

# NORTH CAROLINA GENERAL ASSEMBLY



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## JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY

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### REPORT TO THE 2014 SESSION of the 2013 GENERAL ASSEMBLY

MAY 14, 2014

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## TRANSMITTAL LETTER

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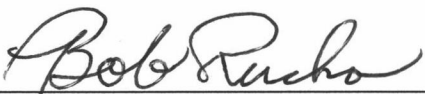
May 14, 2014

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TO THE MEMBERS OF THE 2014 REGULAR SESSION  
OF THE 2013 GENERAL ASSEMBLY

Pursuant to Article 33 of Chapter 120 of the General Statutes, the Joint Legislative Commission on Energy Policy submits its report and recommendations to the 2014 Regular Session of the 2013 General Assembly.

Respectfully submitted,



\_\_\_\_\_  
Senator Bob Rucho



\_\_\_\_\_  
Representative Mike Hager

Co-Chairs  
Joint Legislative Commission on Energy Policy

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# STATUTORY AUTHORITY

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## NORTH CAROLINA GENERAL STATUTES

### Article 33.

#### Joint Legislative Commission on Energy Policy.

#### **§ 120-285. Creation and membership of Joint Legislative Commission on Energy Policy.**

- (a) The Joint Legislative Commission on Energy Policy is established.
- (b) The Commission shall consist of 10 members as follows:
  - (1) Five members of the Senate appointed by the President Pro Tempore of the Senate, at least one of whom is a member of the minority party.
  - (2) Five members of the House of Representatives appointed by the Speaker of the House of Representatives, at least one of whom is a member of the minority party.

(c) Terms on the Commission are for two years and begin on the convening of the General Assembly in each odd-numbered year. Members may complete a term of service on the Commission even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Commission. A member continues to serve until the member's successor is appointed.

#### **§ 120-286. Purpose and powers and duties of Commission.**

(a) The Joint Legislative Commission on Energy Policy shall exercise legislative oversight over energy policy in the State. In the exercise of this oversight, the Commission may do any of the following:

- (1) Monitor and evaluate the programs, policies, and actions of the Mining and Energy Commission established pursuant to G.S. 143B-293.1, the Energy Policy Council established pursuant to G.S. 113B-2, the Energy Division in the Department of Commerce, the Utilities Commission and Public Staff established pursuant to Chapter 62 of the General Statutes, and of any other board, commission, department, or agency of the State or local government with jurisdiction over energy policy in the State.
- (2) Review and evaluate existing and proposed State statutes and rules affecting energy policy and determine whether any modification of these statutes or rules is in the public interest.
- (3) Monitor changes in federal law and court decisions affecting energy policy.

- (4) Monitor and evaluate energy-related industries in the State and study measures to promote these industries.
- (5) Study any other matters related to energy policy that the Commission considers necessary to fulfill its mandate.

(b) The Commission may make reports and recommendations, including proposed legislation, to the General Assembly from time to time as to any matter relating to its oversight and the powers and duties set out in this section.

**§ 120-287. Organization of Commission.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Commission on Energy Policy. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session.

(b) A quorum of the Commission is six members.

(c) While in the discharge of its official duties, the Commission has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02.

(d) From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the Joint Legislative Commission on Energy Policy. Members of the Commission receive subsistence and travel expenses as provided in G.S. 120-3.1. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Commission. The expenses for clerical employees shall be borne by the Commission.

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# COMMISSION MEMBERSHIP

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## JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY

### 2013-2014 Membership

Pursuant to G.S. 120-285, The Joint Legislative Commission on Energy Policy consists of 10 members, 5 appointed by the President Pro Tempore of the Senate, at least one of whom is a member of the minority party and 5 appointed by the Speaker of the House of Representatives, at least one of whom is a member of the minority party.

#### **President Pro Tempore of the Senate** **Appointments:**

**Senator Bob Rucho, Co-Chair**  
300-A Legislative Office Building  
300 N. Salisbury Street  
Raleigh, NC 27603-5925  
(919) 733-5655  
Email: [Bob.Rucho@ncleg.net](mailto:Bob.Rucho@ncleg.net)

**Senator Andrew Brock**  
521 Legislative Office Building  
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**Senator Gene McLaurin**  
1118 Legislative Building  
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#### **Speaker of the House of Representatives** **Appointments:**

**Representative Mike Hager, Co-Chair**  
304 Legislative Office Building  
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## COMMISSION PROCEEDINGS

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The Joint Legislative Commission on Energy Policy met eight times during the interim between the 2013 and the 2014 Regular Sessions of the General Assembly. The Commission's Charge can be found [here](#). The following is a brief summary of the Commission's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library and [online](#)<sup>1</sup>.

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<sup>1</sup> The website for the Joint Legislative Commission on Energy Policy:  
[http://ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing\\_6576](http://ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_6576)

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## AGENDA

**1:00 p.m. Tuesday, October 1, 2013**  
Room 544 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Senator Bob Rucho, Presiding
2. Introductory remarks by Cochairs (*10 minutes*)  
Senator Bob Rucho  
Representative Mike Hager
3. Introduction of Members and Staff (*15 minutes*)
4. Review of Commission Charge (*5 minutes*)  
Jennifer McGinnis, Commission Counsel
5. Report on activity of the Department of Environment and Natural Resources (DENR) related to development of a modern regulatory program for the management of oil and gas exploration and development activities in the State, and use of horizontal drilling and hydraulic fracturing (fracking) for that purpose. (*45 minutes*)
  - a. Merger of the State Energy Office into the Division of Energy, Mineral and Land Resources.
  - b. Use of funds authorized by the 2012 and 2013 appropriations acts (S.L. 2012-142 and S.L. 2013-360, respectively) for: staff assistance to the Mining and Energy Commission (MEC); data collection and analysis of geological samples in the Deep River, Dan River, and the Cumberland-Marlboro Basins; and marketing expenses related to shale gas resources.
  - c. DENR's recent decision to decline Wetlands Program Development Grants from the United States Environmental Protection Agency, including nature and amount of grants, basis for the decision, and prospects for reapplication.
  - d. Report on DENR's findings and recommendations concerning the study of the State's current law on the issue of integration or compulsory pooling and other states' laws on the matter (Sec. 2(l) of S.L. 2012-143/S820, as amended by Sec. 12(c) of S.L. 2012-201/H953, October 1, 2013)  
  
Mitch Gillespie, Assistant Secretary for the Environment  
DENR
6. Report on activity of the MEC concerning the rule development process for the management of oil and gas exploration and development activities in the State, and use of fracking for that purpose, as well as ongoing studies directed by S.L. 2013-365. (*1 hour 25 minutes*)
  - a. Overview of Commission activities

- b. Rules
  - 1. Overview of process, timeline, and administration  
James Womack, Chairman  
MEC
  - 2. Water and Waste Management Committee  
Dr. Vikram Rao, Member  
MEC
  - 3. Environmental Standards Committee  
George Howard, Member  
MEC
  - 4. Rules Committee  
Amy Pickle, Member  
MEC
- c. Completed Studies -- Findings and Recommendations
  - 1. Levels of appropriate funding and potential sources for that funding deemed necessary in connection with management of oil and gas exploration and development activities in the State. (Sec. 2(j) of S.L. 2012-143/S820, as amended by Sec. 12(a) of S.L. 2012-201/H953, October 1, 2013)  
Jane Lewis-Raymond, Member  
MEC
  - 2. Local government regulation of oil and gas exploration and development activities, and the use of fracking for that purpose. (Sec. 2(k) of S.L. 2012-143/S820, as amended by Sec. 12(b) of S.L. 2012-201/H953, October 1, 2013) (*10 minutes*)  
Charles Taylor, Member  
MEC
  - 3. The State's current law on the issue of integration or compulsory pooling and other states' laws on the matter (Sec. 2(l) of S.L. 2012-143/S820, as amended by Sec. 12(c) of S.L. 2012-201/H953, October 1, 2013)  
Dr. Ray Covington, Vice Chairman  
MEC
- d. Ongoing Studies
  - 1. Study Group Overview  
Dr. Ray Covington, Vice Chairman  
MEC
  - 2. Coordinated Permitting  
Dr. Kenneth Taylor, Ex Officio Member  
MEC
  - 3. Protection of Trade Secrets and Proprietary Information  
James Womack, Chairman  
MEC
- e. Closing and questions  
James Womack, Chairman  
MEC



7. Report on activity of the Environmental Management Commission (EMC) concerning the rule development process for the management of oil and gas exploration and development activities in the State, and use of fracking for that purpose (*15 minutes*)  
Benne Hutson, Chairman  
EMC
8. Report on activity of the Commission for Public Health (CPH) concerning the rule development process for the management of oil and gas exploration and development activities in the State, and use of fracking for that purpose (*5 minutes*)  
Mitch Gillespie, Assistant Secretary for the Environment  
DENR
9. Commission discussion and announcements
10. Adjourn

## AGENDA

1:30 p.m. Tuesday, November 5, 2013

Room 643 Legislative Office Building

Raleigh, North Carolina

1. Call to order  
Representative Mike Hager, Presiding
2. Introductory remarks by Cochairs (*10 minutes*)  
Senator Bob Rucho  
Representative Mike Hager
3. Modernization of oil and gas statutes (*1 hour*)  
Ben Norris, Counsel  
American Petroleum Institute  
  
James D. Rankin, III, Attorney  
Perkins & Trotter, PLLC
4. Issues associated with ancient mineral rights (*30 minutes*)  
Theodore A. Feitshans, J.D., Extension Associate Professor  
Department of Agricultural and Resource Economics, North Carolina State  
University
5. Compressed natural gas (CNG) and liquefied natural gas (LNG) for transportation (*1 hour*)  
Zachary Wester, Policy and Regulatory Associate  
Robert Clark, Regional Operations Manager, Southeast  
Bryn Marley, Regional Operations Manager, Northeast  
Blu.  
  
Brett Barry, Public Policy and Regulatory Affairs Advisor  
Clean Energy Fuels
6. Current natural gas utilities and services in North Carolina (*30 minutes*)  
Ken Valentine, Vice President of Business Development and Technology Services  
Piedmont Natural Gas  
  
George Ratchford, Vice-President of Gas Operations  
PSNC
7. Commission discussion and announcements
8. Adjourn

## AGENDA

**1:30 p.m. Tuesday, December 3, 2013**

Room 544 Legislative Office Building

Raleigh, North Carolina

1. Call to order  
Senator Bob Rucho, Presiding
2. Introductory remarks by Cochairs (*10 minutes*)  
Senator Bob Rucho  
Representative Mike Hager
3. Presentation on issues concerning the electrical grid and measures and strategies that may be taken to strengthen and protect the integrity of the grid from direct or indirect attacks and/or the effects of natural disasters (*1 hour*)
  - a. NOAH Mission Statement  
Sid Morris, Founder  
The NOAH Foundation
  - b. The Electric Grid - “Our Most Important Infrastructure”; Why I Wrote “One Second After”  
Dr. William Forstchen, Historian and New York Times Best Selling Author
  - c. Current Status and Vulnerability of the Grid  
R. James Woolsey, Former Director  
Central Intelligence Agency
  - d. Why Isn’t Our Grid Hardened?  
Peter V. Pry, Executive Director  
Task Force on National and Homeland Security
4. Presentation on how municipal electric systems are structured, governing mechanism, and explanation of rates (*30 minutes*)  
T. Graham Edwards, CEO  
ElectriCities of North Carolina
5. Presentation on the structure and function of the Utilities Commission and emerging issues in utility regulation (*30 minutes*)  
Edward S. Finley, Jr., Chairman  
North Carolina Utilities Commission
6. Presentation on the structure and function of Public Staff, primer on rate making for utilities including discussion of avoided cost proceedings, and emerging issues (*30 minutes*)  
Christopher J. Ayers, Executive Director  
Public Staff, North Carolina Utilities Commission

7. Presentation on how electric cooperatives are structured, governing mechanism, and alternative method of regulation (*30 minutes*)  
Joe Brannan, Executive Vice President & Chief Executive Officer,  
North Carolina Electric Membership Corporation
8. Commission discussion and announcements
9. Adjourn

**AGENDA**  
**1:00 p.m. Tuesday, January 7, 2014**  
Room 544 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Representative Mike Hager, Presiding
2. Introductory remarks by Cochairs (*10 minutes*)  
Senator Bob Rucho  
Representative Mike Hager
3. Duke Energy overview and emerging issues (*30 minutes*)  
Paul Newton, President  
Duke Energy, North Carolina
4. Senate Bill 3 (*1 hour 5 minutes*)
  - a. Legislation overview (*15 minutes*)  
Heather Fennell, Commission Counsel
  - b. Renewable energy in the regulatory process (*20 minutes*)  
Dan Conrad, Attorney  
North Carolina Utilities Commission
  - c. Questions/follow-up on renewable energy in the regulatory process (*10 minutes*)  
Christopher J. Ayers, Executive Director  
Public Staff, North Carolina Utilities Commission
  - d. Renewable energy providers in North Carolina (*20 minutes*)  
Ivan Urlaub, Executive Director  
North Carolina Sustainable Energy Association
5. Presentations related to use of alternative fuels for the State's school bus fleets (*25 minutes*)
  - a. Overview of North Carolina Alternative Fuels Feasibility Study (S.L.2012-186)  
Neal Robbins, Director of Legislative and Intergovernmental Affairs  
Department of Environment and Natural Resources (DENR)
  - b. Presentation on addition of propane fuel option to State's school bus bidding form  
Bill Daughtridge, Jr., Secretary  
Department of Administration  
  
