish and maintain a block grants manual that will ensure uniform administration of block grant funds. The manual shall be a comprehensive source of reference for all general and statewide administrative procedures for block grant funds. The manual shall contain the applicable procedures for: the contents of an application, which shall be as simple as possible; the awarding of or contracting with block grant funds; auditing, which shall, to the extent possible, promote the use of single audits of grantees; the ensuring of civil rights compliance by grantees; and monitoring.

(11) Energy-related matters. – To exercise those powers and perform those duties prescribed in Article 1 of Chapter 113B and Part 1 of Article 3B of Chapter 143 of the General Statutes and Parts 2 and 3 of this Article. (1957, c. 215, s. 2; c. 269, s. 1; 1959, c. 683, ss. 2-4; c. 1326; 1963, c. 1, s. 5; 1965, c. 1023; 1969, c. 1144, s. 2; 1971, c. 1097, s. 3; 1975, c. 399, ss. 1, 2; c. 879, s. 46; 1979, c. 136, s. 1; c. 544; 1979, 2nd Sess., c. 1137, s. 38; 1981, c. 300; c. 859, ss. 48-51; 1981 (Reg. Sess., 1982), c. 1282, s. 62; 1983, c. 267, s. 1; c. 717, s. 74; c. 761, ss. 58, 151, 173, 174; c. 923, s. 217; 1983 (Reg. Sess., 1984), c. 1034, s. 122; 1985, c. 479, ss. 168, 170, 174; c. 757, ss. 174, 175, 177; c. 791, s. 51; 1985 (Reg. Sess., 1986), c. 955, ss. 94, 94.1; 1987, c. 738, ss. 43-45, 47(a); c. 827, s. 220; c. 874; 1987 (Reg. Sess., 1988), c. 1086, s. 34(b); 1989, c. 58, s. 2; c. 239, s. 2; 1991, c. 542, s. 10; c. 689, s. 22; 1993, c. 539, s. 1030; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 97, s. 1; c. 402, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 10.2; 1997-412, s. 6; 1998-45, s. 1; 2000-140, s. 76(g); 2000-153, s. 2; 2001-424, s. 7.4; 2001-496, s. 8(d); 2002-126, s. 19.2; 2003-177, s. 1; 2003-284, ss. 18.1, 46.3; 2003-314, s. 1.2; 2005-276, s. 6.25(b); 2005-300, s. 1; 2005-413, s. 3; 2006-203, ss. 96, 97; 2006-217, s. 1.1; 2007-420, s. 2; 2007-446, s. 5; 2009-241, s. 1; 2009-474, s. 5; 2010-167, s. 6; 2011-145, ss. 9.19, 19.1(g), 30.12(b); 2011-401, s. 5.1; 2013-360, s. 16B.4(c); 2016-29, s. 1; 2016-119, ss. 2(a), 3(b); 2017-10, s. 4.5; 2017-57, ss. 31.3(d), 36.8(a); 2018-5, s. 16.3.)

§ 143-341.1: Repealed by Session Laws 2009-451, s. 17.3(c), effective July 1, 2009.

§ 143-341.2. Proactive management of State-owned and State-leased real property portfolio.

(a) Duties of the Department of Administration. – The Department of Administration shall have the following powers and duties:

(1) Development of comprehensive State facilities plan. – No later than December 1, 2018, and every five years thereafter, the Department of Administration shall develop and implement a plan to comprehensively manage, acquire, and dispose of the facilities and spaces required to fully

support State government operations. The plan shall do all of the following:

a. Identify the type, quantity, and location of facilities and spaces required to fully support State government operations.
b. Include an in-depth analysis of existing State-owned facilities' locations, capability, utilization, and condition.
c. Establish strategic priorities and objectives that allow the Department of Administration to manage the performance of the State's portfolio of real property in a way that maximizes the utilization of State-owned facilities and minimizes operating and maintenance costs.
d. Take into consideration the information provided to the Department in five-year real property management plans submitted by State agencies pursuant to subdivision (b)(4) of this section.
e. Provide a mechanism for allocating available facilities or space to State agencies that need it in a manner that reduces the need to acquire new space through purchase, lease, or other means.

(2) Development of performance management system. – The Department of Administration shall establish a performance management system to measure the State's achievement of the priorities and objectives set forth in plans developed pursuant to subdivision (1) of this section. The system shall set measurable goals and deadlines and shall be designed to focus on optimization and efficiency of the State's portfolio of real property. The system shall be used to report the information required by sub-sub-subdivision (7)c.1. of this section.

(3) Development of utilization measures. – No later than December 1, 2016, the Department of Administration shall develop and distribute to State agencies procedures to be used to measure the utilization of State-owned and State-leased real property. The procedures developed pursuant to this subdivision shall be all of the following:

a. Based on the percentage of usable square feet in a facility that is used for State agency functions or for storage, or on other trade industry standards of utilization measurement.
b. Adjusted as appropriate for each facility type.
c. Designed to yield an easily understandable index or ratio of facility utilization.
d. Developed in consultation with State agencies.

(4) Development and enforcement of space planning standards. – No later than December 1, 2016, the Department of Administration shall develop and distribute to State agencies space planning standards to be used to determine workspace size and to govern the use of shared space. The standards developed pursuant to this subdivision shall be based on the

Federal GSA's Office of Real Property Management Performance Measurement Division Workspace Utilization and Allocation Benchmark report unless the Department identifies another efficient industry standard upon which to base the space planning standards developed pursuant to this subdivision. The Department shall annually perform audits of a portion of State agencies to determine each agency's adherence to the space planning standards developed pursuant to this subdivision and shall send formal letters of admonishment to any agency that fails to justify, in the sole discretion of the Department, any deviation from those standards.

(5) Updating of real property inventories. – The Department of Administration shall do all of the following to ensure that the information contained in the inventories maintained pursuant to G.S. 143-341(4) is kept current:

a. Immediately incorporate information received from State agencies pursuant to subdivision (b)(1) of this section into the inventories.

b. Immediately notify State agencies when the incorporation of information into the inventories required by sub-subdivision a. of this subdivision is complete.

(6) Development of surplus property identification and disposal system. – The Department of Administration shall establish a surplus real property disposal system that limits the duration that unneeded property is retained by the State. As part of the system, the Department shall adopt rules defining surplus State-owned real property and establishing a system for continuously identifying and disposing of that property, subject to the approvals required by Chapter 146 of the General Statutes, which shall take into consideration all of the following:

a. The value each facility or parcel of land brings to the performance of the mission of the State or State agency and the fulfillment of its goals and objectives.

b. A general measure of the facility's condition calculated as a ratio of repair needs to replacement value.

c. The degree to which the property is utilized, measured in accordance with the procedures developed pursuant to subdivision (3) of this subsection.

d. The extent to which the property meets the purpose for which it was intended.

e. The extent to which the State or State agency is likely to need to continue to provide the service or function currently provided at the property.

f. Consideration of the best and most cost-effective manner in which these future needs can be met.

(7) Reporting. – The Department of Administration shall make the following reports:

a. No later than December 1, 2018, and every five years thereafter, the Department shall report the following to the Joint Legislative Commission on Governmental Operations, to the Fiscal Research Division of the General Assembly, and to the Program Evaluation Division of the General Assembly:
   1. The plan developed pursuant to subdivision (1) of this subsection.
   2. A summary of the performance measurement procedures developed pursuant to subdivision (2) of this subsection.

b. If any State agency fails to submit the information required by subdivision (b)(1) of this section, the Department shall report the failure to the chairs of the Joint Legislative Commission on Governmental Operations and to the chairs of the Joint Legislative Program Evaluation Oversight Committee within 30 days.

c. No later than December 1, 2019, and each year thereafter, the Department shall report to the Joint Legislative Commission on Governmental Operations, to the Fiscal Research Division of the General Assembly, and to the Program Evaluation Division of the General Assembly on the State's portfolio of real property. This report shall include at least the following information:
   1. The status of achieving the goals and objectives set forth in the most recent plan developed pursuant to subdivision (1) of this section.
   2. Trends in the inventory of leased and owned buildings and real property, including changes in value, square footage, and operation and maintenance costs.
   3. Trends in the inventory of State-owned land, including changes in acreage and value.
   4. Allocation of leased and owned space by facility type, by agency, and by county.
   5. Benchmarks for comparable private sector leases across the regions of the State for both rural and urban locations, as appropriate.
   6. An analysis of utilization targets and a list of owned and leased real property identified as unused or underutilized.
   7. A list of the following information for the period beginning after submission of the most recent report pursuant to this sub-subdivision:
      I. State-owned properties identified as unused or underutilized.
      II. State-owned properties sold.
      III. State-owned properties in the process of being disposed of.
      IV. Properties reallocated between State agencies.

(b) Duties of Other State Agencies. – Each State agency shall have the following powers and duties:

(1) Collection and reporting of information on property use. – No later than July 1, 2018, and each year thereafter, each State agency shall submit to the Department of Administration all of the information described in G.S. 143-341(4)b.1. through 15. for each building, facility, or space in any building or facility that the agency occupies. This shall be in addition to any reports required pursuant to G.S. 143-341(4)h.

(2) Verification of information in real property inventories. – Within 60 days of receiving notice from the Department of Administration pursuant to sub-subdivision (a)(5)b. of this section, each State agency shall report to the Department one of the following, as applicable:

a. That the information submitted to the Department of Administration pursuant to subdivision (1) of this subsection is accurately reflected in the real property inventories.

b. A list of discrepancies between the information submitted to the Department of Administration pursuant to subdivision (1) of this subsection and the corresponding information in the real property inventories.

(3) Auditor may audit submissions. – The State Auditor may audit submissions made to the Department of Administration pursuant to subdivision (1) of this subsection and may recover any costs incurred in performing such an audit from the State Land Fund, in accordance with G.S. 146-72.

(4) Development of five-year property management plan. – No later than July 1, 2018, and every five years thereafter, each State agency shall develop a five-year real property management plan and shall submit the plan to the Department of Administration for review. Each plan shall do all of the following:

a. Identify the type, quantity, and location of facilities and spaces required to fully support agency operations.

b. Include an in-depth analysis of existing facilities' locations, capabilities, utilization, and condition.

c. Establish agency-specific strategic priorities and objectives for each asset under its control.

(c) Exception for Property Not Subject to Department of Administration Oversight. – None of the requirements of this section shall apply to facilities that are not subject to the real property oversight of the Department of Administration under G.S. 143-341. A State agency that is entirely exempt from the real property oversight of the Department of Administration shall not be required to submit any information pursuant to subsection (b) of this section. A State agency that is partially exempt from the real property oversight of the Department of Administration shall submit information pursuant to subsection (b) of

this section for those properties that are subject to the real property oversight of the Department of Administration. (2016-119, s. 1(a); 2017-102, s. 22.)

§ 143-342. Rules governing allocation of property and space.

The Governor, with the approval of the Council of State, shall adopt such reasonable rules, regulations, and procedures as he deems necessary concerning the allocation and reallocation by the Department of land, buildings, and space within buildings to and among the several State agencies. (1957, c. 269, s. 1.)

§ 143-342.1. State-owned office space; fees for use by self-supporting agencies.

The Department shall determine equitable fees for the use of State owned and operated office space, and it shall assess the Department of State Treasurer, the Department of Insurance, and all self-supporting agencies using any of this office space for payment of these fees. For the purposes of this section, self-supporting agencies are those agencies designated by the Director of the Budget as being primarily funded from sources other than State appropriations. Fees assessed under this section shall be paid to the General Fund. (1977, 2nd Sess., c. 1219, s. 48; 1983, c. 717, ss. 76, 77; 1997-443, s. 27.4.)

§ 143-343. General Services Division.

If the Governor and Council of State at any time determine, pursuant to G.S. 129-11, that the General Services Division should be made a part of the Department of Administration, the powers and duties given the Director of General Services by statute shall thereafter be deemed a part of the statutory powers and duties of the Director of Administration, and the powers and duties given the General Services Division by statute shall thereafter be deemed a part of the statutory powers and duties of the Department of Administration. The head of the General Services Division shall thereafter be appointed and removed, and his salary shall be fixed, in the same manner prescribed for other division heads. Upon the accomplishment of such transfer, the General Services Division shall thereafter be in all respects a part of the Department of Administration and subject to the supervision and control of the Director of Administration. (1957, c. 269, s. 1.)

§ 143-344. Transfer of functions, property, records, etc.

(a) Repealed by Session Laws 1979, 2nd Session, c. 1137, s. 39.

(b) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Division of Purchase and Contract are hereby transferred to the Department of Administration, effective July 1, 1957. All statutory references to the "Division of Purchase and Contract" or the "Purchase and Contract Division" shall be deemed to refer to the Department of Administration.

(c) The transfers directed by subsections (a) and (b) above, shall be made under the supervision of the Governor, and he shall be the final arbiter of all differences or disputes arising incident to such transfers.

(d) Repealed by Session Laws 2006-203, s. 98, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. (1957, c. 269, s. 1; 1979, 2nd Sess., c. 1137, s. 39; 2006-203, s. 98.)

§ 143-345. Saving clause.

No transfer of functions to the Department of Administration provided for in this Article shall affect any action, suit, proceeding, prosecution, contract, lease, or other business transaction involving such a function which was initiated, undertaken, or entered into prior to or pending the time of the transfer, except that the Department shall be substituted for the agency from which the function was transferred, and so far as practicable the procedure provided for in this Article shall be employed in completing or disposing of the matter. (1957, c. 269, s. 1.)

§ 143-345.1. Rules and regulations.

The Governor, with the approval of the Council of State, shall adopt reasonable rules and regulations governing the use, care, protection, and maintenance of the public buildings and grounds (other than parking). Any person who violates a rule or regulation adopted by the Governor with the approval of the Council of State is guilty of a Class 1 misdemeanor. (1957, c. 215, s. 2; 1971, c. 1097, s. 4; 1993, c. 539, s. 1031; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 143-345.2. Disorderly conduct in and injury to public buildings and grounds.

Any person who commits a nuisance or conducts himself in a disorderly manner in or around any public building or grounds, or defaces or injures any public building or grounds, is guilty of a Class 1 misdemeanor. (1957, c. 215, s. 2; 1971, c. 1097, s. 4; 1993, c. 539, s. 1032; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 143-345.3. Construction and repair of public buildings; use of Contingency and Emergency Fund.

It is lawful to resort to the Contingency and Emergency Fund provided in the Appropriation Act for financial aid in the construction, alteration, renovation, or repair of any public building, when in the opinion of the Governor and Council of State it is necessary to construct, alter, renovate, or repair such building. (1957, c. 215, s. 2; 1971, c. 1097, s. 4.)

§ 143-345.4. Moore and Nash squares and other public lots.

The governing body of the City of Raleigh is authorized, at its own expense, to grade, to lay out in walks, to plant with trees, shrubbery, and flowers and otherwise to adorn Moore and Nash squares and to that end has the general charge and management of these squares. The governing body may manage and improve in like manner any of the vacant lots within the city limits which belong to the State and which are not otherwise appropriated, subject to the approval of the Governor and Council of State. The governing body may not prevent the free access of the public to such squares or lots during reasonable hours.

Whenever, in the opinion of the Secretary, the governing body is not properly keeping the squares or lots which it has taken in charge under this section, the Secretary shall call the matter to the attention of the governing body, and if the governing body then fails for a period of 60 days to begin to take proper care of the squares or lots, the Governor and Council of State may repossess them and proceed to manage and control them for the preservation of such property.

In the event that the use of these squares and lots is at any time needed by the State, the license of the City of Raleigh to control and manage them shall terminate six months after notice given by the Governor and Council of State to the governing body of the city, and possession shall be promptly surrendered to the State. (1957, c. 215, s. 2; 1971, c. 1097, s. 4; 1975, c. 879, s. 46.)

§ 143-345.5. Program for location and construction of future public buildings.

The Department of Administration is hereby authorized, empowered, and directed to formulate a long range building policy program and shall cooperate with the governing board of the City of Raleigh in zoning property adjacent to or in the vicinity of the Capitol Square when and if the City of Raleigh desires to zone said property. If the Department of Administration is of opinion that property adjacent to or in the vicinity of the Capitol Square will, in the future, be needed for State building purposes, it shall so advise the governing body of the City of Raleigh. At such times as the governing body of the City of Raleigh shall rezone property adjacent to or within four blocks of the State Capitol, it shall request an opinion from the Department of Administration as to whether the Department finds a future need for such property for State building purposes. In the event that the governing board of the City of Raleigh is informed by the Department of Administration that any property herein covered be needed for building purposes by the State in the future, the governing body of the City of Raleigh shall give full consideration to such opinion of the Department before making any rezoning order. Notwithstanding any other provision of law, no local zoning ordinance shall apply to any State-owned building built or to be built on any State-owned land within six blocks of the State Capitol without the consent of the Council of State. (1951, c. 1132; 1957, c. 215, s. 2; 1971, c. 1097, s. 4; 2007-482, s. 1.)

§ 143-345.6: Recodified as § 147-54.3 by Session Laws 1991, c. 689, s. 181(b).

§ 143-345.7. Repair and reconstruction of the Western Residence of the Governor.

If the Western Residence of the Governor in Asheville is damaged or destroyed by fire or other disaster, it shall be repaired or reconstructed. Funds from the Contingency and Emergency Fund may be used for this purpose with the approval of the Director of the Budget if insurance coverage on the property should be inadequate. Insurance on the Western Governor's mansion shall be as adequate as possible and used in case of a fire or devastation of the mansion for the purpose of rebuilding or repairing the mansion. (1983, c. 602.)

§ 143-345.8. North Carolina Purchase Directory.

The Division of Purchase and Contract of the Department of Administration shall electronically advertise information on contract and purchase requirements from the Division of Purchase and Contract, the Office of State Construction, the Department of Transportation, and other agencies of State government which make direct purchases from private suppliers. The Division shall coordinate with the other departments of State government to ensure that the electronic advertisement is meeting the goals of disseminating as widely as possible and in a timely manner information on those State contracts which are open for bids. A printed copy of any information that is electronically advertised shall be made available to any party upon request. The Secretary of the Department of Administration may adopt rules governing the routine and procedures to be followed in advertising information on contract and purchase opportunities, what contracts and purchases will be advertised, and under what conditions exceptions to the electronic advertisement may occur. (1983, c. 839; 1999-417, s. 1.)

§ 143-345.9. Official "Prisoner of War/Missing in Action" flag to be flown over the State Capitol.

The Department of Administration is authorized to fly the official "Prisoner of War/Missing in Action (POW/MIA)" flag over the State Capitol on Veterans Day, Memorial Day, Armed Forces Day, and all other national holidays honoring veterans. (1989, c. 613.)

§ 143-345.10. Parking of maintenance vehicles.

Maintenance vehicles of the Department of Administration may park without charge at any metered parking space located on the street blocks bordering the State's Capitol Square when performing work at or on the State's Capitol Square. No maintenance vehicle shall be parked upon the State's Capitol Square in a location that obstructs the view of or access to any monument on the Square, unless the vehicle itself is needed to perform some maintenance function or duty required by this Article. (2009-262, s. 1.)

§ 143-345.11. Secretary's approval of plans for State buildings required.

(a) No agency or other person authorized or directed by law to select a plan and erect a building for the use of the State or any State institution shall receive and approve of the plan until it is submitted to and approved by the Secretary as to State construction standards and at a minimum as to the safety of the proposed building from fire, including the property's occupants or contents.

(b) Any plan submitted to the Commissioner of Insurance and approved prior to October 1, 2009 shall be deemed to have been approved jointly by the Commissioner of Insurance and the Secretary.

(c) Except as provided in subsection (a) of this section, nothing in this section shall be construed to abrogate the authority of the Commissioner of Insurance under G.S. 58-31-40 or any other provision of law.

(d) The Secretary shall provide quarterly written reports on plans reviewed and approved under this section to the Commissioner of Insurance. The reports shall be made in a form approved by the Commissioner of Insurance and the Secretary. (2009-474, s. 2.)

§ 143-345.12. Reserved for future codification purposes.

Part 2. Stocks of Coal and Petroleum Fuels.

§ 143-345.13. Reporting of stocks of coal and petroleum fuels.

The Department of Administration may, with the prior express approval of the Energy Policy Council and the Governor, require that all coal and petroleum suppliers in North Carolina supplying coal, motor gasoline, middle distillates, residual oils, and propane for resale within the State, file with the Department of Administration, on forms prepared by the Department, accurate reports as to the stocks of coal and petroleum products and storage capacities maintained by the supplier, including the supplier's current inventory and stock of coal, motor gasoline, middle distillates, residual oils and propane, the expected time such supplies will last under ordinary distribution demand and the schedule for receiving additional or replacement stocks. The reports and the information contained therein shall be proprietary information available only to regular employees of the Department of Administration, except that aggregate tables or schedules consolidating information from the reports may be released if they do not reveal individual report data for any named supplier. It is further the intent of this section that no information shall be required from coal and petroleum suppliers, that is, at the time the reports are requested, already on file with any agency, commission, or department of State government.

It is the intent of this section that the reports be filed only at such times as the Energy Policy Council and the Governor determine that an energy crisis as defined in G.S. 113B-20 exists or may be imminent.

If any petroleum or coal supplier fails to file the accurate reports as may be required by this section for more than 10 days after the date on which any such report is due, the Secretary of Administration is authorized and empowered to petition the district court, Division of the General Court of Justice, in the county in which the principal office or place of business of the supplier is located, for a mandatory injunction compelling the supplier to file the report. (2000-140, s. 76(i).)

§ 143-345.14. Authority to collect data; administration and enforcement; confidentiality.

(a) The Department of Administration shall have the authority to obtain from prime suppliers of petroleum products specific petroleum supply data concerning State-level sales and projected sales by month for North Carolina that is currently reported on the federal Form EIA-782C, "Monthly Report of Petroleum Products Sold in States for Consumption" or its successor, at such time that these data requirements are not being met through any federal reporting procedure. The petroleum products subject to this reporting requirement are: finished gasoline (all grades), #1 distillate, kerosene, #2 fuel oil, #2 diesel fuel, aviation gasoline (finished), kerosene-type jet fuel, naphtha-type jet fuel, #4 fuel, residual fuel oil (less than or equal to one percent sulfur), residual fuel oil (greater than one percent sulfur), propane (consumer grade). The authority to collect energy data from suppliers of petroleum products into North Carolina, that is granted to the Department of Administration in this section, shall be limited to the petroleum volume data that is reported on the Form EIA-782C or its successor.

(b) "Prime suppliers" shall be defined as those suppliers which make the first sale of the named product into North Carolina, excluding jobbers, distributors, and retail dealers.

(c) The Department of Administration shall adopt rules and regulations for the administration of this data collection program and the Attorney General and the law enforcement authorities of the State and its political subdivisions shall enforce the provisions of this section and all orders, rules, and regulations promulgated thereunder. Any enforcement action may be brought upon the relation of the Department of Administration or the direction of the Attorney General.

(d) Any person or corporation who willfully refuses to provide the petroleum supply data in accordance with the conditions described herein, or who knowingly or willfully submits false information in any reports required herein or refuses to file any reports shall be guilty of a Class 1 misdemeanor.

(e) Any civil action brought to enforce the provisions of this section shall be brought in the Superior Court of Wake County or in the superior court of the county in which the acts or practices constituting a violation occurred or are occurring.

(f) The Department of Administration shall keep confidential any individually identifiable energy information to the extent necessary to comply with the confidentiality requirements of the reporting agency, and any such information shall not be subject to the public disclosure requirements of G.S. 132-6. "Individually identifiable energy information" shall be defined as any individual record or portion of a record or aggregated data containing energy information about a person or persons obtained from any source, the disclosure of which could reasonably be expected to reveal information about a specific person. (2000-140, s. 76(i).)

§ 143-345.15. Reserved for future codification purposes.

Part 3. Energy Loan Fund.

§ 143-345.16: Recodified as G.S. 143B-437.14 by Session Laws 2010-96, s. 21, effective July 20, 2010.

§ 143-345.17: Recodified as G.S. 143B-437.15 by Session Laws 2010-96, s. 21, effective July 20, 2010.

§ 143-345.18: Recodified as G.S. 143B-437.16 by Session Laws 2010-96, s. 21, effective July 20, 2010.

Article 36A.

State Employee Suggestion Program (NC-Thinks).

§ 143-345.20. Definitions.

The following definitions apply in this Article:

(1) Baseline reversion. – The two-year historical average of reversions by a State department, agency, or institution.

(1a) NC-Thinks. – The State Employee Suggestion Program.

(2) Repealed by Session Laws 2001-424, s. 7.2(b), effective July 1, 2001.

(2a) Participating agency. – Any State department, agency, or institution, or any local school administrative unit that employs State employees eligible to participate in NC-Thinks. The term includes the North Carolina Community Colleges System, The University of North Carolina and its constituent institutions, and charter schools. The term does not include federal or local government agencies.

(2b) Recodified as G.S. 143-345.20(1a).

(3) State employee. – Any of the following:

a. A person who is a contributing member of the Teachers' and State Employees' Retirement System of North Carolina, the Consolidated Judicial Retirement System of North Carolina, or the Optional Program.

b. A person who receives wages from the State as a part-time or temporary worker, but is not otherwise a contributing member of one of the retirement programs listed in sub-subdivision a. of this subdivision. (1997-513, s. 2; 2001-424, s. 7.2(b); 2010-97, s. 11.)

§ 143-345.21. State employee suggestion program.

(a) A State employee or team of State employees may receive an incentive bonus or bonuses in reward for suggestions or innovations resulting in monetary savings to the State, increased revenues to the State, or improved quality of services delivered to the public.

(b) Repealed by Session Laws 2001-424, s. 7.2(c), effective July 1, 2001.

(b1) The amount of savings generated by suggestions and innovations shall be determined after a 12-month period of implementation or, if applicable, no more than 90 days after the one-time savings is determined or the suggestion is approved. No suggestion payments shall be paid prior to the expiration of 12 months, or 90 days after the final

one-time savings is determined or the suggestion is approved, and payment may be delayed further as reasonably required to ensure that a complete cost implementation cycle is evaluated fully.

(c) Any savings are to be calculated using the actual expenditures for a program, activity, or service compared to the budgeted amount for the same, if an amount has been budgeted for the program, activity, or service. The savings calculation shall include the amount of any reversions in excess of the baseline reversion. Any savings realized through NC-Thinks shall be weighed against continued service to the public and the assurance that there is not a negative impact on State programs.

(d) If a suggestion or innovation affects a program, activity, or service for which no separate budgeted amount has been made, the State Coordinator, in conjunction with the agency evaluator or agency fiscal officer, or both for that suggestion or innovation, shall determine the budgetary impact of the suggestion or innovation.

(e) No monetary award or leave can be awarded through NC-Thinks where specifically disallowed by the terms of the funding source.

(f) The Office of State Human Resources shall establish the NC-Thinks reserve fund in which all savings for all suggestions shall be deposited as earned. Each participating agency shall be responsible for transferring savings to the NC-Thinks reserve fund. The funds may be encumbered as needed to ensure payment to the General Fund, to the suggester, and for distribution as required by G.S. 143-345.22. The Office of State Human Resources shall provide the NC-Thinks reserve fund summary at the close of each fiscal year to the Office of State Budget and Management and to the participating agencies. The Office of State Budget and Management shall have oversight responsibility for ensuring that the required reversions and transfers are made to the General Fund, and that all encumbered funds are accounted for and paid as required by law.

(g) No distribution of suggester awards shall occur until reversion requirements to the General Fund are met and distributions as required by G.S. 143-345.22 are satisfied and verified by the Office of State Budget and Management. When all of the requirements of G.S. 143-345.22 are fulfilled, the Department of Administration shall transfer to the suggester's agency funds required to award the suggester. The suggester's agency shall make the suggestion award and ensure that all taxes and withholding requirements are met.

(h) Implementation costs may be prorated over a maximum of three years for suggestions or innovations that are capital intensive, involve leading-edge technology, or involve unconventional processes that require longer than 12 months for implementation. The amount of the average annual savings minus the average annual implementation cost shall be used as the basis for the agency to recommend a suggester award. The State Suggestion Review Committee shall consult the Office of State Budget and Management to make the final award determination in these cases.

(i) There is established in the Office of State Human Resources a nonreverting fund to be administered by the Office of State Human Resources for the training and education of permanent State employees to address specific mission critical needs and objectives. Funds shall be credited from NC-Thinks to the fund as provided by this Article. (1997-513, s. 2; 1998-181, s. 5; 2001-424, s. 7.2(c); 2010-97, s. 11; 2011-224, s. 1; 2013-382, s. 9.1(c).)

§ 143-345.22. Allocation of suggestion program funds; nonmonetary recognition.

(a) If a State employee's suggestion or innovation results in a monetary savings or increased revenue to the State, the funds saved or increased shall be distributed according to the following scale or subject to guidelines as set forth by the funding source:

(1) Twenty percent (20%) of the annualized savings or increased revenues, up to a maximum of twenty thousand dollars ($20,000) for any one State employee, to constitute gainsharing. If a team of State employees is the suggester, the bonus provided in this subdivision shall be divided equally among the team members, except that no team member shall receive in excess of twenty thousand dollars ($20,000), nor shall the team receive an aggregate amount in excess of one hundred thousand dollars ($100,000). These funds shall not revert.

(2) Thirty percent (30%) allocated as follows:

a. Fifteen percent (15%) to the implementing agency for nonrecurring budget items to be used (i) by the implementing agency to provide equipment, supplies, training, and limited but appropriate recognition for the division, section, or group responsible for the implementation of the cost-saving measure and (ii) to meet other similar needs within the agency.

b. Ten percent (10%) to the Office of State Human Resources for augmenting funding for the management and administration of NC-Thinks. These funds shall not revert.

c. Five percent (5%) to the State employee education and training fund administered by the Office of State Human Resources under G.S. 143-342.21(i). These funds shall not revert when nonreversion is otherwise allowed by law or policy.

(3) The remainder to the General Fund for nonrecurring budget items when allowed by law or policy.

(a1) Of the pool of funds identified in subsection (a) of this section, only the General Fund appropriations shall be subject to reversion, except during declared budget emergencies. Under nonemergency budget conditions, NC-Thinks funds arising from savings at The University of North Carolina, the North Carolina Community Colleges System, the Highway Trust Fund, enterprise funds, and receipt-supported organizations shall be exempt from the General Fund reversion requirements.

(b) The budget of a State agency shall not be reduced in the following fiscal year by an amount similar to the monetary savings or increased revenues realized by NC-Thinks. The agency budget shall be reduced in subsequent years only if structural or organizational changes are made that warrant the reductions, including the transfer of responsibility for an activity or service to another agency or the elimination of some function of State government.

(c) If a suggestion or innovation results in improved quality of services to the public or to other State agencies, departments, and institutions, but not in monetary savings to the

State, the suggester shall receive a nonmonetary award in the form of a certificate, leave with pay, or other similar recognition. (1997-513, s. 2; 1998-181, s. 6; 2001-424, s. 7.2(d); 2010-97, s. 11; 2011-224, s. 2; 2013-382, s. 9.1(c).)

§ 143-345.23. Suggestion and review process; role of agency coordinator and agency evaluator.

(a) The process for a State employee or team of State employees to submit a cost-saving or revenue-increasing proposal shall begin with the employee or team of employees submitting the suggestion or innovation to an agency coordinator. The agency coordinator, in conjunction with an agency evaluator, shall review the suggestion or innovation for submission to the State Review Committee established in G.S. 143-345.24.

(b) An agency coordinator shall be appointed by the head of each participating agency to serve as liaison between the agency, the suggester, the agency evaluator, and the NC-Thinks office. The duties of the agency coordinator shall include:

(1) Serving as an information source and maintaining sufficient forms necessary to submit suggestions.
(2) Presenting, in conjunction with the agency evaluator, the recommendation for an award to the State Suggestion Review Committee.
(3) Working in conjunction with the agency evaluator to process a particular suggestion or innovation within 180 days, except when there are extenuating circumstances.

An agency may have more than one coordinator if required to provide sufficient services to State employees.

(c) An agency evaluator shall be designated by the management of the implementing agency to evaluate one or more suggestions. The duties of an agency evaluator shall include:

(1) Receiving from the agency coordinator and reviewing within 90 days, when possible, the feasibility and effectiveness of cost-saving or revenue-increasing measures suggested by State employees.
(2) Being knowledgeable of the subject program, activity, or service.
(3) Determining, in conjunction with the agency fiscal officer, the budgetary impact of a suggestion or innovation.
(4) Judging impartially both the positive and negative effects of a suggestion or innovation on the current functions of the subject program, activity, or service.

(d) The Director of the Office of State Human Resources shall be responsible for general oversight and coordination of NC-Thinks. The State coordinator shall be an employee of the Office of State Human Resources. The State coordinator shall be responsible for day-to-day NC-Thinks program management and administration of the technical aspects of the program. The State coordinator shall be an ex officio voting member of the State Suggestion Review Committee. (1997-513, s. 2; 1998-181, s. 7; 2001-424, s. 7.2(e); 2010-97, s. 11; 2011-224, s. 3; 2013-382, s. 9.1(c).)

§ 143-345.24. State Suggestion Review Committee.

(a) The State Suggestion Review Committee shall consist of nine members, as follows:

(1) The State Coordinator.
(2) A representative of the Office of State Budget and Management.
(3) A representative of the Office of State Human Resources.
(4) A representative of The University of North Carolina.
(5) A representative of the Department of Justice.
(6) A representative of the Department of Labor.
(7) One State employee appointed by the Speaker of the House of Representatives.
(8) One State employee appointed by the President Pro Tempore of the Senate.
(9) One State employee appointed by the Governor upon the recommendation of the State Employees Association of North Carolina, Inc.

(b) The duties of the State Suggestion Review Committee shall include:

(1) Receiving from the various agency coordinators recommendations on suggestions and innovations.
(2) Determining the impact of a suggestion or innovation on State government services by judging the monetary savings, increased revenues, or improved quality of services generated by a suggestion or innovation.
(3) Ensuring that the State employee incentive bonus process does not result in a negative impact on services provided to taxpayers by State government.

(c) All administrative, management, clerical, and other functions and services required by the State Review Committee shall be supplied by the Office of State Human Resources. The Office of State Human Resources and the State Review Committee shall report annually to the Joint Legislative Commission on Governmental Operations on the administration of NC-Thinks. (1997-513, s. 2; 2000-140, s. 93.1(a); 2001-424, ss. 7.2(f), 12.2(b); 2010-97, s. 11; 2011-224, s. 4; 2013-382, s. 9.1(c).)

§ 143-345.25. Innovations deemed property of the State; effect of decisions regarding bonuses.

(a) All suggestions or innovations submitted by State employees pursuant to this Article are the property of the State, and all related intellectual property rights shall be assigned to the State. By January 1, 2002, the Office of State Human Resources shall establish a policy regarding intellectual property rights that arise from NC-Thinks.