Derek Graham, Section Chief  
Transportation Services, Department of Public Instruction

6. Presentation on permitting of wind energy facilities in the State (*25 minutes*)
  - a. Overview of H484/S.L. 2013-51  
Jennifer R.F. Mundt, Commission Analyst
  - b. Status of wind permitting process within DENR and pending projects  
Mitch Gillespie, Assistant Secretary for Environment  
DENR
  
7. USEPA's proposed greenhouse gas emissions (carbon control) standards for new and existing power plants: (a.) Briefing on proposed regulations and recently introduced Congressional legislation to repeal rules (H.R. \_\_, Whitfield-Manchin Legislation); and (b.) Presentation of testimony given to the Committee on Energy and Commerce Subcommittee on Energy and Power of the United States House of Representatives (*25 minutes*)  
Donald R. Van der Vaart, Ph.D, P.E., J.D.  
Chief, Permitting Section, Division of Air Quality, DENR
  
8. Commission discussion and announcements
  
9. Adjourn

**AGENDA**  
**1:30 p.m. Tuesday, February 4, 2014**  
Room 643 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Senator Bob Rucho, Presiding
2. Introductory remarks by Cochairs (*10 minutes*)  
Senator Bob Rucho  
Representative Mike Hager
3. Approval of the minutes from the October 1, 2013, November 5, 2013, and December 3, 2013 Commission meetings
4. Overview of liquefied natural gas facilities and exports (*1 hour 15 minutes*)
  - a. Bruce McKay, Managing Director, Federal Affairs  
Dominion
  - b. Bill Cooper, President  
The Center for Liquefied Natural Gas
5. Report on activity of the Mining and Energy Commission (MEC) concerning the rule development process for the management of oil and gas exploration and development activities in the State, and use of fracking for that purpose. (*1 hour 15 minutes*)
  - a. Update of MEC activities, milestones, and scheduling  
James Womack, Chairman  
MEC
  - b. Water / Wastewater Management & Environmental Standards Committee updates  
James Womack, Chairman  
MEC
  - c. Administration of Oil & Gas Committee update  
Charles Holbrook, Member  
MEC
  - d. Rules Committee update  
Amy Pickle, Member  
MEC
  - e. Coordinated Permitting Study Group findings and conclusions  
Dr. Kenneth Taylor, Member  
MEC
  - f. Pooling, unitization, and other statutory changes needed  
Dr. Ray Covington, Vice-Chairman  
MEC

6. Discussion of members' and staff November 2013 visit to Arkansas (*30 minutes*)
  - a. Overview  
Jennifer L. McGinnis, Commission Counsel
  - b. Member discussion
  
7. Overview and discussion of net-zero energy schools (*30 minutes*)
  - a. Robbie Ferris, CEO/President  
SfL+A Architects
  - b. Steven Hunt, CEO and General Manager  
Lumbee River EMC
  
8. Commission discussion and announcements
  
9. Adjourn



**AGENDA**  
**1:30 p.m. Tuesday, March 4, 2014**  
Room 643 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Representative Mike Hager, Presiding
2. Introductory remarks by Cochairs (*5 minutes*)  
Senator Bob Rucho  
Representative Mike Hager
3. Approval of the minutes from the January 7, 2014 Commission meeting
4. Report on activity of the Energy Policy Council (*45 minutes*)  
Lieutenant Governor Dan Forest
5. Report from the Office of the Governor on development of a regional interstate offshore energy policy compact pursuant to S.L. 2013-365/S76, Sec. 7 (*15 minutes*)  
Donald R. van der Vaart, Ph.D, J.D., P.E., Energy Policy Director  
Department of Environment and Natural Resources
6. Follow-up on January presentation concerning addition of propane fuel option to State's school bus bidding form, including status of award(s) (*30 minutes*)  
Dee Jones, Chief Operating Officer  
Department of Administration  
  
Derek Graham, Section Chief  
Transportation Services, Department of Public Instruction
7. Overview of severance taxes in other states (*45 minutes*)  
Michael A. Hannah, Senate Tax Counsel  
  
Heather Fennell, Commission Counsel
8. Commission discussion and announcements
9. Adjourn

**AGENDA**  
**1:00 p.m. Tuesday, April 1, 2014**  
Room 643 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Senator Bob Rucho, Presiding
2. Introductory remarks by Cochairs (*5 minutes*)  
Senator Bob Rucho  
Representative Mike Hager
3. Approval of the minutes from the March 4, 2014 Commission meeting
4. Presentation on “[The Economic Potential from Developing North Carolina’s On-Shore and Off-Shore Energy Resources](#),” report issued April 1, 2013 (*30 minutes*)  
Dr. Michael L. Walden  
William Neal Reynolds Distinguished Professor  
Department of Agricultural and Resource Economics  
North Carolina State University
5. Presentations from faculty and staff from North Carolina A&T’s Center for Energy Research and Technology (CERT), North Carolina State University, and UNC Charlotte’s Energy Production & Infrastructure Center (EPIC), with overviews of the energy programs at their respective institutions (*45 minutes*)
  - a. Raymond C. Tesiero, Mechanical Engineer & Research Coordinator, CERT  
North Carolina A&T State University
  - b. Louis Martin-Vega, Dean of the College of Engineering  
North Carolina State University
  - c. Dr. Johan Enslin, Director, EPIC  
University of North Carolina Charlotte
6. Reports on: (i) activity of the Mining and Energy Commission (MEC) concerning the rule development process for the management of oil and gas exploration and development activities in the State, and use of fracking for that purpose; and (ii) report on the study required by Section 2(b) of S.L. 2013-365 concerning an appropriate rate of severance tax that should be imposed in association with oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in the State (*45 minutes*)  
James Womack, Chairman  
MEC
- 7.(a) Reports on legislative changes requested or recommended by MEC in association with development of a modern regulatory program for the management of oil and gas

exploration and development activities in the State, and use of fracking for that purpose, as required by Section 2(m) of S.L. 2012-143 (*30 minutes*)

James Womack, Chairman

MEC

- 7.(b) Reports on legislative changes requested or recommended by the Department of Environment and Natural Resources (DENR) in association with development of a modern regulatory program for the management of oil and gas exploration and development activities in the State, and use of fracking for that purpose, as required by Section 2(m) of S.L. 2012-143 (*15 minutes*)

Donald R. van der Vaart, Ph.D, J.D., P.E., Energy Policy Director

DENR

8. Presentation on changes needed for energy-related road use (*15 minutes*)

Jon Nance, Deputy Chief Engineer

Department of Transportation

9. Commission discussion and announcements

10. Adjourn

**AGENDA**  
**1:00 p.m. Thursday, May 8, 2014**  
Room 643 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Representative Mike Hager, Presiding
2. Introductory remarks by Cochairs (*5 minutes*)  
Representative Mike Hager  
Senator Bob Rucho
3. Approval of the minutes from the April 1, 2014 Commission meeting
4. Commission consideration of its legislative proposal and report to the 2014 Regular Session of the 2013 General Assembly
  - Legislative proposal  
2013-RIxz-23 [v.15] – Energy Modernization Act
  - Report to the 2014 Regular Session of the 2013 General Assembly
5. Commission discussion and announcements
6. Adjourn



1  
2 The General Assembly of North Carolina enacts:  
3  
4

5 **PART I. EXTENSION OF RULE DEVELOPMENT DEADLINE**

6 **SECTION 1.** Section 2(m) of S.L. 2012-143 reads as rewritten:

7 **"SECTION 2.(m)** All rules required to be adopted by the Mining and Energy  
8 Commission, the Environmental Management Commission, and the Commission for  
9 Public Health pursuant to this act shall be adopted no later than ~~October 1, 2014.~~January  
10 1, 2015. In order to provide for the orderly, efficient, and effective development and  
11 adoption of rules and to prevent the adoption of duplicative, inconsistent, or inadequate  
12 rules by these Commissions, the Department of Environment and Natural Resources shall  
13 coordinate the adoption of the rules. The Commissions and the Department shall develop  
14 the rules in an open and collaborative process that includes (i) input from scientific and  
15 technical advisory groups; (ii) consultation with the North Carolina League of  
16 Municipalities, the North Carolina Association of County Commissioners, the Division of  
17 Energy of the Department of Commerce, the Department of Transportation, the Division  
18 of Emergency Management of the Department of Public Safety, the Consumer Protection  
19 Division of the Department of Justice, the Department of Labor, the Department of  
20 Health and Human Services, the State Review of Oil and Natural Gas Environmental  
21 Regulations (STRONGER), the American Petroleum Institute (API), and the Rural  
22 Advancement Foundation (RAFI-USA); and (iii) broad public participation. During the  
23 development of the rules, the Commissions and the Department shall identify changes  
24 required to all existing rules and statutes necessary for the implementation of this act,  
25 including repeal or modification of rules and statutes. Until such time as all of the rules  
26 are adopted pursuant to this act, the Department shall submit quarterly reports to the Joint  
27 Legislative Commission on Energy Policy, created under Section 6(a) of this act, and the  
28 Environmental Review Commission on its progress in developing and adopting the rules.  
29 The quarterly reports shall include recommendations on changes required to existing  
30 rules and statutes and any other findings or recommendations necessary for the  
31 implementation of this act. The first report required by this subsection is due January 1,  
32 2013."  
33

34 **PART II. EXEMPTIONS FROM ADMINISTRATIVE PROCEDURE ACT**

35 **SECTION 2.(a)** Notwithstanding G.S. 150B-21.3(b1) and Sec. 1(a) of S.L.  
36 2013-365, all rules adopted pursuant to Section 2(m) of S.L. 2012-143 shall be subject to  
37 legislative review during the next regular session of the General Assembly that begins  
38 after the date the Rules Review Commission approved the rule or during the regular  
39 session that is underway on the date the Commission approved the rule.

40 **SECTION 2.(b)** Notwithstanding G.S. 150B-21.3(b1) and any rule of either  
41 house of the General Assembly, any member of the General Assembly may introduce a  
42 bill to disapprove any rule adopted pursuant to Section 2(m) of S.L. 2012-143 that has  
43 been approved by the Rules Review Commission and that either has not become effective  
44 or has become effective by executive order, as follows: (i) if the Rules Review  
45 Commission approves the rule prior to the start of a legislative session, during the first  
46 thirty calendar days of the regular session of the General Assembly that begins after the

1 date the Commission approved all rules adopted pursuant to Section 2(m) of S.L.  
2 2012-143; or (ii) if the Rules Review Commission approves the rule during a legislative  
3 session, thirty calendar days from the date the Rules Review Commission approved all  
4 rules adopted pursuant to Section 2(m) of S.L. 2012-143.

5 **SECTION 2.(c)** Notwithstanding G.S. 150B 21.3(b1) and any rule of either  
6 house of the General Assembly, all rules adopted pursuant to Section 2(m) of S.L.  
7 2012-143 become effective on the earlier of:

8 (1) If the Rules Review Commission approves all rules adopted  
9 pursuant to Section 2(m) of S.L. 2012-143 prior to the start of a  
10 legislative session, the earlier of: (i) the thirty-first calendar day  
11 of the regular session of the General Assembly that begins after  
12 the date the Commission approved all rules adopted pursuant to  
13 Section 2(m) of S.L. 2012-143 if a bill that specifically  
14 disapproves any of these rules has not been introduced in either  
15 house of the General Assembly by that date; (ii) if a bill that  
16 specifically disapproves a rule is introduced in either house of the  
17 General Assembly before the thirty-first calendar day of that  
18 session, the rule becomes effective on the earlier of either the day  
19 an unfavorable final action is taken on the bill, or the sixty-first  
20 calendar day of that session if by that date a bill that specifically  
21 disapproves the rule has not been ratified; or (iii) the day that  
22 session of the General Assembly adjourns without ratifying a bill  
23 that specifically disapproves the rule.

24 (2) If the Rules Review Commission approves all rules adopted  
25 pursuant to Section 2(m) of S.L. 2012-143 during a legislative  
26 session, the earlier of: (i) the thirty-first calendar day after the  
27 date the Commission approved all rules adopted pursuant to  
28 Section 2(m) of S.L. 2012-143 if a bill that specifically  
29 disapproves a rule has not been introduced in either house of the  
30 General Assembly by that date; (ii) if a bill that specifically  
31 disapproves a rule is introduced in either house of the General  
32 Assembly within thirty calendar days of the date that the  
33 Commission approved all rules adopted pursuant to Section 2(m)  
34 of S.L. 2012-143, the rule becomes effective on the earlier of  
35 either the day an unfavorable final action is taken on the bill, or  
36 the sixty-first day after the date that the Commission approved all  
37 rules adopted pursuant to Section 2(m) of S.L. 2012-143 if by  
38 that date a bill that specifically disapproves the rule has not been  
39 ratified; or (iii) the day that session of the General Assembly  
40 adjourns without ratifying a bill that specifically disapproves the  
41 rule.

42 **SECTION 2.(d)** Notwithstanding G.S. 150B-21.9, the Rules Review  
43 Commission must review any permanent rule adopted pursuant to Section 2(m) of S.L.  
44 2012-143 submitted to it by the end of a month by the last day of the next month.

1           **SECTION 2.(e)** G.S 150B-19.3 shall not apply to rules adopted by the  
2 Mining and Energy Commission, the Environmental Management Commission,  
3 and the Commission for Public Health for the management of oil and gas  
4 exploration, development, and production activities in the State, including the use  
5 of horizontal drilling and hydraulic fracturing for that purpose.

6           **SECTION 2.(f)** Section 1(b) of S.L. 2013-365 reads as rewritten:

7           **"SECTION 1.(b)** The Mining and Energy Commission, the  
8 Environmental Management Commission, and the Commission for Public Health  
9 are exempt from the provisions of Chapter 150B of the General Statutes that  
10 require the preparation of fiscal ~~notes~~ notes, including the requirement established  
11 by G.S. 150B-19.1(f), for any rule proposed for the creation of a modern  
12 regulatory program for that pertains to the management of oil and gas exploration  
13 and development activities in the State, including the use of horizontal drilling and  
14 hydraulic fracturing for that purpose."

15           **SECTION 2.(g)** This Part is effective when it becomes law. Section  
16 2(f) of this act shall expire December 31, 2017.

17  
18 **PART III. CREATE OIL AND GAS COMMISSION AND RECONSTITUTE**  
19 **MINING COMMISSION**

20           **SECTION 3.(a)** Part 6A of Article 7 of Chapter 143B reads as rewritten:

21           "Part 6A. North Carolina ~~Mining and Energy~~ Oil and Gas Commission.

22 **"§ 143B-293.1. North Carolina ~~Mining and Energy~~ Oil and Gas Commission –**  
23 **creation; powers and duties.**

24           (a) There is hereby created the North Carolina ~~Mining and Energy~~ Oil and Gas  
25 Commission of the Department of Environment and Natural Resources with the power  
26 and duty to adopt rules necessary to administer the Oil and Gas Conservation Act  
27 pursuant to G.S. 113-391 and for the development of the ~~oil, gas, and mining~~ oil and gas  
28 resources of the State. The Commission shall make such rules consistent with the  
29 provisions of this Chapter. All rules adopted by the Commission shall be enforced by the  
30 Department of Environment and Natural Resources.

31           (b) The Commission shall have the authority to make determinations and issue  
32 orders pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells  
33 and to establish drilling units as provided in G.S. 113-393; (ii) ~~require the operation of~~  
34 ~~wells with efficient gas-oil ratios and to fix such ratios;~~ (iii) limit and prorate the  
35 production of oil or gas, or both, from any pool or field for the prevention of waste as  
36 provided in G.S. 113-394; (iii) classify wells for taxing purposes; and (iv) require  
37 integration of interests as provided in G.S. 113-393.

38           (c) The Commission shall submit ~~quarterly~~ annual written reports as to its  
39 operation, activities, programs, and progress to the Joint Legislative Commission on  
40 Energy Policy and the Environmental Review Commission. The Commission shall  
41 supplement the written reports required by this subsection with additional written and  
42 oral reports as may be requested by the Joint Legislative Commission on Energy Policy  
43 and the Environmental Review Commission. The Commission shall submit the written  
44 reports required by this subsection whether or not the General Assembly is in session at  
45 the time the report is due.



1 **"§ 143B-293.2. North Carolina Mining and Energy Oil and Gas Commission –**  
2 **members; selection; removal; compensation; quorum; services.**

3 (a) ~~Members Selection.—The North Carolina Mining and Energy Commission~~  
4 ~~shall consist of 15 members appointed as follows:~~

- 5 (1) ~~The Chair of the North Carolina State University Minerals Research~~  
6 ~~Laboratory Advisory Committee, or the Chair's designee, ex officio.~~  
7 (2) ~~The State Geologist, or other designee of the Secretary of Environment~~  
8 ~~and Natural Resources.~~  
9 (3) ~~Repealed by Session Laws 2013 365, s. 3(a), effective July 29, 2013.~~  
10 (3a) ~~One appointed by the Governor, at large.~~  
11 (4) ~~One appointed by the General Assembly upon recommendation of the~~  
12 ~~Speaker of the House of Representatives who is a member of a~~  
13 ~~nongovernmental conservation interest.~~  
14 (5) ~~One appointed by the General Assembly upon recommendation of the~~  
15 ~~Speaker of the House of Representatives who, at the time of initial~~  
16 ~~appointment, is an elected official of a municipal government located~~  
17 ~~in a region of North Carolina that has oil and gas potential. A person~~  
18 ~~-serving in this seat may complete a term on the Commission even if~~  
19 ~~the person is no longer serving as an elected official of a municipal~~  
20 ~~government but may not be reappointed to a subsequent term.~~  
21 ~~(6) One appointed by the General Assembly upon recommendation of the~~  
22 ~~Speaker of the House of Representatives who is a representative of the~~  
23 ~~mining industry.~~  
24 (7) ~~One appointed by the General Assembly upon recommendation of the~~  
25 ~~Speaker of the House of Representatives who shall be a geologist with~~  
26 ~~experience in oil and gas exploration and development.~~  
27 (8) ~~One appointed by the General Assembly upon recommendation of the~~  
28 ~~President Pro Tempore of the Senate who is a member of a~~  
29 ~~nongovernmental conservation interest.~~  
30 (9) ~~One appointed by the General Assembly upon recommendation of the~~  
31 ~~President Pro Tempore of the Senate who, at the time of initial~~  
32 ~~appointment, is a member of a county board of commissioners of a~~  
33 ~~county located in a region of North Carolina that has oil and gas~~  
34 ~~potential. A person serving in this seat may complete a term on the~~  
35 ~~Commission even if the person is no longer serving as county~~  
36 ~~commissioner but may not be reappointed to a subsequent term.~~  
37 ~~(10) One appointed by the General Assembly upon recommendation of the~~  
38 ~~President Pro Tempore of the Senate who is a representative of the~~  
39 ~~mining industry.~~  
40 (11) ~~One appointed by the General Assembly upon recommendation of the~~  
41 ~~President Pro Tempore of the Senate who shall be an engineer with~~  
42 ~~experience in oil and gas exploration and development.~~  
43 (12) ~~One appointed by the Governor who shall be a representative of a~~  
44 ~~publicly traded natural gas company.~~

- 1           (13) ~~One appointed by the Governor who shall be a licensed attorney with~~  
2           ~~experience in legal matters associated with oil and gas exploration and~~  
3           ~~development.~~  
4           (14) ~~One appointed by the Governor who is a member of the~~  
5           ~~Environmental Management Commission.~~  
6           (15) ~~One appointed by the Governor who is a member of the~~  
7           ~~Commission for Public Health.~~

8           (a1) Members Selection. – The North Carolina Oil and Gas Commission  
9           shall consist of 9 members appointed as follows:

- 10           (1) One appointed by the General Assembly upon recommendation  
11           of the Speaker of the House of Representatives who, at the time  
12           of initial appointment, is an elected official of a municipal  
13           government located in a region of North Carolina that has oil and  
14           gas potential. A person serving in this seat may complete a term  
15           on the Commission even if the person is no longer serving as an  
16           elected official of a municipal government but may not be  
17           reappointed to a subsequent term.  
18           (2) One appointed by the General Assembly upon recommendation of the  
19           Speaker of the House of Representatives who shall be a geologist with  
20           experience in oil and gas exploration and development.  
21           (3) One appointed by the General Assembly upon recommendation of the  
22           Speaker of the House of Representatives who is a member of a  
23           nongovernmental conservation interest  
24           (4) One appointed by the General Assembly upon recommendation  
25           of the President Pro Tempore of the Senate who, at the time of  
26           initial appointment, is a member of a county board of  
27           commissioners of a county located in a region of North Carolina  
28           that has oil and gas potential. A person serving in this seat may  
29           complete a term on the Commission even if the person is no  
30           longer serving as county commissioner but may not be  
31           reappointed to a subsequent term.  
32           (5) One appointed by the General Assembly upon recommendation of the  
33           President Pro Tempore of the Senate who is a member of a  
34           nongovernmental conservation interest.  
35           (6) One appointed by the General Assembly upon recommendation of the  
36           President Pro Tempore of the Senate who shall be an engineer with  
37           experience in oil and gas exploration and development.  
38           (7) One appointed by the Governor who shall be a representative of a  
39           publicly traded natural gas company.  
40           (8) One appointed by the Governor who shall be a licensed attorney with  
41           experience in legal matters associated with oil and gas exploration and  
42           development.  
43           (9) One appointed by the Governor, with experience in matters related to  
44           public health.

1 (b) Terms. – The term of office of members of the Commission is three years. A  
2 member may be reappointed to no more than two consecutive three-year terms. The term  
3 of a member who no longer meets the qualifications of their respective appointment, as  
4 set forth in subsection (a) of this section, shall terminate but the member may continue to  
5 serve until a new member who meets the qualifications is appointed. The terms of  
6 members appointed under subdivisions ~~(4), (6), (9), and (12)~~ (1), (4), and (7) of  
7 subsection ~~(a)~~(a1) of this section shall expire on June 30 of years evenly divisible by  
8 three. The terms of members appointed under subdivisions ~~(7), (10), (13), and (14)~~(2),  
9 (5), and (8) of subsection ~~(a)~~(a1) of this section shall expire on June 30 of years that  
10 precede by one year those years that are evenly divisible by three. The terms of members  
11 appointed under subdivisions ~~(5), (8), (11), and (15)~~(3), (6), and (9) of subsection ~~(a)~~(a1)  
12 of this section shall expire on June 30 of years that follow by one year those years that are  
13 evenly divisible by three.

14 (c) Vacancies; Removal from Office. -

15 (1) Any appointment by the Governor to fill a vacancy on the Commission  
16 created by the resignation, dismissal, death, or disability of a member  
17 shall be for the balance of the unexpired term. The Governor shall  
18 have the power to remove any member of the Commission from office  
19 for misfeasance, malfeasance, or nonfeasance in accordance with the  
20 provisions of G.S. 143B-13 of the Executive Organization Act of  
21 1973.

22 (2) Members appointed by the President Pro Tempore of the Senate and  
23 the Speaker of the House of Representatives shall be made in  
24 accordance with G.S. 120-121, and vacancies in those appointments  
25 shall be filled in accordance with G.S. 120-122. In accordance with  
26 Section 10 of Article VI of the North Carolina Constitution, a member  
27 may continue to serve until a successor is duly appointed.

28 (d) Compensation. – The members of the Commission shall receive per diem and  
29 necessary traveling and subsistence expenses in accordance with the provisions of  
30 G.S. 138-5.

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

33 (f) Staff. – All staff support required by the Commission shall be supplied by the  
34 Division of Energy, Mineral, and Land Resources and the North Carolina Geological  
35 Survey.

36 (g) Committees. – In addition to the Committee on Civil Penalty Remissions  
37 required to be established under G.S. 143B-293.6, the chair may establish other  
38 committees from members of the Commission to address specific issues as appropriate.  
39 No member of a committee may hear or vote on any matter in which the member has an  
40 economic interest. A majority of a committee shall constitute a quorum for the  
41 transaction of business. ~~At a minimum, the chair shall establish a Committee on Mining,~~  
42 ~~which shall consist of members appointed under subdivisions (1), (4), (6), (8), (10), (14),~~  
43 ~~and (15) of subsection (a) of this section. The Committee on Mining shall have exclusive~~  
44 ~~responsibility and authority over matters pertaining to mining and implementation of the~~  
45 ~~Mining Act of 1971, including all of the following powers and duties:~~

1       (1) ~~To act as the advisory body to the Governor pursuant to Article V(a) of the~~  
2 ~~Interstate Mining Compact, as set out in G.S. 74-37.~~

3       (2) ~~To adopt rules necessary to administer the Mining Act of 1971 pursuant to~~  
4 ~~G.S. 74-63.~~

5       (3) ~~To adopt rules necessary to administer the Control of Exploration for Uranium~~  
6 ~~in North Carolina Act of 1983 pursuant to G.S. 74-86.~~

7       (4) ~~To adopt rules, not inconsistent with the laws of this State, as may be required~~  
8 ~~by the federal government for grants in aid for mining resource purposes which may be~~  
9 ~~made available to the State by the federal government. This section is to be liberally~~  
10 ~~construed in order that the State and its citizens may benefit from such grants in aid.~~

11       (h) ~~Office May Be Held Concurrently With Others. – Membership on the Mining~~  
12 ~~and Energy Oil and Gas Commission is hereby declared to be an office that may be held~~  
13 ~~concurrently with other elective or appointive offices in addition to the maximum number~~  
14 ~~of offices permitted to be held by one person under G.S. 128-1.1.~~

15  
16 "§ 143B-293.3: Reserved for future codification purposes.