(b) Decisions regarding the award of bonuses by the agency coordinator and the State Suggestion Review Committee are final and are not subject to review under the

contested case procedures of Chapter 150B of the General Statutes. (1997-513, s. 2; 2001-424, s. 7.2(g); 2010-97, s. 11; 2013-382, s. 9.1(c).)

Article 37.

Salt Marsh Mosquito Control.

§ 143-346: Repealed by Session Laws 1973, c. 476, s. 183.

Article 37.

Salt Marsh Mosquito Control.

§ 143-347: Repealed by Session Laws 1995, c. 123, s. 1.

Article 37A.

Marine Science Council.

§§ 143-347.1 through 143-347.9: Repealed by Session Laws 1975, c. 879, s. 33.

Article 37B.

Marine Resources Center Administrative Board.

§§ 143-347.10 through 143-347.14: Repealed by Session Laws 1985, c. 202, s. 4.

Article 38.

Water Resources.

§§ 143-348 through 143-349. Repealed by Session Laws 1967, c. 892, s. 2.

§ 143-350. Definitions.

As used in this Article:

(1) "Commission" means the Environmental Management Commission.

(2) "Department" means the Department of Environmental Quality.

(3) "Essential water use" means the use of water necessary for firefighting, health, and safety; water needed to sustain human and animal life; and water necessary to satisfy federal, State, and local laws for the protection of public health, safety, welfare, the environment, and natural resources; and a minimum amount of water necessary to support and sustain the economy of the State, region, or area.

(3a) "Gray water" means water that is discharged as waste from bathtubs, showers, wash basins, and clothes washers. "Gray water" does not include water that is discharged from toilets or kitchen sinks.

(3b) "Gray water system" means a water reuse system that is contained within a single family residence or multiunit residential or commercial building that filters gray water or captured rain water and reuses it for nonpotable purposes such as toilet flushing and irrigation.

(4) "Large community water system" means a community water system, as defined in G.S. 130A-313(10), that regularly serves 1,000 or more service connections or 3,000 or more individuals.

(4a) "Pretreatment mixing basin" means a basin created from lands that do not include waters of the State and in which raw water is mixed with reclaimed water before it is treated to the standards to make it suitable for potable water supply.

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

(6) "U.S. Drought Monitor" means the national drought map that designates areas of drought using the following categories D0-Abnormally Dry, D1-Moderate, D2-Severe, D3-Extreme, and D4-Exceptional. The U.S. Drought Monitor is developed and maintained by the Joint Agricultural Weather Facility, the Climate Prediction Center, the National Climatic Data Center, and the National Drought Mitigation Center with input from the United States Geological Survey, the National Water and Climate Center, the Climate Diagnostics Center, the National Weather Service, state climatologists, and state water resource agencies.

(7) "Water shortage emergency" means a water shortage resulting from prolonged drought, contamination of the water supply, damage to water infrastructure, or other unforeseen causes that presents an imminent threat to public health, safety, and welfare or to the environment. (1959, c. 779, s. 1; 1967, c. 892, s. 12; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(117); 1989 (Reg. Sess., 1990), c. 1004, s. 18; c. 1024, s. 34; 1991, c. 342, s. 15(a); 1997-443, s. 11A.119(a); 2008-143, s. 3; 2010-143, s. 1; 2011-394, s. 12(a); 2014-113, s. 2; 2015-241, s. 14.30(u).)

§ 143-351. Repealed by Session Laws 1967, c. 892, s. 2.

§ 143-352. Purpose of Article.

The purpose of this Article is to create a State agency to coordinate the State's water resource activities; to devise plans and policies and to perform the research and administrative functions necessary for a more beneficial use of the water resources of the State, in order to insure improvements in the methods of conserving, developing and using those resources. (1959, c. 779, s. 1.)

§ 143-353. Repealed by Session Laws 1967, c. 892, s. 2.

§ 143-354. Ordinary powers and duties of the Commission.

(a) Powers and Duties in General. – Except as otherwise specified in this Article, the powers and duties of the Commission shall be as follows:

(1) The Commission shall carry out a program of planning and education concerning the most beneficial long-range conservation and use of the water resources of the State. It shall investigate the long-range needs of counties and municipalities and other local governments for water supply storage available in federal projects.

(2) The Commission shall advise the Governor as to how the State's present water research activities might be coordinated.

(3) Repealed by Session Laws 2008-143, s. 4, effective July 31, 2008.

(4) The Commission is authorized to call upon the Attorney General for such legal advice as is necessary to the functioning of the Commission.

(5) Recognizing the complexity and difficulties attendant upon the recommendation of the General Assembly of fair and beneficial legislation affecting the use and conservation of water, the Commission shall solicit from the various water interests of the State their suggestions thereon.

(6) The Commission may hold public hearings for the purpose of obtaining evidence and information and permitting discussion relative to water resources legislation and shall have the power to subpoena witnesses therefor.

(7) All recommendations for proposed legislation made by the Commission shall be available to the public.

(8) The Commission shall adopt such rules and regulations as may be necessary to carry out the purposes of this Article.

(9) Any member of the Commission or any person authorized by it, shall have the right to enter upon any private or public lands or waters for the purpose of making investigations and studies reasonably necessary in the gathering of facts concerning streams and watersheds, subject to responsibility for any damage done to property entered.

(10) The Commission is authorized to provide to federal agencies the required assurances, subject to availability of appropriations by the General Assembly or applicable funds or assurances from local governments, of nonfederal cooperation for water supply storage and other congressionally authorized purposes in federal projects.

(11) The Commission is authorized to assign or transfer to any county or municipality or other local government having a need for water supply storage in federal projects any interest held by the State in such storage, upon the assumption of repayment obligation therefor, or compensation to the State, by such local government. The Commission shall also have the authority to reassign or transfer interests in such storage held by local governments, if indicated by the investigation of needs made pursuant to

subdivision (1) of subsection (a) of this section, subject to equitable adjustment of financial responsibility.

(b) through (e). Repealed by Session Laws 2008-143, s. 4, effective July 31, 2008. (1959, c. 779, s. 1; 1967, c. 1071, ss. 1, 2; 1973, c. 1262, s. 23; 1991, c. 342, s. 15(b); 1993, c. 539, s. 1033; 1994, Ex. Sess., c. 24, s. 14(c); 2008-143, s. 4.)

§ 143-355. Powers and duties of the Department.

(a) Repealed by Session Laws 1989, c. 603, s. 1.

(b) Functions to Be Performed. – The Department shall:

(1) Request the North Carolina Congressional Delegation to apply to the Congress of the United States whenever deemed necessary for appropriations for protecting and improving any harbor or waterway in the State and for accomplishing needed flood control, shore-erosion prevention, and water-resources development for water supply, water quality control, and other purposes.

(2) Initiate, plan, and execute a long-range program for the preservation, development and improvement of rivers, harbors, and inland ports, and to promote the public interest therein.

(3) Prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the preservation and improvement of rivers, harbors, dredging of small inlets, provision for safe harbor facilities, and public tidewaters of the State.

(4) Make engineering studies, hydraulic computations, hydrographic surveys, and reports regarding shore-erosion projects, dams, reservoirs, and river-channel improvements; to develop, for budget and planning purposes, estimates of the costs of proposed new projects; to prepare bidding documents, plans, and specifications for harbor, coastal, and river projects, and to inspect materials, workmanship, and practices of contractors to assure compliance with plans and specifications.

(5) Cooperate with the United States Army Corps of Engineers in causing to be removed any wrecked, sunken or abandoned vessel or unauthorized obstructions and encroachments in public harbors, channels, waterways, and tidewaters of the State.

(6) Cooperate with the United States Coast Guard in marking out and establishing harbor lines and in placing buoys and structures for marking navigable channels.

(7) Cooperate with federal and interstate agencies in planning and developing water-resource projects for navigation, flood control, hurricane protection, shore-erosion prevention, and other purposes.

(8) Provide professional advice to public and private agencies, and to citizens of the State, on matters relating to tidewater development, river works, and watershed development.

(9) Discuss with federal, State, and municipal officials and other interested persons a program of development of rivers, harbors, and related resources.

(10) Make investigations and render reports requested by the Governor and the General Assembly.

(11) Participate in activity of the National Rivers and Harbors Congress, the American Shore and Beach Preservation Association, the American Watershed Council, the American Water Works Association, the American Society of Civil Engineers, the Council of State Governments, the Conservation Foundation, and other national agencies concerned with conservation and development of water resources.

(12) Prepare and maintain climatological and water-resources records and files as a source of information easily accessible to the citizens of the State and to the public generally.

(13) Formulate and administer a program of dune rebuilding, hurricane protection, and shore-erosion prevention.

(14) Include in the biennial budget the cost of performing the additional functions indicated above.

(15) Initiate, plan, study, and execute a long-range floodplain management program for the promotion of health, safety, and welfare of the public. In carrying out the purposes of this subsection, the primary responsibility of floodplain management rests with the local levels of government and it is, therefore, the policy of this State and of this Department to provide guidance, coordination, and other means of assistance, along with the other agencies of this State and with the local levels of government, to effectuate adequate floodplain management programs.

(16) Cooperate with units of local government in the identification of water supply needs and appropriate water supply sources and water storage projects to meet those needs. By agreement with a unit of local government, the Department may do any of the following:

a. Assist in the assessment of alternatives for meeting water supply needs; the conduct of engineering studies, hydraulic computations, and hydrographic surveys; and the development of a plan of study for purposes of obtaining necessary permits.

b. For budget and planning purposes, develop estimates of the costs of the proposed new water supply project.

c. Apply for State and federal permits for the development of regional water supplies.

(17) Be the principal State agency to cooperate with other State agencies, the United States Army Corps of Engineers, and all other federal agencies or instrumentalities in the planning and development of water supply sources and water storage projects for the State.

(b1) The Department is directed to pursue an active educational program of floodplain management measures, to include in each biennial report a statement of flood damages, location where floodplain management is desirable, and suggested legislation, if deemed desirable, and within its capacities to provide advice and assistance to State agencies and local levels of government.

(c) Repealed by Session Laws 1961, c. 315.

(d) Investigation of Coasts, Ports and Waterways of State. – The Department is designated as the official State agency to investigate and cause investigations to be made of the coasts, ports and waterways of North Carolina and to cooperate with agencies of the federal and State government and other political subdivisions in making such investigations. The provisions of this section shall not be construed as in any way interfering with the powers and duties of the Utilities Commission, relating to the acquiring of rights-of-way for the Intra-Coastal Waterway; or to authorize the Department to represent the State in connection with such duties.

(e) Repealed by Session Laws 1998-129, s. 1, effective January 1, 2000.

(f) Samples of Cuttings to Be Furnished the Department When Requested. – Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner by the use of power machinery shall furnish the Department samples of cuttings from such depths as the Department may require from all wells constructed by such person, firm or corporation, when such samples are requested by the Department. The Department shall bear the expense of delivering such samples. The Department shall, after an analysis of the samples submitted, furnish a copy of such analysis to the owner of the property on which the well was constructed; the Department shall not report the results of any such analysis to any other person whatsoever until the person legally authorized to do so authorizes in writing the release of the results of the analysis.

(g) Reports of Each Well Required. – Every person, firm or corporation engaged in the business of drilling, boring, coring, or constructing wells with power machinery within the State of North Carolina shall, within 30 days of the completion of each well, report to the Department on forms furnished by the Department the location, size, depth, number of feet of casing used, method of finishing, and formation log information of each such well. In addition such person, firm or corporation shall report any tests made of each such well including the method of testing, length of test, draw-down in feet and yield in gallons per minute. The person, firm or corporation making such report to the Department shall at the time such report is made also furnish a copy thereof to the owner of the property on which the well was constructed.

(h) Drilling for Petroleum and Minerals Excepted. – The provisions of this Article shall not apply to drillings for petroleum and minerals.

(i) Penalty for Violation. – Any person violating the provisions of subsections (e), (f) and (g) of G.S. 143-355 shall be guilty of a Class 3 misdemeanor and, upon conviction, shall only be punished by a fine of fifty dollars ($50.00). Each violation shall constitute a separate offense.

(j) Miscellaneous Duties. – The Department shall make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State and take such measures as it may consider necessary to promote their development; and to supervise, guide, and control the performance of the duties set forth in subsection (b) of this section and to hold hearings with regard thereto. In connection with administration of the well-drilling law the Department may prepare analyses of well cuttings for mineral and petroleum content.

(k) Water Use Information. – Any person using, withdrawing, diverting or obtaining water from surface streams, lakes and underground water sources shall, upon the request of the Department, file a monthly report with the Department showing the amount of water used, withdrawn, diverted or obtained from such sources. Such report shall be on a form supplied by the Department and shall show the identification of the water well or other withdrawal facility, location, withdrawal rate (measured in gallons per minute), and total gallons withdrawn during the month. Reports required to be filed under this subsection shall be filed on or before the fifteenth day of the month succeeding the month during which the using, withdrawing, diverting or obtaining water required to be reported occurred. This subsection does not apply to withdrawals or uses by individuals or families for household, livestock, or gardens. All reports required under this subsection are provided solely for the purpose of the Department. Within the meaning of this subsection the term "person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, and private or public corporations organized or existing under the laws of this State or any other state or country. In the event of extreme or exceptional drought or other water shortage, the Department may require each local government water system and each large community water system in the affected area to report the amount of water used, withdrawn, diverted, or obtained on a weekly basis and may require the reporting of additional information necessary to assess and manage the drought or water shortage.

(*l*) Local Water Supply Plans. – Each unit of local government that provides public water service or that plans to provide public water service and each large community water system shall, either individually or together with other units of local government and large community water systems, prepare a local water supply plan and submit it to the Department for approval. The Department shall provide technical assistance with the preparation of plans to units of local government and large community water systems upon request and to the extent that the Department has resources available to provide assistance. At a minimum, each unit of local government and large community water system shall include in local water supply plans all information that is readily available to it. Plans shall include present and projected population, industrial development, and water use within the service area; present and future water supplies; an estimate of the technical assistance that may be needed at the local level to address projected water needs; current and future water conservation and water reuse programs, including a plan for the reduction of long-term per capita demand for potable water; a description of how the local government or large community water system will respond to drought and other water shortage emergencies

and continue to meet essential public water supply needs during the emergency; and any other related information as the Department may require in the preparation of a State water supply plan. A unit of local government or large community water system shall submit a revised plan that specifies how the water system intends to address foreseeable future water needs when eighty percent (80%) of the water system's available water supply based on calendar year average daily demand has been allocated to current or prospective water users or the seasonal demand exceeds ninety percent (90%). Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit or large community water system on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by each unit of local government and large community water system that participated in the preparation of the plan.

(m) Repealed by Session Laws 2017-209, s. 4(a), effective October 4, 2017.

(n) Repealed by Session Laws 2017-10, s. 4.16(a), effective May 4, 2017.

(o) Basinwide Hydrologic Models. – The Department shall develop a basinwide hydrologic model for each of the 17 major river basins in the State as provided in this subsection.

(1) Definitions. – As used in this subsection:

a. "Ecological flow" means the stream flow necessary to protect ecological integrity.

b. "Ecological integrity" means the ability of an aquatic system to support and maintain a balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to prevailing ecological conditions and, when subject to disruption, to recover and continue to provide the natural goods and services that normally accrue from the system.

c. "Groundwater resource" means any water flowing or lying under the surface of the earth or contained within an aquifer.

d. "Prevailing ecological conditions" means the ecological conditions determined by reference to the applicable period of record of the United States Geological Survey stream gauge data, including data reflecting the ecological conditions that exist after the construction and operation of existing flow modification devices, such as dams, but excluding data collected when stream flow is temporarily affected by in-stream construction activity.

e. "Surface water resource" means any lake, pond, river, stream, creek, run, spring, or other water flowing or lying on the surface of the earth.

(2) Schedule. – The Department shall develop a schedule for basinwide hydrologic model development. In developing the schedule, the

Department shall give priority to developing hydrologic models for river basins or portions of river basins that are experiencing or are likely to experience water supply shortages, where the ecological integrity is threatened or likely to become threatened, or for which an existing hydrologic model has not been developed by the Department or other persons or entities.

(3) Model. – Each basinwide hydrologic model shall:

a. Include surface water resources within the river basin, groundwater resources within the river basin to the extent known by the Department, transfers into and out of the river basin that are required to be registered under G.S. 143-215.22H, other withdrawals, ecological flow, instream flow requirements, projections of future withdrawals, an estimate of return flows within the river basin, inflow data, local water supply plans, and other scientific and technical information the Department deems relevant.

b. Be designed to simulate the flows of each surface water resource within the basin that is identified as a source of water for a withdrawal registered under G.S. 143-215.22H in response to different variables, conditions, and scenarios. The model shall specifically be designed to predict the places, times, frequencies, and intervals at which any of the following may occur:

1. Yield may be inadequate to meet all needs.
2. Yield may be inadequate to meet all essential water uses.
3. Ecological flow may be adversely affected.

c. Be based solely on data that is of public record and open to public review and comment.

(4) Ecological flow. – The Department shall characterize the ecology in the different river basins and identify the flow necessary to maintain ecological integrity. The Department shall create a Science Advisory Board to assist the Department in characterizing the natural ecology and identifying the flow requirements. The Science Advisory Board shall include representatives from the Divisions of Water Resources and Water Quality of the Department, the North Carolina Wildlife Resources Commission, the North Carolina Marine Fisheries Commission, and the Natural Heritage Program. The Department shall also invite participation by the United States Fish and Wildlife Service; the National Marine Fisheries Service; representatives of organizations representing agriculture, forestry, manufacturing, electric public utilities, and local governments, with expertise in aquatic ecology and habitat; and other individuals or organizations with expertise in aquatic ecology and habitat. The Department shall ask the Science Advisory Board to review any report or study submitted to the Department for consideration that is

relevant to characterizing the ecology of the different river basins and identifying flow requirements for maintenance of ecological integrity. The Department shall consider such other information, including site specific analyses, that either the Board or the Department considers relevant to determining ecological flow requirements.

(5) Interstate cooperation. – To the extent practicable, the Department shall work with neighboring states to develop basinwide hydrologic models for each river basin shared by North Carolina and another state.

(6) Approval and modification of hydrologic models. –

a. Upon completion of a hydrologic model, the Department shall:

1. Submit the model to the Commission for approval.
2. Publish in the North Carolina Register notice of its recommendation that the Commission approve the model and of a 60-day period for providing comment on the model.
3. Provide electronic notice to persons who have requested electronic notice of the notice published in the North Carolina Register.

b. Upon receipt of a hydrologic model, the Commission shall:

1. Receive comment on the model for the 60-day period noticed in the North Carolina Register.
2. Act on the model following the 60-day comment period.

c. The Department shall submit any significant modification to an approved hydrologic model to the Commission for review and approval under the process used for initial approval of the model.

d. A hydrologic model is not a rule, and Article 2A of Chapter 150B of the General Statutes does not apply to the development of a hydrologic model.

(7) Existing hydrologic models. – The Department shall not develop a hydrologic model for a river basin for which a hydrologic model has already been developed by a person or entity other than the Department, if the Department determines that the hydrologic model meets the requirements of this subsection. The Department may adopt a hydrologic model that has been developed by another person or entity that meets the requirements of this subsection in lieu of developing a hydrologic model as required by this subsection. The Department may make any modifications or additions to a hydrologic model developed by another person or entity that are necessary to meet the requirements of this subsection.

(8) Construction of subsection. – Nothing in this subsection shall be construed to vary any existing, or impose any additional regulatory requirements, related to water quality or water resources.

(9) Repealed by Session Laws 2017-10, s. 4.16(b), effective May 4, 2017.

(p) Report. – The Department of Environmental Quality shall report to the Environmental Review Commission on the implementation of this section, including the

development of basinwide hydrologic models, no later than November 1 of each year. The Department shall submit the report required by this subsection with the report on basinwide water management plans required by G.S. 143-215.8B(d) as a single report. (1959, c. 779, s. 3; 1961, c. 315; 1967, c. 1069, ss. 1-3; c. 1070, s. 1; c. 1071, ss. 3, 4; c. 1117, s. 1; 1973, c. 1262, ss. 23, 28, 86; 1977, c. 771, s. 4; 1981, c. 514, ss. 2, 3; 1989, c. 603, s. 1; 1993, c. 513, s. 7(a); c. 539, s. 1034; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 509, s. 85; 1997-358, ss. 5, 6; 1998-129, s. 1; 1998-168, s. 5; 2001-452, s. 2.7; 2002-167, ss. 1, 2; 2003-387, s. 1; 2008-143, s. 7; 2010-143, s. 2; 2010-150, s. 1; 2011-374, ss. 1.1, 3.1; 2015-241, s. 14.30(u); 2017-10, ss. 4.16(a), (b), (c); 2017-209, ss. 4(a), (b).)

§ 143-355.1. Drought Management Advisory Council; drought advisories.

(a) The Department shall establish a Drought Management Advisory Council. The purposes of the Council are:

(1) To improve coordination among local, State, and federal agencies; public water systems, as defined in G.S. 130A-313(10); and water users to improve the management and mitigation of the harmful effects of drought.

(2) To provide consistent and accurate information on drought conditions in the State to the U.S. Drought Monitor, the Environmental Management Commission, the Secretary, the Environmental Review Commission, and the public.

(b) The Department shall invite each of the following organizations to designate a representative to serve on the Council:

(1) North Carolina Cooperative Extension Service.

(2) State Climate Office at North Carolina State University.

(3) Public Staff of the Utilities Commission.

(4) Wildlife Resources Commission.

(5) Department of Agriculture and Consumer Services.

(6) Department of Commerce.

(7) Department of Public Safety.

(8) National Weather Service of the National Oceanic and Atmospheric Administration of the United States Department of Commerce.

(9) United States Geological Survey of the United States Department of the Interior.

(10) United States Army Corps of Engineers.

(11) United States Department of Agriculture.

(12) Federal Emergency Management Agency of the United States Department of Homeland Security.

(b1) Representatives designated under subsection (b) of this section shall have expertise or responsibility in meteorology, groundwater and surface water hydrology, water system operation and management, reservoir management, emergency response, or another subject area related to assessment and management of drought impacts.

(c) The Department shall also invite other agencies and organizations that represent water users, including local governments, agriculture, agribusiness, forestry, manufacturing, investor-owned water utilities regulated by the North Carolina Utilities Commission, and others as appropriate, to participate in the work of the Council with respect to particular drought related issues.

(d) The Department shall designate an employee of the Department to serve as Chair of the Council. The Council shall meet at least once in each calendar year in order to maintain appropriate agency readiness and participation. In addition, the Council shall meet on the call of the Chair to respond to drought conditions. The provisions of Article 33C of this Chapter apply to meetings of the Council.

(e) In order to provide accurate and consistent information to assist State agencies, local governments, and other water users in taking appropriate drought response actions, the Council may issue drought advisories that designate:

(1) Specific areas of the State in which drought conditions are impending.

(2) Specific areas of the State that are suffering from drought conditions.

(3) The level of severity of drought conditions based on the drought categories used in the U.S. Drought Monitor or the drought designation approved by the Secretary under subsection (f) of this section.

(f) Drought designations by the U.S. Drought Monitor shall be the default designations for drought advisories issued under subsection (e) of this section. The Council shall publish those drought designations for each county. If more than one drought designation applies to a county, the drought designation for the county shall be the highest drought designation that applies to at least twenty-five percent (25%) of the land area of the county. The Council may recommend a drought designation for a county that is different from the designation based on the U.S. Drought Monitor if the U.S. Drought Monitor does not accurately reflect localized conditions because of differences in scale or because the U.S. Drought Monitor does not consider one or more of the indicators of drought identified in this subsection. In recommending a drought designation that differs from the U.S. Drought Monitor designation, the Council shall consider stream flows, ground water levels, the amount of water stored in reservoirs, weather forecasts, the time of year, and other factors that are relevant to determining the location and severity of drought conditions.

(f1) The Secretary shall accept the Council's recommendation to adopt a drought designation for a county that is different from the designation based on the U.S. Drought Monitor if the Secretary finds that the indicators of drought identified by the Council under subsection (f) of this section support the designation recommended by the Council.

(g) The Council shall report on the implementation of this section to the Secretary, the Governor, and the Environmental Review Commission no later than 1 October of each year. The report shall include a review of drought advisories issued by the Council and any recommendations to improve coordination among local, State, and federal agencies; public water systems; and water users to improve the management and mitigation of the harmful effects of drought. (2003-387, s. 2; 2004-195, s. 2.5; 2008-143, s. 16; 2011-145, s. 19.1(g).)

§ 143-355.2. Water conservation measures for drought.

(a) Each unit of local government that provides public water service and each large community water system shall develop and implement water conservation measures to respond to drought or other water shortage conditions as provided in this section. Pursuant to G.S. 143-355(l), water conservation measures to respond to drought or other water shortage conditions shall be set out in a water shortage response plan and submitted to the Department for review and approval. The Department shall approve the water shortage response plan if the plan meets all of the following criteria:

(1) The plan includes tiered levels of water conservation measures or other response actions based on the severity of water shortage conditions.

(2) Each tier of water conservation measures shall be based on increased severity of drought or water shortage conditions and will result in more stringent water conservation measures.

(3) All other requirements of rules adopted by the Commission pursuant to S.L. 2002-167.

(4) Does not contain any provision that meters or regulates private drinking water wells, as defined in G.S. 87-85.

(b) The Department may require a unit of local government that provides public water service or a large community water system to implement the more stringent water conservation measures described in subsection (d) of this section if the Department makes written findings that any county, as determined by subsection (e) of this section, in which the source of water for the public water system operated by the unit of local government or by a large community water system is in:

(1) Severe, extreme, or exceptional drought, and the Department finds all of the following:

a. The unit of local government that provides water service or large community water system has not begun implementation of any level of water conservation measures set out in the water shortage response plan.

b. Implementation of measures is necessary to minimize the harmful impacts of drought on public health, safety, and the environment, including the potential impacts of drought or other water shortage on interconnected water systems and other water systems withdrawing from the same water source, or

(2) Extreme or exceptional drought, and the Department finds that the unit of local government that provides water service or large community water system has implemented the measures required under the water shortage response plan for the appropriate tier of water conservation measure for 30 days or more and that implementation of the measures required has not reduced water use in an amount sufficient to minimize the harmful impacts of drought on public health, safety, and the environment, including the potential impact of drought or other water shortage on

interconnected water systems and other water systems withdrawing from the same water source.

(c) In making the findings required under subsection (b) of this section, the Department shall consider the:

(1) Hydrological drought conditions.

(2) Drought forecast.

(3) Reductions in water use achieved under water conservation measures in effect.

(4) Availability of other water supply sources and other indicators of the extent and severity of drought impacts.

(5) Economic impacts on the community to implement more stringent water conservation measures.

(6) Conservation measures of all registered water withdrawals within the same 8 digit hydrologic unit code established by the U.S. Geological Survey to the extent the Department is able to document those measures.

(d) Based on the findings required under subsection (b) of this section, the Department may require the unit of local government that provides public water service or the large community water system to begin implementation of its plan or to implement the next tier of water shortage response measures. If, after consultation with the unit of local government or the large community water system, the Department makes a written finding that the next tier of measures set out in the plan, together with any other reasonable steps that may be available to reduce water use, will not reduce water use in an amount sufficient to minimize the harmful impacts of drought on public health, safety, and the environment, including the potential impact of drought or other water shortage on interconnected water systems and other water systems drawing from the same water source, then the Department may require implementation of the tier that is two levels more stringent than the tier being implemented.

(e) For purposes of this section, the drought designation for an area shall be the U.S. Drought Monitor designation for the county in which the water source is located as published by the Drought Management Advisory Council. The Secretary may approve a county drought designation that is different from the U.S. Drought Monitor designation pursuant to G.S. 143-355.1(f1). If the water source is located in more than one county and the counties have different drought designations, the Council shall recommend to the Secretary the drought designation to be applied to water systems that withdraw water from the water source. The recommendation of the Council shall be based on the drought indicators identified in G.S. 143-355.1(f) as applied to the water source.

(f) A unit of local government that provides public water service or a large community water system that does not have a water shortage response plan shall implement the default water conservation measures for extreme and exceptional drought set out in the rules adopted by the Commission pursuant to S.L. 2002-167.

(g) A unit of local government that provides water service or a large community water system that does not have an approved water shortage response plan shall implement the default water conservation measures specified in subsection (f) of this section within

10 days following a drought designation that requires implementation of water conservation measures. A water shortage response plan is presumed to be approved until the Department notifies the unit of local government or large community water system that the plan has been disapproved. A unit of local government that provides public water service and a large community water system shall be deemed to be in compliance with this section if, within 10 days after water shortage conditions identified in the plan require implementation of water conservation measures, the water system begins implementation of the water conservation measures required by the plan.

(h) Water conservation measures imposed by a unit of local government that provides public water service or by a large community water system may be more stringent than the minimum water conservation measures required under this section.

(h1) A trade or professional organization representing commercial car washes may establish a voluntary water conservation and water use efficiency certification program to encourage and promote the use of year-round water conservation and water use efficiency measures. Implementation of a voluntary water conservation and water use efficiency program shall be considered in determining compliance with local government water shortage response plans as follows:

(1) A water conservation and water use efficiency certification may only be issued to a person that demonstrates full implementation of a voluntary water conservation and water use efficiency program that is approved pursuant to subdivision (3) of this subsection. In order to receive and maintain certification, a person must have its facility inspected on an annual basis by a licensed plumbing contractor who will confirm that the applicant is in compliance with the standards of the certification program.

(2) A unit of local government that provides public water service or a large community water system shall recognize and credit a commercial car wash that has met the standards of a certification program for at least six months prior to the most recent extreme drought designation for water conservation achieved under the program. To the extent that a tiered response stage in the water shortage response plan requires commercial or industrial users to implement a percentage reduction in use, a car wash certified under a program shall be credited with the percentage reduction achieved by measures implemented under the program. Car washes certified under a program shall not be required to reduce consumption more than any other class of commercial or industrial water users during a water shortage emergency.

(3) To qualify as an approved water conservation and water use efficiency certification program, the Department of Environmental Quality shall determine that the program achieves year-round reductions in water use and results in a reduction of twenty percent (20%) or more in average water use per vehicle. Best management practices may include, but are not limited to, recycling, reclaiming, or reusing a portion of the water in the consuming processes. If a unit of local government that provides

public water service or a large community water system determines that a person certified under such a program is not complying with the terms and standards of the certification program, it may refuse to recognize and credit the conservation measures.

(i) A unit of local government that provides public water service and a large community water system shall report that the water system has begun implementation of water conservation measures set out in the water system's water shortage response plan or the default water conservation measures to the Department within 72 hours after beginning implementation.

(j) This section shall not be construed to authorize or require the implementation of water conservation management measures that conflict with or are superseded by the provisions of any order of a federal or State court or administrative agency, any interstate agreement governing the allocation of water to which the State is a party, or any license for a hydroelectric generating facility issued by the Federal Energy Regulatory Commission; including, without limitation, any protocol or subsidiary agreement that may be part of or incorporated in any such order, interstate agreement, or operating license. (2008-143, s. 5; 2009-480, s. 1; 2010-180, s. 8; 2015-241, s. 14.30(u).)

§ 143-355.3. Water shortage emergency powers.

(a) Declaration of Water Shortage Emergency. – If, after consultation with the affected water system and the unit of local government with jurisdiction over the area served by the water system, the Secretary determines that the needs of human consumption, necessary sanitation, and public safety require emergency action, the Secretary shall provide the Governor with written findings setting out the basis for declaration of a water shortage emergency. The Governor shall have the authority to declare a water shortage emergency in the area affected by the water shortage emergency, which may include both the water system experiencing a water shortage emergency and the area served by a water system required under subdivision (1) of subsection (b) of this section to provide water in response to the water shortage emergency. No emergency period shall exceed 30 days, but the Governor may declare successive emergencies based upon the written findings of the Secretary.

(b) Water Shortage Emergency Powers and Duties. – Whenever, pursuant to this Article, the Governor declares the existence of a water shortage emergency within a particular area of the State, the Secretary shall have the powers and duties set out in subdivisions (1), (2), and (3) of this subsection. These powers may only be exercised within the designated water shortage emergency area, after the Secretary has consulted with the affected water systems and determined that the water shortage emergency cannot be effectively managed in the absence of exercising these powers, and only for the period of the water shortage emergency. Under these circumstances, the Secretary has the power and duty to:

(1) Require any water system that has water supply in excess of that required to meet the essential water uses of its customers to provide water to a water system experiencing a water shortage emergency. The Secretary

shall give preference to diversion of water from a water system within the same river basin as the water system that is experiencing a water shortage emergency. A diversion of water that requires a certificate under G.S. 143-215.22L shall meet the requirements of that section. The amount required to be supplied shall be limited to the amount necessary to supply essential water uses within the receiving system. The required diversion of waters shall cease upon the termination of the water shortage emergency.

(2) Adopt rules governing the conservation and use of water within the water shortage emergency area as shall be necessary to maintain essential water use within the water shortage emergency area. Before such rules and regulations shall become effective, they shall be published in two consecutive issues of a daily newspaper generally circulated in the emergency area.

(3) Adopt rules governing conservation and use of water within the service area of the water system from which water is being diverted as shall be necessary to maintain essential water uses in the system while supplying water to the water shortage emergency area.

(c) Temporary Rights-of-Way. – A water system that is affected by a water shortage emergency is authorized to lay necessary temporary waterlines for the period of a declared water shortage emergency across, under, or above any and all properties to connect the water system experiencing a water shortage emergency to an emergency intake in a new water source or to interconnect the water system to a supplying water or wastewater system without first acquiring right-of-way. The Department shall expedite the approval of temporary waterlines needed to provide emergency water supply under this section. Temporary waterlines installed under this section shall be removed within 90 days following the end of the emergency period except that the Secretary may, for good cause, authorize a 30-day extension.

(d) Compensation for Water Allocated During Water Shortage Emergency and Temporary Rights-of-Way. – Whenever the Secretary, pursuant to this Article, has ordered any diversion of water, the receiving water or wastewater system shall reimburse the supplying water system for the cost of the water. The cost charged to the receiving system shall not exceed one hundred ten percent (110%) of the retail cost that would be charged to a customer of the supplying system for an equivalent amount of water and any additional costs incurred by the supplying system for alterations to its infrastructure or water treatment to effectuate the diversion except as provided under an interlocal agreement. Unless liability is otherwise assigned in an interlocal agreement, the receiving water system shall be liable to all persons suffering any loss or damage caused by or resulting from the laying of temporary waterlines to effectuate the diversion. Within 10 days of placing the temporary waterlines, the water system that is liable shall institute a civil action in accordance with the procedures set out under Article 9 of Chapter 136 of the General Statutes to compensate the property owners for any taking caused by or resulting from the laying of temporary waterlines, with the water system that is liable having the role of the

Department of Transportation and the governing board of the water system that is liable having the role of the Secretary of Transportation under Article 9 of Chapter 136 of the General Statutes. The placing of temporary waterlines pursuant to this section is not subject to the provisions of G.S. 153A-15.