17 "~~§ 143B-293.4. North Carolina Mining and Energy Oil and Gas Commission –~~  
18 ~~officers.~~

19       The ~~Mining and Energy Oil and Gas~~ Commission shall have a chair and a vice-chair.  
20 The Commission shall elect one of its members to serve as chair and one of its members  
21 to serve as vice-chair. The chair and vice-chair shall serve one-year terms beginning  
22 August 1 and ending July 31 of the following year. The chair and vice-chair may serve  
23 any number of terms, but not more than two terms consecutively.

24 "~~§ 143B-293.5. North Carolina Mining and Energy Oil and Gas Commission –~~  
25 ~~meetings.~~

26       The ~~North Carolina Mining and Energy Oil and Gas~~ Commission shall meet at least  
27 quarterly and may hold special meetings at any time and place within the State at the call  
28 of the chair or upon the written request of at least ~~nine~~five members.

29 "~~§ 143B-293.6. North Carolina Mining and Energy Oil and Gas Commission –~~  
30 ~~quasi-judicial powers; procedures.~~

31       (a) With respect to those matters within its jurisdiction, the ~~Mining and Energy~~  
32 ~~Oil and Gas~~ Commission shall exercise quasi-judicial powers in accordance with the  
33 provisions of Chapter 150B of the General Statutes.

34       (b) The chair shall appoint a Committee on Civil Penalty Remissions from the  
35 members of the Commission. No member of the Committee on Civil Penalty Remissions  
36 may hear or vote on any matter in which the member has an economic interest. In  
37 determining whether a remission request will be approved, the Committee shall consider  
38 the recommendation of the Secretary or the Secretary's designee and all of the following  
39 factors:

- 40           (1) Whether one or more of the civil penalty assessment factors in  
41           subsection (b) of this section were wrongly applied to the detriment of  
42           the petitioner.  
43           (2) Whether the violator promptly abated continuing environmental  
44           damage resulting from the violation.  
45           (3) Whether the violation was inadvertent or a result of an accident.

1 (4) Whether the violator had been assessed civil penalties for any previous  
2 violations.

3 (5) Whether payment of the civil penalty will prevent payment for the  
4 remaining necessary remedial actions.

5 (c) The Committee on Civil Penalty Remissions may remit the entire amount of  
6 the penalty only when the violator has not been assessed civil penalties for previous  
7 violations and when payment of the civil penalty will prevent payment for the remaining  
8 necessary remedial actions."

9 **SECTION 3.(b)** The terms of all members of the Mining and Energy  
10 Commission serving on July 31, 2015, shall expire on that date. A new Oil and Gas  
11 Commission of 9 members shall be appointed in the manner provided by  
12 G.S. 143B-293.2(a1), as enacted by Section 3.(a) of this act, and this section. Members  
13 appointed in the manner provided by G.S. 143B-293.2(a1), as enacted by Section 3.(a) of  
14 this act, shall be appointed no later than August 1, 2015.

15 **SECTION 3.(c)**. The Revisor of Statutes shall make the conforming statutory  
16 changes necessary to the General Statutes to reflect renaming of the Mining and Energy  
17 Commission to the Oil and Gas Commission, effective August 1, 2015, as provided in  
18 this section.

19 **SECTION 4.(a)** Part 6 of Article 7 of Chapter 143B of the General  
20 Statutes is reenacted and reads as rewritten:

21 "Part 6. North Carolina Mining Commission.

22 **"§ 143B-290. North Carolina Mining Commission – creation; powers and  
23 duties.**

24 There is hereby created the North Carolina Mining Commission of the  
25 Department of Environment and Natural Resources with the power and duty to  
26 promulgate rules for the enhancement of the mining resources of the State.

27 (1) The North Carolina Mining Commission shall have the following  
28 powers and duties:

29 a. To act as the advisory body to the Governor pursuant to  
30 Article V(a) of the Interstate Mining Compact, as set out  
31 in G.S. 74-37.

32 b. Repealed by Session Laws 2002-165, s. 1.10, effective  
33 October 23, 2002.

34 c. To hear permit appeals, conduct a full and complete  
35 hearing on such controversies and affirm, modify, or  
36 overrule permit decisions made by the Department  
37 pursuant to G.S. 74-61.

38 d. To promulgate rules necessary to administer the Mining  
39 Act of 1971, pursuant to G.S. 74-63.

40 e. To promulgate rules necessary to administer the Control  
41 of Exploration for Uranium in North Carolina Act of  
42 1983, pursuant to G.S. 74-86.

43 (2) The Commission is authorized to make such rules, not  
44 inconsistent with the laws of this State, as may be required by the

1 federal government for grants-in-aid for mining resource  
2 purposes which may be made available to the State by the federal  
3 government. This section is to be liberally construed in order that  
4 the State and its citizens may benefit from such grants-in-aid.

5 (3) The Commission shall make such rules consistent with the  
6 provisions of this Chapter. All rules adopted by the Commission  
7 shall be enforced by the Department of Environment and Natural  
8 Resources.

9 (4) Recodified as § 74-54.1 by c. 1039, s. 16, effective July 24, 1992.

10 **"§ 143B-291. North Carolina Mining Commission – members; selection;  
11 removal; compensation; quorum; services.**

12 (a) ~~Members, Selection.—The North Carolina Mining Commission shall  
13 consist of nine members appointed by the Governor under a specified subdivision  
14 of this subsection as follows:~~

15 (1) ~~One member who is the chair of the North Carolina State  
16 University Minerals Research Laboratory Advisory Committee,  
17 ex-officio.~~

18 (2) ~~One member who is a representative of the mining industry.~~

19 (3) ~~One member who is a representative of the mining industry.~~

20 (4) ~~One member who is a representative of the mining industry.~~

21 (5) ~~One member who is a representative of nongovernmental  
22 conservation interests.~~

23 (6) ~~One member who is a representative of nongovernmental  
24 conservation interests.~~

25 (7) ~~One member who is a representative of nongovernmental  
26 conservation interests.~~

27 (8) ~~One who, at the time of the appointment to the Mining  
28 Commission, is a member of the Environmental Management  
29 Commission and knowledgeable in the principles of water and air  
30 resources management.~~

31 (9) ~~One who, at the time of the appointment to the Mining  
32 Commission, is a member of the Environmental Management  
33 Commission and knowledgeable in the principles of water and air  
34 resources management.~~

35 (a1) Members, Selection. – The North Carolina Mining Commission shall  
36 consist of seven members appointed as follows:

37 (1) One member who is the chair of the North Carolina State  
38 University Minerals Research Laboratory Advisory Committee.

39 (2) The State Geologist.

40 (3) One member appointed by the Governor who is a representative  
41 of the mining industry.

- 1           (4) One member appointed by the General Assembly upon  
2 recommendation of the Speaker of the House of Representatives  
3 who is a representative of the mining industry.  
4           (5) One member appointed by the General Assembly upon  
5 recommendation of the President Pro Tempore of the Senate who  
6 is a representative of the mining industry.  
7           (6) One member appointed by the General Assembly upon  
8 recommendation of the Speaker of the House of Representatives  
9 who is a representative of nongovernmental conservation  
10 interests.  
11           (7) One member appointed by the General Assembly upon  
12 recommendation of the President Pro Tempore of the Senate who  
13 is a representative of nongovernmental conservation interests.

14       (b) Terms. – The term of office of a member of the Commission is six  
15 years. At the expiration of each member's term, the ~~Governor~~appointing authority  
16 shall replace the member with a new member of like qualifications for a term of  
17 six years. The term of ~~members~~the member appointed under ~~subdivisions (2), (5),~~  
18 ~~and (8)~~subdivision (5) of subsection ~~(a)~~(a1) of this section shall expire on ~~30~~June  
19 30 of years that precede by one year those years that are evenly divisible by six.  
20 The term of members appointed under subdivisions (3) and (6) of subsection ~~(a)~~  
21 (a1) of this section shall expire on ~~30~~June 30 of years that follow by one year  
22 those years that are evenly divisible by six. The term of members appointed under  
23 subdivisions ~~(4), (7), and (9)~~(4) and (7) of subsection ~~(a)~~(a1) of this section shall  
24 expire on ~~30~~June 30 of years that follow by three years those years that are evenly  
25 divisible by six. Upon the expiration of a six-year term, a member may continue to  
26 serve until a successor is appointed and duly qualified as provided by G.S. 128-7.

27       (c) Vacancies. – An appointment to fill a vacancy shall be for the unexpired  
28 balance of the term.

29       (d) Removal. – The Governor may remove any member of the Commission  
30 from office for misfeasance, malfeasance, or nonfeasance in accordance with the  
31 provisions of G.S. 143B-13.

32       (e) Compensation. – The members of the Commission shall receive per  
33 diem and necessary traveling and subsistence expenses in accordance with the  
34 provisions of G.S. 138-5.

35       (f) Quorum. – A majority of the Commission shall constitute a quorum for  
36 the transaction of business.

37       (g) Staff. – All clerical and other services required by the Commission shall  
38 be supplied by the Secretary of Environment and Natural Resources.

39 **"§ 143B-292. North Carolina Mining Commission – officers.**

40       The North Carolina Mining Commission shall have a chair and a vice-chair.  
41 The chair shall be designated by the Governor from among the members of the  
42 Commission to serve as chair at the pleasure of the Governor. The vice-chair shall

1 be elected by and from the members of the Commission and shall serve for a term  
2 of two years or until the expiration of the vice-chair's regularly appointed term.

3 **"§ 143B-293. North Carolina Mining Commission – meetings.**

4 The North Carolina Mining Commission shall meet at least semiannually and  
5 may hold special meetings at any time and place within the State at the call of the  
6 chair or upon the written request of at least ~~five~~four members."

7 **SECTION 4.(b)** The terms of all members of the Mining and Energy  
8 Commission serving on July 31, 2015, shall expire on that date. A new Mining  
9 Commission of 7 members shall be appointed in the manner provided by  
10 G.S. 143B-291(a1), as enacted by Section 4.(a) of this act, and this section. Members  
11 appointed in the manner provided by G.S. 143B-291(a1), as enacted by Section 4.(a) of  
12 this act, shall be appointed no later than August 1, 2015.

13 **SECTION 4.(c).** The Revisor of Statutes shall make the conforming statutory  
14 changes necessary to the General Statutes to reflect renaming of the Mining and Energy  
15 Commission to the Mining Commission, effective August 1, 2015, as provided in this  
16 section.

17 **SECTION 5.** This Part becomes effective July 31, 2015.

18  
19 **PART IV. MISCELLANEOUS STATUTORY AMENDMENTS RELATED TO**  
20 **SHALE GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION**

21 **SECTION 6.(a)** G.S. 113-391(a2) reads as rewritten:

22 "(a2) In addition to the matters for which the Commission is required to adopt rules  
23 pursuant to subsection (a) of this section, the Commission may adopt rules as it deems  
24 necessary for any of the following purposes:

- 25 (1) ~~To require the operation of wells with efficient gas-oil ratios and to fix~~  
26 ~~such ratios.~~  
27 (2) To limit and prorate the production of oil or gas, or both, from any  
28 pool or field for the prevention of waste as defined in this Article and  
29 rules adopted thereunder.  
30 (3) To require, either generally or in or from particular areas, certificates  
31 of clearance or tenders in connection with the transportation of oil or  
32 gas.  
33 (4) To prevent, so far as is practicable, reasonably avoidable drainage  
34 from each developed unit which is not equalized by counter-drainage."

35 **SECTION 6.(b)** G.S. 143B-293.1(b) reads as rewritten:

36 "(b) The Commission shall have the authority to make determinations and issue  
37 orders pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells  
38 and to establish drilling units as provided in G.S. 113-393; (ii) ~~require the operation of~~  
39 ~~wells with efficient gas-oil ratios and to fix such ratios;~~ (iii) limit and prorate the  
40 production of oil or gas, or both, from any pool or field for the prevention of waste as  
41 provided in G.S. 113-394; (iii) classify wells for taxing purposes; and (iv) require  
42 integration of interests as provided in G.S. 113-393."

43 **SECTION 7.(a)** Article 27 of Chapter 113 of the General Statutes is  
44 amended by adding a new section to read:

45 **"§ 113-391A. Trade secret and confidential information determination;**  
46 **protection; retention; disclosure to emergency personnel.**



1       (a) Legislative findings. – The General Assembly finds that while  
2 confidential information must be maintained as such with the utmost care, for the  
3 protection of public health, safety, and the environment, the information should be  
4 immediately accessible to first responders and medical personnel in the event that  
5 the information is deemed necessary to address an emergency.

6       (b) Determination and treatment of confidential information. – Information  
7 obtained by the Commission and the Department pursuant to this Article, and rules  
8 adopted thereunder, shall be available to the public except that, upon a showing  
9 satisfactory to the Commission by any person that information to which the  
10 Commission and Department has access, if made public, would divulge methods  
11 or processes entitled to protection as confidential information pursuant to  
12 G.S. 132-1.2, the Commission shall consider the information confidential. In  
13 accordance with subsection (b1) of G.S. 113-391, the State Geologist shall serve  
14 as the custodian of the confidential information, and shall ensure that it is  
15 maintained securely as provided in G.S. 132-7.

16       (c) Exceptions to disclosure prohibitions. – Confidential information  
17 obtained by the Commission and the Department pursuant to this Article, and rules  
18 adopted thereunder, may be disclosed to any officer, employee, or authorized  
19 representative of any federal or state agency if disclosure is necessary to carry out  
20 a proper function of the Department or other agency or when relevant in any  
21 proceeding under this Article. Confidential information shall be disclosed to:

22           (1) The Division of Emergency Management of the Department of  
23 Public Safety. The Division shall maintain this information as  
24 confidential except if disclosure is necessary to carry out a proper  
25 function of the Division, including for the purposes of emergency  
26 planning and emergency response, For purposes of this section,  
27 the term "emergency" is defined as provided in G.S. 166A-19.3.

28           (2) A treating health care provider who determines that a medical  
29 emergency exists and that the information is necessary for  
30 emergency or first-aid treatment. Regardless of the existence of a  
31 written statement of need or a confidentiality agreement, the  
32 Department shall immediately disclose the confidential  
33 information to the treating health care provider upon request. If  
34 confidential information is disclosed pursuant to this subdivision,  
35 the Department shall notify the owner of the confidential  
36 information as soon as practicable, but no later than 24 hours  
37 after disclosure. The owner of the confidential information may  
38 require execution of a written statement of need and a  
39 confidentiality agreement from the treating health care provider  
40 as soon as circumstances permit. The confidentiality agreement  
41 (i) may restrict the use of the information to the health purposes  
42 indicated in a written statement of need; (ii) may provide for  
43 appropriate legal remedies in the event of a breach of the

1 agreement, including stipulation of a reasonable pre-estimate of  
2 likely damages; and (iii) may not include requirements for the  
3 posting of a penalty bond. The parties are not precluded from  
4 pursuing noncontractual remedies to the extent permitted by law.

5 (3) A Fire Chief, as that term is defined in G.S. 95-174, who  
6 determines that an emergency exists and that the information is  
7 necessary to address the emergency. Regardless of the existence  
8 of a written statement of need or a confidentiality agreement, the  
9 Department shall immediately disclose the confidential  
10 information to the Fire Chief upon request. If confidential  
11 information is disclosed pursuant to this subdivision, the  
12 Department shall notify the owner of the confidential information  
13 as soon as practicable, but no later than 24 hours after disclosure.  
14 The owner of the confidential information may require execution  
15 of a written statement of need and a confidentiality agreement  
16 from the Fire Chief as soon as circumstances permit. The  
17 confidentiality agreement (i) may restrict the use of the  
18 information to the emergency purposes indicated in a written  
19 statement of need; (ii) may provide for appropriate legal  
20 remedies in the event of a breach of the agreement, including  
21 stipulation of a reasonable pre-estimate of likely damages; and  
22 (iii) may not include requirements for the posting of a penalty  
23 bond. The parties are not precluded from pursuing noncontractual  
24 remedies to the extent permitted by law.

25 (d) Penalties for unlawful disclosure. – Except as provided in subsection (c)  
26 of this section or as otherwise provided by law, any person who has access to  
27 confidential information pursuant to this section and who discloses it knowing it to  
28 be confidential information to any person not authorized to receive it shall be  
29 guilty of a Class I felony, and if knowingly or negligently disclosed to any person  
30 not authorized, shall be subject to civil action for damages and injunction by the  
31 owner of the confidential information, including, without limitation, actions under  
32 Article 24 of Chapter 66 of the General Statutes.

33 (e) Appeal from Commission decisions concerning confidentiality. –  
34 Within 10 days of any decision made pursuant to subsection (b) of this section, the  
35 Commission shall provide notice to any person who submits information asserted  
36 to be confidential: (i) that the information is not entitled to confidential treatment;  
37 and, (ii) of any decision to release such information to any person who has  
38 requested the information. Notwithstanding the provisions of G.S. 132-9, or  
39 procedures for appeal provided under Article 4 of Chapter 150B of the General  
40 Statutes, any person who requests information and any person who submits  
41 information who is dissatisfied with a decision of the Commission to withhold or  
42 release information made pursuant to subsection (b) of this section shall have 30  
43 days after receipt of notification from the Commission to bring an action in

1 Business Court to appeal the decision in accordance with the procedures for a  
2 mandatory business case set forth in G.S. 7A-45.4, and the Business Court shall  
3 have exclusive jurisdiction over such actions. The information may not be released  
4 by the Commission until the earlier of: (i) the 30 day period for filing of an appeal  
5 has expired without filing of an appeal; or (ii) a final judicial determination has  
6 been made in an action brought to appeal a decision of the Commission. In  
7 addition, the following shall apply to actions brought pursuant to this section:

- 8 (1) Such actions shall be set down for immediate hearing.
- 9 (2) The burden shall be on the owner of the information to show that  
10 the information is entitled to protection as confidential  
11 information pursuant to G.S. 132-1.2.
- 12 (3) The court shall allow a party seeking disclosure of information  
13 who substantially prevails to recover its reasonable attorneys'  
14 fees if attributed to the information. The court may not assess  
15 attorneys' fees against the Commission or the Department,  
16 however, but shall impose such fees on the owner of the  
17 information asserting confidentiality.
- 18 (4) If the court determines that an action brought pursuant to this  
19 section was filed in bad faith or was frivolous, the court shall  
20 assess reasonable attorneys' fees against the person or persons  
21 instituting the action and award to the prevailing party or  
22 parties."

23 **SECTION 7.(b)** G.S. 113-391(b1) reads as rewritten:

24 "(b1) In the exercise of their respective authority over oil and gas exploration  
25 and development activities, the Commission and the Department, as applicable,  
26 shall have access to all data, records, and information related to such activities,  
27 including, but not limited to, seismic surveys, stratigraphic testing, geologic cores,  
28 proposed well bore trajectories, hydraulic fracturing fluid chemicals and  
29 constituents, drilling mud chemistry, and geophysical borehole logs. With the  
30 exception of information designated as a trade secret, as defined in G.S. 66-152(3),  
31 and that is designated as confidential or as a trade secret under G.S. 132-1.2, the  
32 Department shall make any information it receives available to the public. The  
33 State ~~Geologist~~–Geologist, or the State Geologist's designee, shall serve as the  
34 custodian of all data, information, and records received by the Department  
35 pursuant to this ~~subsection~~subsection, including information designated as a trade  
36 secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a  
37 trade secret under G.S. 132-1.2, and shall ensure that all of the ~~information~~  
38 information, including information designated as a trade secret, as defined in  
39 G.S. 66-152(3), and that is designated as confidential or as a trade secret under  
40 G.S. 132-1.2, is maintained securely as provided in G.S. 132-7."

41 **SECTION 8.** G.S. 113-391(a)(6) is repealed.

42 **SECTION 9.** G.S. 113-392(c) is repealed.

43 **SECTION 10.** G.S. 113-395(a) reads as rewritten:

1       "(a) Before any well, in search of oil or gas, shall be drilled, the person  
2 desiring to drill the same shall submit an application for a permit to the  
3 Department upon such form as the Department may prescribe and shall pay a fee  
4 of three thousand dollars (\$3,000) for ~~each well~~ the first well to be drilled on a  
5 pad, and fifteen hundred dollars (\$1,500) for each additional well to be drilled on  
6 the same pad. The drilling of any well is prohibited unless the Department has  
7 issued a permit for the activity."

8               **SECTION 11.** G.S. 113-420 reads as rewritten:

9       "**§ 113-420. Notice and entry to property.**

10       (a) Notice Required for Activities That Do Not Disturb Surface of  
11 Property-Property to Surface Owner. – If an oil or gas developer or operator is not  
12 the surface owner of the property on which oil and gas operations are to occur,  
13 before entering the property for oil or gas operations that do not disturb the  
14 surface, including inspections, staking, surveys, measurements, and general  
15 evaluation of proposed routes and sites for oil or gas drilling operations, the  
16 developer or operator shall give written notice to the surface owner at least 14  
17 days before the desired date of entry to the property. Notice shall be given by  
18 certified mail, return receipt requested. The requirements of this subsection may  
19 not be waived by agreement of the parties. The notice, at a minimum, shall include  
20 all of the following:

- 21               (1) The identity of person(s) requesting entry upon the property.
- 22               (2) The purpose for entry on the property.
- 23               (3) The dates, times, and location on which entry to the property will  
24 occur, including the estimated number of entries.

25       (b) Notice Required for Land-Disturbing Activities-Activities to Surface  
26 Owner. – If an oil or gas developer or operator is not the surface owner of the  
27 property on which oil or gas operations are to occur, before entering the property  
28 for oil or gas operations that disturb the surface, the developer or operator shall  
29 give written notice to the surface owner at least 30 days before the desired date of  
30 entry to the property. Notice shall be given by certified mail, return receipt  
31 requested. The notice, at a minimum, shall include all of the following:

- 32               (1) A description of the exploration or development plan, including,  
33 but not limited to (i) the proposed locations of any roads, drill  
34 pads, pipeline routes, and other alterations to the surface estate  
35 and (ii) the proposed date on or after which the proposed  
36 alterations will begin.
- 37               (2) An offer of the oil and gas developer or operator to consult with  
38 the surface owner to review and discuss the location of the  
39 proposed alterations.
- 40               (3) The name, address, telephone number, and title of a contact  
41 person employed by or representing the oil or gas developer or  
42 operator who the surface owner may contact following the

1 receipt of notice concerning the location of the proposed  
2 alterations.

3 (b1) Persons Entering Land; Identification Required; Presumption of Proper  
4 Protection While on Surface Owners' Property. – Persons who enter land on behalf  
5 of an oil or gas developer or operator for oil and gas operations shall carry on their  
6 person identification sufficient to identify themselves and their employer or  
7 principal and shall present the identification to the surface owner upon request.  
8 Entry upon land by such a person creates a rebuttable presumption that the surface  
9 owner properly protected the person against personal injury or property damage  
10 while the person was on the land.

11 (b2) Notice of Initiation of Exploration, Development, and Production  
12 Activities to Owner of Subsurface Oil or Gas Resources. – If an oil or gas  
13 developer or operator is the lessee of subsurface oil or gas resources, before  
14 initiating oil or gas exploration or development operations with respect to those  
15 resources, the developer or operator shall give written notice to the lessor of those  
16 resources at least 30 days before the oil and gas operations are to be initiated. The  
17 notice, at a minimum, shall include all of the following:

18 (1) A description of the exploration or development plan, including,  
19 the proposed date on which the exploration or development will  
20 begin.

21 (2) The name, address, telephone number, and title of a contact  
22 person employed by or representing the oil or gas developer or  
23 operator who the lessor may contact following the receipt of  
24 notice.

25 (c) Venue. – If the oil or gas developer or operator fails to give notice or  
26 otherwise comply with the provisions of this section, the surface owner may seek  
27 appropriate relief in the superior court for the county in which the oil or gas well is  
28 located and may receive actual damages."

29 **SECTION 12.(a)** G.S. 113-421 reads as rewritten:

30 **"§ 113-421. Presumptive liability for water contamination; compensation for other**  
31 **damages; responsibility for reclamation.**

32 (a) Presumptive Liability for Water Contamination. – It shall be presumed that an  
33 oil or gas developer or operator is responsible for contamination of all water supplies that  
34 are within ~~5,000 feet~~ a one-half mile radius of a wellhead that is part of the oil or gas  
35 developer's or operator's activities unless the presumption is rebutted by a defense  
36 established as set forth in subsection (a1) of this subsection. If a contaminated water  
37 supply is located within ~~5,000 feet~~ a one-half mile radius of a wellhead, in addition to any  
38 other remedy available at law or in equity, including payment of compensation for  
39 damage to a water supply, the developer or operator shall provide a replacement water  
40 supply to the surface owner and other persons using the water supply at the time the oil or  
41 gas developer's activities were commenced on the property, which water supply shall be  
42 adequate in quality and quantity for those persons' use.

1 (a1) [Rebuttal of Presumption. -] In order to rebut a presumption arising pursuant  
2 to subsection (a) of this section, an oil or gas developer or operator shall have the burden  
3 of proving by a preponderance of the evidence any of the following:

- 4 (1) The contamination existed prior to the commencement of the drilling  
5 activities of the oil or gas developer or operator, as evidenced by a  
6 pre-drilling test of the water supply in question conducted in  
7 conformance with G.S. 113-423(f).
- 8 (2) The surface owner or owner of the water supply in question refused  
9 the oil or gas developer or operator access to conduct a pre-drilling test  
10 of the water supply conducted in conformance with G.S. 113-423(f).
- 11 (3) The water supply in question is not within ~~5,000 feet~~ a one-half mile  
12 radius of a wellhead that is part of the oil or gas developer's or  
13 operator's activities.
- 14 (4) The contamination occurred as the result of a cause other than  
15 activities of the developer or operator.