(e) This section shall not be construed to authorize or require any actions that conflict with or are superseded by the provisions of any order of a federal or State court or administrative agency, any interstate agreement governing the allocation of water to which the State is a party, or any license for a hydroelectric generating facility issued by the Federal Energy Regulatory Commission; including, without limitation, any protocol or subsidiary agreement that may be part of or incorporated in any such order, interstate agreement, or operating license.

(f) Nothing in this section shall limit a landowner from withdrawing water for use in agricultural activities, as described in G.S. 106-581.1, when the water is withdrawn from any of the following:

(1) Surface water sources located wholly on the landowner's property, including, but not limited to, impoundments constructed by or owned by the landowner and captured stormwater.

(2) Groundwater sources, including, but not limited to, wells constructed on the landowner's property, springs, and artesian wells. This subsection shall not apply if the Governor determines that withdrawal of water from a groundwater source is causing negative impacts to groundwater sources not located on the landowner's property, including the diminution of water available from neighboring groundwater sources or saltwater intrusion into neighboring groundwater sources. (2008-143, s. 8; 2013-265, s. 21.)

§ 143-355.4. Water system efficiency.

(a) Local government water systems and large community water systems shall require separate meters for new in-ground irrigation systems on lots platted and recorded in the office of the register of deeds in the county or counties in which the real property is located after July 1, 2009, that are connected to their systems. This section shall not apply to lots with privately owned septic tanks systems or other types of privately owned innovative on-site wastewater systems if a lockable cutoff valve approved by the water system and a testable backflow prevention device approved by the water system for the appropriate level of risk associated with the irrigation system or other identified risk are installed on the water supply line for the irrigation system. The lockable cutoff value shall be installed on the water supply line for the irrigation system within 24 inches of the water meter and the testable backflow device shall be installed on the water supply line for the irrigation system.

(b) To be eligible for State water infrastructure funds from the Drinking Water State Revolving Fund or the Drinking Water Reserve or any other grant or loan of funds allocated by the General Assembly whether the allocation of funds is to a State agency or to a nonprofit organization for the purpose of extending waterlines or expanding water

treatment capacity, a local government or large community water system must demonstrate that the system:

(1) Has established a water rate structure that is adequate to pay the cost of maintaining, repairing, and operating the system, including reserves for payment of principal and interest on indebtedness incurred for maintenance or improvement of the water system during periods of normal use and periods of reduced water use due to implementation of water conservation measures. The funding agency shall apply guidelines developed by the State Water Infrastructure Authority in determining the adequacy of the water rate structure to support operation and maintenance of the system.

(2) Has implemented a leak detection and repair program.

(3) Has an approved water supply plan pursuant to G.S. 143-355.

(4) Meters all water use except for water use that is impractical to meter, including, but not limited to, use of water for firefighting and to flush waterlines.

(5) Does not use a rate structure that gives residential water customers a lower per-unit water rate as water use increases.

(6) Has evaluated the extent to which the future water needs of the water system can be met by reclaimed water.

(7) Has implemented a consumer education program that emphasizes the importance of water conservation and that includes information on measures that residential customers may implement to reduce water consumption. (2008-143, s. 9; 2010-142, s. 13; 2010-180, s. 16; 2011-374, s. 3.2; 2013-360, s. 14.21(*l*); 2017-130, s. 7.)

§ 143-355.5. Water reuse; policy; rule making.

(a) Water Reuse Policy. – It is the public policy of the State that the reuse of treated wastewater or reclaimed water and the use of gray water or captured rain water is critical to meeting the existing and future water supply needs of the State.

(a1) The General Assembly finds that reclaimed water systems permitted and operated under G.S. 143-215.1 in an approved reuse program can provide water for many beneficial purposes in a way that is both environmentally acceptable and protective of public health. This finding includes and applies to conjunctive facilities that require the relocation of a discharge from one receiving stream to another under all of the following conditions:

(1) The relocation is necessary to create an approved comprehensive wastewater reuse program.

(2) The reuse program provides significant reuse benefits.

(3) The relocated discharge will comply with all applicable water quality standards; will not result in degradation of water quality in the receiving waters; and will not contribute to water quality impairment in the receiving watershed.

(a2) The General Assembly finds that reclaimed water systems permitted and operated under G.S. 143-215.1 in an approved wastewater reuse program can provide water for the beneficial purpose of supplementing the water supply source for potable water in a way that is both environmentally acceptable and protective of public health. Notwithstanding any other provision of law, a local water supply system may combine reclaimed water with other raw water sources before treatment if all of the following conditions are satisfied:

(1) The reclaimed water use is not permitted for compliance with flow limitations imposed by a permit issued pursuant to G.S. 143-215.1(a4)(1).

(2) The reclaimed water and source water are combined in a pretreatment mixing basin owned and controlled by the drinking water supplier from which water is pumped to the water treatment plant.

(3) The pretreatment mixing basin is sized to hold a minimum volume corresponding to five days' storage at the authorized operating capacity of the water treatment plant under normal operating conditions.

(4) The pretreatment mixing basin design and pumping infrastructure incorporate features to ensure mixing of reclaimed water and source water.

(5) The reclaimed water is treated to comply with the highest reclaimed water effluent standards established by the Commission.

(6) The average daily flow of reclaimed water into the pretreatment mixing basin, as measured over a 24-hour period, is no more than twenty percent (20%) of the sum of the average daily flow of source water and reclaimed water, as measured over the same 24-hour period, into the pretreatment mixing basin.

(7) The local water system has implemented conservation and efficiency measures designed to achieve water use reductions.

(8) Unbilled leakage from the local water system is maintained below fifteen percent (15%) of annual average potable water consumption of the local water system.

(9) The local water system has a master plan that evaluates alternatives for reclaimed water use.

(10) The local water system provides public notice to potable water recipients with opportunity for public participation.

(11) The potable water supply provided pursuant to this subsection shall comply with all State and federal laws for the provision of safe drinking water.

(12) Any discharge into the waters of the State must be pursuant to a permit issued under G.S. 143-215.1.

(b) Water Reuse Rule Making. – The Commission shall encourage and promote safe and beneficial reuse of treated wastewater as an alternative to surface water discharge. The Commission shall adopt rules to:

(1) Identify acceptable uses of reclaimed water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.
(2) Facilitate the permitting of reclaimed water systems.
(3) Establish standards for reclaimed water systems that are adequate to prevent the direct distribution of reclaimed water as potable water. Standards adopted pursuant to this subdivision shall not prohibit the combining of reclaimed water with other raw water sources before treatment pursuant to subsection (a2) of this section.

(c) Gray Water Rule Making. – The Commission shall encourage and promote the safe and beneficial use of gray water. The Commission shall adopt rules to:
(1) Identify acceptable uses of gray water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.
(2) Facilitate the permitting of gray water systems.
(3) Establish standards, in coordination with the Commission for Public Health, for gray water systems that protect public health and safety and the environment and reduce the use of potable water within individual structures.

(d) The Department shall develop policies and procedures to promote the voluntary adoption and installation of gray water systems. (2008-143, s. 10; 2010-155, s. 6; 2011-394, s. 12(b); 2014-113, s. 3.)

§ 143-355.6. Enforcement.

(a) The Secretary may assess a civil penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) against any person who:
(1) Fails to report water use or other information required under G.S. 143-355(k).
(2) Fails to act in accordance with the terms, conditions, or requirements of an order issued by the Secretary under G.S. 143-355.3.
(3) Violates any provision of this Article or any rule adopted by the Commission, the Department, or the Secretary implementing this Article.

(b) For each willful action or failure to act for which a penalty may be assessed under this section, the Secretary may consider each day the action or inaction continues after notice is given of the violation as a separate violation. A separate penalty may be assessed for each separate violation.

(c) The Secretary may assess a civil penalty of not more than ten thousand dollars ($10,000) per month against a unit of local government that provides public water service or a large community water system that fails to implement the water conservation measures set out in the water shortage response plan approved by the Department under G.S. 143-355.2, measures required by the Department under subsections (b) and (d) of G.S. 143-355.2, or the default measures required under rules adopted by the Commission under S.L. 2002-167.

(c1) The amount of the civil penalty shall be based on the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(c2) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and the Secretary's recommended action to the Committee on Civil Penalty Remissions of the Commission appointed pursuant to G.S. 143B-282.1(c).

(c3) If any civil penalty has not been paid within 30 days after the notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or in which the violator's principal place of business is located to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (e) of this section, or requests remission of the assessment in whole or in part as provided in subsection (c2) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or in which the violator's principal place of business is located to recover the amount of the assessment.

(d) The violation of emergency water conservation rules adopted by the Secretary pursuant to G.S. 143-355.3(b) is a Class 1 misdemeanor.

(e) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons for the assessment by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

(f) 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. (2008-143, s. 11; 2010-180, s. 9.)

§ 143-355.7. Water supply development; State-local cooperation.

(a) At the request of one or more units of local government, the Department may assist the local government in identifying the preferred water supply alternative that alone or in combination with other water sources will provide for the long-term water supply needs documented in the local water supply plan and meet all of the following criteria:

(1) Are economically and practically feasible.

(2) Make maximum, practical beneficial use of reclaimed wastewater and stormwater.

(3) Comply with water quality classifications and standards.

(4) Avoid or mitigate impacts to threatened or endangered species to the extent such species are protected by State or federal law.
(5) Maintain downstream flows necessary to protect downstream users.
(6) Do not have significant adverse impacts on other water withdrawals or wastewater discharges.
(7) Avoid or mitigate water quality impacts consistent with the requirements of rules adopted by the Environmental Management Commission to implement 33 U.S.C. § 1341.

(b) During the alternatives analysis, the Department shall request relevant information regarding the potential alternatives, including the establishment or expansion of the water supply reservoir or other water supply resources, from other State agencies with jurisdiction over any natural resources that will be impacted under the alternatives identified by the Department. Unless the local government agrees to an extension of time, the Department shall determine the preferred alternative within two years of the execution of a contract with the requesting local government for the costs of the analysis. The determination of the preferred alternative shall be binding on all State agencies unless the Department determines from its further evaluation during its review of any State or federal permit applications for the project that another preferred alternative should be selected in light of additional information brought forward during the permit reviews.

(c) If the Department provides an analysis of practicable alternatives for meeting a water supply need under this section, the analysis shall be accepted by the Department and the Department of Administration for purposes of satisfying the requirements of the North Carolina Environmental Policy Act and any State permit or authorization that requires identification and assessment of alternatives, including, but not limited to, a request for an interbasin transfer pursuant to G.S. 143-215.22L.

(d) The Department may provide technical assistance to a unit of local government in obtaining federal permits for the preferred water supply alternative identified pursuant to subsection (a) of this section. For purposes of providing technical assistance and conducting studies in support of a proposed water supply project under this section, the Department may enter into an agreement with one or more units of local government to conduct studies or modeling. The agreement shall specify the allocation of costs for any studies or modeling prepared by the Department in support of the project.

(e) When the Department has identified the most practicable alternative, a regional water supply system may request that the Department become a co-applicant for all required federal approvals for the alternative identified by the Department. The Department may become a co-applicant when all of the following conditions are met:

(1) The regional water supply system has acquired or will acquire the property necessary for construction of the water supply reservoir or other water supply resource.
(2) The local water supply plan shows that the regional water supply system has implemented appropriate conservation measures similar in effect to the measures in comparably sized North Carolina regional water supply systems.

(3) The regional water supply system has developed and is implementing measures to replace existing leaking infrastructure that is similar in effect to the measures being implemented by comparably sized North Carolina regional water systems.

(4) The regional water supply system has entered into a contractual agreement to pay the expenses incurred by the Department as a co-applicant for the project approval.

(f) Nothing in this section shall be construed to limit the authority of the Department to require environmental permits or to apply and enforce environmental standards pursuant to State law. (2011-374, s. 1.2.)

§ 143-355.8. Regional water supply planning organizations.

(a) One or more water systems may establish a water supply planning organization to plan for and coordinate water resource supply and demand on a regional basis. A water supply planning organization may include representatives of local government water systems, water authorities, nongovernmental water systems, and registered water withdrawers.

(b) A regional water supply planning organization may do any of the following:

(1) Identify sources of raw water supply for regional systems.

(2) Identify areas suitable for the development of new regional water sources.

(3) Identify opportunities for purchase and sale of water between water systems to meet regional water supply needs.

(4) Prepare joint water supply plans.

(5) Enter into agreements with the Department for technical assistance in identifying practical alternatives to meet regional water supply needs pursuant to G.S. 143-355.7 or to provide studies in support of a proposed regional water supply project.

(6) Support cooperative arrangements between water systems for purchase and sale of water by providing technical assistance and voluntary mediation of disputes concerning water supply.

(c) Nothing in this section shall be construed to alter the requirements for obtaining a certificate for an interbasin transfer. (2011-374, s. 1.2.)

§§ 143-356 through 143-357: Repealed by Session Laws 1983, c. 222, ss. 1, 2.

§ 143-358. Cooperation of State officials and agencies.

All State agencies and officials shall cooperate with and assist the Commission in enforcing and carrying out the provisions of this Article and rules adopted by the Commission under this Article. (1959, c. 779, s. 6; 1973, c. 1262, s. 23; 1991, c. 342, s. 15(b); 1991 (Reg. Sess., 1992), c. 890, s. 19.)

§ 143-359: Repealed by Session Laws 2001-452, s. 1.1.

Article 39.

U.S.S. North Carolina Battleship Commission.

§§ 143-360 through 143-362: Repealed by Session Laws 1977, c. 741, s. 5.

§§ 143-363 through 143-365. Repealed by Session Laws 1973, c. 476, s. 59.

§ 143-366. Recodified as § 143B-73.1 by Session Laws 1977, c. 741, s. 8.

§§ 143-367 through 143-369. Recodified as §§ 143B-74.1 to 143B-74.3 by Session Laws 1977, c. 741, s. 8.

Article 39A.

Frying Pan Lightship Marine Museum Commission.

§§ 143-369.1 through 143-369.3: Repealed by Session Laws 1973, c. 476, s. 116.

Article 40.

Advisory Commission for State Museum of Natural History.

§§ 143-370 through 143-373: Recodified as §§ 143B-344.18 through 143B-344.21 by Session Laws 1993, c. 561, s. 116.

Article 41.

Science and Technology Research Center.

§§ 143-374 through 143-377: Recodified as §§ 143B-442 through 143B-445 by Session Laws 1977, c. 198, s. 26.

Article 42.

Board of Science and Technology.

§§ 143-378 through 143-383: Repealed by Session Laws 1973, c. 1262, s. 79.

Article 43.

North Carolina Seashore Commission.

§§ 143-384 through 143-391: Repealed by Session Laws 1969, c. 1143, s. 1.

Article 44.

North Carolina Traffic Safety Authority.

§§ 143-392 through 143-395: Repealed by Session Laws 1981, c. 90, s. 1.

Article 45.

North Carolina American Revolution Bicentennial Commission.

§§ 143-396 through 143-399: Repealed by Session Laws 1973, c. 476, s. 70.

Article 46.

Governor's Committee on Law and Order.

§§ 143-400 through 143-402.2: Repealed by Session Laws 1969, c. 1145, s. 4.

Article 47.

Promotion of Arts.

§ 143-403. "Arts" defined.

The term "arts" includes, but is not limited to: music, dance, drama, creative writing, architecture and allied fields, painting, sculpture, photography, crafts, television, radio, and the execution and exhibition of such major art forms. (1967, c. 164, s. 1; 1973, c. 476, s. 79.)

§§ 143-404 through 143-405. Repealed by Session Laws 1973, c. 476, s. 79.

§ 143-406. Duties of Department of Natural and Cultural Resources.

The Department of Natural and Cultural Resources shall take action to carry out the following purposes as funds and staff permit:

(1) Study, collect, maintain, and otherwise disseminate factual data and pertinent information relative to the arts;

(2) Assist local organizations and the community at large with needs, resources and opportunities in the arts;

(3) Serve as an agency through which various public and nonpublic organizations concerned with the arts can exchange information, coordinate programs and stimulate joint endeavors;

(4) Identify research needs, encourage research and assist in obtaining funds for research;

(5) Assist in bringing the highest obtainable quality in the arts to the State; promote the maximum opportunity for the people to experience, enjoy, and profit from those arts.

By February 15 of each odd-numbered year, the Department of Natural and Cultural Resources shall, in addition to such other recommendations, studies, and plans as it may submit from time to time, submit a biennial report of progress to the Governor, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic

Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division. (1967, c. 164, s. 4; 1973, c. 476, s. 79; 2015-241, s. 14.30(s); 2017-57, s. 14.1(hh).)

§ 143-407. Appropriations; funds.

In addition to the appropriations out of the general fund of the State, the Department may accept gifts, devises, matching funds, or other considerations for use in promoting the arts. (1967, c. 164, s. 5; 1973, c. 476, s. 79; 2011-284, s. 93.)

§ 143-407.1. Composer laureate.

(a) The Governor of North Carolina may appoint a distinguished living composer as "Composer-Laureate for the State of North Carolina."

(b) Any person appointed "Composer-Laureate for the State of North Carolina" shall be appointed for life but may voluntarily resign at any time. (1991, c. 56, ss. 1, 2.)

§ 143-408: Repealed by Session Laws 1973, c. 476, s. 79.

Article 47A.

Art Works in State Buildings.

§§ 143-408.1 through 143-408.7: Repealed by Session Laws 1995, c. 324, s. 12.2.

Article 48.

Executive Mansion.

§ 143-409: Repealed by Session Laws 1973, c. 476, s. 67.

§ 143-410. Purpose.

The purpose of the Department of Natural and Cultural Resources shall be:

(1) To preserve and maintain the Executive Mansion, located at 200 North Blount Street, Raleigh, North Carolina, as a structure having historical significance and value to the State of North Carolina;

(2) To improve the furnishing of the Executive Mansion by encouraging gifts and objects of art, furniture and articles which may have historical value, and to approve major changes in the furnishings of the Mansion;

(3) To recommend to the Department of Administration any major renovations to the Executive Mansion which the Department of Natural and Cultural Resources deems necessary to preserve and maintain the structure;

(4) To keep a complete list of all gifts and articles received, together with their history and value; and

(5) To publicize work of the Executive Mansion Fine Arts Committee. (1967, c. 273, s. 2; 1973, c. 476, s. 67; 2015-241, s. 14.30(s).)

§ 143-411. Powers of Department of Natural and Cultural Resources.

The Department of Natural and Cultural Resources is hereby empowered on behalf of the State of North Carolina to receive gifts, contributions of money and objects of art consistent with the purpose for which the Department is created. Title to all gifts, articles and moneys received by the Department shall be vested in the State of North Carolina and shall remain in the custody and control of the Department. The Department is authorized to accept loans of furniture and other objects as, in its discretion, it deems suitable. The Department is empowered to employ clerical assistance on such basis as it may deem reasonable. Provided, however, that the salary of such person shall be paid out of funds the Department has received in the conduct of its work, and it is specifically provided that no other funds belonging to the State of North Carolina shall be used for this purpose. (1967, c. 273, s. 3; 1973, c. 476, s. 67; 2015-241, s. 14.30(s).)

§§ 143-412 through 143-414. Repealed by Session Laws 1973, c. 476, s. 67.

§ 143-415. Authority, etc., of Department of Administration not affected.

This Article shall not be construed as divesting the Department of Administration of any powers, duties and authority relating to the budget or the operation and maintenance of the Executive Mansion. (1967, c. 273, s. 7.)

Article 49.

North Carolina Human Relations Commission.

§§ 143-416 through 143-422. Repealed by Session Laws 1975, c. 879, s. 36.

Article 49A.

Equal Employment Practices.

§ 143-422.1. Short title.

This Article shall be known and may be cited as the Equal Employment Practices Act. (1977, c. 726, s. 1.)

§ 143-422.2. Legislative declaration.

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers which regularly employ 15 or more employees.

(b) It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and

substantially and adversely affects the interests of employees, employers, and the public in general.

(c) Repealed by Session Laws 2017-4, s. 1, effective March 30, 2017. (1977, c. 726, s. 1; 2016-3, 2nd Ex. Sess., s. 3.1; 2017-4, s. 1.)

§ 143-422.3. Investigations; conciliations.

The Human Relations Commission in the Civil Rights Division of the Office of Administrative Hearings shall have the authority to receive charges of discrimination from the Equal Employment Opportunity Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this process, the agency shall use its good offices to effect an amicable resolution of the charges of discrimination. (1977, c. 726, s. 1; 1989 (Reg. Sess., 1990), c. 979, ss. 1(5), 2; 2016-3, 2nd Ex. Sess., s. 3.2; 2016-99, s. 1(a); 2017-4, s. 1; 2017-57, s. 31.1(d).)

§ 143-422.4. Reserved for future codification purposes.

§ 143-422.5. Reserved for future codification purposes.

§ 143-422.6. Reserved for future codification purposes.

§ 143-422.7. Reserved for future codification purposes.

§ 143-422.8. Reserved for future codification purposes.

§ 143-422.9. Reserved for future codification purposes.

Article 48B.

Equal Access to Public Accommodations.

§§ 143-422.10 through 143-422.13: Repealed by Session Laws 2017-4, s. 1, effective March 30, 2017.

Article 50.

Commission on the Status of Women.

§§ 143-423 through 143-428. Repealed by Session Laws 1975, c. 879, s. 39.

Article 51.

Tobacco Museums.

§§ 143-429 through 143-430. Repealed by Session Laws 1973, c. 476, s. 116.

§ 143-431. Tobacco museums.

It shall be the duty of the Department of Natural and Cultural Resources to establish, supervise, manage and maintain the tobacco museums. The Department of Natural and Cultural Resources may establish a reasonable fee for viewing the museums which fees shall be used to defray the expenses of the museums. To accomplish these purposes, the Department of Natural and Cultural Resources shall have authority to buy and sell real and personal property and to accept donations of real or personal property from any source. The Department of Natural and Cultural Resources shall not contract any debt in its purchase of real or personal property. (1969, c. 840, s. 3; 1973, c. 476, s. 116; 2015-241, s. 14.30(s).)

§ 143-432. Location of museums.

One of the tobacco museums shall be located within Rockingham County at a site to be determined by the Department of Natural and Cultural Resources, and shall emphasize the history and development of tobacco manufacturing. One of the tobacco museums shall be located in Nash or Edgecombe Counties at a site to be determined by the Department of Natural and Cultural Resources and shall emphasize the history and development of growing and marketing of tobacco. (1969, c. 840, s. 4; 1973, c. 476, s. 116; 2015-241, s. 14.30(s).)

Article 51A.

Tax Study Commission.

§§ 143-433 through 143-433.5: Repealed by Session Laws 1979, c. 14, s. 1.

Article 51B.

North Carolina Federal Tax Reform Allocation Committee.

§ 143-433.6. Legislative findings.

(a) The General Assembly finds and determines that the Tax Reform Act of 1984 established a federal volume limitation upon the aggregate amount of "private activity bonds" that may be issued by each state; that, pursuant to Section 103(n) of the Internal Revenue Code of 1954, as amended, a previous Governor of North Carolina issued Executive Order 113 proclaiming a formula for allocating the federal volume limitation for North Carolina; that on October 22, 1986, the Tax Reform Act of 1986, hereinafter referred to as the "Tax Reform Act", was enacted; that the Tax Reform Act (i) establishes a new unified limitation for private activity bonds on a state by state basis, (ii) establishes a new definition of the types of private activity bonds to be included under those new limitations, (iii) establishes a new low-income housing credit to induce the construction of and the improvement of housing for low-income people, and (iv) limits the aggregate use of this low-income housing credit on a state by state basis; that the Tax Reform Act provides for federal formulas for the allocation of these "state by state" resources, and also provides for states which cannot use the federal formula for allocation to set allocation procedures and

formulas which are more appropriate for the individual states; that the Tax Reform Act gives authority for the legislature of each state to formulate and execute plans for allocation; and that Section 146 of the Internal Revenue Code of 1986, as amended, and Section 42 of the Internal Revenue Code of 1986, as amended, will require continued inquiry and study in the ways in which North Carolina can best and most fairly manage and utilize resources provided therein.

(b) The General Assembly further finds and determines that the Economic Growth and Tax Relief Reconciliation Act of 2001 added new subsections (a)(13) and (k) to section 142 of the Internal Revenue Code of 1986, as amended, which (i) establish a new type of private activity bond that can be issued to finance "qualified public educational facilities," (ii) establish an annual aggregate limitation on the face amount of qualified public educational facility bonds that may be issued on a state-by-state basis, (iii) provide that each state may allocate the annual aggregate limitation for any calendar year in such manner as each state determines appropriate, and (iv) provide for an elective carryforward by each state of the unused annual aggregate limitation; and that subsections (a)(13) and (k) will require continued inquiry and study in the ways in which North Carolina can best and most fairly manage and utilize the resource provided therein.

(c) The General Assembly further finds and determines that section 1400U-3 of the American Recovery and Reinvestment Tax Act of 2009 (ARRTA) added a new type of exempt facility bond called "recovery zone facility bonds" to be used to finance construction, renovation, and equipping of recovery zone property for use in any trade or business in a recovery zone, all as defined in ARRTA, and a new type of governmental bond called "recovery zone economic development bonds." The ARRTA provides a formula for allocation of authority to issue recovery zone facility bonds and recovery zone economic development bonds to the states and by which the authority is to be reallocated by the State to counties and large municipalities within the State.

(d) The General Assembly further finds and determines that section 54D of the Internal Revenue Code of 1986, as amended, permits the issuance of tax credit bonds called "qualified energy conservation bonds" (QECBs), the proceeds of which must be used for certain energy conservation purposes enumerated in section 54D. Section 54D and ARRTA provide a national bond limitation for the issuance of QECBs, and the Treasury Department has allocated that authority among the states. Under section 54D, the United States is required to reallocate the authority to issue QECBs to the counties and large local governments within the states based on population, in accordance with the guidelines provided by the Treasury Department, and to assure that not more than thirty percent (30%) of the QECBs issued in a state are used for private activity bonds, as defined in section 54D. (1987, c. 588, s. 1; 2008-204, s. 6.1; 2009-140, s. 2.)

§ 143-433.7. North Carolina Federal Tax Reform Allocation Committee.

The North Carolina Federal Tax Reform Allocation Committee, hereinafter referred to as the "Committee", is hereby established. The Committee is a continuation of the Interim Private Activity Bond Allocation Committee established under Executive Order 28 and amended under Executive Order 31 and the North Carolina Federal Tax Reform Allocation Committee established under Executive Order 37. The Secretary of the Department of Commerce, the Executive Assistant to the Governor for Budget Management, and the Treasurer of the State of North Carolina shall constitute the membership of this Committee. The Secretary of the Department of Commerce shall serve as Chairman of the Committee. (1987, c. 588, s. 2.)

§ 143-433.8. Duties.

The Committee shall perform the following duties:

(1) Manage the allocation of private activity bonds, low-income housing credits, qualified public educational facility bonds, recovery zone facility bonds, recovery zone economic development bonds, and qualified energy conservation bonds and receive advice from bond issuers, elected officials, and the General Assembly.

(2) Continue to monitor bond markets, economic development financing trends, school financing trends, housing markets, and tax incentives available to induce events and programs favorable to North Carolina, its cities and counties, and individual citizens.

(3) Continue to study the ways in which North Carolina can best and most fairly manage and utilize the allocation of private activity bonds, low-income housing credits, qualified public educational facility bonds, recovery zone facility bonds, recovery zone economic development bonds, and qualified energy conservation bonds.

(4) Report to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Revenue Laws Study Committee as requested and on not less than an annual basis. The annual report is due by November 1 of each year. (1987, c. 588, s. 3; 2008-204, s. 6.2; 2009-140, s. 3.)

§ 143-433.9. Allocation.

(a) To provide for the orderly and prompt issuance of bonds the allocation of which is managed under this Article, the Committee must follow formulas for allocating the following: (i) the unified volume limitation, (ii) the state housing credit ceiling, (iii) the annual aggregate limitation on the face amount of qualified public educational facility bonds, (iv) the limitation on issuance of recovery zone facility bonds, (v) the limitation on issuance of recovery zone economic development bonds, and (vi) the limitation on issuance of qualified energy conservation bonds. The unified volume limitation for all issues of private activity bonds, other than qualified public educational facility bonds and recovery zone facility bonds, in North Carolina shall be considered as a single resource to be allocated under this Article. The annual aggregate limitation on the face amount of qualified public educational facility bonds for all issues in North Carolina shall be considered as a single resource to be allocated under this Article. The Committee shall issue the following: (i) allocations of the unified volume limitation, (ii) allocations of the state housing credit ceiling, (iii) allocations and reallocations of the aggregate limitation on the face amount of qualified public educational facility bonds, (iv) allocation and reallocation of the authority for issuance of recovery zone facility bonds allocated to the State, (v) allocation and reallocation of the authority for issuance of recovery zone economic development bonds allocated to the State, (vi) allocation and reallocation of authority for issuance of qualified energy conservation bonds allocated to the State, and (vii) allocation of other limitations on authority to issue bonds as may be directed by the Governor. The Committee shall set forth procedures for making such allocations and in the making of such allocations shall take into consideration the best interest of the State of

North Carolina with regard to the economic development, school facility needs, energy conservation, green initiatives, and general prosperity of the people of North Carolina. In making the initial allocations for recovery zone facility bonds and recovery zone economic development bonds, the Committee shall follow the formula provided in section 1400U-1(a)(3) of ARRTA. In making the initial allocation for qualified energy conservation bonds, the Committee shall follow the guidelines provided in section 54D of the Internal Revenue Code of 1986. The Committee shall make all elective carryforwards of the unused unified volume limitation, the annual aggregate limitation on the face amount of qualified public educational facility bonds, recovery zone facility bonds, qualified energy conservation bonds, and any other bonds or tax credits over which it has allocation authority on behalf of the State. The Committee shall monitor the issuance of qualified energy conservation bonds to ensure that not more than thirty percent (30%) of such bonds are used for purposes that would be treated as private activity bonds under the Internal Revenue Code of 1986, as amended. The Committee is authorized to establish a procedure to monitor whether the initial allocations of recovery zone facility bonds or recovery zone economic development bonds to counties and large municipalities pursuant to ARRTA will be utilized, for an allocation that will not be utilized to be waived by notice to the Committee, and for the reallocation of the waived allocation to other projects that qualify pursuant to ARRTA.

(b) In administering the low-income housing credit program, the Committee shall adopt a Qualified Allocation Plan (the Plan) as required by 26 U.S.C. § 42(m) annually. Solely with respect to the adoption of the Plan, the Committee is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of the Plan, the Committee shall:

(1) Publish the proposed Plan in the North Carolina Register at least 30 days prior to the adoption of the final Plan;

(2) Notify any person who has applied for the low-income housing credit in the previous year and any other interested parties of its intent to adopt the Plan;

(3) Accept oral and written comments on the proposed Plan; and

(4) Hold at least one public hearing on the proposed Plan.

(c) In administering the allocation and reallocation of authority for issuance of qualified energy conservation bonds allocated to the State and reallocated to any "large local government" as defined in 26 U.S.C. § 54D(e), the Committee shall establish procedures (i) to monitor whether the initial sub-allocations of qualified energy conservation bonds to large local governments will be utilized by October 1, 2017; (ii) for the waiver and return to the Committee of sub-allocations that will not meet the deadline imposed by this subsection; and (iii) for the reallocation of returned sub-allocations for other projects or purposes that qualify under 26 U.S.C. § 54D(f) for financing with qualified energy conservation bonds. The Committee shall also develop programs described by 26 U.S.C. § 54D(f)(1)(A)(iii) and shall consider those programs along with other eligible uses for qualified energy conservation bonds in determining the reallocation

of unused and returned qualified energy conservation bond allocation. (1987, c. 588, s. 4; 2001-299, s. 1.1; 2008-204, s. 6.3; 2009-140, s. 4; 2017-57, s. 15.23.)

Article 52.

Pesticide Board.

Part 1. Pesticide Control Program: Organization and Functions.

§ 143-434. Short title.

This Article may be cited as the North Carolina Pesticide Law of 1971. (1971, c. 832, s. 1.)

§ 143-435. Preamble.

(a) The Legislative Research Commission was directed by House Resolution 1392 of the 1969 General Assembly "to study agricultural and other pesticides," and to report its findings and recommendations to the 1971 General Assembly. Pursuant to said Resolution a report was prepared and adopted by the Legislative Research Commission in 1970 concerning pesticides. In this report the Legislative Research Commission made the following findings concerning the use and effects of pesticides and the need for legislation concerning control of pesticide use, of which the General Assembly hereby takes cognizance:

(1) The use of chemical pesticides has developed since the 1940's into a major, new billion-dollar industry. Pesticides have bettered the lot of mankind in many ways and especially have assisted the farmer by their contribution to a stable and inexpensive supply of high quality food, fiber and forest products. The control of insects, fungi and other pests is essential to the public health and welfare and specifically to the prevention of disease, to the production and preservation of food, fiber, and forests and to the protection of other aspects of modern civilization.

(2) The use of pesticides for these important purposes is currently a matter of serious public concern and their use in some instances presents risks to man and the environment which must be weighed against the benefits of those uses in the overall public interest. Evidence is accumulating that extensive use of persistent pesticides poses hazards to health and the environment. Environmental problems resulting from the use, overuse and misapplication of some chemicals, and the disposal of unused chemicals and containers, have grown to the point where contamination of the environment is approaching significant proportions. There is concern among scientists and public health personnel about the long-term chronic effects of pesticide pollution on human health. Contamination by DDT has been shown to be global in extent. Moreover, recent experience in North Carolina and elsewhere has shown that the more toxic but less persistent pesticides cannot safely be substituted for the persistent "hard" pesticides without stringent safeguards.

(3) More extensive observation, study and monitoring of the effectiveness and the use of pesticides and of undesirable side effects on man and on the environment and of their relative importance for the overall public health and welfare are desirable in the public interest.

(4) Continued and strengthened control of the quality of pesticides and the control of labeling claims, direction for use and warnings are necessary for the protection of the purchasing public, including the household consumer, the farmer and other users.

(5) No existing legislation in North Carolina effectively limits or controls the use of pesticides. Misuse and misapplication of pesticides, while effectively controlled by law with respect to structural pest control operators, is not adequately controlled with respect to some other major groups of pesticide applicators. Careless disposal of unused pesticides and contaminated containers is not controlled by law, and no North Carolina legislation requires that pesticide dealers, who are the principal source of advice for many pesticide users, be qualified to give advice or be held responsible for their advice. These gaps in legal control of pesticides are important and should be remedied.

(b) The purpose of this Article is to regulate in the public interest the use, application, sale, disposal and registration of insecticides, fungicides, herbicides, defoliants, desiccants, plant growth regulators, nematicides, rodenticides, and any other pesticides designated by the North Carolina Pesticide Board. New pesticides are continually being discovered or synthesized which are valuable for the control of insects, fungi, weeds, nematodes, rodents, and for use as defoliants, desiccants, plant regulators and related purposes. However, such pesticides may be ineffective or may seriously injure health, property, or wildlife if not properly used. Pesticides may injure man or animals, either by direct poisoning or by gradual accumulation of poisons in the tissues. Crops or other plants may also be injured by their improper use. The drifting or washing of pesticides into streams or lakes can cause appreciable danger to aquatic life. A pesticide applied for the purpose of killing pests in a crop, which is not itself injured by the pesticide, may drift and injure other crops or nontarget organisms with which it comes in contact. In furtherance of the findings and recommendations of the Legislative Research Commission, it is hereby declared to be the policy of the State of North Carolina that for the protection of the health, safety, and welfare of the people of this State, and for the promotion of a more secure, healthy and safe environment for all the people of the State, the future sale, use and application of pesticides shall be regulated, supervised and controlled by the State in the manner herein provided. (1971, c. 832, s. 1.)

§ 143-436. North Carolina Pesticide Board; creation and organization.

(a) There is hereby established the North Carolina Pesticide Board which, together with the Commissioner of Agriculture, shall be responsible for carrying out the provisions of this Article.

(b) The Pesticide Board shall consist of seven members, to be appointed by the Governor, as follows:

(1) One member each representing the North Carolina Department of Agriculture and Consumer Services, the State Health Director or his designee, and one member from an environmental protection agency in the Department of Environmental Quality. The persons so selected may be either members of a policy board or departmental officials or employees.

(2) A representative of the agricultural chemical industry.

(3) A person directly engaged in agricultural production.

(4) Two at-large members, from fields of endeavor other than those enumerated in subdivisions (2) and (3) of this subsection, one of whom shall be a nongovernmental conservationist.

(c) The members of the Pesticide Board shall serve staggered four-year terms. Of the persons originally appointed, the members representing State agencies shall serve two-year terms, and the four at-large members shall serve four-year terms. All members shall hold their offices until their successors are appointed and qualified. Any vacancy occurring in the membership of the Board prior to the expiration of the term shall be filled by appointment by the Governor for the remainder of the unexpired term. The Governor may at any time remove any member from the Board for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. Each appointment to fill a vacancy in the membership of the Board shall be of a person having the same credentials as his predecessor.

(d) The Board shall select its chair from its own membership, to serve for a term of two years. The chair shall have a full vote. Any vacancy occurring in the chair's position shall be filled by the Board for the remainder of the term. The Board may select such other officers as it deems necessary.

(e) Any action of the Board shall require at least four concurring votes.

(f) The members of the Board who are not officers or employees of the State shall receive for their services the per diem and compensation prescribed in G.S. 138-5. (1971, c. 832, s. 1; 1973, c. 476, s. 128; 1989, c. 727, s. 170; 1997-261, s. 90; 1997-443, s. 11A.97; 2015-241, s. 14.30(u).)

§ 143-437. Pesticide Board; functions.

The Pesticide Board shall be the governing board for the programs of pesticide management and control set forth in this Article. The Pesticide Board shall have the following powers and duties under this Article:

(1) To adopt rules and regulations and make policies for the programs set forth in this Article.

(2) To carry out a program of planning, environmental and biological monitoring, and of investigation into long-range needs and problems concerning pesticides. In order to encourage the cooperation of private property owners needed to implement the provisions of this subdivision, the Board may enter into agreements with private property owners to conduct sampling, testing, monitoring, and related activities on their property. Information obtained pursuant to these agreements shall not be disclosed in a manner that would permit the identification of an individual property owner unless the property owner has given permission to disclose the information.

(3) To collect, analyze and disseminate information necessary for the effective operation of the programs set forth in this Article.

(4) To provide professional advice to public and private agencies and citizens of the State on matters relating to pesticides, in cooperation with other

State agencies, with professional groups, and with North Carolina State University and other educational institutions.

(5) To accept gifts and devises, and with the approval of the Governor to apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association or individual, and may comply with the terms, conditions and limitations of the grant, in order to accomplish any of the purposes of the Board, such grant funds to be expended pursuant to the Executive Budget Act.

(6) To inform and advise the Governor on matters involving pesticides, and to prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the management and control of pesticides in North Carolina.

(7) To make annual reports to the Governor and to make such other investigations and reports as may be requested by the Governor or the General Assembly.

(8) To exempt any federal or State agency from any provision of this Article if it is determined by the Board that emergency conditions exist which require exemption. (1971, c. 832, s. 1; 1977, c. 199; 1979, c. 448, s. 14; 1995, c. 445, s. 1; 2011-284, s. 94.)

§ 143-438. Commissioner of Agriculture to administer and enforce Article.

The Commissioner of Agriculture shall have the following powers and duties under this Article:

(1) To administer and enforce the provisions of this Article.

(2) To attend all meetings of the Pesticide Board, but without power to vote (unless he be designated as the ex officio member of the Board from the Department of Agriculture and Consumer Services).

(3) To keep an accurate and complete record of all Board meetings and hearings, and to have legal custody of all books, papers, documents and other records of the Board.

(4) To assign and reassign the administrative and enforcement duties and functions assigned to him in this Article to one or more of the divisions and other units within the Department of Agriculture and Consumer Services.

(5) To direct the work of the personnel employed by the Board and of the personnel of the Department of Agriculture and Consumer Services who have responsibilities concerning the programs set forth in this Article.

(6) To delegate to any division head or other officer or employee of the Department of Agriculture and Consumer Services any of the powers and duties given to the Department by statute or by the rules, regulations and procedures established pursuant to this Article.

(7) To perform such other duties as the Board may from time to time direct. (1971, c. 832, s. 1; 1997-261, s. 91.)

§ 143-439: Repealed by Session Laws 2017-57, s. 12.1(b), effective July 1, 2017.

Part 2. Regulation of the Use of Pesticides.

§ 143-440. Restricted use pesticides regulated.

(a) The Board may, by regulation after a public hearing, adopt and from time to time revise a list of restricted use pesticides for the State or for designated areas within the State. The Board may designate any pesticide or device as a "restricted use pesticide" upon the grounds that, in the judgment of the Board (either because of its persistence, its toxicity, or otherwise) it is so hazardous or injurious to persons, pollinating insects, animals, crops, wildlife, lands, or the environment, other than the pests it is intended to prevent, destroy, control, or mitigate that additional restriction on its sale, purpose, use or possession are required.

(b) The Board may include in any such restricted use regulation the time and conditions of sale, distribution, or use of such restricted use pesticides, may prohibit the use of any restricted use pesticide for designated purposes or at designated times; may require the purchaser or user to certify that restricted use pesticides will be used only as labeled or as further restricted by regulation; may require the certification and recertification of private applicators, and charge a fee of up to ten dollars ($10.00), with the fee set at a level to make the certification/recertification program self-supporting, and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; may adopt rules to classify private applicators; and may, if it deems it necessary to carry out the provisions of this Part, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the Board and under its direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations except that any person licensed to sell such pesticides may purchase and possess such pesticides without a permit. The Board may require all persons issued such permits to maintain records as to the use of the restricted use pesticides. The Board may authorize the use of restricted use pesticides by persons licensed under the North Carolina Structural Pest Control Act without a permit. A nonrefundable fee of ten dollars ($10.00) shall be charged for each examination required by this section. This examination fee is in addition to the certification or recertification fee, and any other fee authorized pursuant to any other provision of Article 4C of Chapter 106 of the General Statutes.

(c) A fee of fifty dollars ($50.00) shall be charged for examination of individuals seeking to be designated as Worker Protection Designated Trainers, in accordance with provisions of the Federal Worker Protection Standard set forth in 40 C.F.R. Part 170, and subsequent amendments to those regulations. (1971, c. 832, s. 1; 1979, c. 448, s. 1; 1981, c. 592, s. 1; 1987, c. 559, s. 2; c. 846; 2010-31, s. 11.1(a); 2014-100, s. 13.10(a); 2014-103, s. 16.)

§ 143-441. Handling, storage and disposal of pesticides.

(a) The Board may adopt regulations:

(1) Concerning the handling, transport, storage (which may include security precautions), display or distribution of pesticides, and concerning the disposal of pesticides and pesticide containers.

(2) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/ or size to alleviate danger of spillage, breakage, or misuse.

(b) No person shall handle, transport, store, display, or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with pesticides, or in any manner contrary to the regulations of the Board.

(c) No person shall dispose of, discard, or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, or to pollute any water supply or waterway, or in any manner contrary to the regulations of the Board. (1971, c. 832, s. 1.)

§ 143-442. Registration.

(a) Every pesticide prior to being distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the office of the Board, and such registration shall be renewed annually before January 1 for the ensuing calendar year. Beginning in 1988, the Board may by rule adopt a system of staggered three-year registrations. The applicant for registration shall file with the Board a statement that includes all of the following:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant.

(2) The name of the pesticide.

(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use.

(4) If requested by the Board, a full description of the tests made and the results thereof upon which the claims are based.

(5) In the case of renewal of registration, a statement with respect to information which is different from that furnished when the pesticide was last registered.

(6) Repealed by Session Laws 2011-239, s. 1, effective June 23, 2011, and applicable to applications for registration or renewals of registration filed on or after that date.

(7) Any other information needed by the Board to determine the amount of annual assessment payable by the applicant.

(b) The applicant shall pay an annual registration fee of one hundred fifty dollars ($150.00) plus an additional annual assessment for each brand or grade of pesticide registered. The annual assessment shall be fifty dollars ($50.00) if the applicant's gross sales of the pesticide in this State for the preceding 12 months for the period ending September 30th were more than five thousand dollars ($5,000.00) and twenty-five dollars ($25.00) if gross sales were less than five thousand dollars ($5,000.00). An additional two hundred dollars ($200.00) delinquent registration penalty shall be assessed against the registrant for each brand or grade of pesticide which is marketed in North Carolina prior to registration as required by this Article. In the case of multi-year registration, the annual fee

and additional assessment for each year shall be paid at the time of the initial registration. The Board shall give a pro rata refund of the registration fee and additional assessment to the registrant in the event that registration is canceled by the Board or by the United States Environmental Protection Agency.

(c) The Board, when it deems necessary in the administration of this Article, may require the submission of the complete formula of any pesticide.

(d) If the pesticide is properly registered with the United States Environmental Protection Agency and is in compliance with the requirements of G.S. 143-443, the Board shall register the pesticide. Provided, however, that if it does not appear to the Board that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Part, it shall not register the article and in turn shall notify the applicant of the manner in which the article, labeling, or other material required to be submitted fail to comply. The Board may suspend or cancel the registration of a pesticide when the pesticide or its labeling does not comply with this Part.

(e) The Board is authorized and empowered to refuse to register, or to cancel the registration of any brands and grades of pesticides as herein provided, if the registrant fails or refuses to comply with the provisions of this Part, or any rules and regulations promulgated thereunder, or, upon satisfactory proof that the registrant or applicant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this Part, or any rules and regulations promulgated thereunder. The Board may require the manufacturer or distributor of any pesticide, for which registration has been refused, cancelled, suspended or voluntarily discontinued or which has been found adulterated or deficient in its active ingredient, to remove such pesticide from the marketplace.

(f) Notwithstanding any other provisions of this Part, registration is not required in the case of a pesticide shipped from one plant within this State to another plant within this State operated by the same person.

(g) Any pesticide declared to be discontinued by the registrant must be registered by the registrant for one full year after distribution is discontinued. Any pesticide in channels of distribution after the aforesaid registration period may be confiscated and disposed of by the Board, unless the pesticide is acceptable for registration and is continued to be registered by the manufacturer or the person offering the pesticide for wholesale or retail sale. Provided, however, this subsection shall not apply to any brand or grade of pesticide which the Board determines does not remain in channels of distribution due to method of sale by registrant directly to users thereof.

(h) A pesticide may be registered by the Board for experimental use, including use to control wild animal or bird populations, even though the Wildlife Resources Commission may not have concurred in the declaration of the animal or bird populations as pests under the terms of Article 22A of Chapter 113 of the General Statutes.

(i) The Board shall be empowered to set forth criteria for determining when a given product constitutes a different or separate brand or grade of pesticide.

(j) Each manufacturer, distributor or registrant of a pesticide shall supervise the activities of any employee or agent to prevent the making of deceptive or misleading statements about the pesticide. (1971, c. 832, s. 1; 1973, c. 389, ss. 1, 7; 1975, c. 425, ss. 1, 2; 1979, c. 448, ss. 2, 3; c. 830, s. 10; 1981, c. 592, s. 2; 1987, c. 559, ss. 3-7; c. 827, s. 39; 1989, c. 544, s. 13; 1993, c. 481, ss. 1.1, 2; 1995, c. 445, s. 2; 2003-284, s. 35.4(e); 2009-451, s. 11.2; 2011-239, s. 1.)

§ 143-443. Miscellaneous prohibited acts.

(a) It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(1) Any pesticide which has not been registered pursuant to the provisions of G.S. 143-442, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with the registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: Except that, in the discretion of the Board, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.

(2) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing:

a. The name and address of the manufacturer, registrant, or person for whom manufactured;

b. The name, brand, or trademark under which said article is sold; and

c. The net weight or measure of the content subject, however, to such reasonable variations as the Board may permit.

(3) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in G.S. 143-444, unless the label shall bear, in addition to any other matter required by this Part:

a. The skull and crossbones;

b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and

c. A statement of an antidote for the pesticide.

(4) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Part, or any other white or lightly colored pesticide which the Board, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored, provided, that the Board may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the Board

determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any pesticide which is adulterated or misbranded, (or any device which is misbranded).

(6) Any pesticide in containers violating regulations adopted pursuant to G.S. 143-441. Pesticides found in containers which are unsafe due to damage or defective construction may be seized and impounded.

(b) It shall be unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Part or regulations promulgated hereunder, or to add any substance to, or take any substance from a pesticide in a manner that may defeat the purpose of this Part;

(2) For any person to use for his own advantage or to reveal, other than to the Board or proper officials or employees of the State or federal government or to the courts of this State in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of G.S. 143-442.

(2a) Repealed by Session Laws 1981, c. 592, s. 3.

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

(4) For any person who contracts for the aerial application of a pesticide to permit the application of any pesticide that is designated on its labeling as toxic to bees without first notifying, based on available listings, the owner or operator of any apiary registered under the North Carolina Bee and Honey Act of 1977 that is within a distance designated by the Pesticide Board as necessary and appropriate to prevent damage or injury.

(5) For any person to distribute, sell or offer for sale any restricted use pesticide to any dealer who does not hold a valid North Carolina Pesticide Dealer License.

(6) For any person to assault, resist, impede, intimidate, or interfere with any State employee while that employee is engaged in the performance of his or her duties under this Article.

(7) For any person to apply, for compensation, a pesticide that has not been registered pursuant to G.S. 143-442. (1971, c. 832, s. 1; 1975, c. 425, s. 3; 1979, c. 448, ss. 4, 5; 1981, c. 547; c. 592, ss. 3, 4; 1987, c. 559, s. 8; 1995, c. 445, s. 3.)

§ 143-444. Determinations.

The Board is authorized:

(1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) To determine whether pesticides are highly toxic to man; and

(3) To determine standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of G.S. 143-443(a)(4). (1971, c. 832, s. 1.)

§ 143-445. Exemptions.

(a) The penalties provided for violations of G.S. 143-443(a) shall not apply to:

(1) Any carrier while lawfully engaged in transporting pesticides within this State, if such carrier shall, upon request, permit the Board or its designated agent to copy all records showing the transactions in and movement of the articles;

(2) Public officials of this State or local subdivisions thereof and the federal government engaged in the performance of their official duties;

(3) The manufacturer or shipper of a pesticide for experimental use only,

a. By or under the supervision of an agency of this State or of the federal government authorized by law to conduct research in the field of pesticides, or

b. By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only –Not to be sold," together with the manufacturer's name and address; (except that if a written permit has been obtained from the Board, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit).

(b) No article shall be deemed in violation of this Part when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this Part shall apply. (1971, c. 832, s. 1.)

§ 143-446. Samples; submissions.

(a) The Board, or its agent, is authorized and directed to sample, test, inspect and make analyses of pesticides sold or offered for sale or distributed within this State, at time and place and to such an extent as it may deem necessary to determine whether such pesticides are in compliance with the provisions of this Article. The Board is authorized to adopt regulations concerning the collection and examination of samples (or devices), and to adopt regulations establishing tolerances providing for reasonable deviations from the guaranteed analysis.

(b) The official analysis shall be made from the official sample. Official samples shall be collected from material that has been packaged, labeled and released for shipment. A sealed and identified sample, herein called "official check sample" shall be kept until the analysis is completed on the official sample, except that the registrant may obtain upon request a portion of said official sample. If the official analysis conforms with the provisions of this Part, the official check sample may be destroyed. If the official analysis does not conform with the provisions of this Part, then the official check sample shall be retained for a period of 90 days from the date of the certificate of analysis of the official sample.

(c) The Board, of its own motion or upon complaint, may cause an examination to be made for the purpose of determining whether any pesticide complies with the requirements of this Part. If it shall appear from such examination that a pesticide fails to comply with the provisions of this Part, the Board may cause notice to be given to the offending person in the manner provided in G.S. 143-464, and the proceedings thereupon shall be as provided in such section; provided that pesticides may be seized and confiscated as provided in G.S. 143-447.

(d) The Board shall, by publication in such manner as it may prescribe, give notice of all judgments entered in actions instituted under the authority of this Article. (1971, c. 832, s. 1; 1987, c. 559, s. 9.)

§ 143-447. Emergency suspensions; seizures.

(a) The Board may order the summary suspension of the registration of a pesticide if it finds the suspension necessary to prevent an imminent hazard to the public, a nontarget organism, or a segment of the environment. In no event shall registration of a pesticide be construed as a defense to any charge of an offense prohibited under this Article.

(b) It shall be the duty of the Board to issue and enforce a written or printed "stop sale, stop use, or removal" order to the owner or custodian of any lot of pesticide and for the owner or custodian to hold said lot at a designated place when the Board finds said pesticide is being offered or exposed for sale in violation of any of the provisions of this Article until the law has been complied with and said pesticide is released in writing by the Board or said violation has been otherwise legally disposed of by written authority. The Board shall release the pesticide so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

The Board may issue a "stop sale, use or removal order" to prevent or stop the use of a pesticide in a manner inconsistent with its labeling or to prevent or stop the disposal of a pesticide or a pesticide container in violation of this Article or the rules of the Board adopted thereunder.

(c) Any pesticide (or device) that is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce between points within this State through any point outside this State shall be liable to be proceeded against in superior court in any county of the State where it may be found and seized for confiscation by process or libel for condemnation:

(1) In the case of a pesticide,
  a. If it is adulterated or misbranded,
  b. If it has not been registered under the provisions of G.S. 143-442, or has had its registration suspended or revoked or is the subject of a stop sale, stop use, or removal order,
  c. If it fails to bear on its label the information required by this Part,
  d. If it is a white or lightly colored pesticide and is not colored as required under this Part.
(2) In the case of a device, if it is misbranded.

(d) If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the State Treasurer; provided that the article shall not be sold contrary to the provisions of this Part; and provided further that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing or disposal, as the case may be.

(e) When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article. (1971, c. 832, s. 1; 1979, c. 448, s. 6; 1981, c. 592, s. 5; 1987, c. 559, s. 10, c. 827, s. 41.)

Part 3. Pesticide Dealers.

§ 143-448. Licensing of pesticide dealers; fees.

(a) No person shall act in the capacity of a pesticide dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a pesticide dealer unless he is licensed annually as provided in this Part. A separate license and fee shall be obtained

for each location or outlet from which restricted use pesticides are distributed, sold, held for sale, or offered for sale.

(b) Applications for a pesticide dealer license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a non-refundable fee of seventy-five dollars ($75.00). All licenses issued under this Part shall expire on December 31 of the year for which they are issued.

(c) The license for a pesticide dealer may be renewed annually upon application to the Board, accompanied by a fee of seventy-five dollars ($75.00) for each license, on or before the first day of January of the calendar year for which the license is issued.

(d) Repealed by Session Laws 1981, c. 592, s. 6.

(e) Every licensed pesticide dealer who changes his address or place of business shall immediately notify the Board.

(f) The Board shall issue to each applicant that satisfies the requirements of this Part a license which entitles the applicant to conduct the business described in the application for the calendar year for which the license is issued, unless the license is sooner revoked or suspended. (1971, c. 832, s. 1; 1981, c. 592, s. 6; 1987, c. 559, ss. 2, 11; 1989, c. 544, s. 11; 1995, c. 445, s. 4; 2003-284, ss. 35.4(b), 35.4(c); 2010-31, s. 11.1(b); 2011-145, s. 31.8(c).)

§ 143-449. Qualifications for pesticide dealer license; examinations.

(a) An applicant for a license must present evidence satisfactory to the Board concerning his qualifications for such license.

(b) Each applicant shall satisfy the Board as to his responsibility in carrying on the business of a pesticide dealer. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide dealer; and his knowledge of the laws and regulations governing the use and sale of pesticides. A nonrefundable fee of fifty dollars ($50.00) shall be charged for each examination required by this section. This examination fee is in addition to any fee authorized pursuant to any other provision of Article 4C of Chapter 106 of the General Statutes.

(c) The Board shall by regulation:

(1) Designate what persons or class of persons shall be required to pass the examination in the case of a pesticide dealer operating more than one location, and in the case of an applicant that is a corporation, governmental unit or agency, or other organized group;

(2) Provide for license renewal by completion of continuing certification credit requirements as prescribed by the Board or reexaminations at intervals not more frequent than four years. (1971, c. 832, s. 1; 1975, c. 425, s. 4; 2010-31, s. 11.1(c); 2015-263, s. 29(a).)

§ 143-450. Employees of pesticide dealers; dealer's responsibility.

(a) Every licensed pesticide dealer shall submit to the Board, at such times as the Board or the Commissioner may prescribe, the names of all persons employed by him who sell or recommend "restricted use pesticides."

(b) Each pesticide dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of pesticides, and in all claims and recommendations for use or application of pesticides. (1971, c. 832, s. 1; 1979, c. 448, s. 7; 1987, c. 559, s. 2.)

§ 143-451. Denial, suspension and revocation of license.

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;

(2) Made a pesticide recommendation not in accordance with the label registered pursuant to this Article;

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(4) Failed to pay the original or renewal license fee when due, and continued to sell restricted use pesticides without paying the license fee, or sold restricted use pesticides without a license;

(5) Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;

(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection;

(7) Made false or fraudulent records, invoices, or reports;

(8) Used fraud or misrepresentation, or presented false information, in making an application for a license or renewal of a license, or in selling or offering to sell restricted use pesticides;

(9) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(10) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;

(11) Impersonated any state, county, or city inspector or official;

(12) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulations.

(13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

(b) Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until such time has elapsed from the date of the order

revoking said license as established by the Board (not to exceed two years), or if an appeal is taken from said order or revocation, not to exceed two years from the date of the order or final judgment sustaining said revocation. (1971, c. 832, s. 1; 1975, c. 425, ss. 6, 7; 1987, c. 559, ss. 2, 13, c. 827, s. 40.)

Part 4. Pesticide Applicators and Consultants.

§ 143-452. Licensing of pesticide applicators; fees.

(a) No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

(b) Applications for pesticide applicator license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a non-refundable fee of seventy-five dollars ($75.00) for each pesticide applicator's license. In addition, an annual inspection fee of twenty-five dollars ($25.00) shall be submitted for each aircraft to be licensed. Should any aircraft fail to pass inspection, making it necessary for a second inspection to be made, the Board shall require an additional twenty-five-dollar ($25.00) inspection fee. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with the laws and regulations. All aircraft licensed to apply pesticides shall be identified by a license plate or decal furnished by the Board at no cost to the licensee, which plate or decal shall be affixed on the aircraft in a location and manner prescribed by the Board. No applicator inspection or license fee, original or renewal, shall be charged to State agencies or local governments or their employees. Inspections of ground pesticide application equipment may be made. Any such equipment determined to be faulty or unsafe shall not be used for the purpose of applying a pesticide(s) until such time as proper repairs and/or alterations are made.

(c) Repealed by Session Laws 1981, c. 592, s. 6.

(d) The Board shall classify licenses to be issued under this Part. Separate classifications or subclassifications shall be specified for (i) ground and aerial methods of application, and (ii) State and local government units engaged in the control of rodents and insects of public health significance. The Board may include such further classifications and subclassifications as the Board considers appropriate, including provisions for licensing of apprentice pesticide applicators. For aerial applicators, a license shall be required for both the contractor and the pilot. Each classification and subclassification may be subject to separate testing procedures and requirements.

(e) Every licensed pesticide applicator who changes his address shall immediately notify the Board.

(f) If the Board finds the applicant qualified to apply pesticides in the classifications he has applied for and, if the applicant files the bond or insurance required under G.S. 143-467, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency to operate the equipment described in the application, the Board shall issue a pesticide applicator's license limited to the classifications for which he is qualified. Every such license shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto

by the Board for cause, or unless such financial security required under G.S. 143-467 is dated to expire at an earlier date, in which case said license shall be dated to expire upon expiration date of said financial security. The license may restrict the applicant to the use of a certain type or types of equipment or pesticides or to certain areas if the Board finds that the applicant is qualified to use only such type or types. If a license is not issued as applied for, the Board shall inform the applicant in writing of the reasons therefor.

(g) A pesticide applicator's license shall not be transferable. When there is a transfer of ownership, management, or operation of a business of a licensee hereunder, the new owner, manager, or operator (as the case may be) whether it be an individual, firm, partnership, corporation, or other entity, must have available a licensed pesticide applicator to supervise the pesticide application business prior to continuance of such business.

(h) Repealed by Session Laws 1987, c. 559, s. 15. (1971, c. 832, s. 1; 1973, c. 389, ss. 2, 5; 1977, c. 100; 1981, c. 592, ss. 6, 7; 1987, c. 559, ss. 14, 15; 1989, c. 544, s. 10; 2003-284, s. 35.4(a); 2010-31, s. 11.1(d).)

§ 143-453. Qualifications for pesticide applicator's license; examinations.

(a) An applicant for a license must present satisfactory evidence to the Board concerning his qualifications for a pesticide applicator license. The contractor and each pilot involved in aerial application of pesticides shall be licensed.

Those qualifications, in the case of a pilot, shall include at least 125 hours and one year's flying experience as a pilot in the field of aerial pesticide application. A pilot lacking 125 hours and one year's experience as a pilot in the field of aerial pesticide application shall be licensed as an apprentice aerial pesticide applicator pilot. All aerial applications of pesticides by a licensed apprentice shall be conducted under the direct supervision of a licensed pesticide applicator pilot. The supervising pilot, while directly supervising an apprentice, shall operate out of the same airstrip as the apprentice and shall be available periodically throughout each day to provide advice and assistance to the apprentice. A nonrefundable fee of fifty dollars ($50.00) shall be charged for the examination required by this subsection. Such examination fee shall be charged in addition to the fees authorized pursuant to subsection (b) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes.

(b) Each applicant shall satisfy the Board as to his knowledge of the laws and regulations governing the use and application of pesticides in the classifications he has applied for (manually or with various equipment that he may have applied for a license to operate), and as to his responsibility in carrying on the business of a pesticide applicator. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide applicator; and his knowledge of the laws and regulations governing the use and application of pesticides in the classification for which he has applied. A nonrefundable fee of fifty dollars ($50.00) shall be charged for the core examination, and an additional twenty dollars ($20.00) shall be charged for each additional specific classification licensure. Such examination fees shall be charged in

addition to the fees authorized pursuant to subsection (a) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes.

(c) The Board shall by regulation:

(1) Designate what persons or class of persons shall be required to pass the examination in the case of an applicant that is a corporation or governmental unit or agency;

(2) Provide for license renewal by completion of continuing certification credit requirements as prescribed by the Board or reexaminations at intervals not more frequent than four years, or more frequently if found by the Board to be required to be necessary in order to qualify North Carolina's State pesticide control plan for federal approval. (1971, c. 832, s. 1; 1973, c. 389, s. 4; 1975, c. 425, ss. 5, 9; 1977, c. 1125; 1985, c. 163; 2010-31, s. 11.1(e); 2015-263, s. 29(b).)

§ 143-454. Solicitors, salesmen and operators; applicator's responsibility.

(a) Every licensed pesticide applicator shall submit to the Board, at such times as the Board or the Commissioner may prescribe, the names of all solicitors, salesmen, and operators employed by him.

(b) Each licensed pesticide applicator shall be responsible for solicitors, salesmen, and operators in his employment to assure that pesticides are used in a manner consistent with the intent of this Article. (1971, c. 832, s. 1; 1979, c. 448, s. 8.)

§ 143-455. Pest control consultant license.

(a) No person shall perform services as a pest control consultant without first procuring from the Board a license. Applications for a consultant license shall be in the form and shall contain the information prescribed by the Board. The application for a license shall be accompanied by a non-refundable annual fee of seventy-five dollars ($75.00).

(b) An applicant for a consultant license must present satisfactory evidence to the Board concerning his qualifications for such license. The Board may classify consultant licenses into one or more classifications or subclassifications based upon types of consulting services performed or to be performed. Such classifications and subclassifications may reflect the crops involved in the consulting service, the discipline or training of consultant, the discretion or lack of discretion involved in the consulting service, and the site or location of the service. Each classification and subclassification may be subject to separate testing procedures and requirements, and may be subject to its own minimum standards of training in specialized subject matter from a recognized college or university, or equivalent specialized consulting experience or training. A nonrefundable fee of fifty dollars ($50.00) shall be charged for the consultant examination, and an additional twenty dollars ($20.00) shall be charged for each additional specific classification licensure permitted by this subsection. Such examination fee shall be charged in addition to the fees authorized pursuant to subsection (a) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes. Qualifications for licensing may be less stringent if the licensee is restricted to making recommendations contained in

publications recognized by the Board as appropriate for a specific consulting classification or subclassification.

(c) Each applicant shall satisfy the Board as to his responsibility in carrying on the business of a pesticide consultant. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide consultant; and his knowledge of the laws and regulations governing the use and sale of pesticides.

(d) Pest control consultants shall be subject to the same provisions as pesticide applicators concerning penalties for late applications for license, changes of address, transferability of licenses, continuing certification credit requirements, periodic reexamination, and examinations for corporate applicants. (1971, c. 832, s. 1; 1975, c. 425, s. 10; 1987, c. 559, s. 16; 1989, c. 544, s. 12; 2003-284, s. 35.4(d); 2010-31, s. 11.1(f); 2015-263, s. 29(c).)

§ 143-456. Denial, suspension and revocation of license.

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;
(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
(3) Operated faulty or unsafe equipment;
(4) Operated in a faulty, careless, or negligent manner;
(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required;
(7) Made false or fraudulent records, invoices, or reports;
(8) Operated unlicensed equipment;
(9) Used fraud or misrepresentation, or presented false information, in making an application for a license or renewal of a license;
(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;
(11) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;
(12) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;
(13) Impersonated any state, county, or city inspector or official;
(14) Stored or disposed of containers or pesticides by means other than those prescribed on the labeling or by rule;
(15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

(16) Failed to pay a civil penalty assessed under this Article within 30 days after the date it is assessed.

(b) Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until such time has elapsed from the date of the order revoking said license as established by the Board (not to exceed two years), or if an appeal is taken from said order or revocation, not to exceed two years from the date of the order or final judgment sustaining said revocation. (1971, c. 832, s. 1; 1975, c. 425, ss. 6, 8; 1987, c. 559, s. 17; c. 827, s. 42; 1995, c. 445, s. 5.)

§ 143-457: Repealed by Session Laws 1981, c. 592, s. 8.

§ 143-458. Rules and regulations concerning methods of application.

(a) The Board may adopt rules prescribing the method to be used in the application of pesticides and the times and places pesticides may be applied. The Board may adopt rules restricting or prohibiting the sale and use of pesticides in designated areas during specified time periods. In adopting rules under this subsection, the Board shall consider factors required to prevent damage or injury to the following by the drift or misapplication of pesticides:

(1) Plants, including forage plants, on adjacent or nearby land;

(2) Wildlife in the adjoining or nearby areas;

(3) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; or

(4) Other animals, persons or beneficial insects.

In issuing such regulations, the Board shall give consideration to pertinent research findings and recommendations of other agencies of this State or of the federal government.

(b) The Board may by regulation require that notice of a proposed application of a pesticide be given to landowners adjoining the property to be treated or in the immediate vicinity thereof, if it finds that such notice is necessary to carry out the purpose of this Article.

(c) A pesticide applicator, a pesticide applicator's employee, or an agent of a pesticide applicator shall not apply any substance that:

(1) Has the active ingredients contained in a pesticide that is registered pursuant to G.S. 143-442, and

(2) Is not registered as a pesticide pursuant to G.S. 143-442.

(d) A pesticide applicator, a pesticide applicator's employee, or an agent of a pesticide applicator shall not combine any substance whose application is prohibited under subsection (c) of this section with any other substance to apply as a pesticide or to apply for any other reason, whether the combination occurs before, during, or after the application.

(e) Any person who violates subsection (c) or (d) of this section shall be guilty of a Class 2 misdemeanor, which shall include a fine of up to one thousand dollars ($1,000) per violation. (1971, c. 832, s. 1; 1987, c. 827, s. 43; 1995, c. 478, s. 1.)

§ 143-459. Reporting of shipments and volumes of pesticides.

Every person selling pesticides directly to the consumer shall file with the Board, in such manner and with such frequency as the Board may prescribe, reports of purchases, sales and shipments of restricted use pesticides and other pesticides designated by the Board. Failure to file any report when due shall be cause for suspension or revocation of any license or registration issued under this Article, or for denial of the issuance or renewal of any such license or registration,

and shall be a misdemeanor, punishable as provided by G.S. 143-469. The time for reporting may be extended for an additional 15 days for cause, upon written request to the Board. All reports provided under this Part are provided solely for the purposes of the Board. (1971, c. 832, s. 1; 1987, c. 559, s. 2.)

Part 5. General Provisions.

§ 143-460. Definitions.

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

(1) The term "active ingredient" means
  a. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;
  b. In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;
  c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;
  d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of a plant tissue.

(2) The term "adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(2a) "Antimicrobial pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any microorganism pest.

(3) Reserved.

(4) "Board" means the North Carolina Pesticide Board.

(5) "Commissioner" means the North Carolina Commissioner of Agriculture.

(6) Repealed by Session Laws 2017-57, s. 12.1(b), effective July 1, 2017.

(7) The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(8) The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(9) The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, weeds, nematodes, or such other pests as may be designated by the Board, but not including equipment used for the application of pesticides when sold separately therefrom.

(10) Repealed by Session Laws 1995, c. 445, s. 6.

(11) "Equipment" means any type of ground, water or aerial equipment, device, or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but shall not include any pressurized hand-sized household device used to apply any pesticide or any equipment, device or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

(12) The term "fungus" means any non-chlorophyll-bearing thallophyte (that is any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

(13) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.

(14) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

(15) The term "inert ingredient" means an ingredient which is not an active ingredient.

(16) The term "ingredient statement" means

a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; and

b. In case the pesticide contains arsenic in any form, a statement of the percentages of total and water-soluble arsenic, each calculated as elemental arsenic.