16 ...

17 (e) Joint and Several Liability. – In order to provide maximum protection  
18 for the public interest, any actions brought for recovery of cleanup costs, damages,  
19 or for civil penalties brought pursuant to this section or any other section of this  
20 Article or rules adopted thereunder, may be brought against any one or more of the  
21 persons having control over the activities that contributed to the contamination,  
22 damage to property, or other violations. All such persons shall be jointly and  
23 severally liable, but ultimate liability as between the parties may be determined by  
24 common-law principles."

25 **SECTION 12.(b)** G.S. 113-423(f) reads as rewritten:

26 "(f) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any  
27 other conveyance of any kind separating rights to oil or gas from the freehold estate of  
28 surface property shall include a clause that requires the oil or gas developer or operator to  
29 conduct a test of all water supplies within ~~5,000 feet~~ a one-half mile radius from a  
30 proposed wellhead that is part of the oil or gas developer's or operator's activities at least  
31 30 days prior to initial drilling activities and at least two follow-up tests within a  
32 24-month period after production has commenced. The Department shall identify the  
33 location of all water supplies, including wells, on a property on which drilling operations  
34 are proposed to occur. A surface owner may elect to have an independent third party  
35 selected from a laboratory certified by the Department's Wastewater/Groundwater  
36 Laboratory Certification program ~~the Department~~ sample wells located on their  
37 property, in lieu of sampling conducted by the oil or gas developer or operator, in which  
38 case the developer or operator shall pay ~~reimburse the Department~~ for the reasonable  
39 costs involved in testing of the wells in question. Developers and operators: (i) shall  
40 provide all analytical results to the Department within 30 days of testing; and (ii) may  
41 share analytical results obtained with other developers and operators as necessary or  
42 advisable. Nothing in this subsection shall be construed to preclude or impair the right of  
43 any surface owner to refuse pre-drilling testing of wells located on their property."

44 **SECTION 13.** Article 27 of Chapter 113 of the General Statutes is amended  
45 by adding a new section to read:

1 **"§ 113-415A. Local ordinances prohibiting oil and gas exploration, development,**  
2 **and production activities invalid; petition to preempt local ordinance.**

3 (a) It is the intent of the General Assembly to maintain a uniform system for the  
4 management of oil and gas exploration, development, and production activities, and the  
5 use of horizontal drilling and hydraulic fracturing for that purpose, and to place  
6 limitations upon the exercise by all units of local government in North Carolina of the  
7 power to regulate the management of oil and gas exploration, development, and  
8 production activities by means of special, local, or private acts or resolutions, ordinances,  
9 property restrictions, zoning regulations, or otherwise. Notwithstanding any authority  
10 granted to counties, municipalities, or other local authorities to adopt local ordinances,  
11 including, but not limited to, those imposing taxes, fees, or charges or regulating health,  
12 environment, or land use, any local ordinance that prohibits or has the effect of  
13 prohibiting oil and gas exploration, development, and production activities that the  
14 Mining and Energy Commission has preempted pursuant this section, shall be invalid to  
15 the extent necessary to effectuate the purposes of this Article. To this end, all provisions  
16 of special, local, or private acts or resolutions are repealed that do the following:

- 17 (1) Prohibit the siting of wells for oil and gas exploration, development,  
18 and production within any county, city, or other political subdivision.
- 19 (2) Prohibit the use of horizontal drilling or hydraulic fracturing for the  
20 purpose of oil or gas exploration or development within any county,  
21 city, or other political subdivision.
- 22 (3) Place any restriction or condition not placed by this Article upon oil  
23 and gas exploration, development, and production activities and use of  
24 horizontal drilling or hydraulic fracturing for that purpose within any  
25 county, city, or other political subdivision.
- 26 (4) In any manner are in conflict or inconsistent with the provisions of this  
27 Article.

28 (b) No special, local, or private act or resolution enacted or taking effect hereafter  
29 may be construed to modify, amend, or repeal any portion of this Article, unless it  
30 expressly provides for such by specific references to the appropriate section of this  
31 Article. Further to this end, all provisions of local ordinances, including those regulating  
32 land use, adopted by counties, municipalities, or other local authorities that prohibit or  
33 have the effect of prohibiting oil and gas exploration, development, and production  
34 activities and use of horizontal drilling or hydraulic fracturing for that purpose within the  
35 jurisdiction of a local government are invalidated to the extent preempted by the  
36 Commission pursuant to this section.

37 (c) When oil and gas exploration, development, and production activities would  
38 be prevented from construction or operation by a county, municipal, or other local  
39 ordinance, the operator of the proposed activities may petition the Mining and Energy  
40 Commission to review the matter. After receipt of a petition, the Commission shall hold a  
41 hearing in accordance with the procedures in subsection (d) of this section and shall  
42 determine whether or to what extent to preempt the local ordinance to allow for the  
43 proposed oil and gas exploration, development, and production activities.

44 (d) When a petition described in subsection (c) of this section has been filed with  
45 the Mining and Energy Commission, the Commission shall hold a public hearing to  
46 consider the petition. The public hearing shall be held in the affected locality within 60

1 days after receipt of the petition by the Commission. The Commission shall give notice  
2 of the public hearing by both of the following means:

3 (1) Publication in a newspaper or newspapers having general circulation  
4 in the county or counties where the activities are to be conducted, once  
5 a week for three consecutive weeks, the first notice appearing at least  
6 30 days prior to the scheduled date of the hearing.

7 (2) First class mail to persons who have requested notice. The  
8 Commission shall maintain a mailing list of persons who request  
9 notice in advance of the hearing pursuant to this section. Notice by  
10 mail shall be complete upon deposit of a copy of the notice in a  
11 postage-paid wrapper addressed to the person to be notified at the  
12 address that appears on the mailing list maintained by the  
13 Commission, in a post office or official depository under the exclusive  
14 care and custody of the United States Postal Service.

15 (e) Any interested person may appear before the Mining and Energy Commission  
16 at the hearing to offer testimony. In addition to testimony before the Commission, any  
17 interested person may submit written evidence to the Commission for the Commission's  
18 consideration. At least 20 days shall be allowed for receipt of written comment following  
19 the hearing.

20 (f) A local zoning or land-use ordinance is presumed to be valid and enforceable  
21 to the extent the zoning or land-use ordinance imposes requirements, restrictions, or  
22 conditions that are generally applicable to development, including, but not limited to,  
23 setback, buffer, and stormwater requirements, unless the Mining and Energy Commission  
24 makes a finding of fact to the contrary. The Commission shall determine whether or to  
25 what extent to preempt local ordinances so as to allow for the establishment and  
26 operation of the facility no later than 60 days after conclusion of the hearing. The  
27 Commission shall preempt a local ordinance only if the Commission makes all of the  
28 following findings:

29 (1) That there is a local ordinance that would prohibit or have the effect of  
30 prohibiting oil and gas exploration, development, and production  
31 activities, or use of horizontal drilling or hydraulic fracturing for that  
32 purpose.

33 (2) That all legally required State and federal permits or approvals have  
34 been issued by the appropriate State and federal agencies or that all  
35 State and federal permit requirements have been satisfied and that the  
36 permits or approvals have been denied or withheld only because of the  
37 local ordinance.

38 (3) That local citizens and elected officials have had adequate opportunity  
39 to participate in the permitting process.

40 (4) That the oil and gas exploration, development, and production  
41 activities, and use of horizontal drilling or hydraulic fracturing for that  
42 purpose, will not pose an unreasonable health or environmental risk to  
43 the surrounding locality and that the operator has taken or consented to  
44 take reasonable measures to avoid or manage foreseeable risks and to  
45 comply to the maximum feasible extent with applicable local  
46 ordinances.



1       (g) If the Mining and Energy Commission does not make all of the findings under  
2 subsection (f) of this section, the Commission shall not preempt the challenged local  
3 ordinance. The Commission's decision shall be in writing and shall identify the evidence  
4 submitted to the Commission plus any additional evidence used in arriving at the  
5 decision.

6       (h) The decision of the Mining and Energy Commission shall be final unless a  
7 party to the action files a written appeal under Article 4 of Chapter 150B of the General  
8 Statutes, as modified by this section, within 30 days of the date of the decision. The  
9 record on appeal shall consist of all materials and information submitted to or considered  
10 by the Commission, the Commission's written decision, a complete transcript of the  
11 hearing, all written material presented to the Commission regarding the location of the oil  
12 and gas exploration, development, and production activities, the specific findings  
13 required by subsection (f) of this section, and any minority positions on the specific  
14 findings required by subsection (f) of this section. The scope of judicial review shall be  
15 that the court may affirm the decision of the Commission, or may remand the matter for  
16 further proceedings, or may reverse or modify the decision if the substantial rights of the  
17 parties may have been prejudiced because the Commission's findings, inferences,  
18 conclusions, or decisions are any of the following:

- 19           (1) In violation of constitutional provisions.
- 20           (2) In excess of the statutory authority or jurisdiction of the Commission.
- 21           (3) Made upon unlawful procedure.
- 22           (4) Affected by other error of law.
- 23           (5) Unsupported by substantial evidence admissible under  
24 G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as  
25 submitted.
- 26           (6) Arbitrary or capricious.

27       (i) If the court reverses or modifies the decision of the Mining and Energy  
28 Commission, the judge shall set out in writing, which writing shall become part of the  
29 record, the reasons for the reversal or modification.

30       (j) In computing any period of time prescribed or allowed by this procedure, the  
31 provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply."

32       **SECTION 14.** Article 27 of Chapter 113 of the General Statutes is amended  
33 by adding four new sections to read:

34 **"§ 113-395A. Miscellaneous permit requirements.**

35       The Department shall require that all natural gas compressor stations associated with  
36 an oil and gas drilling operation be located inside a baffled building.

37 **"§ 113-395B. Subsurface injection of waste prohibited.**

38       Disposal of wastes produced in connection with oil and gas exploration, development,  
39 and production, and use of horizontal drilling and hydraulic fracturing treatments for that  
40 purpose by injection to subsurface or groundwaters of the State by means of wells is  
41 prohibited in accordance with G.S. 143-214.2.

42 **"§ 113-395C. Environmental compliance review requirements for applicants and**  
43 **permit holders.**

44       (a) For purposes of this section, "applicant" means an applicant for a permit  
45 and a permit holder and includes the owner or operator of the facility, and, if the  
46 owner or operator is a business entity, applicant also includes: (i) the parent,

1 subsidiary, or other affiliate of the applicant; (ii) a partner, officer, director,  
2 member, or manager of the business entity, parent, subsidiary, or other affiliate of  
3 the applicant; and (iii) any person with a direct or indirect interest in the applicant,  
4 other than a minority shareholder of a publicly traded corporation who has no  
5 involvement in management or control of the corporation or any of its parents,  
6 subsidiaries, or affiliates.

7 (b) The Department shall conduct an environmental compliance review of  
8 each applicant for a new permit under this Article. The environmental compliance  
9 review shall evaluate the environmental compliance history of the applicant for a  
10 period of five years prior to the date of the application and may cover a longer  
11 period at the discretion of the Department. The environmental compliance review  
12 of an applicant may include consideration of the environmental compliance history  
13 of the parents, subsidiaries, or other affiliates of an applicant or parent that is a  
14 business entity, including any business entity or joint venturer with a direct or  
15 indirect interest in the applicant, and other facilities owned or operated by any of  
16 them. The Department shall determine the scope of the review of the  
17 environmental compliance history of the applicant, parents, subsidiaries, or other  
18 affiliates of the applicant or parent, including any business entity or joint venturer  
19 with a direct or indirect interest in the applicant, and of other facilities owned or  
20 operated by any of them. An applicant for a permit shall provide environmental  
21 compliance history information for each facility, business entity, joint venture, or  
22 other undertaking in which any of the persons listed in this subsection is or has  
23 been an owner, operator, officer, director, manager, member, or partner, or in  
24 which any of the persons listed in this subsection has had a direct or indirect  
25 interest as requested by the Department.

26 (c) The Department shall determine the extent to which the applicant, or a  
27 parent, subsidiary, or other affiliate of the applicant or parent, or a joint venturer  
28 with a direct or indirect interest in the applicant, has substantially complied with  
29 the requirements applicable to any activity in which any of these entities  
30 previously engaged, and has substantially complied with federal, North Carolina,  
31 and other states' laws, regulations, and rules for the protection of the environment.  
32 The Department may deny an application for a permit if the applicant has a history  
33 of significant or repeated violations of statutes, rules, orders, or permit terms or  
34 conditions for the protection of the environment or for the conservation of natural  
35 resources as evidenced by civil penalty assessments, administrative or judicial  
36 compliance orders, or criminal penalties.