(17) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, wasps, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(18) The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(19) The term "label" means the written, printed, or graphic matter on, or attached to, the pesticide (or device) or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide (or device).

(20) The term "labeling" means all labels and other written, printed, or graphic matter:

a. Upon the pesticide (or device) or any of its containers or wrappers;
b. Accompanying the pesticide (or device) at any time;
c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate, nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by law to conduct research in the field of pesticides.

(21) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(22) "Manufacturer" includes any person engaged in the business of importing, producing, preparing, formulating, mixing, or processing pesticides.

(22a) "Material Safety Data Sheet" or "MSDS" means a chemical information sheet which would satisfy the requirements of the Hazardous Chemicals Right-to-Know Act, Article 18, Chapter 95 of the General Statutes, or any law enacted in substitution therefor.

(23) The term "misbranded" shall apply:
a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
b. To any pesticide:
1. If it is an imitation of or is offered for sale under the name of another pesticide;
2. If its labeling bears any reference to registration under this Article;
3. If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;
4. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;
5. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase except that the Board may permit the statement to appear prominently on some other part of the container, if the

size or form of the container make it impractical to comply with the requirements of this subparagraph;

6. If any word, statement, or other information required by or under the authority of this Article to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

7. If in the case of an insecticide, nematicide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticides or

8. In the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticides, except that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

(24) The term "nematicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(25) The term "nematode" means invertebrate animals of the phylum nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(25a) The phrase "packaged, labeled and released for shipment" means the point in the production and marketing process of a pesticide where the pesticide has been produced, and it is the intent of the producer that such product be introduced into commerce for direct retail sale.

(26) A "person" is any person, including (but not limited to) an individual, firm, partnership, association, company, joint-stock association, public or private institution, municipality or county or local government unit (as defined in G.S. 143-215.40(b)), state or federal governmental agency, or private or public corporation organized under the laws of this State or the United States or any other state or country.

(26a) The term "pest" means any insect, rodent, nematode, fungus, weed or any other noxious or undesirable microorganism or macroorganism, except viruses, bacteria, or other microorganisms on or in living persons or other living animals.

(27) "Pest control consultant" means any person, who, for a fee, offers or supplies technical advice, supervision, or aid, or recommends the use of

specific pesticides for the purpose of controlling insects, plant diseases, weeds, and other pests, but does not include any person regulated by the North Carolina Structural Pest Control Act (G.S. Chapter 106, Article 4C).

(28) The term "pesticide" means:

a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and

b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(29) "Pesticide applicator" means any person who owns or operates a pesticide application business or who provides, for compensation, a service that includes the application of pesticides upon the lands or properties of another; any public operator; any golf course operator; any seed treater; any person engaged in demonstration or research pest control; and any other person who applies pesticides for compensation and is not exempt from this definition. It does not include:

a. Any person who uses or supervises the use of a pesticide (i) only for the purpose of producing an agricultural commodity on property owned or rented by him or his employer, or (ii) only (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person, or (iii) only for the purposes set forth in (i) and (ii) above.

b. Any person who applies pesticides for structural pest control, as defined in the North Carolina Structural Pest Control Law (G.S. Chapter 106, Article 4C).

c. Any person certified by the Water Treatment Facility Operators Board of Certification under Article 2 of Chapter 90A of the General Statutes or by the Wastewater Treatment Operators Plant Certification Commission under Article 3 of Chapter 90A of the General Statutes who applies pesticides labeled for the treatment of water or wastewater.

d. Any person who applies antimicrobial pesticides that are not classified for restricted use and are not being used for agricultural, horticultural, or forestry purposes.

e. Any person who applies a general use pesticide to the property of another as a volunteer, without compensation.

f. Any person who is employed by a licensed pesticide applicator.

(30) The term "pesticide dealer" means any person who is engaged in the business of distributing, selling, offering for sale, or holding for sale restricted use pesticides for distribution directly to users. The term pesticide dealer does not include:

a. Persons whose sales of pesticides are limited to pesticides in consumer-sized packages (as defined by the Board) which are labeled and intended for home and garden use only and are not restricted use pesticides, or

b. Practicing veterinarians and physicians who prescribe, dispense, or use pesticides in the performance of their professional services.

(31) Repealed by Session Laws 1973, c. 389, s. 3.

(32) The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(33) "Public operator" means any person in charge of any equipment used by public utilities (as defined by General Statutes Chapter 62), State agencies, municipal corporations, or other governmental agencies applying pesticides.

(34) The term "registrant" means the person registering any pesticide pursuant to the provisions of this Article.

(35) The term "restricted use pesticide" or "pesticide classified for restricted use" means any pesticide or use classified as restricted by the Administrator of the United States Environmental Protection Agency or other pesticide or use which the Board has designated as such pursuant to G.S. 143-440.

(36) The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, attracting, or mitigating rodents or any other vertebrate animal which the Board shall declare to be a pest.

(36a) The phrase "to use any pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner not permitted by the labeling; provided that the phrase shall not include:

a. Applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling,

b. Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the labeling specifically states that the pesticide may be used only for the pests specified on the labeling,

c. Employing any method of application not prohibited by the labeling, or

d. Mixing pesticides or mixing a pesticide with a fertilizer when such mixture is not prohibited by the labeling.

(37) The term "weed" means any plant or part thereof which grows where not wanted.

(38) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this Article, pests; including but not limited to mammals, birds, and aquatic life. (1971, c. 832, s. 1; 1973, c. 389, s. 3; 1975, c. 425, s. 11; 1979, c. 448, ss. 9, 10; 1981, c. 592, ss. 9-11; 1987, c. 559, ss. 2, 18-20; 1991, c. 87, ss. 1, 2; 1995, c. 445, ss. 6, 7; 2017-57, s. 12.1(b).)

§ 143-461. General powers of Board.

In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Board shall have the power, at any time and from time to time:

(1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of this Article and rules of procedure establishing and amplifying the procedures to be followed in the administration of this Article. Unless the Board deems there are overriding policy considerations involved, any regulation of the Board, which will in the judgment of the Board result in severe curtailment of the usefulness or value of inventories or equipment in the hands of persons licensed under this Article, should be given a future effective date so as to minimize undue potential economic loss to licensees;

(2) To authorize the Commissioner by proclamation (i) to suspend or implement, in whole or in part, particular regulations of the Board which may be affected by variable conditions, or (ii) to suspend the application of any provision of this Part to any federal or State agency if it is determined by the Commissioner that emergency conditions require such action.

(3) To conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed by this Article;

(4) To conduct public hearings in accordance with the procedures prescribed by this Article;

(5) To delegate such of the powers of the Board as the Board deems necessary (other than its powers to adopt rules and regulations of any kind) to one or more of its members, to the Commissioner, or to any qualified employee of the Board or of the Commissioner; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Board. Any person to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Board for decision;

(6) To call upon the Attorney General for such legal advice and assistance as is necessary to the functioning of the Board;

(7) To institute such actions in the superior court in the county in which any defendant resides, or has his or its principal place of business, as the Board may deem necessary for the enforcement of any of the provisions of this Article or of any official actions of the Board, including proceedings to enforce subpoenas or for the punishment of contempt of the Board. Upon violation of any of the provisions of this Article, or of any regulation of the Board adopted under the authority of this Article the Board may, either before or after the institution of any other proceedings (civil or criminal), institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation and

for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any other penalty or remedy prescribed by this Article for any violation of same;

(8) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings. (1971, c. 832, s. 1; 1973, c. 389, s. 6; 1987, c. 827, s. 44.)

§ 143-462. Procedures for revocations and related actions affecting licenses.

In all proceedings, the effect of which would be to revoke, suspend, deny, or withhold renewal of a license issued under Part 3 or Part 4 of this Article, or to deny permission to take an examination for such a license, the provisions of Chapter 150B of the General Statutes shall be applicable. (1971, c. 832, s. 1; 1987, c. 827, s. 1.)

§ 143-463. Adoption and publication of rules.

Chapter 150B of the General Statutes governs the adoption of rules under this Article and the publication of those rules. (1971, c. 832, s. 1; 1975, 2nd Sess., c. 983, s. 84; 1979, c. 448, s. 11; 1987, c. 827, s. 45.)

§ 143-464. Procedures concerning registration of pesticides.

A denial, suspension, or cancellation of a registration of a pesticide shall be made in accordance with the procedures in Chapter 150B of the General Statutes for denying, suspending, or canceling a license. (1971, c. 832, s. 1; 1979, c. 448, s. 12; 1987, c. 827, s. 46.)

§ 143-465. Reciprocity; intergovernmental cooperation.

(a) The Board may issue any license required by this Article on a reciprocal basis with other states without examination to a nonresident who is licensed in another state substantially in accordance with any of the provisions of the Article, provided that financial security as provided for in G.S. 143-467 is met.

(b) The Board may cooperate or enter into formal agreements with any other agency of this State or its subdivisions or with any agency of any other state or of the federal government for the purpose of enforcing any of the provisions of this Article.

(c) In order to avoid confusion resulting from diverse requirements and to avoid increased costs to the people of this State due to the necessity of complying with such diverse requirements in the manufacture and sale of such pesticides, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such pesticides. To this end the Board is authorized, after public hearing, to adopt by regulation such regulations, applicable to and in conformity with the primary standards established by this Article, as have been or may be prescribed with respect to pesticides by departments or agencies of the United States government.

(d) No county, city, or other political subdivision of the State shall adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of pesticides in any area subject to regulation by the Board pursuant to this Article. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from exercising its planning and zoning authority under Article 19 of Chapter 160A of the General Statutes or Article

18 of Chapter 153A of the General Statutes, or from exercising its fire prevention or inspection authority. (1971, c. 832, s. 1; 1995, c. 445, s. 8.)

§ 143-466. Records; information; inspection; enforcement.

(a) The Board shall require licensees to maintain records with respect to the sale and application of such pesticides as it may from time to time prescribe. Such relevant information as the Board may deem necessary may be specified by rule. The records shall be kept for a period of three years from the date of the application of the pesticide to which the records refer, and shall be available for inspection and copying by the Board or its agents at its request.

(b) The Board may publish information regarding injury which may result from improper application or use of pesticides and the methods and precautions designed to prevent such injury.

(c) The Board may provide for inspection of any equipment used for application of pesticides and may require repairs or other changes before its further use for pesticide application. A list of requirements that equipment shall meet may be adopted by the Board by regulation.

(d) The Board may provide for inspection of any place of business where pesticides are stored or sold and may require changes in methods of handling, displaying and storing of all pesticides. A list of requirements that places of business must meet may be adopted by regulation of the Board.

(e) For the purpose of carrying out the provisions of this Article, inspectors designated by the Board may enter upon any public or private premises at reasonable times, in order:

(1) To have access for the purpose of inspecting the premises and any equipment subject to this Article and such premises on which such equipment is kept or stored;
(2) To inspect lands actually or reported to be exposed to pesticides;
(3) To inspect storage or disposal areas;
(4) To inspect or investigate complaints of injury to humans, land or plants; or
(5) To sample pesticides being applied, or to be applied.

No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties. Should the Board or its designated agent be denied access to any land where such access was sought for the purposes set forth in this Article, the Board may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may upon such application issue the search warrant for the purposes requested. (1971, c. 832, s. 1; 1995, c. 445, s. 9.)

§ 143-467. Financial responsibility.

(a) The Board may require from a licensee or an applicant for a license under this Article evidence of his financial ability to properly indemnify persons suffering damage from the use or application of pesticides, in the form of a surety bond, liability insurance or cash deposit. The amount of this bond, insurance or deposit shall be determined by the Board, in light of the risk of damage. The indemnification requirements may extend to damage to persons and property from equipment used (including aircraft).

(b) The Board may also require a reasonable performance bond with satisfactory surety to secure the performance of contractual obligations of the licensee, with respect to application of pesticides. Any person injured by the breach of any such obligation or any person damaged by

pesticides or by equipment used in their application shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained.

(c) Any regulations adopted by the Board pursuant to G.S. 143-461 to implement this section may provide for such conditions, limitations and requirements concerning the financial responsibility required by this section as the Board deems necessary, including but not limited to notice of reduction or cancellation of coverage, deductible provisions, and acceptability of surety. Such regulations may classify financial responsibility requirements according to the separate license classifications and subclassifications prescribed by the Board pursuant to G.S. 143-452 and the dealer category (Part 3 of this Article). (1971, c. 832, s. 1.)

§ 143-468. Disposition of fees and charges.

(a) Except as provided in G.S. 143-469 and in subsection (b), all fees and charges received by the Board under this Article shall be credited to the Department of Agriculture and Consumer Services for the purpose of administration and enforcement of this Article.

(b) The Pesticide Environmental Trust Fund is established as a nonreverting account within the Department of Agriculture and Consumer Services. The Department of Agriculture and Consumer Services shall administer the Fund. The additional assessment imposed by G.S. 143-442(b) on the registration of a brand or grade of pesticide shall be credited to the Fund. The Department shall distribute money in the Fund as follows:

(1) Two and one-half percent (2.5%) to North Carolina State University Cooperative Extension Service to enhance its agromedicine efforts in cooperation with East Carolina University School of Medicine.

(2) Two and one-half percent (2.5%) to East Carolina University School of Medicine to enhance its agromedicine efforts in cooperation with North Carolina State University Cooperative Extension Service.

(3) Twenty percent (20%) to North Carolina State University, Department of Toxicology, to establish and maintain an extension agromedicine specialist position.

(4) Seventy-five percent (75%) to the Department of Agriculture and Consumer Services for the costs of administering its pesticide disposal program, including the salaries and support of staff for the pesticide disposal program, and for its environmental programs, as directed by the Board, including establishing a pesticide container management program to enhance its pesticide disposal program and its water quality initiatives. (1971, c. 832, s. 1; 1993, c. 481, s. 1; 1997-261, s. 92; 1998-215, s. 26(b); 2005-276, s. 11.1.)

§ 143-469. Penalties.

(a) Any person who shall be adjudged to have violated any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Board, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) A civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

(c) Proceedings for the assessment of civil penalties under this section shall be governed by Chapter 150B of the North Carolina General Statutes. If the person assessed a civil penalty fails to pay the penalty to the North Carolina Department of Agriculture and Consumer Services, the Board may institute an action in the superior court of the county in which the person resides or has his principal place of business to recover the unpaid amount of said penalty. An action to recover a civil penalty under this section shall not relieve any party from any other penalty prescribed by law.

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars ($500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

(e) 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. (1971, c. 832, s. 1; 1981, c. 592, s. 12; 1987, c. 559, s. 21; c. 827, s. 1; 1993, c. 539, s. 1035; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 445, s. 10; 1997-261, s. 109; 1998-215, s. 26(a).)

§ 143-470: Repealed by Session Laws 1981, c. 592, s. 13, effective July 1, 1981.

§ 143-470.1. Report of minor violations in discretion of Board or Commissioner.

Nothing in this Article shall be construed to require the Board or the Commissioner to initiate, or attempt to initiate, any criminal or administrative proceedings under this Article for minor violations of this Article whenever the Board or Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1979, c. 448, s. 13.)

Article 53.

Commission for Mental Health, Mental Retardation and Substance Abuse Services.

§§ 143-471 through 143-475. Repealed by Session Laws 1975, c. 879, s. 18.

§ 143-475.1: Repealed by Session Laws 1985, c. 589, s. 44.

Article 54.

North Carolina Council on State Goals and Policy Act.

§§ 143-476 through 143-489. Repealed by Session Laws 1975, c. 879, s. 9.

Article 55.

The Southern Growth Policies Agreement.

§ 143-490. Compact enacted into law.

The Southern Growth Policies Agreement is hereby enacted into law and entered into by this State with all other states legally joining therein in the form substantially as follows. (1973, c. 200, s. 1.)

§ 143-491. Article I. Findings and Purposes.

(a) The party states find that the South has a sense of community based on common social, cultural and economic needs and fostered by a regional tradition. There are vast potentialities for mutual improvement of each state in the region by cooperative planning for the development, conservation and efficient utilization of human and natural resources in a geographic area large enough to afford a high degree of flexibility in identifying and taking maximum advantage of opportunities for healthy and beneficial growth. The independence of each state and the special needs of subregions are recognized and are to be safeguarded. Accordingly, the cooperation resulting from this Agreement is intended to assist the states in meeting their own problems by enhancing their abilities to recognize and analyze regional opportunities and take account of regional influences in planning and implementing their public policies.

(b) The purposes of this Agreement are to provide:

(1) Improved facilities and procedures for study, analysis and planning of governmental policies, programs and activities of regional significance.

(2) Assistance in the prevention of interstate conflicts and the promotion of regional cooperation.

(3) Mechanisms for the coordination of state and local interests on a regional basis.

(4) An agency to assist the states in accomplishing the foregoing. (1973, c. 200, s. 1.)

§ 143-492. Article II. The Board.

(a) There is hereby created the Southern Growth Policies Board, hereinafter called "the Board."

(b) The Board shall consist of five members from each party state, as follows:

(1) The governor.

(2) Two members of the state legislature, one appointed by the presiding officer of each house of the legislature or in such other manner as the legislature may provide. For the Senate of North Carolina, the General Assembly provides that the appointment shall be made by the President Pro Tempore of the Senate.

(3) Two residents of the state who shall be appointed by the governor to serve at his pleasure.

(c) In making appointments pursuant to paragraph (b)(3), a governor shall, to the greatest extent practicable, select persons who, along with the other members serving pursuant to paragraph (b), will make the state's representation on the Board broadly representative of the several socioeconomic elements within his state.

(d) (1) A governor may be represented by an alternate with power to act in his place and stead, if notice of the designation of such alternate is given to the Board in such manner as its bylaws may provide.

(2) A legislative member of the Board may be represented by an alternate with power to act in his place and stead, unless the laws of his state prohibit such representation and if notice of the designation of such alternate is given to the Board in such manner as its bylaws may provide. An alternate for a legislative member of the Board shall be selected by the member from among the members of the legislative house in which he serves.

(3) A member of the Board serving pursuant to paragraph (b)(3) of this Article may be represented by another resident of his state who may participate in his place and stead, except that he shall not vote: Provided that notice of the identity and designation of the representative selected by the member is given to the Board in such manner as its bylaws may provide. (1973, c. 200, s. 1; 1995, c. 490, s. 50.)

§ 143-493. Article III. Powers.

(a) The Board shall prepare and keep current a statement of regional objectives, including recommended approaches to regional problems. The statement may also identify projects deemed by the Board to be of regional significance. The statement shall be available in its initial form two years from the effective date of this Agreement and shall be amended or revised no less frequently than once every six years. The statement shall be in such detail as the Board may prescribe. Amendments, revisions, supplements or evaluations may be transmitted at any time. An annual commentary on the statement shall be submitted at a regular time to be determined by the Board.

(b) In addition to powers conferred on the Board elsewhere in this Agreement, the Board shall have the power to make or commission studies, investigations and recommendations with respect to:

(1) The planning and programming of projects of interstate or regional significance.
(2) Planning and scheduling of governmental services and programs which would be of assistance to the orderly growth and prosperity of the region, and to the well-being of its population.
(3) Effective utilization of such federal assistance as may be available on a regional basis or as may have an interstate or regional impact.
(4) Measures for influencing population distribution, land use, development of new communities and redevelopment of existing ones.
(5) Transportation patterns and systems of interstate and regional significance.
(6) Improved utilization of human and natural resources for the advancement of the region as a whole.
(7) Any other matters of a planning, data collection or informational character that the Board may determine to be of value to the party states. (1973, c. 200, s. 1.)

§ 143-494. Article IV. Avoidance of Duplication.

(a) To avoid duplication of effort and in the interest of economy, the Board shall make use of existing studies, surveys, plans and data and other materials in the possession of the governmental agencies of the party states and their respective subdivisions or in the possession of other interstate agencies. Each such agency, within available appropriations and if not expressly prevented or limited by law, is hereby authorized to make such materials available to the Board and to otherwise assist it in the performance of its functions. At the request of the Board, each such agency is further authorized to provide information regarding plans and programs affecting the region, or any subarea thereof, so that the Board may have available to it current information with respect thereto.

(b) The Board shall use qualified public and private agencies to make investigations and conduct research, but if it is unable to secure the undertaking of such investigations or original research by a qualified public or private agency, it shall have the power to make its own

investigations and conduct its own research. The Board may make contracts with any public or private agencies or private persons or entities for the undertaking of such investigations or original research within its purview.

(c) In general, the policy of paragraph (b) of this Article shall apply to the activities of the Board relating to its statement of regional objectives, but nothing herein shall be construed to require the Board to rely on the services of other persons or agencies in developing the statement of regional objectives or any amendment, supplement or revision thereof. (1973, c. 200, s. 1.)

§ 143-495. Article V. Advisory Committees.

The Board shall establish a Local Governments Advisory Committee. In addition, the Board may establish advisory committees representative of subregions of the South, civic and community interests, industry, agriculture, labor or other categories or any combinations thereof. Unless the laws of a party state contain a contrary requirement, any public official of the party state or a subdivision thereof may serve on an advisory committee established pursuant hereto and such service may be considered as a duty of his regular office or employment. (1973, c. 200, s. 1.)

§ 143-496. Article VI. Internal Management of the Board.

(a) The members of the Board shall be entitled to one vote each. No action of the Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Board are cast in favor thereof. Action of the Board shall be only at a meeting at which a majority of the members or their alternates are present. The Board shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the Board may delegate the exercise of any of its powers relating to internal administration and management to an Executive Committee or the Executive Director. In no event shall any such delegation include final approval of:

(1) A budget or appropriation request.
(2) The statement of regional objectives or any amendment, supplement or revision thereof.
(3) Official comments on or recommendations with respect to projects of interstate or regional significance.
(4) The annual report.

(b) To assist in the expeditious conduct of its business when the full Board is not meeting, the Board shall elect an Executive Committee of not to exceed 23 members, including at least one member from each party state. The Executive Committee, subject to the provisions of this Agreement and consistent with the policies of the Board, shall be constituted and function as provided in the bylaws of the Board. One half of the membership of the Executive Committee shall consist of governors, and the remainder shall consist of other members of the Board, except that at any time when there is an odd number of members on the Executive Committee, the number of governors shall be one less than half of the total membership. The members of the Executive Committee shall serve for terms of two years, except that members elected to the first Executive Committee shall be elected as follows: One less than half of the membership for two years and the remainder for one year. The Chairman, Chairman-Elect, Vice-Chairman and Treasurer of the Board shall be members of the Executive Committee and anything in this paragraph to the contrary notwithstanding shall serve during their continuance in these offices. Vacancies in the Executive Committee shall not affect its authority to act, but the Board at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term.

(c) The Board shall have a seal.

(d) The Board shall elect, from among its members, a Chairman, a Chairman-Elect, a Vice-Chairman and a Treasurer. Elections shall be annual. The Chairman-Elect shall succeed to the office of chairman for the year following his service as Chairman-Elect. For purposes of the election and service of officers of the Board, the year shall be deemed to commence at the conclusion of the annual meeting of the Board and terminate at the conclusion of the next annual meeting thereof. The Board shall provide for the appointment of an Executive Director. Such Executive Director shall serve at the pleasure of the Board, and together with the Treasurer and such other personnel as the Board may deem appropriate shall be bonded in such amounts as the Board shall determine. The Executive Director shall be Secretary.

(e) The Executive Director, subject to the policy set forth in this Agreement and any applicable directions given by the Board, may make contracts on behalf of the Board.

(f) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the Executive Director, subject to the approval of the Board, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Board, and shall fix the duties and compensation of such personnel. The Board in its bylaws shall provide for the personnel policies and programs of the Board.

(g) The Board may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

(h) The Board may accept for any of its purposes and functions under this Agreement any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the Board pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this Article shall be reported in the annual report of the Board. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

(i) The Board may establish and maintain such facilities as may be necessary for the transacting of its business. The Board may acquire, hold, and convey real and personal property and any interest therein.

(j) The Board shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Board shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The Board annually shall make to the governor and legislature of each party state a report covering the activities of the Board for the preceding year. The Board at any time may make such additional reports and transmit such studies as it may deem desirable.

(l) The Board may do any other or additional things appropriate to implement powers conferred upon it by this Agreement. (1973, c. 200, s. 1; 1979, c. 35, s. 1.)

§ 143-497. Article VII. Finance.

(a) The Board shall advise the governor or designated officer or officers of each party state of its budget of estimated expenditures for such period as may be required by the laws of that party state. Each of the Board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

(b) The total amount of appropriation requests under any budget shall be apportioned among the party states. Such apportionment shall be in accordance with the following formula:

(1) One third in equal shares,

(2) One third in the proportion that the population of a party state bears to the population of all party states, and

(3) One third in the proportion that the per capita income in a party state bears to the per capita income in all party states.

In implementing this formula, the Board shall employ the most recent authoritative sources of information and shall specify the sources used.

(c) The Board shall not pledge the credit of any party state. The Board may meet any of its obligations in whole or in part with funds available to it pursuant to Article VI(h) of this Agreement, provided that the Board takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the Board makes use of funds available to it pursuant to Article VI(h), or borrows pursuant to this paragraph, the Board shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same. The Board may borrow against anticipated revenues for terms not to exceed two years, but in any such event the credit pledged shall be that of the Board and not of a party state.

(d) The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Board.

(e) The accounts of the Board shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the Board.

(f) Nothing contained herein shall be construed to prevent Board compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Board. (1973, c. 200, s. 1.)

§ 143-498. Article VIII. Cooperation with the Federal Government and Other Governmental Entities.

Each party state is hereby authorized to participate in cooperative or joint planning undertakings with the federal government, and any appropriate agency or agencies thereof, or with any interstate agency or agencies. Such participation shall be at the instance of the governor or in such manner as state law may provide or authorize. The Board may facilitate the work of state representatives in any joint interstate or cooperative federal-state undertaking authorized by this Article, and each such state shall keep the Board advised of its activities in respect of such undertakings, to the extent that they have interstate or regional significance. (1973, c. 200, s. 1.)

§ 143-499. Article IX. Subregional Activities.

The Board may undertake studies or investigations centering on the problems of one or more selected subareas within the region: Provided that in its judgment, such studies or investigations will have value as demonstrations for similar or other areas within the region. If a study or investigation that would be of primary benefit to a given state, unit of local government, or intrastate or interstate area is proposed, and if the Board finds that it is not justified in undertaking the work for its regional value as a demonstration, the Board may undertake the study or investigation as a special project. In any such event, it shall be a condition precedent that

satisfactory financing and personnel arrangements be concluded to assure that the party or parties benefited bear all costs which the Board determines that it would be inequitable for it to assume. Prior to undertaking any study or investigation pursuant to this Article as a special project, the Board shall make reasonable efforts to secure the undertaking of the work by another responsible public or private entity in accordance with the policy set forth in Article IV(b). (1973, c. 200, s. 1.)

§ 143-500. Article X. Comprehensive Land Use Planning.

If any two or more contiguous party states desire to prepare a single or consolidated comprehensive land use plan, or a land use plan for any interstate area lying partly within each such state, the governors of the states involved may designate the Board as their joint agency for the purpose. The Board shall accept such designation and carry out such responsibility: Provided that the states involved make arrangements satisfactory to the Board to reimburse it or otherwise provide the resources with which the land use plan is to be prepared. Nothing contained in this Article shall be construed to deny the availability for use in the preparation of any such plan of data and information already in the possession of the Board or to require payment on account of the use thereof in addition to payments otherwise required to be made pursuant to other provisions of this Agreement. (1973, c. 200, s. 1.)

§ 143-501. Article XI. Compacts and Agencies Unaffected.

Nothing in this Agreement shall be construed to:

(1) Affect the powers or jurisdiction of any agency of a party state or any subdivision thereof.

(2) Affect the rights or obligations of any governmental units, agencies or officials, or of any private persons or entities conferred or imposed by any interstate or interstate-federal compacts to which any one or more states participating herein are parties.

(3) Impinge on the jurisdiction of any existing interstate-federal mechanism for regional planning or development. (1973, c. 200, s. 1.)

§ 143-502. Article XII. Eligible Parties; Entry into and Withdrawal.

(a) This Agreement shall have as eligible parties the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, the Commonwealth of Puerto Rico, and the Territory of the Virgin Islands, hereinafter referred to as party states.

(b) Any eligible state may enter into this Agreement and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least five states shall be required.

(c) Adoption of the Agreement may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1973. During any period when a state is participating in this Agreement through gubernatorial action, the governor may provide to the Board an equitable share of the financial support of the Board from any source available to him. Nothing in this paragraph shall be construed to require a governor to take action contrary to the constitution or laws of his state.

(d) Except for a withdrawal effective on December 31, 1973, in accordance with paragraph (c) of this Article, any party state may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal. (1973, c. 200, s. 1; 1979, c. 35, s. 2.)

§ 143-503. Article XIII. Construction and Severability.

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any state participating therein, the Agreement shall remain in full force and effect as to the state affected as to all severable matters. (1973, c. 200, s. 1.)

§ 143-504. Copies of bylaws and amendments to be filed.

Copies of bylaws and amendments to be filed pursuant to Article VI(j) of the Agreement shall be filed with chief state records-keeping agency. (1973, c. 200, s. 2.)

§ 143-505. Continuance of states as parties.

Nothing contained in the Southern Growth Policies Agreement as enacted by this Article shall in any event be construed to terminate the participation of this State with any state which adopted the Southern Growth Policies Agreement prior to the effective date of this Article, except that the provisions of Article XII(c) shall govern with respect to the continuance of states as parties thereto after December 31, 1973. (1973, c. 200, s. 3.)

§ 143-506. Rights of State and local governments not restricted.

No section, Article, or provision contained herein shall be construed so as to prohibit, restrict or restrain the actions of any individual member state or the actions of any county or municipal government within the boundaries of any individual member state nor shall any delegate from the State of North Carolina be authorized by this General Assembly to cast any vote that would in any manner restrict the sovereign rights presently granted to or retained by this State under the United States Constitution, or the rights of any local governments granted by the Constitution of the State of North Carolina or by statutory acts of the General Assembly. (1973, c. 200, s. 4.)

§§ 143-506.1 through 143-506.5. Reserved for future codification purposes.

Article 55A.

Balanced Growth Policy Act.

§ 143-506.6. Title.

This Article shall be known as the North Carolina Balanced Growth Policy Act. (1979, c. 412, s. 1.)

§ 143-506.7. Purposes.

The purposes of this Article are to declare as a policy that the State of North Carolina shall encourage economic progress and job opportunities throughout the State; support growth trends which are favorable to maintain a dispersed population, to maintain a healthy and pleasant environment and to preserve the natural resources of the State. (1979, c. 412, s. 2.)

§ 143-506.8. Declaration of State Balanced Growth Policy.

The General Assembly of North Carolina recognizes the importance of reaching a higher standard of living throughout North Carolina by maintaining a balance of people, jobs, public services and the environment, supported by the growing network of small and large cities in the State. The General Assembly of North Carolina, in order to assure that opportunities for a higher standard of living are available all across the State, declares that it shall be the policy of the State to bring more and better jobs to where people live; to encourage the development of adequate public services on an equitable basis for all of the State's people at an efficient cost; and to maintain the State's natural environmental heritage while accommodating urban and agricultural growth. (1979, c. 412, s. 3.)

§ 143-506.9. Cooperation of agencies.

The General Assembly encourages, to the fullest extent possible, all State agencies to review their existing policies, procedures and regulations to bring them into conformity with the provisions of this Balanced Growth Policy. (1979, c. 412, s. 4.)

§ 143-506.10. Designation of growth centers; achieving balanced growth.

It shall be the policy of the State of North Carolina to support the expansion of the State and to designate growth areas or centers with the potential, capacity and desire for growth. The Governor, with the advice of county and municipal government officials and citizens, is charged with designating growth areas or centers, which shall include at least one center in each North Carolina county. Designation of growth areas or centers shall be reviewed annually. These designations may be used for the purpose of establishing priority consideration for State and federal assistance for growth.

Progress toward achieving balanced growth shall be measured by the strengthening of economic activity and the adequacy of public services within each of the State's multi-county regions and, as to the geographical area included, the Southeastern Economic Development Commission. The Governor, with the advice of county and municipal government officials and citizens, shall develop measures of progress toward achieving balanced growth. (1979, c. 412, s. 5.)

§ 143-506.11. Citizen participation.

The Governor shall establish a process of citizen participation that assures the expression of needs and aspirations of North Carolina's citizens in regard to the purposes of this Article. (1979, c. 412, s. 6.)

§ 143-506.12. Policy areas.

The following program area guidelines shall become the policy for the State of North Carolina:

(1) To encourage diversified job growth in different areas of the State, with particular attention to those groups which have suffered from high rates of

unemployment or underemployment, so that sufficient work opportunities at high wage levels can exist where people live;

(2) To encourage the development of transportation systems that link growth areas or centers together with appropriate levels of service;

(3) To encourage full support for the expansion of family-owned and operated units in agriculture, forestry and the seafood industry as the basis for increasing productive capacity;

(4) To encourage the development and use of the State's natural resources wisely in support of Balanced Growth Policy while fulfilling the State's constitutional obligation to protect and preserve its natural heritage;

(5) To promote the concept that a full range of human development services shall be available and accessible to persons in all areas of the State;

(6) To encourage the continued expansion of early childhood, elementary, secondary and higher education opportunities so that they are improving in both quality and availability;

(7) To encourage excellent technical training for North Carolina workers that prepares them to acquire and hold high-skill jobs and that encourages industries which employ high-skill workers to locate in the State;

(8) To encourage the availability of cultural opportunities to people where they live;

(9) To encourage the expansion of local government capacity for managing growth consistent with this Balanced Growth Policy; and

(10) To encourage conservation of existing energy resources and provide for the development of an adequate and reliable energy supply, while protecting the environment. (1979, c. 412, s. 7.)

§ 143-506.13. Implementation of a State-local partnership.

The Governor, with the advice of the State Goals and Policy Board, shall establish a statewide policy-setting process for Balanced Growth, in partnership with local government, that brings about full participation of both the State and local government. The purpose of this State-local partnership is to arrive at joint strategies and objectives for balanced statewide development and ensure consistent action by the State and local government for jointly agreed upon strategies and objectives. (1979, c. 412, s. 8.)

§ 143-506.14: Repealed by Session Laws 2011-266, s. 1.12, effective July 1, 2011.

Article 55B.

North Carolina Commission on Jobs and Economic Growth.

§ 143-506.15: Expired.

Article 56.

Emergency Medical Services Act of 1973.

§ 143-507. Establishment of Statewide Emergency Medical Services System.

(a) There is established a comprehensive Statewide Emergency Medical Services System in the Department of Health and Human Services. All responsibility for this System shall be vested in the Secretary of the Department of Health and Human Services and other officers, boards, and commissions specified by law or regulation.

(b) The Statewide Medical Services System includes Emergency Medical Services and also includes first aid by members of the community; public knowledge and easy access into the system; prompt emergency medical dispatch of well-designed, equipped, and staffed ambulances; effective care by trained and credentialed personnel with appropriate disposition at the scene of the emergency and while in transit; communications with the treatment center while at the scene and while in transit; routing and referral to the appropriate treatment facility; injury prevention initiatives; wellness initiatives within the community and the public health system; and follow-up lifesaving and restorative care.

(c) The purpose of this Article is to enable and assist providers of Emergency Medical Services in the delivery of adequate emergency medical services for all people of North Carolina and the provision of medical care during a disaster.

(d) Emergency Medical Services as referred to in this Article include all services rendered by emergency medical services personnel as defined in G.S. 131E-155(7) in responding to improve the health and wellness of the community and to address the individual's need for immediate emergency medical care in order to prevent loss of life or further aggravation of physiological or psychological illness or injury. (1973, c. 208, s. 1; 1997-443, s. 11A.118(a); 2001-220, s. 1.)

§ 143-508. Department of Health and Human Services to establish program; rules and regulations of North Carolina Medical Care Commission.

(a) The State Department of Health and Human Services shall establish and maintain a program for the improvement and upgrading of emergency medical services throughout the State. The Department shall consolidate all State functions relating to emergency medical services, both regulatory and developmental, under the auspices of this program.

(b) The North Carolina Medical Care Commission shall adopt, amend, and rescind rules to carry out the purpose of this Article and Articles 7 and 7A of Chapter 131E of the General Statutes regardless of other provisions of rule or law. These rules shall be adopted with the advice of the Emergency Medical Services Advisory Council. The Department of Health and Human Services shall enforce all rules adopted by the Commission. Nothing in this Chapter shall be construed to authorize the North Carolina Medical Care Commission to establish or modify the scope of practice of emergency medical personnel.

(c) The North Carolina Medical Care Commission may adopt rules with regard to emergency medical services, not inconsistent with the laws of this State, that may be required by the federal government for grants-in-aid for emergency medical services and licensure which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(d) The North Carolina Medical Care Commission shall adopt rules to do all of the following:

(1) Establish standards and criteria for the credentialing of emergency medical services agencies to carry out the purpose of Article 7 of Chapter 131E of the General Statutes.

(2) Establish standards and criteria for the credentialing of trauma centers to carry out the purpose of Article 7A of Chapter 131E of the General Statutes.

(3) Establish standards and criteria for the education and credentialing of emergency medical services personnel to carry out the purpose of Article 7 of Chapter 131E of the General Statutes.
(4) Establish standards and criteria for the credentialing of EMS educational institutions to carry out the purpose of Article 7 of Chapter 131E of the General Statutes.
(5) Establish standards and criteria for data collection as part of the statewide emergency medical services information system to carry out the purpose of G.S. 143-509(5).
(6) Implement the scope of practice of credentialed emergency medical services personnel as determined by the North Carolina Medical Board.
(7) Define the practice settings of credentialed emergency medical services personnel.
(8) Establish standards for vehicles and equipment used within the emergency medical services system.
(9) Establish standards for a statewide EMS communications system.
(10) Establish standards and criteria for the denial, suspension, or revocation of emergency medical services credentials for emergency medical services agencies, educational institutions, and personnel including the establishment of fines for credentialing violations.
(11) Establish standards and criteria for the education and credentialing of persons trained to administer lifesaving treatment to a person who suffers a severe adverse reaction to agents that might cause anaphylaxis.
(12) Establish standards for the voluntary submission of hospital emergency medical care data.
(13) Establish occupational standards for EMS systems, EMS educational institutions, and specialty care transport programs. (1973, c. 208, s. 2; c. 1224, s. 2; 1997-443, s. 11A.118(a); 2001-220, s. 1; 2002-179, s. 13; 2003-392, s. 2(d).)

§ 143-509. Powers and duties of Secretary.

The Secretary of the Department of Health and Human Services has full responsibilities for supervision and direction of the emergency medical services program and, to that end, shall accomplish all of the following:

(1) After consulting with the Emergency Medical Services Advisory Council and with any local governments that may be involved, seek the establishment of a Statewide Emergency Medical Services System, integrated with other health care providers and networks including, but not limited to, public health, community health monitoring activities, and special needs populations.
(2) Repealed by Session Laws 1989, c. 74.
(3) Establish and maintain a comprehensive statewide trauma system in accordance with the provisions of Article 7A of Chapter 131E of the General Statutes and the rules of the North Carolina Medical Care Commission.
(4) Establish and maintain a statewide emergency medical services communications system including designation of EMS radio frequencies and

coordination of EMS radio communications networks within FCC rules and regulations.

(5) Establish and maintain a statewide emergency medical services information system that provides information linkage between various public safety services and other health care providers.

(6) Credential emergency medical services providers, vehicles, EMS educational institutions, and personnel after documenting that the requirements of the North Carolina Medical Care Commission are met.

(7), (8) Repealed by Session Laws 2001-220, s. 1, effective January 1, 2002.

(9) Promote a means of training individuals to administer life-saving treatment to persons who suffer a severe adverse reaction to agents that might cause anaphylaxis. Individuals, upon successful completion of this training program, may be approved by the North Carolina Medical Care Commission to administer epinephrine to these persons, in the absence of the availability of physicians or other practitioners who are authorized to administer the treatment. This training may also be offered as part of the emergency medical services training program.

(10) Establish and maintain a collaborative effort with other community resources and agencies to educate the public regarding EMS systems and issues.

(11) Collaborate with community agencies and other health care providers to integrate the principles of injury prevention into the Statewide EMS System to improve community health.

(12) Establish and maintain a means of medical direction and control for the Statewide EMS System.

(13) Establish programs for aiding in the recovery and rehabilitation of EMS personnel who experience chemical addiction or abuse and programs for monitoring these EMS personnel for safe practice. (1973, c. 208, s. 3; 1981, c. 927; 1989, c. 74; 1995, c. 94, s. 34; 1997-443, s. 11A.118(a); 2001-220, s. 1; 2003-392, s. 2(e); 2009-363, s. 1.)

§ 143-510. North Carolina Emergency Medical Services Advisory Council.

(a) There is created the North Carolina Emergency Medical Services Advisory Council to consult with the Secretary of the Department of Health and Human Services in the administration of this Article.

The North Carolina Emergency Medical Services Advisory Council shall consist of 25 members.

(1) Twenty-one of the members shall be appointed by the Secretary of the Department of Health and Human Services as follows:

a. Three of the members shall represent the North Carolina Medical Society and include one licensed pediatrician, one surgeon, and one public health physician.

b. Three members shall represent the North Carolina College of Emergency Physicians, two of whom shall be current local EMS Medical Directors.

c. One member shall represent the North Carolina Chapter of the American College of Surgeons Committee on Trauma.

d. One member shall represent the North Carolina Association of Rescue and Emergency Medical Services.
e. One member shall represent the North Carolina Association of EMS Administrators.
f. One member shall represent the North Carolina Hospital Association.
g. One member shall represent the North Carolina Nurses Association.
h. One member shall represent the North Carolina Association of County Commissioners.
i. One member shall represent the North Carolina Medical Board.
j. One member shall represent the American Heart Association, North Carolina Council.
k. One member shall represent the American Red Cross.
l. The remaining six members shall be appointed so as to fairly represent the general public, credentialed and practicing EMS personnel, EMS educators, local public health officials, and other EMS interest groups in North Carolina.

(2) Two members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(3) Two members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

The membership of the Council shall, to the extent possible, reflect the gender and racial makeup of the population of the State.

(b) The members of the Council appointed pursuant to subsection (a) of this section shall serve initial terms as follows:

(1) The members appointed by the Secretary of the Department of Health and Human Services shall serve initial terms as follows:
a. Five members shall serve initial terms of one year;
b. Five members shall serve initial terms of two years;
c. Five members shall serve initial terms of three years; and
d. Six members shall serve initial terms of four years.

(2) The members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall serve initial terms as follows:
a. One member shall serve an initial term of two years; and
b. One member shall serve an initial term of four years.

(3) The members appointed by the General Assembly upon the recommendation of the Speaker of the House of the Representatives shall serve initial terms as follows:
a. One member shall serve an initial term of two years; and
b. One member shall serve an initial term of four years. Thereafter, all terms shall be four years.

(c) Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. Vacancies on the Council among the membership nominated by a society, association, or foundation as provided in subsection (a) of this section shall be filled by appointment of the Secretary upon consideration of a nomination by the executive committee or other authorized agent of the society, association, or foundation until the next meeting of the society, association, or foundation at which time the

society, association, or foundation shall nominate a member to fill the vacancy for the unexpired term.

(d) The members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) A majority of the Council shall constitute a quorum for the transaction of business. All clerical and other services required by the Council shall be supplied by the Department of Health and Human Services, Division of Health Service Regulation, Office of Emergency Medical Services.

(f) The Council shall elect annually from its membership a chairperson and vice-chairperson upon a majority vote of the quorum present. (1973, c. 208, s. 4; 1977, c. 509; 1991, c. 739, s. 24; 1997-443, s. 11A.118(a); 2001-220, s. 1; 2003-392, s. 2(f); 2007-182, s. 1.)

§ 143-511. Powers and duties of the Council.

The North Carolina Emergency Medical Services Advisory Council may advise the Secretary of the Department of Health and Human Services on policy issues regarding the Statewide Emergency Medical Services System, including all rules proposed to be adopted by the North Carolina Medical Care Commission. (1973, c. 208, s. 5; 1997-443, s. 11A.118(a); 2001-220, s. 1.)

§ 143-512. Regional demonstration plans.

The Secretary of the Department of Health and Human Services may develop and implement, in conjunction with any local sponsors that may agree to participate, regional emergency medical services systems in order to demonstrate the desirability of comprehensive regional emergency medical services systems and to determine the optimum characteristics of such plans. The Secretary may make special grants-in-aid to participants. (1973, c. 208, s. 6; 1997-443, s. 11A.118(a); 2001-220, s. 1.)

§ 143-513. Regional emergency medical services councils.

The Secretary of the Department of Health and Human Services may establish emergency medical services regional councils to implement and coordinate emergency medical services programs within regions. (1973, c. 208, s. 7; 1997-443, s. 11A.118(a).)

§ 143-514. Scope of practice for credentialed emergency medical services personnel.

The North Carolina Medical Board shall determine the scope of practice for credentialed emergency medical services personnel regardless of other provisions of law by establishing the medical skills and medications that may be used by credentialed emergency medical services personnel at each level of patient care. No provision of Article 56 of Chapter 143 or Article 7 of Chapter 131E of the General Statutes shall be interpreted to require the North Carolina Medical Board to include any service within the scope of practice of any Emergency Medical Services provider, unless the North Carolina Medical Board determines that the emergency medical service personnel in question have the experience and training necessary to ensure the service can be provided in a safe manner. (1973, c. 208, s. 8; c. 1121; 1995, c. 94, s. 35; 1997-443, s. 11A.118(a); 2001-220, s. 1.)

§ 143-515. Establishment of regions.

The Secretary may establish an appropriate number of multicounty emergency medical services regions. (1973, c. 208, s. 9; 2001-220, s. 1.)

§ 143-516. Single State agency.

The Department of Health and Human Services is hereby designated as the single agency for North Carolina for the purposes of all federal emergency medical services legislation as has or may be hereafter enacted to assist in development of emergency medical services plans and programs. (1973, c. 208, s. 10; 1997-443, s. 11A.118(a).)

§ 143-517. Ambulance support; free enterprise.

Each county shall ensure that emergency medical services are provided to its citizens. Nothing in this Article affects the power of local governments to finance ambulance operations or to support rescue squads. Nothing in this Article shall be construed to allow infringement on the private practice of medicine or the lawful operation of health care facilities. (1973, c. 208, s. 11; 2001-220, s. 1.)

§ 143-518. Confidentiality of patient information.

(a) Medical records compiled and maintained by the Department, hospitals participating in the statewide trauma system, or EMS providers in connection with dispatch, response, treatment, or transport of individual patients or in connection with the statewide trauma system pursuant to Article 7 of Chapter 131E of the General Statutes may contain patient identifiable data which will allow linkage to other health care-based data systems for the purposes of quality management, peer review, and public health initiatives.

These medical records and data shall be strictly confidential and shall not be considered public records within the meaning of G.S. 132-1 and shall not be released or made public except under any of the following conditions:

(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 guardians.

(3) Release is made to health care personnel providing medical care to the patient.

(4) Release is made pursuant to a 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.

(5) Release is made to a Medical Review Committee as defined in G.S. 131E-95, 90-21.22A, or 130A-45.7 or to a peer review committee as defined in G.S. 131E-108, 131E-155, 131E-162, 122C-30, or 131D-21.1.

(6) Release is made for use in a health research project under rules adopted by the North Carolina Medical Care Commission. The Commission shall adopt rules that allow release of information when an institutional review board, as defined by the Commission, has determined that the health research project:

a. Is of sufficient scientific importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

b. Is impracticable without the use or disclosure of identifying health information;

c. Contains safeguards to protect the information from redisclosure;

d. Contains safeguards against identifying, directly or indirectly, any patient in any report of the research project; and

e. Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project.

(7) Release is made to a statewide data processor, as defined in Article 11A of Chapter 131E of the General Statutes, in which case the data is deemed to have been submitted as if it were required to have been submitted under that Article.

(8) Release is made pursuant to any other law.

(b) Charges, accounts, credit histories, and other personal financial records compiled and maintained by the Department or EMS providers in connection with the admission, treatment, and discharge of individual patients are strictly confidential and shall not be released. (2001-220, s. 1; 2002-179, s. 11; 2003-392, ss. 2(g), 2(h).)

§ 143-519. Emergency Medical Services Disciplinary Committee.

(a) There is created the Emergency Medical Services Disciplinary Committee. The Committee shall review and make recommendations to the Department regarding all disciplinary matters relating to credentialing of emergency medical services personnel. At the request of the Department, the Committee shall review criminal background information and make a recommendation regarding the eligibility of an individual to obtain initial EMS credentials, renew EMS credentials, or maintain EMS credentials.

(b) The Emergency Medical Services Disciplinary Committee shall consist of seven members appointed by the Secretary of the Department of Health and Human Services to serve four-year terms. Two of the members shall be currently practicing local EMS physician medical directors. One member each shall be a current physician member of the North Carolina Medical Board, a current EMS administrator, a current EMS educator, and two currently practicing and credentialed EMS personnel, one of whom shall be an emergency medical technician-paramedic.

(c) In order to stagger the terms of the membership of the Committee, the initial appointment for one of the local EMS physician medical directors and the currently practicing and credentialed emergency medical technician-paramedic shall be for a three-year term. The other three initial appointments and all future appointments shall be for four-year terms.

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

(e) A majority of the Committee shall constitute a quorum for the transaction of business. The Department of Health and Human Services, Division of Health Service Regulation, Office of Emergency Medical Services, shall supply all clerical and other services required by the Committee.

(f) The Committee shall elect annually from its membership a chairperson and vice-chairperson upon a majority vote of the quorum present. (2001-220, s. 1; 2003-392, s. 2(i); 2007-182, s. 1.1; 2007-411, s. 3.)

§ 143-520. Reserved for future codification purposes.

Article 57.

Crime Study Commission.

§§ 143-521 through 143-531. Repealed by Session Laws 1979, c. 504, s. 3.

Article 58.

Committee on Inaugural Ceremonies.

§ 143-532. Definitions.

For the purposes of this Article:

(1) The term "inaugural period" means the period which includes the day on which the ceremony inaugurating the Governor is held, the seven calendar days immediately preceding such day, and the seven calendar days immediately subsequent to such day; and

(2) The term "inaugural planning period" means the period beginning July 1 of the year in which the Governor is elected and ending the last day in the inaugural period. (1975, c. 816.)

§ 143-533. Creation, appointment of members; members ex officio.

There is hereby created a Committee on Inaugural Ceremonies to consist of three representatives to be appointed by the Speaker of the House, (or a person designated by the Speaker) three senators to be appointed by the President Pro Tempore of the Senate, three citizens to be appointed by the Governor, and three citizens to be appointed by the Governor-elect upon certification of his election. Of the three citizens appointed to the Committee by the Governor, only two may be of the same political party. The Speaker of the House, the President of the Senate, (or a person designated by the President of the Senate), the Governor, and, upon certification of their election, all members-elect of the Council of State, shall be ex officio members of the Committee on Inaugural Ceremonies. (1975, c. 816; 1981, c. 47, s. 2; 1991, c. 739, s. 25.)

§ 143-534. Time of appointments; terms of office.

Appointments to the Committee on Inaugural Ceremonies shall be made on or before July 1 of years in which there is an election of the Governor. The term of office of the Committee members, the Speaker of the House, the President of the Senate and the Governor who are members ex officio, shall begin on the first day of the inaugural planning period, and shall end on the last day of the inaugural period. The term of office of the members-elect of the Council of State, who are ex officio members of the Committee, shall begin upon certification of their election, and shall end on the last day of the inaugural period. (1975, c. 816.)

§ 143-535. Vacancies.

Vacancies in the appointive membership of the Committee on Inaugural Ceremonies occurring during a term shall be filled for the unexpired term by appointment by the officer who made the original appointment. Vacancies in the ex officio membership shall be filled for the unexpired term by election by the remaining members of the Committee. A legislative vacancy on the Committee shall be filled by a member of the same house in which the vacancy occurred. (1975, c. 816.)

§ 143-536. Chairman; rules of procedure; quorum.

At its first meeting the Committee on Inaugural Ceremonies shall, by majority vote, elect a chairman from within the Committee membership. There shall also be a vice-chairman who shall be designated by the Governor-elect from among his appointees on the Committee who shall assume his duties upon appointment. The chairman, and in his absence the vice-chairman, shall preside over meetings of the Committee. The Committee shall adopt rules of procedure governing its meetings. Six members, excluding ex officio members, shall constitute a quorum of the Committee. (1975, c. 816.)

§ 143-537. Meetings.

The first meeting of the Committee on Inaugural Ceremonies shall be held during the inaugural planning period at the call of the President of the Senate. Thereafter the Committee shall meet at the call of the chairman. (1975, c. 816.)

§ 143-538. Powers and duties.

During the inaugural planning period the Committee on Inaugural Ceremonies shall plan and sponsor official parades, swearing-in ceremonies and other formal occasions connected with the swearing-in and installation of the Governor and other members of the Council of State. Throughout the inaugural planning period the Committee shall consult with and remain in close contact with the Governor-elect and all of the other members-elect of the Council of State upon certification of their election. Balls, dinners, testimonials, parties and other informal occasions shall be coordinated with official events by the Committee; however, nothing in this Article shall preclude any group or person from conducting private events during the inaugural period. (1975, c. 816.)

§ 143-539. Offices; per diem and allowances of members; payments from appropriations.

The Department of Administration shall provide office space to the Committee. The members of the Committee, including ex officio members, shall be paid such per diem, subsistence and travel allowances as are prescribed by law for State boards and commissions generally. All payments for purposes authorized by this Article shall be paid by the State Treasurer upon written authorization of the chairman of the Committee, from funds appropriated to the Contingency and Emergency Budget. (1975, c. 816; 1991, c. 739, s. 26.)

§§ 143-540 through 143-544. Reserved for future codification purposes.

Article 59.

Vocational Rehabilitation Services.

§ 143-545: Repealed by Session Laws 1995, c. 403, s. 1.

§ 143-545.1. Purpose, establishment and administration of program; services.

(a) Policy. – Recognizing that disability is a natural part of human experience, the State establishes as its policy that individuals with physical and mental disabilities should be able to participate to the maximum extent of their abilities in the economic, educational, cultural, social, and political activities available to all citizens of the State. To implement this policy, the Department of Health and Human Services shall establish and operate comprehensive and accountable programs of vocational rehabilitation and independent living for persons with

disabilities. These programs are to be administered by the Division of Vocational Rehabilitation Services in collaboration with the Division of Services for the Blind, which conducts vocational rehabilitation and independent living programs for individuals who are blind or visually impaired, pursuant to Chapter 111 of the General Statutes and the rules of the Commission for the Blind adopted pursuant to G.S. 143B-157. The programs so provided shall be administered according to the following principles:

(1) The opportunity and ability to work and to live independently are important activities that enhance not only the lives of individuals with disabilities but also the greater society in which they live. These activities fulfill the need to be productive, promote self-esteem, and allow for participation in the full array of activities of daily living;

(2) Eligible individuals with disabilities shall be provided individualized training, independent living services, and educational and support services that prepare them for independent living and competitive employment opportunities in integrated settings with reasonable accommodations;

(3) Individuals with disabilities shall be active participants in their own vocational rehabilitation/independent living programs and shall be involved in making meaningful and informed choices about vocational/independent living goals and objectives and the related services they receive; and

(4) As full partners in their vocational rehabilitation and independent living programs, participants in the programs shall provide information required by the Department to determine eligibility and the nature of their disabilities, shall use other resources that are available to assist in their programs, and shall assume joint responsibility with departmental staff for planning and implementing their programs.

(b) Services: –

(1) Vocational rehabilitation and independent living services provided by the Department shall address comprehensively the needs of each individual to the maximum extent possible within available resources. These services shall contain labor force development and training components and services that enhance the independence and full participation of citizens with disabilities in community life. Specific services shall include assessment services to determine eligibility and rehabilitation needs; counseling, guidance, and referral services; physical and mental restoration services; reader services; vocational and other training services; job development and job placement services; interpreter services; on-the-job or other related personal assistance services including attendant care services; mobility and rehabilitation technology services; training services necessary for living in the community; and supported employment services.

(2) The Secretary of the Department of Health and Human Services shall adopt rules to establish eligibility for services, the nature and scope of services to be provided, standards for community rehabilitation programs and qualified personnel to provide services and conditions, criteria, and procedures under which services may be provided including financial need for services. Rules governing financial need for services shall meet the requirements set in federal law and regulations.

(3) The Secretary of the Department of Health and Human Services or, when appropriate, the Commission for the Blind, shall establish by rule a formula for a schedule of rates and fees to be paid by clients and other third party purchasers for services.

(4) The Secretary of the Department of Health and Human Services or, when appropriate, the Commission for the Blind, shall establish formal appeals procedures that are consistent with those required by federal regulations so that any applicant for or client of vocational rehabilitation or independent living services who is dissatisfied with any determinations made by rehabilitation counselors or coordinators concerning the furnishing or denial of services may request a timely review of those determinations. The appeal procedures shall be the same regardless of whether federal funds are included in the particular services. (1995, c. 403, s. 1(b); 1997-443, s. 11A.118(a); 1997-456, s. 27; 1999-161, s. 1.)

§ 143-546: Repealed by Session Laws 1995, c. 403, s. 2(a).

§ 143-546.1. Duties of Secretary; cooperation with federal rehabilitation services administration or successor.

(a) [Duties of Secretary]. – In carrying out the purposes of this Article, the Secretary of the Department of Health and Human Services shall:

(1) Ensure the cooperation of other divisions in the Department of Health and Human Services in implementing the provisions of this Article;

(2) Cooperate with other departments, agencies, and institutions, both public and private, in providing for the vocational rehabilitation and independent living of individuals with disabilities, in studying the problems involved, and in establishing, developing, and providing the programs, facilities, and services necessary to implement this Article;

(3) Conduct research and gather statistical data related to the vocational rehabilitation and independent living needs of individuals with disabilities; and

(4) Administer the expenditure of funds made available by appropriations by the General Assembly by grants from the federal government, and by gifts, grants, or reimbursements from private or public sources, or other sources, and any combination thereof for vocational rehabilitation and independent living services. Gifts or donations, from either public or private sources, as may be offered unconditionally or under conditions that are proper and consistent with this Article, shall be deposited in the State treasury in a fund to be known as the "Vocational Rehabilitation and Independent Living State Program Fund".

(b) Federal Funds. – In accepting federal funds provided under the Rehabilitation Act of 1973, as amended, the State accepts all of the provisions and benefits of the Act. The Department of Health and Human Services shall:

(1) Cooperate with the Federal Rehabilitation Services Administration or its successor agency in the administration of the Rehabilitation Act of 1973, as amended;

(2) Administer vocational rehabilitation and independent living services provided in cooperation with the Federal Rehabilitation Services Administration or its successor agency through an approved State plan;

(3) Adopt rules as required by the Rehabilitation Act of 1973, as amended, and federal regulations promulgated pursuant to it. (1995, c. 403, s. 2(b); 1997-443, s. 11A.118(a).)

§ 143-547. Subrogation rights; withholding of information a misdemeanor.

(a) Notwithstanding any other provisions of law, to the extent of payments under this Article, the State Vocational Rehabilitation program shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of the assistance, or his personal representative, his heirs, or the administrator or executor of his estate, against any person; provided, however, that any attorney retained by the beneficiary of the assistance shall be compensated for his services in accordance with the following schedule and in the following order of priority from any amount obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of such injury or death:

(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) In furnishing a person rehabilitation services, including medical case services under this Chapter, the Division of Vocational Rehabilitation Services is subrogated to the person's right of recovery from:

(1) Personal insurance;

(2) Worker's Compensation;

(3) Any other person or personal injury caused by the other person's negligence or wrongdoing; or

(4) Any other source.

(c) The Division of Vocational Rehabilitation Services' right to subrogation is limited to the cost of the rehabilitation services provided by or through the Division for which a financial needs test is a condition of the service provisions. Those services that are provided without a financial needs test are excluded from these subrogation rights.

(d) The Division of Vocational Rehabilitation Services may totally or partially waive subrogation rights when the Division finds that enforcement would tend to defeat the client's process of rehabilitation or when client assets can be used to offset additional Division costs.

(e) The Division of Vocational Rehabilitation Services may adopt rules for the enforcement of its rights of subrogation.

(f) It is a Class 1 misdemeanor for a person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the Division of Vocational Rehabilitation Services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise. (1989, c. 552; 1993, c. 539, s. 1036; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 143-548. Vocational Rehabilitation Council.

(a) There is established the Vocational Rehabilitation Council within the Division of Vocational Rehabilitation Services to be composed of not more than 18 appointed members. Appointed members shall be voting members except where prohibited by federal law or regulations. The Director of the Division of Vocational Rehabilitation Services and one vocational rehabilitation counselor who is an employee of the Division shall serve ex officio as nonvoting members. The President Pro Tempore of the Senate shall appoint six members, the Speaker of the House of Representatives shall appoint six members, and the Governor shall appoint five or six members. The appointing authorities shall appoint members of the Council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities. Terms of appointment shall be as specified in subsection (d1) of this section. Appointments shall be made as follows:

(1) The six members appointed by the President Pro Tempore of the Senate shall include one member recommended by the North Carolina Chamber, one other representing providers of community rehabilitation services, one other who is a vocational rehabilitation counselor, with knowledge of and experience with vocational rehabilitation programs, who is not an employee of the Division, one other representing the Commission on Workforce Preparedness, and two others representing disability advocacy groups representing a cross-section of individuals with physical, cognitive, sensory, and mental disabilities. Of the six members appointed by the President Pro Tempore of the Senate, three shall be individuals with disabilities;

(2) The six members appointed by the Speaker of the House of Representatives shall include one member representing the business and industry sector, one other representing labor, one other representing a parent training and information center established pursuant to section 631(c) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1431(c), one other representing the Department of Public Instruction, and two others representing disability advocacy groups representing a cross-section of individuals with physical, cognitive, sensory, and mental

disabilities. Of the six members appointed by the Speaker of the House of Representatives, three shall be individuals with disabilities; and

(3) The five or six members appointed by the Governor shall include one member representing the business and industry sector, one other representing the regional rehabilitation centers for the physically disabled, one other representing the Division's Statewide Independent Living Council, one other representing the State's Client Assistance Program, one other representing the directors of projects carried out under section 121 of the Rehabilitation Act of 1973, 29 U.S.C. § 741, as amended, if there are any of these projects in the State, and one other current or former applicant for or recipient of vocational rehabilitation services. If five members are appointed by the Governor, three shall be individuals with disabilities. If six members are appointed by the Governor, four shall be individuals with disabilities.

(b) Repealed by Session Laws 1993, c. 248, s. 1.

(b1) Additional Qualifications. – In addition to ensuring the qualifications for membership prescribed in subsection (a) of this section, the appointing authorities shall ensure that a majority of Council members are individuals with disabilities and are not employed by the Division of Vocational Rehabilitation Services.

(c) The Council shall elect one of the voting members of the Council as Chair of the Council. The Chair's term shall not exceed a single three-year term.

(d) The Council shall meet at least quarterly and at other times at the call of the Chair. A majority of the voting members of the Council constitutes a quorum.

(d1) Terms of Appointment. –

(1) Length of Term. – Each member of the Council shall serve for a term of not more than three years, except that:

a. A member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed shall be appointed for the remainder of that term;

b. The terms of service of the members initially appointed are as specified by the appointing authority for a fewer number of years as will provide for the expiration of terms on a staggered basis and shall include the members of the existing Council to the extent possible with appropriate adjustments to their terms;

c. The appointing authority shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16; and

d. A member may continue to serve until a successor for the position is appointed;

(2) Number of Terms. – No member of the Council other than the representative of the Client Assistance Program, the representative of a parent training and information center, and the representative of the directors of projects carried out under section 121 of the Rehabilitation

Act of 1973, 29 U.S.C. § 741, as amended, may serve more than two consecutive full terms.

(d2) Vacancies. – Any vacancy occurring in the membership of the Council shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Council.

(d3) Functions of Council. – The Council shall, after consulting with the Commission on Workforce Preparedness:

(1) Review, analyze, and advise the Division regarding the performance of its responsibilities under Title I of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 29 U.S.C. § 720, et seq., as amended, particularly responsibilities relating to:

a. Eligibility, including order of selection;

b. The extent, scope, and effectiveness of services provided; and

c. Functions performed by State agencies that affect or that potentially affect the ability of individuals with disabilities in achieving employment outcomes under Title I of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 29 U.S.C. § 720, et seq.;

(1a) In partnership with the Division:

a. Develop, agree to, and review State goals and priorities in accordance with section 101(a)(15)(C) of the Rehabilitation Act of 1973, 29 U.S.C. § 721(a)(15)(C); and

b. Evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Commissioner of the Rehabilitation Services Administration of the U.S. Department of Education in accordance with section 101(a)(15)(E) of the Rehabilitation Act of 1973, 29 U.S.C. § 721(a)(15)(E);

(2) Advise the Department of Health and Human Services and the Division regarding activities authorized to be carried out under Title I of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 29 U.S.C. § 720, et seq., as amended and assist in the preparation of applications, the State Plan, amendments to the plans, reports, needs assessments, and evaluations required by Title I of the Rehabilitation Act of 1973;

(3) To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with:

a. Vocational rehabilitation functions and services provided by the Department of Health and Human Services and other State agencies and public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355, 29 U.S.C. § 701, et seq.; and

b. Repealed by Session Laws 1999-161, s. 2, effective June 8, 1999.

c. Employment outcomes achieved by eligible individuals receiving services under Title I of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 29 U.S.C. § 720, et seq., as amended, including the availability of health and other employment benefits in connection with those employment outcomes;

(4) Prepare and submit an annual report to the Governor and the Commissioner of the Rehabilitation Services Administration of the U.S. Department of Education on the status of vocational rehabilitation programs operated within the State and make the report available to the public;

(5) Coordinate activities with the activities of other councils within the State, including the Division's Statewide Independent Living Council established under section 705 of the Rehabilitation Act of 1973, 29 U.S.C. § 742, the advisory panel established under section 612(a)(21) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1413(a)(12), the State Development Disabilities Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 6024, the State Mental Health Planning Council established under section 1914(a) of the Public Health Service Act, 42 U.S.C. § 300x-4(e), and the Commission on Workforce Preparedness;

(6) Provide for coordination and the establishment of working relationships between the Department and the Statewide Independent Living Council and centers for independent living within the State; and

(7) Perform such other functions, consistent with the purpose of Title I of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 29 U.S.C. § 720, et seq., as amended, as the Council determines to be appropriate, that are comparable to other functions performed by the Council.

(d4) Resources. –

(1) The Division shall supply all necessary clerical and staff support to the Council pursuant to G.S. 143B-14(a) and (d). The Council shall prepare, in conjunction with the Division, a plan for the provision of such resources as may be necessary and sufficient to carry out the functions of the Council under this Part. The resource plan shall, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.

(2) To the extent that there is a disagreement between the Council and the Division in regard to the resources necessary to carry out the functions of the Council as set forth in this Part, the disagreement shall be resolved by the Governor.

(3) While assisting the Council in carrying out its duties, staff and other personnel shall not be assigned duties by the Division or any other agency of the State that would create a conflict of interest.

(d5) Member Conflict of Interest. – No member of the Council shall cast a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest under State law.

(e) Council members shall be reimbursed for expenses incurred in the performance of their duties in accordance with G.S. 138-5. In addition, Council members may be reimbursed for personal assistance services that are necessary for members to attend Council meetings and perform Council duties. These expenses shall not exceed whichever is lower, the actual cost of the services or the Medicaid rate per day for personal assistance services, in addition to subsistence and travel expenses at the State rate for the attendant.

(f) Repealed by Session Laws 1993, c. 248, s. 1. (1991 (Reg. Sess., 1992), c. 900, s. 150; 1993, c. 248, s. 1; 1997-443, s. 11A.118(a); 1997-509, s. 1; 1999-161, s. 2; 2009-570, s. 8(e); 2017-134, s. 5(a).)

§§ 143-549 through 143-551. Reserved for future codification purposes.

Article 60.

State and Certain Local Educational Entity Employees, Nonsalaried Public Officials, and Legislators Required to Repay Money Owed to State.

Part 1. State and Local Educational Entity Employees.

§ 143-552. Definitions.

As used in this Part:

(1) "Employing entity" means and includes:

a. Any State entity enumerated in G.S. 143B-3 of the Executive Organization Act of 1973;

b. Any city or county board of education under Chapter 115 of the General Statutes; or

c. Any board of trustees of a community college under Chapter 115D of the General Statutes.

(2) "Employee" means any person who is appointed to or hired and employed by an employing entity under this Part and whose salary is paid in whole or in part by State funds.

(3) "Net disposable earnings" means the salary paid to an employee by an employing entity after deduction of withholdings for taxes, social security, State retirement or any other sum obligated by law to be withheld. (1979, c. 864, s. 1; 1987, c. 564, s. 29.)

§ 143-553. Conditional continuing employment; notification among employing entities; repayment election.

(a) All persons employed by an employing entity as defined by this Part who owe money to the State and whose salaries are paid in whole or in part by State funds must make full restitution of the amount owed as a condition of continuing employment; provided, however, that no employing entity shall terminate for failure to make full restitution the employment of such an employee who owes money to the University of

North Carolina Health Care System or to East Carolina University's Division of Health Sciences for health care services.

(b) Whenever a representative of any employing entity as defined by this Part has knowledge that an employee owes money to the State and is delinquent in satisfying this obligation, the representative shall notify the employing entity. Upon receipt of notification an employing entity shall terminate the employee's employment if after written notice of his right to do so he does not repay the money within a reasonable period of time; provided, however, that where there is a genuine dispute as to whether the money is owed or how much is owed, or there is an unresolved issue concerning insurance coverage, the employee shall not be dismissed as long as he is pursuing administrative or judicial remedies to have the dispute or the issue resolved.