37 (d) A permit holder shall notify the Department of any significant change in  
38 its environmental compliance history or any significant change in the: (i) identity  
39 of any person or structure of the business entity that holds the permit for the  
40 facility; (ii) identity of any person or structure of the business entity that owns or  
41 operates the facility; or (iii) assets of the permit holder, owner, or operator of the  
42 facility. The permit holder shall notify the Department within 30 days of a  
43 significant change. A change shall be considered significant if it would result in a

1 change in the identity of the permit holder, owner, or operator for purposes  
2 environmental compliance review. Based on its review of the changes, the  
3 Department may modify or revoke a permit, or require issuance of a new permit.

4 **"§ 113-395D. Seismic or geophysical data collection.**

5 (a) Notwithstanding any other provision of law, no liability for trespass  
6 shall arise from activities conducted for the purpose of seismic or geophysical data  
7 collection. Provided, however: (i) persons conducting seismic and geophysical  
8 data collection may only conduct such activity by undershooting from an off-site  
9 location and without physical entry to private land, unless the landowner's consent  
10 for such activity is obtained in writing; and (ii) persons conducting seismic or  
11 geophysical data collection shall be civilly liable for any physical or property  
12 damage determined to be a direct result of their seismic or geophysical data  
13 collection activities, whether or not the seismic or geophysical data collection was  
14 conducted by undershooting the land at an off-site location or by physical entry to  
15 land as permitted by the landowner.

16 (b) Conduct of seismic or geophysical data collection activities through  
17 physical entry to land without a landowner's written consent shall constitute a  
18 Class 1 misdemeanor."

19 **SECTION 15.** G.S. 87-98.4(b) is amended by adding a new  
20 subdivision to read:

21 **"§ 87-98.4. Well contractor certification required; exemptions.**

22 (a) Certification Required. – No person shall perform, manage, or supervise  
23 any well contractor activity without being certified under this Article. A person  
24 who is not a certified well contractor or who is not employed by a certified well  
25 contractor shall not offer to perform any well contractor activity unless the person  
26 utilizes a certified well contractor to perform the well contractor activity and, prior  
27 to the performance of the well contractor activity, the person discloses to the  
28 landowner in writing the name of the certified well contractor who will perform  
29 the well contractor activity, the certification number of the well contractor, and the  
30 name of the company that employs the certified well contractor.

31 (b) Exempt persons and activities. – This Article does not apply to any of  
32 the following persons or activities:

- 33 ...  
34 (14) Construction, repair, or abandonment of a well used for the  
35 exploration or development of oil or gas.

36 ..."

37 **PART V. ESTABLISH SEVERANCE TAX**

38 **SECTION 16.(a)** Chapter 105 of the General Statutes is amended by  
39 adding a new Article to read:

40 "Article 5I.

41 "Severance Tax.

42 **"§ 105-187.71. Definitions.**

43 The following definitions apply in this Article:

- 1           (1)    Casinghead gas. – Gas or vapor indigenous to an oil stratum and  
2                    produced from the stratum with oil.
- 3           (2)    Commission. – The Mining and Energy Commission.
- 4           (3)    Condensate. – Liquid hydrocarbon that is or can be recovered  
5                    from gas by a separator or other means.
- 6           (4)    Energy mineral. – All forms of natural gas, oil, and related  
7                    condensates.
- 8           (5)    First purchaser. – A person who purchases an energy mineral  
9                    from a producer.
- 10          (6)    Gas. – All natural gas, including casinghead gas, and all other  
11                    hydrocarbons not defined as condensates.
- 12          (7)    Gross price. – The total price paid by the first purchaser of the  
13                    energy mineral at the wellhead.
- 14          (8)    Marginal gas well. – A well incapable of producing more than  
15                    100 MCF per day, as determined by the Commission using the  
16                    current wellhead deliverability rate methodology utilized by the  
17                    Commission, during the calendar month for which the severance  
18                    tax report is filed.
- 19          (9)    MCF. – One thousand cubic feet of natural gas.
- 20          (10)   Oil. – Crude petroleum oil, and other hydrocarbons, regardless of  
21                    gravity, which are produced at the well in liquid form by  
22                    ordinary production methods and which are not the result of  
23                    condensation of gas after it leaves the reservoir.
- 24          (11)   Owner. – An owner of a landowner's royalty interest, of an  
25                    overriding royalty, of profits and working interests, or any  
26                    combination thereof in energy minerals. The term does not  
27                    include an owner of federal, State, or local governmental royalty  
28                    interest.
- 29          (12)   Person. – Defined in G.S. 105-228.90.
- 30          (13)   Producer. – A person who takes an energy mineral from the soil  
31                    or water in this State.
- 32          (14)   Return. – Any report or statement required to be filed under this  
33                    Article to determine the tax due.
- 34          (15)   Royalty interest. – An interest in mineral rights in a producing  
35                    leasehold in the State. A royalty interest does not include the  
36                    interest of a person having only the management and operation of  
37                    a well.
- 38          (16)   Secretary. – The Secretary of Revenue.
- 39          (17)   Severance. – The extraction or other removal of an energy  
40                    mineral from the soil or water of this State.
- 41          (18)   Severed. – The point at which the energy mineral has been  
42                    separated from the soil or water of this State.
- 43          (19)   Standard barrel of oil. – A barrel of oil containing 42 gallons.

1           (20) Taxpayer. – Any person required to pay the severance tax levied  
2           by this Article.

3 **"§ 105-187.72. Tax on severance of energy minerals.**

4           (a) Purpose. – An excise tax is levied on the privilege of engaging in the  
5 severance of energy minerals from the soil or water of this State. The purpose of  
6 the tax is to provide revenue to administer and enforce the provisions of this  
7 Article, to administer the State's natural gas and oil reclamation regulatory  
8 program, to meet the environmental and resource management needs of this State,  
9 and to reclaim land affected by exploration for, drilling for, and production of  
10 natural gas and oil. The severance tax is imposed upon all energy minerals severed  
11 when sold.

12           (b) Calculation of Tax. – The amount of the severance tax is calculated as  
13 follows:

14           (1) Condensates. – The applicable percentage rate of the gross price  
15 paid.

16           (2) Gas. – The applicable percentage rate of the market value as  
17 determined in G.S. 105-187.73.

18           (3) Oil. – The applicable percentage rate of the gross price paid.

19           (c) Oil and Condensates Rate. – The percentage rate for condensates and oil  
20 is two percent (2%).

21           (d) Marginal Gas Rate. – The producer of a proposed or existing gas well  
22 may apply to the Mining and Energy Commission for a determination that the well  
23 qualifies as a marginal gas well. The producer may elect to have the gas taxed at  
24 the marginal gas rate or the gas rate. For severance of gas from a marginal gas  
25 well the percentage rate is four-tenths of one percent (.4%).

26           (e) Gas Rate. – The percentage rate for gas is nine tenths of one percent  
27 (.9%).

28 **"§ 105-187.73. Delivered to Market Value.**

29           (a) Delivered to Market Value of Natural Gas. – The delivered to market  
30 value of natural gas is the total actual gross price as adjusted in this section. The  
31 delivered to market value of gas is determined by subtracting the producer's actual  
32 costs to deliver the gas to the market from the producer's total gross cash receipts  
33 from the sale of the natural gas. A producer receiving a cost reimbursement from  
34 the gas purchaser shall include the reimbursement in the gross cash receipts and is  
35 entitled to deduct the actual costs of delivering the gas to market incurred.

36           (b) Records. – In order to be eligible to subtract the actual costs to deliver  
37 the gas to the market from the producer's gross receipts for purposes of calculating  
38 the delivered to market value of natural gas, the producer shall provide any  
39 information required by the Secretary. Every producer subtracting the costs to  
40 deliver the gas to the market as permitted under this subsection shall maintain and  
41 make available for inspection by the Secretary any records the Secretary considers  
42 necessary to determine and verify the amount of the costs to deliver the gas to the  
43 market the producer is eligible to subtract. The burden of proving eligibility for

1 subtracting the costs to deliver the gas to the market and the amount of the costs to  
2 deliver the gas to the market to be subtracted shall rest upon the producer, and no  
3 subtraction of costs to deliver the gas to the market shall be allowed to a producer  
4 that fails to maintain adequate records or to make them available for inspection.

5 (c) Costs to Deliver the Gas to the Market and Facilities Used to Deliver the  
6 Gas to the Market. – A "facility used to deliver the gas to market" includes flow  
7 lines or gathering systems from the separator to the purchaser's transmission line,  
8 compressor stations, dehydration units, line heaters after the separator, and treating  
9 facilities. "Costs to deliver the gas to the market" are the actual and reasonable  
10 costs incurred by the producer to get the gas from the mouth of the well to the first  
11 purchaser, except costs incurred in normal lease separation of the oil or condensate  
12 from the gas and costs associated with insurance premiums on a facility used to  
13 deliver the gas to market. Costs to deliver the gas to the market include only the  
14 following:

- 15 (1) Costs for compressing the gas sold.
- 16 (2) Costs for dehydrating the gas sold.
- 17 (3) Costs for sweetening and treating the gas sold.
- 18 (4) Costs for delivering the gas to the purchaser.
- 19 (5) Reasonable charges for depreciation of the facility used to deliver  
20 the gas to market being used, provided that, if the facility is  
21 rented, the actual rental fee is added.
- 22 (6) Costs of direct or allocated labor associated with the facility used  
23 to deliver the gas to market.
- 24 (7) Costs of materials, supplies, maintenance, repairs, and fuel  
25 associated with the facility used to deliver the gas to market.
- 26 (8) Property taxes paid on the facility used to deliver the gas to  
27 market.
- 28 (9) Charges for fees paid by the producer to any provider of  
29 dehydration, treating, compression, and delivery services.

30 **§ 105-187.74. On-site use exemption from the tax.**

31 On-site use is exempt from the tax imposed under this Article. On-site use is  
32 the severance of energy minerals from land or water in this State owned legally or  
33 beneficially by the producer, which energy minerals are used on the land from  
34 which they are taken by the producer as part of the improvement of or use in the  
35 producer's homestead and which have a yearly cumulative delivered to market  
36 value of not greater than one thousand two hundred dollars (\$1,200). When  
37 severed energy minerals so used exceed a cumulative delivered to market value of  
38 one thousand two hundred dollars (\$1,200) during any year, the further severance  
39 of energy minerals shall be subject to the tax imposed by this Article.

40 **§ 105-187.75. Returns and payment of tax.**

41 (a) General. – Severance taxes are payable when a return is due. A return is  
42 due quarterly or monthly as specified in this section. A return must be filed by the  
43 producer of the energy mineral with the Secretary on a form prescribed by the

1 Secretary and in the manner required by the Secretary. A return must be signed by  
2 the taxpayer or the taxpayer's agent.

3 (b) Payment. – A producer of energy minerals shall pay the tax for all  
4 owners of the energy minerals. The producer shall withhold from any payment due  
5 owners the proportionate tax due for remittance to the Secretary.

6 (c) Quarterly. – A taxpayer who is consistently liable for less than one  
7 thousand dollars (\$1,000) a month in severance taxes must file a return and pay  
8 the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and  
9 is due by the 25th day of the second month following the end of the quarter.

10 (d) Monthly. – A taxpayer who is consistently liable for at least one  
11 thousand dollars (\$1,000) a month in severance taxes must file a return and pay  
12 the taxes due on a monthly basis. A monthly return is due by the 25th day of the  
13 second month following the calendar month covered by the return.

14 (e) Category. – The Secretary must monitor the amount of severance taxes  
15 paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer  
16 and must direct each taxpayer to pay tax and file returns as required by this  
17 section. In determining the amount of taxes due from a taxpayer, the Secretary  
18 must consider the total amount due from all places of business owned or operated  
19 by the same person as the amount due from that person. A taxpayer must file a  
20 return and pay tax in accordance with the Secretary's direction.

21 (f) Information on Return. – The amount of tax due and any other  
22 information required by the Secretary must be included on the return. Returns that  
23 do not contain the required information will not be accepted. When an  
24 unacceptable return is submitted, the Secretary will require a corrected return to be  
25 filed. The return must contain the following information concerning energy  
26 minerals produced during the month being reported:

- 27 (1) The gross amount of energy minerals produced that are subject to  
28 the tax imposed by this Article.
- 29 (2) The leases from which the energy minerals were produced.
- 30 (3) The names and addresses of the first purchasers of the energy  
31 minerals.

32 (g) Additional Information. – To claim an exemption for on-site use the  
33 producer or taxpayer of a proposed or existing gas well shall apply to the Secretary  
34 for determination of eligibility. The Secretary may require an applicant to provide  
35 any information required to administer this provision. The Secretary shall make  
36 the determination within 15 calendar days of the receipt of all information required  
37 by the Secretary from the producer or taxpayer, and the producer or taxpayer shall  
38 attach the determination of eligibility to its severance tax form next due, as  
39 applicable. The taxpayer shall provide any information required by the Secretary.  
40 Every taxpayer claiming the exemption shall maintain and make available for  
41 inspection by the Secretary of Revenue any records the Secretary considers  
42 necessary to determine and verify the claim to which the taxpayer is entitled. The  
43 burden of proving eligibility shall rest upon the taxpayer, and no exemption shall

1 be allowed to a taxpayer that fails to maintain adequate records or to make them  
2 available for inspection. The portion of the severance tax that is required to be  
3 deducted from the royalty owner or other interest shall be calculated in the same  
4 manner as the portion of the severance tax borne by the producer.