(c) An employee of any employing entity who has elected in writing to allow not less than ten percent (10%) of his net disposable earnings to be periodically withheld for application towards a debt to the State shall be deemed to be repaying the money within a reasonable period of time and shall not have his employment terminated so long as he is consenting to repayment according to such terms. Furthermore, the employing entity shall allow the employee who for some extraordinary reason is incapable of repaying the obligation to the State according to the preceding terms to continue employment as long as he is attempting repayment in good faith under his present financial circumstances, but shall promptly terminate the employee's employment if he ceases to make payments or discontinues a good faith effort to make repayment. (1979, c. 864, s. 1; 2007-306, s. 2; 2012-194, s. 68(a).)

§ 143-554. Right of employee appeal.

(a) Any employee or former employee of an employing entity within the meaning of G.S. 143-552(1)a whose employment is terminated pursuant to the provisions of this Part shall be given the opportunity to appeal the employment termination to the State Human Resources Commission according to the normal appeal and hearing procedures provided by Chapter 126 and the State Human Resources Commission rules adopted pursuant to the authority of that Chapter; however, nothing herein shall be construed to give the right to termination reviews to anyone exempt from that right under G.S. 126-5.

(b) Before the employment of an employee of a local board of education within the meaning of G.S. 143-552(1)b who is either a superintendent, supervisor, principal, teacher or other professional person is terminated pursuant to this Part, the local board of education shall comply with the provisions of G.S. 115-142. If an employee within the meaning of G.S. 143-552(1)b is other than one whose termination is made reviewable pursuant to G.S. 115-142, he shall be given the opportunity for a hearing before the local board of education prior to the termination of his employment.

(c) Before the employment of an employee of a board of trustees of a community college within the meaning of G.S. 143-552(1)c is finally terminated pursuant to this Part, he shall be given the opportunity for a hearing before the board of trustees. (1979, c. 864, s. 1; 1987, c. 564, s. 12; 2013-382, s. 9.1(c).)

Part 2. Public Officials.

§ 143-555. Definitions.

As used in this Part:

(1) "Appointing authority" means the Governor, Chief Justice of the Supreme Court, Lieutenant Governor, Speaker of the House, President pro tempore of the Senate, members of the Council of State, all heads of the executive departments of State government, the Board of Governors of The University of North Carolina, and any other State person or group of State persons authorized by law to appoint to a public office.

(2) "Employing entity" means and includes:

a. Any State entity enumerated in G.S. 143B-3 of the Executive Organization Act of 1973;

b. Any city or county board of education under Chapter 115 of the General Statutes; or

c. Any board of trustees of a community college under Chapter 115D of the General Statutes.

(3) "Public office" means appointive membership on any State Commission, council, committee, board, including occupational licensing boards as defined in G.S. 93B-1, board of trustees, including boards of constituent institutions of The University of North Carolina and boards of community colleges under Chapter 115D of the General Statutes, and any other State agency created by law; provided that "public office" does not include an office for which a regular salary is paid to the holder as an employee of the State or of one of its departments, agencies, or institutions.

(4) "Public official" means any person who is a member of any public office as defined by this Part. (1979, c. 864, s. 1; 1987, c. 564, ss. 29, 30.)

§ 143-556. Notification of the appointing authority; investigation.

Whenever a representative of an employing entity as defined by this Part has knowledge that a public official owes money to the State and is delinquent in satisfying this obligation, the representative shall notify the appointing authority who appointed the public official in question. Upon receipt of notification the appointing authority shall investigate the circumstances of the claim of money owed to the State for purposes of determining if a debt is owed and its amount. (1979, c. 864, s. 1.)

§ 143-557. Conditional continuing appointment; repayment election.

If after investigation under the terms of this Part an appointing authority determines the existence of a delinquent monetary obligation owed to the State by a public official, he shall notify the public official that his appointment will be terminated 60 days from the date of notification unless repayment in full is made within that period. Upon determination that any public official has not made repayment in full after the expiration of the time prescribed by this section, the appointing authority shall terminate the appointment of the public official; provided however, the appointing authority shall allow the public official who for some extraordinary reason is incapable of repaying the obligation according to the preceding terms to continue his appointment as long as he is attempting repayment in good faith under his present financial circumstances, but shall

promptly terminate the public official's appointment if he ceases to make payments or discontinues a good faith effort to make repayment. (1979, c. 864, s. 1.)

Part 3. Legislators.

§ 143-558. Definition of employing entity.

For the purposes of this Part "employing entity" shall have the same meaning as provided in G.S. 143-552(1) and 143-555(2). (1979, c. 864, s. 1.)

§ 143-559. Notification to the Legislative Ethics Committee; investigation.

Whenever a representative of any employing entity as defined by this Part has knowledge that a legislator owes money to the State and is delinquent in satisfying this obligation, this information shall be reported to the Legislative Ethics Committee established pursuant to Chapter 120, Article 14 of the General Statutes for disposition. (1979, c. 864, s. 1.)

Part 4. Confidentiality Exemption, Preservation of Federal Funds, and Limitation of Actions.

§ 143-560. Confidentiality exemption.

Notwithstanding the provisions of any law of this State making confidential the contents of any records or prohibiting the release or disclosure of any information, all information exchange among the employing entities defined under this Article necessary to accomplish and effectuate the intent of this Article is lawful. (1979, c. 864, s. 1.)

§ 143-561. Preservation of federal funds.

Nothing in this Article is intended to conflict with any provision of federal law or to result in the loss of federal funds. If the exchange among employing entities of information necessary to effectuate the provisions of this Article would conflict with this intention, the exchange of information shall not be made. (1979, c. 864, s. 1.)

§ 143-562. Applicability of a statute of limitations.

Payments on obligations to the State collected under the procedures established by this Article shall not be construed to revive obligations or any part thereof already barred by an applicable statute of limitations. Furthermore, payments made as a result of collection procedures established by the terms of this Article shall not be construed to extend an applicable statute of limitations. (1979, c. 864, s. 1.)

Article 61.

Commission on the Bicentennial of the United States Constitution.

§§ 143-563 through 143-570: Expired.

Article 62.

North Carolina Child Fatality Prevention System.

§§ 143-571 through 143-579: Repealed by Session Laws 1998-202, s. 5, effective July 1, 1999.

Article 63.

State Employees Workplace Requirements Program for Safety, Health, and Workers' Compensation.

Part 1. Executive Branch Programs.

§ 143-580. Definition.

As used in this Article, "State agency" means any department, commission, division, board, or institution of the State within the executive branch of government, including The University of North Carolina system, and the Office of Administrative Hearings. (1991 (Reg. Sess., 1992), c. 994, s. 1; 2015-241, s. 30.18(b).)

§ 143-581. Program goals.

The Office of State Human Resources shall establish a written program for State employee workplace safety, health, and workers' compensation. The program shall promote safe and healthful working conditions and shall be based on clearly stated goals and objectives for meeting the goals. The program shall provide managers, supervisors, and employees with a clear and firm understanding of the State's concern for protecting employees from job-related injuries and health impairment; preventing accidents and fires; planning for emergencies and emergency medical procedures; identifying and controlling physical, chemical, and biological hazards in the workplace; communicating potential hazards to employees; and assuring adequate housekeeping and sanitation. (1991 (Reg. Sess., 1992), c. 994, s. 1; 2015-241, s. 30.18(b).)

§ 143-582. Program requirements.

The written program required under this Article shall describe at a minimum:

(1) The methods to be used to identify, analyze, and control new or existing hazards, conditions, and operations.

(2) How managers, supervisors, and employees are responsible for implementing the program, controlling accident-related expenditures, and how continued participation of management and employees will be established, measured, and maintained.

(3) How the plan will be communicated to all affected employees so that they are informed of work-related physical, chemical, or biological hazards, and controls necessary to prevent injury or illness.

(4) How managers, supervisors, and employees will receive training in avoidance of job-related injuries and health impairment.

(5) How workplace accidents will be reported and investigated and how corrective actions will be implemented.

(6) How safe work practices and rules will be communicated and enforced.

(7) The safety and health training program that will be made available to employees.

(8) How employees can make complaints concerning safety and health problems without fear of retaliation.

(9) How employees will receive medical attention following a work-related injury or illness. (1991 (Reg. Sess., 1992), c. 994, s. 1.)

§ 143-583. Model program; technical assistance; reports.

(a) The Office of State Human Resources shall:

(1) Maintain a model program of safety and health requirements to guide State agencies in the development of their individual programs and in complying with the provisions of G.S. 95-148 and this Article.

(2) Establish guidelines for the creation and operation of State agency safety and health committees.

(3) Adopt policies that shall govern the administration of the workers' compensation program and monitor compliance with Chapter 97 of the General Statutes.

(4) Establish guidelines for the delegation of certain administrative functions as necessary for the administration of the workers' compensation program to State agencies, as defined in this section.

(b) Repealed by Session Laws 2015-241, s. 30.18(b), effective July 1, 2015.

(c) The Office of State Human Resources shall report annually to the Joint Legislative Commission on Governmental Operations on the safety, health, and workers' compensation activities of State agencies, compliance with this Article, and the fines levied against State agencies pursuant to Article 16 of Chapter 95 of the General Statutes. (1991 (Reg. Sess., 1992), c. 994, s. 1; 2013-382, s. 9.1(c); 2015-241, s. 30.18(b).)

§ 143-584. State agency safety and health committees.

The Office of State Human Resources shall create, pursuant to guidelines adopted under subsection (a) of G.S. 143-583, committees to perform workplace inspections, review injury and illness records, make advisory recommendations to the agency's managers, and perform other functions determined by the Office of State Human Resources to be necessary for the effective implementation of the State Employees Workplace Requirements Program for Safety and the workers' compensation program. (1991 (Reg. Sess., 1992), c. 994, s. 1; 2013-382, s. 9.1(c); 2015-241, s. 30.18(b).)

§§ 143-585 through 143-588. Reserved for future codification purposes.

Part 2. Legislative and Judicial Branch Programs.

§ 143-589. Legislative and judicial branch safety and health programs.

The Legislative Services Commission and the Administrative Office of the Courts are authorized to separately establish safety and health programs for their employees. (1991 (Reg. Sess., 1992), c. 994, s. 3; 2001-424, s. 22.6(c).)

§§ 143-590 through 143-594. Reserved for future codification purposes.

Article 64.

Smoking in Public Places.

§ 143-595. Legislative intent.

It is the intent of the General Assembly to address the needs and concerns of both smokers and nonsmokers in public places by providing for designated smoking and nonsmoking areas. (1993, c. 367, s. 1.)

§ 143-596. Definitions.

As used in this Article, unless the context clearly provides otherwise:

(1) Constituent institution. – As defined in G.S. 116-2(4) and G.S. 116-4.

(1a) Grounds. – The area located and controlled by State government that is within 100 linear feet of any of the following:

a. A State-owned building allocated to and occupied by State government.

b. A State-owned building leased to a third party.

c. A building owned by a third party and leased to State government.

(1b) Local government. – The local political subdivision of the State or any authority or body created by any ordinance or rules of any such entity.

(1c) Medical Faculty Practice Plan. – As defined in G.S. 116-40.6.

(2) Nonsmoking area. – Any designated area where smoking is not permitted.

(3) Public meeting. – Any assemblage authorized by State or local government or any subdivision of State or local government.

(4) Restaurant. – Any building, structure, or area having a seating capacity of 50 or more patrons where food is available for eating on the premises in consideration of payment. The following are not included in determining seating capacity:

a. Seats in any bar or lounge area of a restaurant.

b. Seats in any separate room or section of a restaurant which is used exclusively for private functions.

c. Seats in any open outside area.

(5) Smoke, smokes, or smoking. – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

(6) State government. – The political unit for the State of North Carolina; including all agencies of the executive, judicial, and legislative branches of government.

(7) The University of North Carolina. – As defined in Chapter 116 of the General Statutes.

(8) The University of North Carolina Health Care System. – As defined in G.S. 116-37. (1993, c. 367, s. 1; 2007-114, s. 1.)

§ 143-597. Nonsmoking areas in State-controlled buildings.

(a) All of the following areas may be designated as nonsmoking in buildings owned, leased, or occupied by State government:

(1) Any library open to the public.

(2) Any museum open to the public.

(3) Any area established as a nonsmoking area, so long as at least twenty percent (20%) of the interior space of equal quality to that of the nonsmoking area shall be designated as a smoking area, unless physically impracticable. If physically impracticable, the person in charge of the facility shall provide an adequate

smoking area within the facility as near as feasible to twenty percent (20%) of the interior space.

(4) Any indoor space in a State-controlled building such as an auditorium, arena, or coliseum, or an appurtenant building thereof; except that a designated area for smoking shall be established in lobby areas.

(5) Any educational buildings primarily involved in health care instruction and the grounds of those buildings.

(6) Except as provided in G.S. 143-599(11), any facilities of The University of North Carolina and the grounds of those facilities. Each constituent institution, except for the North Carolina School of Science and Mathematics, shall make a reasonable effort to provide residential smoking rooms in residence halls in proportion to student demand for those rooms. For purposes of this subdivision, the term "facilities" includes all of the following:

a. State-owned buildings allocated to and occupied by The University of North Carolina.

b. State-owned buildings allocated to The University of North Carolina and leased to a third party.

c. The area of any building owned by a third party and occupied by The University of North Carolina as lessee.

(7) Repealed by Session Laws 2007-114, s. 2, effective July 1, 2007.

(a1) All areas of any building occupied by the General Assembly shall be designated as nonsmoking areas.

(b) Any area designated as nonsmoking or smoking shall be established by the appropriate department, institution, agency, or person in charge of the State-controlled building or area, except as specified in subsection (a1). The person in charge of the building shall conspicuously post or cause to be posted, in any area designated as a smoking or nonsmoking area, one or more signs stating that smoking is or is not permitted in the area.

(c) Where a nonsmoking area is designated, existing physical barriers and ventilation systems shall be used where appropriate to minimize smoke from adjacent areas. This subsection shall not be construed to require fixed structural or other physical modification in providing these areas or to require installation or operation of any heating, ventilating, or air-conditioning system in any manner which adds expense. (1993, c. 367, s. 1; 2003-292, s. 1; 2006-66, s. 9.11(cc); 2006-76, s. 1; 2007-114, s. 2.)

§ 143-598. Prohibited acts related to nonsmoking areas.

(a) No person shall smoke in a nonsmoking area in a State-controlled building or area pursuant to G.S. 143-597.

(b) Any person who continues to smoke in a nonsmoking area described in this section following notice by the person in charge of the State-controlled building or area or their designee that smoking is not permitted shall be guilty of an infraction and punished by a fine of not more than twenty-five dollars ($25.00). (1993, c. 367, s. 1.)

§ 143-599. Exemptions.

All of the following facilities shall be exempt from the provisions of this Article:

(1) Any primary or secondary school or child care center, except for a teacher's lounge.

(2) An enclosed elevator.
(3) Public school bus.
(4) Hospital, nursing home, rest home, and State facility operated under the authority of G.S. 122C-181.
(5) Local health department and local department of social services and the building and grounds where the local health department or local department of social services, as applicable, is located. For the purposes of this subdivision, "grounds" means the area located within 50 linear feet of a local health department or a local department of social services.
(6) Any nonprofit organization or corporation whose primary purpose is to discourage the use of tobacco products by the general public.
(7) Tobacco manufacturing, processing, and administrative facilities.
(8) Indoor arenas with a seating capacity greater than 23,000.
(9) State correctional facilities operated by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.
(10) Community colleges.
(11) The buildings, grounds, and walkways of the University of North Carolina Health Care System and of the East Carolina University School of Medicine, Health Sciences Complex, and Medical Faculty Practice Plan. (1993, c. 367, s. 1; 1997-506, s. 53; 2005-19, s. 1; 2005-168, s. 1; 2005-239, s. 1; 2005-372, s. 1; 2006-133, s. 1; 2007-114, s. 3; 2011-145, s. 19.1(h); 2017-186, s. 2(eeeeee).)

§ 143-600. Construction of Article.

Nothing in this Article shall be construed to permit smoking in any area where smoking is prohibited by any other law or rule for fire safety purposes, including the State minimum fire safety standards pursuant to Chapter 58, Chapter 153A, or Chapter 160A of the General Statutes; provided, however, this Article shall not be construed to recognize any authority of a local government to restrict smoking other than as provided in this Article, for fire safety purposes as specified herein, and for the facilities exempt pursuant to G.S. 143-599. (1993, c. 367, s. 1.)

§ 143-601. Applicability of Article; local government may enact.

(a) This Article shall not supersede nor prohibit the enactment or enforcement of any otherwise valid local law, rule, or ordinance enacted prior to October 15, 1993, regulating the use of tobacco products. However, no local law, rule, or ordinance enacted and placed in operation prior to October 15, 1993, shall be amended to impose a more stringent standard than in effect on the date of ratification of this Article.

(b) Any local ordinance, law, or rule that regulates smoking adopted on or after October 15, 1993, shall not contain restrictions regulating smoking which exceed those established in this Article. Any such local ordinance, law, or rule may restrict smoking in accordance with this subsection and pursuant to G.S. 143-597 only in the following facilities that are not owned, leased, or occupied by local government:

(1) Repealed by Session Laws 2007-193, s. 3, effective January 1, 2008.
(2) A public meeting.

(3) The indoor space in an auditorium, arena, or coliseum, or an appurtenant building thereof.
(4) A library or museum open to the public.
(5) Repealed by Session Laws 2007-193, s. 3, effective January 1, 2008.

If any of the facilities listed in this subsection are owned, leased as lessor, or the area leased as lessee and occupied by local government, then the local ordinance, law, or rule restricting smoking shall be governed by Article 23 of Chapter 130A of the General Statutes. (1993, c. 367, s. 1; 2007-193, s. 3.)

§§ 143-602 through 143-609. Reserved for future codification purposes.

Article 65.

Medical Education and Primary Care.

§§ 143-610 through 143-611: Repealed by Session Laws 1996, Second Extra Session, c. 17, s. 16.2.

§ 143-612: Repealed by Session Laws 1995, c. 507, s. 23A.3(d).

§ 143-612A: Repealed by Session Laws 1996, Second Extra Session, c. 17, s. 16.2.

§ 143-613. Medical education; primary care physicians and other providers.

(a) In recognition of North Carolina's need for primary care physicians, Bowman Gray School of Medicine and Duke University School of Medicine shall each prepare a plan with the goal of encouraging North Carolina residents to enter the primary care disciplines of general internal medicine, general pediatrics, family medicine, obstetrics/gynecology, and combined medicine/pediatrics and to strive to have at least fifty percent (50%) of North Carolina residents graduating from each school entering these disciplines. These schools of medicine shall present their plans to the Board of Governors of The University of North Carolina by April 15, 1996, and shall update and present their plans every two years thereafter. The Board of Governors shall report to the Joint Legislative Education Oversight Committee by May 15, 1996, and every two years thereafter on the status of these efforts to strengthen primary health care in North Carolina.

(b) The Board of Governors of The University of North Carolina shall set goals for the Schools of Medicine at the University of North Carolina at Chapel Hill and the School of Medicine at East Carolina University for increasing the percentage of graduates who enter residencies and careers in primary care. A minimum goal should be at least sixty percent (60%) of graduates entering primary care disciplines. Each school shall submit a plan with strategies to reach these goals of increasing the number of graduates entering primary care disciplines to the Board by April 15, 1996, and shall update and present the plans every two years thereafter. The Board of Governors shall report to the Joint Legislative Education Oversight Committee by May 15, 1996, and every two years thereafter on the status of these efforts to strengthen primary health care in North Carolina.

Primary care shall include the disciplines of family medicine, general pediatric medicine, general internal medicine, internal medicine/pediatrics, and obstetrics/gynecology.

(b1) The Board of Governors of The University of North Carolina shall set goals for State-operated health professional schools that offer training programs for licensure or certification of physician assistants, nurse practitioners, and nurse midwives for increasing the percentage of the graduates of those programs who enter clinical programs and careers in primary care. Each State-operated health professional school shall submit a plan with strategies for increasing the percentage to the Board by April 15, 1996, and shall update and present the plan every two years thereafter. The Board of Governors shall report to the Joint Legislative Education Oversight Committee by May 15, 1996, and every two years thereafter on the status of these efforts to strengthen primary health care in North Carolina.

(c) The Board of Governors of The University of North Carolina shall further initiate whatever changes are necessary on admissions, advising, curriculum, and other policies for State-operated medical schools and State-operated health professional schools to ensure that larger proportions of students seek residencies and clinical training in primary care disciplines. The Board shall work with the Area Health Education Centers and other entities, adopting whatever policies it considers necessary to ensure that residency and clinical training programs have sufficient residency and clinical positions for graduates in these primary care specialties. As used in this subsection, health professional schools are those schools or institutions that offer training for licensure or certification of physician assistants, nurse practitioners, and nurse midwives.

(d) The progress of the private and State-operated medical schools and State-operated health professional schools towards increasing the number and proportion of graduates entering primary care shall be monitored annually by the Board of Governors of The University of North Carolina. Monitoring data shall include (i) the entry of State-supported graduates into primary care residencies and clinical training programs, and (ii) the specialty practices by a physician and each midlevel provider who were State-supported graduates as of a date five years after graduation. The Board of Governors shall certify data on graduates, their residencies and clinical training programs, and subsequent careers by November 15 of each calendar year, beginning in November of 2012, to the Fiscal Research Division of the Legislative Services Office and to the Joint Legislative Education Oversight Committee.

(e) The information provided in subsection (d) of this section shall be made available to the Appropriations Committees of the General Assembly for their use in future funding decisions on medical and health professional education. (1993, c. 321, ss. 78(a1)-(e); c. 529, s. 1.3; c. 561, s. 10; 1995, c. 507, s. 23A.5; 2012-142, s. 9.5.)

§ 143-614: Repealed by Session Laws 1996, Second Extra Session, c. 17, s. 16.2.

§§ 143-615 through 143-620. Reserved for future codification purposes.

Article 66.

Health Care Purchasing Alliance Act

§§ 143-621 through 143-639: Repealed by Session Laws 2000-67, s. 21.2.

Article 67.

First Flight Centennial Commission.

§§ 143-640 through 143-643: Repealed by Session Laws 2015-184, s. 2, effective August 5, 2015.

§§ 143-644 through 143-649. Reserved for future codification purposes.

Article 68.

Regulation of Boxing.

§ 143-650: Repealed by Session Laws 2004-124, s. 18.2(a), effective July 1, 2004.

§ 143-651. Definitions.

The following definitions apply in this Article:

(1) Amateur. – A person who is not receiving or competing for and has never received or competed for any purse or other article or thing of value for participating in a match.

(2) Announcer. – Any person who engages in the act of announcing a match.

(3) Boxer. – Any person who engages as a participant in a boxing match.

(4) Boxing match. – A match where the participants engage in the use of full contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or technical knockout (TKO).

(4a) Branch. – The Alcohol Law Enforcement Branch of the State Bureau of Investigation.

(5) Repealed by Session Laws 2004-124, s. 18.2.(a), effective July 1, 2004.

(6) Contest. – A match in which the participants strive to win.

(7) Contestant. – Any person who engages as a participant in a boxing, kickboxing, or mixed martial arts match, or toughman event.

(8) Exhibition. – A match where the participants display their skills and technique without necessarily striving to win.

(9) Judge. – A person who has a vote in determining the winner of any match or contest.

(10) Kickboxer. – Any person who engages as a participant in a kickboxing match.

(11) Kickboxing match. – A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).

(12) Licensee. – Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.

(13) Manager. – Any person who controls or administers the affairs of any contestant, and who:

a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional contest in which the contestant is to participate and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his or her services, without regard to the sources of the compensation. The term "manager" shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to representing the interests of a professional contestant as a client.

b. Directs or controls the professional activities of any professional contestant.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional contest.

(14) Match. – Any boxing, kickboxing, or mixed martial arts contest or exhibition, or toughman event, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) Matchmaker. – A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates.

(15a) Mixed martial artist. – Any person who engages as a participant in a mixed martial arts match.

(15b) Mixed martial arts. – A form of sporting martial arts that uses a variety of martial arts techniques to deliver blows with the hands, elbows, and any part of the leg below the hip, including the knee and foot, and also uses boxing, wrestling, and grappling techniques.

(16) Natural person. – An individual.

(17) Participant. – Any person who engages in a match or exhibition and performs as a boxer, kickboxer, or mixed martial artist.

(18) Person. – An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(19) Physician. – An individual licensed to practice medicine in this State.
(20) Professional. – Any person who is licensed as a contestant and receives compensation for participating in matches.
(21) Promoter. – Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.
(22) Referee. – The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.
(23) Ring official. – Any person who performs an official function for the duration of a match.
(23a) Sanctioned amateur. – A person who competes in a sanctioned amateur match.
(23b) Sanctioned amateur match. – Any match regulated by an amateur sports organization that has been recognized and approved by the Branch.
(24) Second. – Any person who will work or be present in the corner of a participant for the duration of a match.
(24a) Repealed by Session Laws 2014-100, s. 17.1(yyy), effective July 1, 2014.
(25) Timekeeper. – Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.
(25a) Toughman contestant. – Any person who competes in a toughman event.
(25b) Toughman event. – An elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist receives a purse or other article of value, (iii) the participants engage in the use of full contact boxing techniques, and (iv) the object of each match is to win by decision, knockout (KO), or technical knockout (TKO).
(26) Repealed by Session Laws 2007-490, s. 1, effective August 30, 2007.
(27) Unarmed combat. – A match consisting of any combination of boxing, kicking, wrestling, hitting, punching, or other combative contact techniques which may reasonably be expected to inflict injury to opponents. (1995, c. 499, s. 1; 1997-504, s. 1; 1998-23, s. 18; 1998-212, s. 19.11(g); 2004-124, ss. 18.2(a), (b), (e); 2006-264, s. 22(c); 2007-490, s. 1; 2011-145, ss. 19.1(g), (n); 2014-100, s. 17.1(yyy).)

§ 143-652: Repealed by Session Laws 2004-124, s. 18.2.(a), effective July 1, 2004.

§ 143-652.1. Regulation of boxing, kickboxing, mixed martial arts, and toughman events.

The Alcohol Law Enforcement Branch of the Department of Public Safety shall regulate live boxing, kickboxing, and mixed martial arts matches, whether professional, amateur, or sanctioned amateur, or toughman events, in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Branch shall have the exclusive authority to approve and issue rules

for the regulation of the conduct, promotion, and performances of live boxing, kickboxing, and mixed martial arts matches and exhibitions, whether professional, amateur, or sanctioned amateur, and toughman events in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.
(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996. (2004-124, s. 18.2(d); 2007-490, s. 2; 2011-145, ss. 19.1(g), (n); 2014-100, s. 17.1(xxx).)

§ 143-652.2. Boxing Advisory Commission.

(a) Creation. – The Boxing Advisory Commission is created within the Department of Public Safety to advise the Alcohol Law Enforcement Branch of the Department of Public Safety concerning matters regulated by this Article. The Commission shall consist of six voting members and two nonvoting advisory members. All the members shall be residents of North Carolina. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.
(2) One voting member shall be appointed by the President Pro Tempore of the Senate for an initial term of three years.
(3) One voting member shall be appointed by the Speaker of the House of Representatives for an initial term of three years.
(4) One voting member shall be appointed by the Secretary of Public Safety for an initial term of three years.
(5) One voting member shall be appointed by the Lieutenant Governor for an initial term of two years.
(6) One voting member shall be appointed by the Tribal Council of the Eastern Band of the Cherokee for an initial term of three years.
(7) One nonvoting advisory member shall be appointed by the Speaker of the House of Representatives for an initial term of one year, from

nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

(8) One nonvoting advisory member shall be appointed by the President Pro Tempore of the Senate for an initial term of one year, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

Notwithstanding the schedule above in subdivisions (1), (5), (7), and (8) of this subsection, if any former member of the North Carolina Boxing Commission is appointed to the initial membership, that person shall serve an initial term of three years. The member appointed pursuant to subdivision (6) of this subsection may serve on the Commission only if an agreement exists and remains in effect between the Tribal Council of the Eastern Band of the Cherokee and the Commission authorizing the Commission to regulate professional boxing matches within the Cherokee Indian Reservation as provided by the Professional Boxing Safety Act of 1996.

The two nonvoting advisory members appointed pursuant to subdivisions (7) and (8) of this subsection shall advise the Commission and the Branch on matters concerning the health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and to the Branch for its approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of Public Safety shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of Public Safety for cause. Members of the Commission are subject to the conflicts of interest requirements of 15 U.S.C. § 6308 (contained in the Professional Boxing Safety Act of 1996, as amended). Each member, before entering upon the duties of a member, shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of Public Safety.

(b) Vacancies. – Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. – Meetings of the Commission shall be called by the chair or by any two members of the Commission, and meetings shall be held at least quarterly. Any three voting members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists.

(d) Review Authority of the Commission. – The Commission shall review existing rules adopted under this Article and shall from time to time make recommendations to the Branch for changes or addition to such rules. Any proposals for change, amendment,

addition, or deletion to those rules shall be submitted by the Branch to the Commission for its comments prior to approval.

(e) Compensation. – None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. – The Secretary of Public Safety shall provide staff assistance to the Commission.

(g) Initial appointments to the Commission under this section shall be for terms commencing July 1, 2007. (2007-528, s. 1; 2008-187, s. 22; 2011-145, ss. 19.1(g), (n); 2014-100, s. 17.1(xxx).)

§ 143-653. Unauthorized matches prohibited.

No person shall promote, conduct, or engage in an unarmed combat match, whether the participants are professional or amateur, except as authorized by this Article. This section shall not preclude professional wrestling. (1995, c. 499, s. 1; 1997-504, s. 3; 1998-23, s. 18; 1998-212, s. 19.11(g); 2007-490, s. 3; 2014-100, s. 17.1(xxx).)

§ 143-654. Licensing and permitting.

(a) License and Permit Required. – Except for sanctioned amateur matches, it is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State, other than a sanctioned amateur match, unless the promoter has a permit issued under this Article to do so. The Branch has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. – All licenses issued under this Article shall be valid only during the calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Branch the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Branch may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Branch deems appropriate. A person may not participate

under a fictitious or assumed name in any match unless the person has first registered the name with the Branch.

(c) Surety Bond. – An applicant for a promoter's license must submit, in addition to any other forms, documents, or exhibits requested by the Branch, a surety bond payable to the Branch for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Branch or (ii) the promoter's failure to fulfill the obligations of any contract related to the holding of a match. The surety bond shall be issued in an amount to be no less than ten thousand dollars ($10,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Branch. All surety bonds shall be upon forms approved by the Secretary of Public Safety and supplied by the Branch.

(d) Permit. – A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Branch the appropriate nonrefundable fee and any forms or documents the Branch may require. (1995, c. 499, s. 1; 1997-504, s. 4; 1998-23, s. 18; 1998-212, s. 19.11(c), (g); 1999-237, s. 20.3(b); 2004-124, s. 18.2(e); 2006-264, s. 22(a); 2007-490, s. 4; 2011-145, ss. 19.1(g), (n); 2014-100, s. 17.1(xxx).)

§ 143-655. Fees; State Boxing Revenue Account.

(a) License Fees. – The Branch shall collect the following license fees:

Announcer	$75.00
Contestant	$50.00
Judge	$75.00
Manager	$150.00
Matchmaker	$300.00
Promoter	$450.00
Referee	$75.00
Timekeeper	$75.00
Second	$50.00.

The annual license renewal fees shall not exceed the initial license fees.

(b) Permit Fees. – The Branch may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

Seating Capacity	Fee Amount
Less than 2,000	$150.00
2,000 – 5,000	$300.00
Over 5,000	$450.00.

(b1) Admission Fees. – The Branch shall collect a fee in the amount of two dollars ($2.00) per spectator to attend events regulated in this Article.

(c) State Boxing Revenue Account. – There is created the State Boxing Revenue Account within the Department of Public Safety. Monies collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article. (1995, c. 499, s. 1; 1998-212, s. 19.11(d); 2004-124, s. 18.2(e); 2006-264, s. 22(b); 2007-490, s. 5; 2009-451, ss. 17.7(a), (b); 2011-145, ss. 19.1(g), (n); 2014-100, s. 17.1(xxx); 2015-241, s. 16B.6(a).)

§ 143-656. Contracts and financial arrangements.

Any contract between licensees and related to a match or exhibition held or to be held in this State must meet the requirements of administrative rules as set forth by the Branch. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing. (1995, c. 499, s. 1; 1997-504, s. 5; 1998-23, s. 18; 1998-212, s. 19.11(g); 2004-124, s. 18.2(e); 2006-264, s. 22(a); 2007-490, s. 6; 2011-145, s. 19.1(n); 2014-100, s. 17.1(xxx).)

§ 143-657: Repealed by Session Laws 1997-504, s. 6.

§ 143-657.1. Sanctioned amateur matches.

In addition to the other applicable provisions of this Article, a sanctioned amateur match shall be conducted pursuant to the rules of the sports organization sanctioning the match or exhibition. (1997-504, s. 7; 1998-23, s. 18; 1998-212, s. 19.11(g); 2007-490, s. 7; 2014-100, s. 17.1(xxx).)

§ 143-658. Violations.

(a) Civil Penalties. – The Secretary of Public Safety may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Criminal Penalties. – A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of Public Safety may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

(c) Injunction. – Whenever it appears to the Secretary of Public Safety that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the Secretary of Public Safety may bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

(d) Repealed by Session Laws 1998-212, s. 19.11(e), effective July 1, 1998. (1995, c. 499, s. 1; 1997-504, s. 8; 1998-23, s. 18; 1998-212, s. 19.11(e), (g); 1998-215, s. 125; 2011-145, s. 19.1(g); 2014-100, s. 17.1(xxx).)

§ 143-659. Reserved for future codification purposes.

Article 69.

Criminal Justice Information Network Governing Board.

§§ 143-660 through 143-664: Recodified as Part 9 of Article 15 of Chapter 143B (G.S. 143B-1390 through 143B-1394) by Session Laws 2015-241, s. 7A.3(1), effective September 18, 2015.

§§ 143-665 through 143-669. Reserved for future codification purposes.

Article 70.

Adopt-A-Beach Program.

§§ 143-670 through 143-674: Repealed by Session Laws 2001-452, s. 1.1.

Article 71.

North Carolina Postal History Commission.

§§ 143-675 through 143-679: Repealed by Session Laws 2015-184, s. 3, effective August 5, 2015.

§ 143-680. Reserved for future codification purposes.

§ 143-681. Reserved for future codification purposes.

Article 72.

Commission On Children With Special Health Care Needs.

§ 143-682. Commission established.

(a) There is established the Commission on Children With Special Health Care Needs. The Department of Health and Human Services shall provide staff services and space for Commission meetings. The purpose of the Commission is to monitor and evaluate the availability and provision of health services to special needs children in this State, and to monitor and evaluate services provided to special needs children under the Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes.

(b) The Commission shall consist of nine members appointed by the Governor, as follows:

(1) Two parents, not of the same family, each of whom has a special needs child. In appointing parents, the Governor shall consider appointing one parent of a child with chronic illness and one parent of a child with a developmental disability or behavioral disorder.

(2) A licensed psychiatrist recommended by the North Carolina Psychiatric Association.

(3) A licensed psychologist recommended by the North Carolina Psychological Association.
(4) A licensed pediatrician whose practice includes services for special needs children, recommended by the Pediatric Society of North Carolina.
(5) A representative of one of the children's hospitals in the State, recommended by the Pediatric Society of North Carolina.
(6) A local public health director recommended by the Association of Local Health Directors.
(7) An educator providing education services to special needs children, recommended by the North Carolina Council of Administrators of Special Education.
(8) A licensed dentist who provides services to children with special needs, recommended by the North Carolina Dental Society.

(c) The Governor shall appoint from among Commission members the person who shall serve as chair of the Commission. Of the initial appointments, two shall serve one-year terms, three shall serve two-year terms, and three shall serve three-year terms. Thereafter, terms shall be for two years. Vacancies occurring before expiration of a term shall be filled from the same appointment category in accordance with subsection (b) of this section. (1998-1, s. 3(a); 1998-212, s. 12.12(c); 2010-12, s. 1.)

§ 143-683. Powers and duties of the Commission.

The Commission shall have the following powers and duties:

(1) Study the needs of children with special health care needs in this State for health care services not presently provided or regularly available through State or federal programs or through private or employer-sponsored health insurance plans;
(2) Develop guidelines for case management services, quality assurance measures, and periodic evaluations to determine efficacy of health services provided to special needs children;
(3) Develop and coordinate an outreach program of case managers to assist children with special health care needs and their families in accessing available State and federal resources for all health care services;
(4) Review rules adopted by the Commission for Public Health pertaining to the provision of services for special needs children and make recommendations for modifications or additions to the rules necessary to improve services to these children or to make service delivery more efficient and effective;
(5) Review policies and practices of the Department of Health and Human Services and recommend to the Secretary of Health and Human Services changes that would improve implementation of health programs for children with special health care needs;
(6) Report to each session of the General Assembly not later than the first day of its convening. The report shall include a summary of the

Commission's work and any recommendations the Commission may have on ways to improve the efficiency and effectiveness of health services delivery to children with special health care needs in this State, The Commission shall provide a copy of its report to the General Assembly's Commission on Children With Special Needs;

(7) Study the feasibility of establishing a privately funded risk pool to provide insurance coverage and services for children with special health care needs;

(8) Make recommendations to the Department and to the Commission for Public Health regarding quality assurance measures and mechanisms to enhance the health outcomes of children with special health care needs;

(9) Establish subcommittees as necessary to provide assistance and advice to the Commission in conducting its studies and other activities. The Commission may appoint non-Commission members to the subcommittees;

(10) Seek grants and other funds from private and federal sources to carry out the purposes of this Article; and

(11) Conduct other activities the Commission deems appropriate and necessary to carry out the purposes of this Article. (1998-1, s. 3(a); 2007-182, s. 2.)

§ 143-684. Compensation and expenses of Commission members; travel reimbursements.

Members of the Commission shall serve without compensation but may receive travel and subsistence as follows:

(1) Commission members who are officials or employees of a State agency or unit of local government, in accordance with G.S. 138-6.

(2) All other Commission members at the rate established in G.S. 138-5. (1998-1, s. 3(a).)

§§ 143-685 through 143-689. Reserved for future codification purposes.

Article 73.

Reserved.

§§ 143-690 through 143-693. Reserved for future codification purposes.

Article 74.

North Carolina Government Competition Act.

§§ 143-701 through 143-709. Repealed by Session Laws 1999-395, s. 18.1, effective July 1, 1999.

§§ 143-710 through 143-714. Reserved for future codification purposes.

Article 75.

Tobacco Trust Fund

§ 143-715. Policy; purpose.

The General Assembly finds:

(1) For many years, the State and its prosperity have been supported by its agricultural economy and particularly by the tobacco-related segment of the agricultural economy. The Master Settlement Agreement is expected to cause significant economic hardship upon the tobacco-related segment of the agricultural economy in that it is expected to result in reduced demand, sales, and prices for tobacco as an agricultural product.

(2) Tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses are entitled to indemnification for the adverse economic effects in the State resulting from the Master Settlement Agreement, tobacco producers, allotment holders, and persons engaged in tobacco-related businesses are entitled to compensation for the economic losses resulting from lost quota in this State, and tobacco producers are entitled to compensation for the decline in value of tobacco-related personal property assets and declining market conditions in this State resulting from the Master Settlement Agreement, to the extent that funds are available in the Tobacco Trust Fund to address those purposes.

(3) Even in the absence of the Master Settlement Agreement, the tobacco-related segment of the State's economy is experiencing severe economic hardship as it confronts a national decline in the use of, and demand for, tobacco products, which decline is expected to continue. At present, the tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses are facing an economic crisis that threatens their health and survival. Therefore, in addition to indemnification and compensation for losses in this State resulting from the Master Settlement Agreement, the public interest will be served by the funding of qualified agricultural programs that support, foster, encourage, and facilitate a strong agricultural economy in North Carolina. To the extent that funds are available in the Tobacco Trust Fund, expenditure of those funds to finance qualified agricultural programs is in the public interest.

(4) It is a public purpose for these funds to be expended in this manner, and it is public service for these persons to accept these funds to the end that conditions of unemployment and fiscal distress may be alleviated or avoided, more stable local economies may be created, local tax bases may be stabilized and maintained, natural resources may be optimally used, and the general public may be benefited. (2000-147, s. 3.)

§ 143-716. Definitions.

The following definitions apply in this Article:

(1) Commission. – The Tobacco Trust Fund Commission.

(2) Compensatory programs. – Programs developed by the Commission to identify, locate, compensate, and indemnify tobacco producers, allotment holders, and persons engaged in tobacco-related businesses who have suffered actual economic losses in this State due to lost quota, the decline in value of tobacco-related personal property assets, and declining market conditions resulting from the Master Settlement Agreement or declines in the tobacco-related segment of the State's economy.

(3) Fund. – The Tobacco Trust Fund.

(4) Master Settlement Agreement. – The settlement agreement between certain tobacco manufacturers and the states, as incorporated in the consent decree entered in the action of State of North Carolina v. Philip Morris, Incorporated, et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.

(5) National Tobacco Grower Settlement Trust. – The trust established by tobacco companies to provide payments to tobacco growers and allotment holders in 14 states for the purposes of ameliorating potential adverse economic consequences of likely reduction in demand, sales, and prices for tobacco as an agricultural product as a result of the Master Settlement Agreement.

(6) Qualified agricultural programs. – Programs developed by the Commission to support and foster the vitality and solvency of the tobacco-related segment of the State's agricultural economy, particularly the segment adversely affected by the Master Settlement Agreement, with the objective of alleviating and avoiding unemployment, preserving, and increasing local tax bases, and encouraging the economic stability of participants in the State's agricultural economy. Examples of qualified agricultural programs include programs to finance the modernization of farming equipment, programs to finance the conversion of existing equipment to conform to environmental and other regulatory requirements, and programs to finance the conversion or replacement of equipment in order to cultivate crops that are more profitable than are currently being cultivated.

(7) Tobacco product component business. – An individual, partnership, limited liability company, corporation, or other commercial entity that engages in the manufacture of component products for use in the manufacture of tobacco products.

(8) Tobacco-related business. – An individual, partnership, limited liability company, corporation, or other commercial entity that provides products or services used directly in (i) the production of tobacco, or (ii) support of the business of the production or sale of tobacco. The term does not include the manufacturing of tobacco products or the sale of tobacco products at wholesale or retail.

(9) Tobacco-related employment. – Employment in a tobacco-related business, or in the manufacturing of tobacco products or the component products used in the manufacture of tobacco products. The term does not include persons employed in the sale of tobacco products at wholesale or retail. (2000-147, s. 3.)

§ 143-717. Commission.

(a) Creation. – The Tobacco Trust Fund Commission is created. The Commission shall be administratively located within the Department of Agriculture and Consumer Services but shall exercise its powers independently of the Commissioner of Agriculture and the Department. All administrative expenses of the Commission shall be paid from the Fund.

(b) Membership. – The Commission shall consist of 18 members. The Commission shall be appointed as follows: six members by the Governor, six members by the President Pro Tempore of the Senate, and six members by the Speaker of the House of Representatives. The members shall be appointed as follows:

(1) The Governor shall make the following appointments:
   a. A flue-cured tobacco farmer.
   b. A flue-cured tobacco farmer.
   c. A person in or displaced from tobacco-related employment.
   d. An at-large appointee.
   e. An at-large appointee.
   f. An at-large appointee.

(2) The President Pro Tempore of the Senate shall make the following appointments:
   a. A flue-cured tobacco farmer.
   b. A flue-cured tobacco farmer.
   c. A burley tobacco farmer.
   d. An at-large appointee.
   e. An at-large appointee.
   f. An at-large appointee.

(3) The Speaker of the House of Representatives shall make the following appointments:
   a. A flue-cured tobacco farmer.
   b. A former flue-cured allotment holder who is not also a flue-cured tobacco farmer.
   c. A burley tobacco farmer.
   d. An at-large appointee.
   e. An at-large appointee.
   f. An at-large appointee.

It is the intent of the General Assembly that the appointing authorities, in appointing members, shall appoint members who represent the geographic, political, gender, and racial diversity of the State. It is the intent of the General Assembly that at least one-half of the members of the Commission be tobacco farmers.

Except as provided for the initial members under subsection (c) of this section, members shall serve four-year terms beginning July 1. No member may serve more than two full consecutive terms. Members may continue to serve beyond their terms until their successors are duly appointed, but any holdover shall not affect the expiration date of the succeeding term. Vacancies shall be filled by the designated appointing authority for the

remainder of the unexpired term. A member may be removed from office for cause by the authority that appointed that member.

(c) Initial Membership; Staggering. – To provide for a staggered membership, the members initially appointed to the Commission shall be appointed to staggered terms. Of the initial appointments to the Commission, the members initially appointed pursuant to sub-subdivisions (b)(1)a., (1)b., (2)d., and (3)d. of this section shall serve one-year terms ending on June 30, 2001. The members initially appointed pursuant to sub-subdivisions (b)(2)c., (2)e., (3)a., and (3)e. shall serve two-year terms ending on June 30, 2002. The members initially appointed pursuant to sub-subdivisions (b)(1)c., (1)d., (1)e., (2)b., and (3)c. of this section shall serve three-year terms ending June 30, 2003. The remaining members initially appointed pursuant to subsection (b) of this section shall serve four-year terms ending June 30, 2004.

(d) Officers. – The Commission shall elect from its membership a chair, vice-chair, and other officers as necessary for two-year terms beginning July 1 at the first meeting of the Commission held on or after July 1 of every even-numbered year. The vice-chair may act for the chair in the absence of the chair as authorized by the Commission.

(e) Frequency of Meetings. – The Commission shall meet at least quarterly each year and may hold special meetings at the call of the chair or a majority of members. The Governor shall call the initial meeting of the Commission.

(f) Quorum; Majority. – Ten members shall constitute a quorum of the Commission. The Commission may act upon a majority vote of the members of the Commission on matters involving the disbursement of funds and personnel matters properly before the Commission. On all other matters, the Commission may act by majority vote of the members of the Commission at a meeting at which a quorum is present.

(g) Per Diem and Expenses. – The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the members shall be paid from the Fund.

(h) Conflict of Interest. – Members of the Commission shall comply with the provisions of G.S. 14-234 prohibiting conflicts of interest, except that G.S. 14-234(a) shall not apply to an application for or the receipt of a grant or other financial assistance award by a member of the Commission from the Fund created under this Article, or an entity in which a member of the Commission has an interest, if both of the following conditions are met:

(1) A member does not vote on, participate in the deliberation of, or otherwise attempt through his or her official capacity to influence the vote on, a grant or other financial assistance award by the Commission to the member.

(2) The Commissioner of Agriculture determines that any award to a member is in accordance with general criteria adopted by the Commission for the distribution of funds from the Fund.

(i) Limit on Operating and Administrative Expenses. – All administrative expenses of the Commission shall be paid from the Fund. No more than three hundred fifty thousand

dollars ($350,000) may be used each fiscal year for administrative and operating expenses of the Commission and its staff, provided that the Commission may annually adjust the administrative expense cap imposed by this subsection, so long as that any cap increase does not exceed the amount necessary to provide for statewide salary and benefit adjustments enacted by the General Assembly. (2000-147, s. 3; 2006-264, s. 68; 2015-241, s. 13.12.)

§ 143-718. Powers and duties.

The Commission shall have the following powers and duties:

(1) To administer the provisions of this Article.

(2) To develop compensatory programs and qualified agriculture programs, including guidelines and criteria for eligibility for and disbursement of funds, the forms of direct and indirect economic assistance to be awarded, and procedures for applying for and reviewing applications for assistance from the Fund. In developing guidelines and criteria for eligibility and disbursement of funds, the Commission may consult with and otherwise obtain assistance from the State and local offices of the Farm Service Agency and other agencies of the United States Department of Agriculture.

(3) To provide financial assistance to eligible recipients, in carrying out compensatory programs and qualified agricultural programs.

(4) To hire staff for the administration of the Fund.

(5) To contract with other persons to assist in the administration of the Commission's programs.

(6) To accept gifts or grants from other sources.

(7) To adopt rules to implement this Article. (2000-147, s. 3.)

§ 143-719. Tobacco Trust Fund; creation; investment; priority use.

(a) Fund Established. – The Tobacco Trust Fund is established in the Office of the State Treasurer. The Fund shall be used for the purposes provided in this Article.

(b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer is the custodian of the Fund and shall invest the assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the Fund become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year is carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the chair of the Commission, pursuant to the directives of the Commission.

(c) Priority Use of Funds. – As soon as practicable after the beginning of each fiscal year, the State Treasurer must certify in writing to the chair of the Commission the estimated amount of debt service anticipated to be paid during the fiscal year for special indebtedness authorized by the State Capital Facilities Act of 2004, Part 1 of S.L. 2004-179. The chair of the Commission must issue a warrant from the Fund to the General Fund for the lesser of (i) one-half of the amount certified by the Treasurer and (ii) the applicable percentage of the Fund's receipts for the current fiscal year. For fiscal years beginning before July 1, 2007, the applicable percentage is thirty percent (30%). For fiscal years beginning on or after July 1, 2007, the applicable percentage is sixty-five percent (65%). (2000-147, s. 3; 2004-179, s. 1.4.)

§ 143-720. Benefits and administration of Fund for compensatory programs.

(a) Funds held in the Fund may be expended on compensatory programs as provided in this section.

(b) The Fund may provide direct and indirect financial assistance, in accordance with criteria established by the Commission and to the extent allowed by law, to accomplish the following:

(1) Indemnify tobacco producers, allotment holders, and persons engaged in tobacco-related businesses from the adverse economic effects in this State of the Master Settlement Agreement.

(2) Compensate tobacco producers, allotment holders, and persons engaged in tobacco-related businesses for economic loss resulting from lost quota and compensate tobacco producers for the decline in value of tobacco-related personal property assets and declining market conditions resulting from the Master Settlement Agreement in this State.

(3) Compensate individuals displaced from tobacco-related employment in this State as a result of the adverse economic effects of the Master Settlement Agreement.

(4) Compensate tobacco product component businesses that are (i) adversely impacted by the Master Settlement Agreement and that (ii) need financial assistance to retool machinery or equipment or to retrain workers, in order to convert to the production of new products or nontobacco use of existing products, or to effect other similar changes.

(c) Only tobacco producers, persons engaged in tobacco-related businesses, individuals displaced from tobacco-related employment, and tobacco product component businesses in this State, and holders of North Carolina tobacco allotments are eligible to apply for and receive assistance pursuant to subsection (b) of this section. Direct payments made to tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses shall be based on losses resulting in 1998 and thereafter. Lost quota shall be a primary determinative factor in calculating the amount of compensable economic loss for tobacco producers, allotment holders, and persons engaged in tobacco-related businesses.

(d) The Commission shall determine the priority of awards among the categories in subsection (b) of this section and within each of those categories.

(e) Financial assistance awards shall be for no more than one year at a time. An award may be renewed annually, without limitation.

(f) The Commission may require applicants to provide copies of documents necessary to determine compensable economic loss.

(g) In no event shall the amount paid to a tobacco producer or allotment holder pursuant to this Article, when combined with the amount received through the National Tobacco Grower Settlement Trust, exceed the compensable economic loss of the producer or allotment holder.

(h) The Commission may consider the criteria used for National Tobacco Grower Settlement Trust payments and may correspond with the National Tobacco Grower Settlement Trust certification entity to ensure that tobacco farmers and allotment holders are treated fairly. (2000-147, s. 3.)

§ 143-721. Benefits and administration of Fund for qualified agricultural programs.

(a) Funds held in the Fund may be expended on qualified agricultural programs as provided in this section.

(b) In implementing qualified agricultural programs, the Commission shall endeavor to identify those areas of the tobacco-related segment of the State's economy in need of assistance to be provided by the Fund in order to assure the continued vitality and solvency of those areas. The Commission shall endeavor to select for funding qualified agricultural programs that will have the greatest favorable impact on the long-term health of the tobacco-related economy of the State.

(c) The benefits of qualified agricultural programs are not limited to persons suffering economic loss resulting from the Master Settlement Agreement, but these programs shall be designed to foster, support, and assist the tobacco-related segment of the agricultural economy.

(d) The Commission may solicit and accept proposals from agencies and departments of the State, including institutions of The University of North Carolina, local units of government, the federal government, and members of the private sector for qualified agricultural programs to be funded with money held in the Fund. (2000-147, s. 3.)

§ 143-722. Reporting.

(a) The chair of the Commission shall report each year by November 1 to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the chairs of the House and Senate Appropriations Committees, and the Fiscal Research Division regarding the implementation of this Article, including a report on funds disbursed during the fiscal year by amount, purpose, and category of recipient, and other information as requested by the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources. A written copy of the report shall also be sent to the Legislative Library by November 1 each year.

(b) Any non-State entity as that term is defined in G.S. 143C-1-1 that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of G.S. 143C-6-14. (2000-147, s. 3; 2004-196, s. 4; 2006-203, s. 99; 2008-187, s. 23; 2017-57, s. 14.1(rr).)

§ 143-723. Open meetings; public records; audit.

The Open Meetings Law (Article 33 of Chapter 143 of the General Statutes) and the Public Records Act (Chapter 132 of the General Statutes) shall apply to the Fund and the Commission, and the Fund and the Commission shall be subject to audit by the State Auditor as provided by law. The Commission shall reimburse the State Auditor for the actual cost of the audit. (2000-147, s. 3.)

§ 143-724. Reserved for future codification purposes.

Article 76.

North Carolina Geographic Information Coordinating Council.

§§ 143-725 through 143-727: Recodified as Part 11 of Article 15 of Chapter 143B (G.S. 143B-1420 through 143B-1422) by Session Laws 2015-241, s. 7A.3(3), effective September 18, 2015.

§ 143-728. Reserved for future codification purposes.

§ 143-729. Reserved for future codification purposes.

Article 77.

Managed Care Patient Assistance Program.

§ 143-730. Health Insurance Smart NC.

(a) The Office of Managed Care Patient Assistance Program shall hereafter be known as the Health Insurance Smart NC.

(b) The Health Insurance Smart NC shall provide information and assistance to individuals enrolled in health care plans.

(c) Health Insurance Smart NC shall have the responsibility and duty to:

(1) Develop and distribute educational and informational materials for consumers, explaining their rights and responsibilities as health care plan enrollees.

(2) Answer inquiries posed by consumers.

(3) Advise health care plan enrollees about the utilization review process.

(4) Assist enrollees with the grievance, appeal, and external review procedures established by Article 50 of Chapter 58 of the General Statutes.

(5) Publicize the Health Insurance Smart NC.

(6) Compile data on the activities of the Office and evaluate such data to make recommendations as to the needed activities of the Office.

(d) Repealed by Session Laws 2013-199, s. 11, effective July 1, 2013.

(e) All health information in the possession of the Health Insurance Smart NC is confidential and is not a public record pursuant to G.S. 132-1 or any other applicable statute.

For purposes of this section, "health information" means any of the following:

(1) Information relating to the past, present, or future physical or mental health or condition of an individual.

(2) Information relating to the provision of health care to an individual.

(3) Information relating to the past, present, or future payment for the provision of health care to an individual.

(4) Information, in any form, that identifies or may be used to identify an individual, that is created by, provided by, or received from any of the following:

a. An individual or an individual's spouse, parent, legal guardian, or designated representative.

b. A health care provider, health plan, employer, health care clearinghouse, or an entity doing business with these entities.

(2001-446, s. 1.6; 2002-159, s. 45; 2012-142, s. 15.3(b); 2013-199, s. 11.)

§ 143-731. Reserved for future codification purposes.

§ 143-732. Reserved for future codification purposes.

§ 143-733. Reserved for future codification purposes.

§ 143-734. Reserved for future codification purposes.

Article 78.

Commission on State Property.

§ 143-735: Repealed by Session Laws 2007-12, s. 1, effective April 12, 2007.

§ 143-736: Repealed by Session Laws 2007-12, s. 1, effective April 12, 2007.

§ 143-737: Repealed by Session Laws 2007-12, s. 1, effective April 12, 2007.

§ 143-738: Reserved for future codification purposes.

§ 143-739: Reserved for future codification purposes.

§ 143-740: Reserved for future codification purposes.

§ 143-741: Reserved for future codification purposes.

§ 143-742: Reserved for future codification purposes.

§ 143-743: Reserved for future codification purposes.

§ 143-744: Reserved for future codification purposes.

Article 79.

Internal Auditing.

§ 143-745. Definitions; intent; applicability.

(a) For the purposes of this section:

(1) "Agency head" means the Governor, a Council of State member, a cabinet secretary, the President of The University of North Carolina, the President of the Community College System, the State Controller, and other independent appointed officers with authority over a State agency.

(2) "State agency" means each department created pursuant to Chapter 143A or 143B of the General Statutes, and includes all institutions, boards, commissions, authorities, by whatever name, that is a unit of the executive branch of State government, including The University of North Carolina, and the Community Colleges System Office. The term does not include a unit of local government.

(b) This Article applies only to a State agency that:

(1) Has an annual operating budget that exceeds ten million dollars ($10,000,000);

(2) Has more than 100 full-time equivalent employees; or

(3) Receives and processes more than ten million dollars ($10,000,000) in cash in a fiscal year. (2007-424, s. 1; 2009-516, s. 2; 2013-406, s. 1; 2016-126, 4th Ex. Sess., s. 9.)

§ 143-746. Internal auditing required.

(a) Requirements. – A State agency shall establish a program of internal auditing that:

(1) Promotes an effective system of internal controls that safeguards public funds and assets and minimizes incidences of fraud, waste, and abuse.

(2) Determines if programs and business operations are administered in compliance with federal and state laws, regulations, and other requirements.

(3) Reviews the effectiveness and efficiency of agency and program operations and service delivery.

(4) Periodically audits the agency's major systems and controls, including:

a. Accounting systems and controls.

b. Administrative systems and controls.

c. Information technology systems and controls.

(b) Internal Audit Standards. – Internal audits shall comply with current Standards for the Professional Practice of Internal Auditing issued by the Institute for Internal Auditors or, if appropriate, Government Auditing Standards issued by the Comptroller General of the United States.

(c) Appointment and Qualifications of Internal Auditors. – Any State employee who performs the internal audit function shall meet the minimum qualifications for internal auditors established by the Office of State Human Resources, in consultation with the Council of Internal Auditing.

(d) Director of Internal Auditing. – The agency head shall appoint a Director of Internal Auditing who shall report to, as designated by the agency head, (i) the agency head, (ii) the chief deputy or chief administrative assistant, or (iii) the agency governing board, or subcommittee thereof, if such a governing board exists. The Director of Internal Auditing shall be organizationally situated to avoid impairments to independence as defined in the auditing standards referenced in subsection (b) of this section.

(e) Insufficient Personnel. – If a State agency has insufficient personnel to comply with this section, the Office of State Budget and Management shall provide technical assistance.

(f) Reporting Fraudulent Activity. – If an internal audit conducted pursuant to this section results in a finding that a private person or entity has received public funds as a result of fraud, misrepresentation, or other deceptive acts or practices while doing business with the State agency, the internal auditor shall submit a detailed written report of the finding, and any additional necessary supporting documentation, to the State Purchasing Officer. A report submitted under this subsection may include a recommendation that the private person or entity be debarred from doing business with the State or a political subdivision thereof. (2007-424, s. 1; 2013-382, s. 9.1(c); 2013-406, s. 1; 2015-241, s. 25.1(a); 2015-268, s. 7.4.)

§ 143-747. Council of Internal Auditing.

(a) The Council of Internal Auditing is created, consisting of the following members:

(1) The State Controller who shall serve as Chair.
(2) The State Budget Officer.
(3) The Secretary of Administration.
(4) The Attorney General.
(5) The Secretary of Revenue.
(6) The State Auditor who shall serve as a nonvoting member. The State Auditor may appoint a designee.

(b) The Council shall be supported by the Office of State Budget and Management.

(c) The Council shall:

(1) Hold meetings at the call of the Chair or upon written request to the Chair by two members of the Council.
(2) Keep minutes of all proceedings.
(3) Promulgate guidelines for the uniformity and quality of State agency internal audit activities.
(4) Recommend the number of internal audit employees required by each State agency.
(5) Develop internal audit guides, technical manuals, and suggested best internal audit practices.
(6) Administer an independent peer review system for each State agency internal audit activity; specify the frequency of such reviews consistent with applicable national standards; and assist agencies with selection of independent peer reviewers from other State agencies.
(7) Provide central training sessions, professional development opportunities, and recognition programs for internal auditors.
(8) Administer a program for sharing internal auditors among State agencies needing temporary assistance and assembly of interagency teams of

internal auditors to conduct internal audits beyond the capacity of a single agency.

(9) Maintain a central database of all annual internal audit plans; topics for review proposed by internal audit plans; internal audit reports issued and individual findings and recommendations from those reports.

(10) Require reports in writing from any State agency relative to any internal audit matter.

(11) If determined necessary by a majority vote of the council:

a. Conduct hearings relative to any attempts to interfere with, compromise, or intimidate an internal auditor.

b. Inquire as to the effectiveness of any internal audit unit.

c. Authorize the Chair to issue subpoenas for the appearance of any person or internal audit working papers, report drafts, and any other pertinent document or record regardless of physical form needed for the hearing.

(12) Issue an annual report including, but not limited to, service efforts and accomplishments of State agency internal auditors and to propose legislation for consideration by the Governor and General Assembly. (2007-424, s. 1; 2013-406, s. 1.)

§ 143-748. Confidentiality of internal audit work papers.

Internal audit work papers are confidential except as otherwise provided in this section or upon subpoena issued by a duly authorized court. A published internal audit report is a public record as defined in G.S. 132-1 to the extent it does not include information which is confidential under State or federal law or would compromise the security of a State agency. An internal auditor shall maintain for 10 years a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews conducted under the internal auditor's authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of the internal auditor's office shall be retained in accordance with Chapter 132 of the General Statutes. Unless otherwise prohibited by law and to promote intergovernmental cooperation and avoid unnecessary duplication of audit effort, audit work papers related to released audit reports shall be made available for inspection by duly authorized representatives of the State and federal government in connection with some matter officially before them. (2013-406, s. 1.)

§ 143-749. Obstruction of audit.

It shall be a Class 2 misdemeanor for any officer, employee, or agent of a State agency subject to the provisions of this Article to willfully make or cause to be made to a State agency internal auditor or the internal auditor's designated representatives any false, misleading, or unfounded report for the purpose of interfering with the performance of any audit, special review, or investigation or to hinder or obstruct the State agency internal auditor or the internal auditor's designated representatives in the performance of their duties. (2013-406, s. 1.)

§ 143-750: Reserved for future codification purposes.

§ 143-751: Reserved for future codification purposes.

§ 143-752: Reserved for future codification purposes.

§ 143-753: Reserved for future codification purposes.

§ 143-754: Reserved for future codification purposes.

Article 80.

Permit Choice.

§ 143-755. Permit choice.

(a) If a permit applicant submits a permit application for any type of development and a rule or ordinance changes between the time the permit application was submitted and a permit decision is made, the permit applicant may choose which version of the rule or ordinance will apply to the permit.

(b) This section applies to all development permits issued by the State and by local governments.

(c) Repealed by Session Laws 2015-246, s. 5(a), effective September 23, 2015. (2014-120, s. 16(a); 2015-246, s. 5(a).)

§ 143-756. Reserved for future codification purposes.

§ 143-757. Reserved for future codification purposes.

§ 143-758. Reserved for future codification purposes.

§ 143-759. Reserved for future codification purposes.

Article 81.

Single-Sex Multiple Occupancy Bathroom and Changing Facilities.

§ 143-760: Repealed by Session Laws 2017-4, s. 1, effective March 30, 2017.

Article 81A.

Preemption of Regulation of Access to Multiple Occupancy Restrooms.

§ 143-761. Preemption of regulation of access to multiple occupancy restrooms, showers, or changing facilities.

State agencies, boards, offices, departments, institutions, branches of government, including The University of North Carolina and the North Carolina Community College System, and political subdivisions of the State, including local boards of education, are preempted from regulation of access to multiple occupancy restrooms, showers, or changing facilities, except in accordance with an act of the General Assembly. (2017-4, s. 2.)

Article 82.

Child Well-Being Transformation Council.

§ 143-775: Repealed by Session Laws 2018-5, s. 24.1(a), effective June 30, 2018.

§ 143-776: Repealed by Session Laws 2018-5, s. 24.1(a), effective June 30, 2018. (2017-41, s. 5.1; repealed by 2018-5, s. 24.1(a), effective June 30, 2018.)

Article 83.

Employee Fair Classification Act.

§ 143-785. Title.

This Article shall be known and may be cited as the "Employee Fair Classification Act." (2017-203, s. 1.)

§ 143-786. Definitions; scope.

(a) The following definitions apply in this Article:

(1) Chairman. – The Chairman of the Industrial Commission.

(2) Employ. – As defined by G.S. 95-25.2(3). For the purposes of this Article, an entity or individual shall not be deemed to be an employer of an individual hired or otherwise engaged by or through the entity or individual's independent contractor.

(3) Employee. – Any individual that is defined as an employee by either G.S. 95-25.2(4), 96-1(b)(10), 97-2(2), or 105-163.1(4). The term does not mean an individual who is an independent contractor.

(4) Employee Classification Section or Section. – The Employee Classification Section within the Industrial Commission.

(5) Employee misclassification. – Avoiding tax liabilities and other obligations imposed by Chapter 95, 96, 97, 105, or 143 of the General Statutes by misclassifying an employee as an independent contractor.

(6) Employer. – Any individual or entity that employs one or more employees as defined by G.S. 97-2(3).

(7) Public notice statement. – Notice as set forth in G.S. 143-788(a)(5).

(b) Nothing in this Article shall be construed or is intended to change the definition of "employer" or "employee" under any other provision of law. (2017-203, s. 1.)

§ 143-787. Establishment of Employee Classification Section.

(a) The Employee Classification Section is established within the Industrial Commission.

(b) The Chairman shall appoint a director of the Section to serve at the Chairman's pleasure with such authority as the Chairman deems necessary to direct and oversee the Section in carrying out the purposes of this Article.

(c) The Chairman may employ clerical staff, investigators, and other staff within the Section as is necessary for the Section to perform its duties under this Article.

(d) The Office of the State Chief Information Officer shall ensure that the Section is provided with all necessary access to the Government Data Analytics Center and all other information technology services.

(e) The Secretary of Revenue, the Commissioner of Labor, the Chairman, and the Assistant Secretary of Commerce for the Division of Employment Security shall each designate an employee of their respective agencies to serve as liaisons to the Section. (2017-203, s. 1.)

§ 143-788. Section powers and duties.

(a) The Section shall have the following duties:

(1) Be available during business hours to receive reports of employee misclassification by telephonic, written, or electronic communication.

(2) Investigate reports of employee misclassification and coordinate with and assist all relevant State agencies in recovering any back taxes, wages, benefits, penalties, or other monies owed as a result of an employer engaging in employee misclassification.

(3) Coordinate with relevant State agencies and district attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties assessed as a result of the employer's or individual's involvement in employee misclassification.

(4) Provide all relevant information pertaining to each instance of reported employee misclassification to the North Carolina Department of Labor, the Division of Employment Security within the North Carolina Department of Commerce, the North Carolina Department of Revenue, and the North Carolina Industrial Commission to facilitate investigation of potential violations of Chapter 95, 96, 97, 105, or 143 of the General Statutes.

(5) Create a publicly available notice that includes the definition of employee misclassification.

(6) Develop methods and strategies for information sharing between State agencies in order to proactively identify possible instances of employee misclassification.

(7) Develop methods and strategies to educate employers, employees, and the public about proper classification of employees and the prevention of employee misclassification.

(b) No later than October 1 of each year, the Section shall publish annually to the Office of the Governor and to the Joint Legislative Commission on Governmental Operations a report of the administration of this Article, together with any recommendations as the Section deems advisable. This report shall include, at a minimum, the number of reports of employee misclassification received, the number and amount of back taxes, wages, benefits, penalties, or other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies collected, and the number of cases referred to each State agency.

(c) The Section may adopt rules in accordance with Article 2A of Chapter 150B of the General Statutes for the purpose of carrying out the provisions of this Article and establishing the processes and procedures to be used under this Article. (2017-203, s. 1.)

§ 143-789. Occupational licensing boards and commissions; notice requirement; applicant certification and disclosure.

(a) Every State occupational licensing board or commission that is authorized to issue any license, permit, or certification shall include on every application for licensure, permit, or certification, or application for renewal of the same, the following:

(1) Certification by the applicant that the applicant has read and understands the public notice statement.

(2) Disclosure by the applicant of any investigations for employee misclassification and the result of the investigations for a time period determined by the occupational licensing board or commission.

(b) An occupational licensing board or commission shall deny the license, permit, or certification application of any applicant who fails to comply with the certification and disclosure requirements of this section. (2017-203, s. 1.)

§ 143-790. Confidentiality; access to records.

(a) The records of the Section are not public records under G.S. 132-1.

(b) The Section shall exchange information as required by this Article.

(c) The Section may share information with other State and federal agencies as permitted or required by law. (2017-203, s. 1.)

§ 143-791. Exchange of information among coordinating agencies.

The North Carolina Department of Revenue, the North Carolina Department of Labor, the Division of Employment Security within the North Carolina Department of Commerce, and the North Carolina Industrial Commission shall disclose all reports and investigations of employee misclassification to the Section. The Section shall distribute the information to the other agencies to allow each agency to conduct an investigation. (2017-203, s. 1.)