5 (h) Commission Determination. – To claim the marginal gas rate the  
6 producer or taxpayer of a proposed or existing gas well shall provide to the  
7 Secretary proof that the Mining and Energy Commission has determined the well  
8 qualifies as a marginal gas well.

9 **"§ 105-187.76. Bond or letter of credit required.**

10 A producer must file with the Secretary a bond or an irrevocable letter of credit  
11 if the producer fails to file a return required under this Article. A bond or an  
12 irrevocable letter of credit must be conditioned upon compliance with the  
13 requirements of this Article, be payable to the State, and be in the form required  
14 by the Secretary. The amount of the bond or irrevocable letter of credit is two  
15 times the applicant's average expected monthly tax liability under this Article, as  
16 determined by the Secretary. When notified to do so by the Secretary, a person  
17 that is required to file a bond or an irrevocable letter of credit must file the bond or  
18 irrevocable letter of credit in the amount required by the Secretary within 30 days  
19 after receiving the notice from the Secretary.

20 **"§ 105-187.77. Liability of producer for tax.**

21 The tax imposed by this Article is the primary liability of the producer, except  
22 as provided in this section. A first purchaser may not take delivery of energy  
23 minerals from a producer unless the producer furnishes the purchaser with a  
24 taxpayer identification number assigned by the Secretary. A first purchaser failing  
25 to secure the producer's taxpayer number, either from the producer or the  
26 Secretary, will be liable for any tax, penalty, and interest due on the energy  
27 minerals purchased from the producer.

28 **"§ 105-187.78. Royalty owner's records.**

29 The owner of a royalty interest shall keep and provide to the Secretary, upon  
30 request, both of the following:

- 31 (1) A record of all money received as royalty from each producing  
32 leasehold in the State.  
33 (2) A copy of all settlement sheets furnished by a purchaser or  
34 operator or other statement showing the amount of energy  
35 minerals for which a royalty was received and the amount of  
36 severance tax deducted.

37 **"§ 105-187.79. Permits suspended for failure to report.**

38 If an entity fails to file any report or return or to pay any tax or fee required by  
39 this Article for 90 days after it is due, the Secretary shall inform the Secretary of  
40 Environment and Natural Resources of this failure. The Secretary of Environment  
41 and Natural Resources shall suspend permits for oil and gas exploration using  
42 horizontal drilling and hydraulic fracturing under G.S. 113-395 of any entity that  
43 fails to file a return under this Article. The Secretary of Environment and Natural



1 Resources shall immediately notify by mail an entity of a suspension under this  
2 section.

3 **"§ 105-187.80. No local taxation.**

4 A city or county may not impose a franchise, privilege, license, income, or  
5 excise tax on the severing, production, treating, processing, ownership, sale,  
6 storage, purchase, marketing, or transportation on any energy minerals produced  
7 in the State, or upon the business of severing, producing, treating, processing,  
8 owning, selling, buying, storing, marketing, or transporting such energy minerals,  
9 or upon the ownership, operation, or maintenance of plants, facilities, machinery,  
10 pipelines, and gathering lines related to the severing, production, treating,  
11 processing, ownership, storage, sale, purchase, marketing, or transportation of  
12 energy minerals. This section does not preclude the taxation of the property in  
13 accordance with Article 11 of this Chapter."

14 **SECTION 16.(b)** G.S. 105-259(b) is amended by adding a new  
15 subdivision to read:

16 "(44) To furnish to the Department of Environment and Natural  
17 Resources the name, address, tax year end, and account and  
18 identification numbers of an entity liable for severance tax to  
19 enable the Secretary of Environment and Natural Resources to  
20 notify the entity that the Department of Environment and Natural  
21 Resources shall suspend permits of the entity for oil and gas  
22 exploration using horizontal drilling and hydraulic fracturing  
23 under G.S. 113-395."

24 **SECTION 16.(c)** G.S. 113-387 and G.S. 113-388 are repealed.

25  
26 **SECTION 16.(d)** G.S. 105-187.72 as enacted by Section 16(a) of this  
27 act, reads as rewritten:

28 **"§ 105-187.72. Tax on severance of energy minerals.**

29 ...

30 (c) Oil and Condensates Rate. – The percentage rate for condensates and oil  
31 is ~~two percent (2%).~~ three and one-half percent (3.5%).

32 (d) Marginal Gas Rate. – The producer of a proposed or existing gas well  
33 may apply to the Mining and Energy Commission for a determination that the well  
34 qualifies as a marginal gas well. The producer may elect to have the gas taxed at  
35 the marginal gas rate or the gas rate. For severance of gas from a marginal gas  
36 well the percentage rate is six-tenths of one percent (.6%). ~~four tenths of one~~  
37 percent ~~(.4%).~~

38 (e) Gas Rate. – The percentage rate for gas is ~~nine tenths of one percent~~  
39 ~~(.9%).~~ is set in the table below. The tax rate is applied to the delivered to market  
40 value of the gas sold.

<u>Over</u>	<u>Up to</u>	<u>Rate</u>
<u>-0-</u>	<u>\$3.00 per mcf</u>	<u>0.9%</u>
<u>\$3.01 per mcf</u>	<u>\$4.00</u>	<u>1.9%</u>

1                    \$4.01                    N/A                    2.9%"

2                    **SECTION 16.(e)** G.S. 105-187.72 as enacted by Section 16(a) of this  
3 act, and amended by Section 16(d) of this act, reads as rewritten:

4 **"§ 105-187.72. Tax on severance of energy minerals.**

5

6                    (c) Oil and Condensates Rate. – The percentage rate for condensates and oil  
7 is ~~three and one-half percent (3.5%)~~ five percent (5%).

8                    (d) Marginal Gas Rate. – The producer of a proposed or existing gas well  
9 may apply to the Mining and Energy Commission for a determination that the well  
10 qualifies as a marginal gas well. The producer may elect to have the gas taxed at  
11 the marginal gas rate or the gas rate. For severance of gas from a marginal gas  
12 well the percentage rate is eight-tenths of one percent (.8%).

13                    (e) Gas Rate. – The percentage rate for gas is set in the table below. The tax  
14 rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	\$3.00 per mcf	0.9%
\$3.01 per mcf	\$4.00	1.9%
<u>\$4.01</u>	<del>N/A</del> <u>\$5.00</u>	2.9%
<u>\$5.01</u>	<u>\$6.00</u>	<u>3.9%</u>
<u>\$6.01</u>	<u>\$7.00</u>	<u>4.9%</u>
<u>\$7.01</u>	<u>N/A</u>	<u>5%"</u>

22                    **SECTION 16.(f)** G.S. 105-187.72(e) as enacted by Section 16(a) of  
23 this act, and amended by Sections 16.(d) and 16(e) of this act, reads as rewritten:

24                    "(e) Gas Rate. – The percentage rate for gas is set in the table below. The tax  
25 rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	\$3.00 per mcf	0.9%
\$3.01 per mcf	\$4.00	1.9%
\$4.01	\$5.00	2.9%
\$5.01	\$6.00	3.9%
\$6.01	\$7.00	4.9%
\$7.01	<del>N/A</del> <u>\$8.00</u>	<del>5%</del> <u>5.9%</u>
<u>\$8.01</u>	<u>\$9.00</u>	<u>6.9%</u>
<u>\$9.01</u>	<u>\$10.00</u>	<u>7.9%</u>
<u>\$10.01</u>	<u>N/A</u>	<u>9%"</u>

36                    **SECTION 17.** G.S. 105-275 is amended by adding a new subdivision  
37 to read:

38                    "(47) Energy mineral interest in property for which a permit has not  
39                    been issued under G.S. 113-395. For the purposes of this  
40                    subdivision "energy mineral" has the same meaning as  
41                    G.S. 105-187.71."

42                    **SECTION 18.** G.S. 153A-149 read as rewritten:

43 **"§ 153A-149. Property taxes; authorized purposes; rate limitation.**

1 (a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina,  
2 the General Assembly confers upon each county in this State the power to levy,  
3 within the limitations set out in this section, taxes on property having a situs  
4 within the county under the rules and according to the procedures prescribed in the  
5 Machinery Act (Chapter 105, Subchapter II). County property tax revenues for a  
6 fiscal year may increase no more than eight percent (8%) from the county property  
7 tax revenues for the prior fiscal year.

8 (b) ~~Each~~ Other than the restriction in subsection (a) of this section, each  
9 county may levy property taxes without restriction as to rate or amount for the  
10 following purposes:

- 11 (1) Courts. – To provide adequate facilities for and the county's  
12 share of the cost of operating the General Court of Justice in the  
13 county.
- 14 (2) Debt Service. – To pay the principal of and interest on all general  
15 obligation bonds and notes of the county.
- 16 (3) Deficits. – To supply an unforeseen deficiency in the revenue  
17 (other than revenues of public enterprises), when revenues  
18 actually collected or received fall below revenue estimates made  
19 in good faith and in accordance with the Local Government  
20 Budget and Fiscal Control Act.
- 21 (4) Elections. – To provide for all federal, State, district and county  
22 elections.
- 23 (5) Jails. – To provide for the operation of a jail and other local  
24 confinement facilities.
- 25 (6) Joint Undertakings. – To cooperate with any other county, city,  
26 or political subdivision in providing any of the functions,  
27 services, or activities listed in this subsection.
- 28 (7) Schools. – To provide for the county's share of the cost of  
29 kindergarten, elementary, secondary, and post-secondary public  
30 education.
- 31 (8) Social Services. – To provide for public assistance required by  
32 Chapters 108A and 111 of the General Statutes.

33 ..."

34 **SECTION 19.** G.S. 160A-209 reads as rewritten:

35 "**§ 160A-209. Property taxes.**

36 (a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina,  
37 the General Assembly confers upon each city in this State the power to levy,  
38 within the limitations set out in this section, taxes on property having a situs  
39 within the city under the rules and according to the procedures prescribed in the  
40 Machinery Act (Chapter 105, Subchapter II). City property tax revenues for a  
41 fiscal year may increase no more than eight percent (8%) from the city property  
42 tax revenues for the prior fiscal year.

1 (b) ~~Each~~ Other than the restriction in subsection (a) of this section, each city  
2 may levy property taxes without restriction as to rate or amount for the following  
3 purposes:

- 4 (1) Debt Service. – To pay the principal of and interest on all general  
5 obligation bonds and notes of the city.
- 6 (2) Deficits. – To supply an unforeseen deficiency in the revenue  
7 (other than revenues of any of the enterprises listed in  
8 G.S. 160A-311), when revenues actually collected or received  
9 fall below revenue estimates made in good faith in accordance  
10 with the Local Government Budget and Fiscal Control Act.
- 11 (3) Civil Disorders. – To meet the cost of additional  
12 law-enforcement personnel and equipment that may be required  
13 to suppress riots or other civil disorders involving an  
14 extraordinary breach of law and order within the jurisdiction of  
15 the city.

16 ..."

17 **SECTION 20.** Sections 16(a), 16(b), and 16(c) become effective July  
18 1, 2015, and apply to energy minerals severed on or after that date. Section 16(d)  
19 becomes effective January 1, 2019, and applies to energy minerals severed on or  
20 after that date. Section 16(e) becomes effective January 1, 2021, and applies to  
21 energy minerals severed on or after that date. Section 16(f) becomes effective  
22 January 1, 2023, and applies to energy minerals severed on or after that date.  
23 Sections 18 and 19 become effective for taxable years beginning on or after July 1,  
24 2015. The remainder of this Part is effective when it becomes law.

## 25 26 **PART VI. STUDIES**

27 **SECTION 21.** The Local Government Division of the Department of  
28 Revenue shall study how other states value energy minerals for the purpose of  
29 property taxation. The Division shall establish guidelines for counties to ensure the  
30 consistent and fair taxation of energy minerals throughout the State. The Local  
31 Government Division shall report its findings to the Joint Legislative Commission  
32 on Energy Policy by January 1, 2015.

33 **SECTION 22.(a)** The Department of Commerce, in consultation with  
34 the Department of Environment and Natural Resources, the North Carolina Ports  
35 Authority, and the Department of Administration, shall study the desirability and  
36 feasibility of siting, constructing, and operating a liquefied natural gas (LNG)  
37 export terminal in North Carolina. At a minimum, as a part of the study, the  
38 agencies shall:

- 39 (1) Identify the State, federal, and local regulatory programs under  
40 which LNG export terminals are permitted and approved.
- 41 (2) Identify any State statutory or regulatory barriers to siting,  
42 constructing, or operating a LNG export terminal in the State.
- 43 (3) Evaluate infrastructure needs and impacts as follows:

- a. Identify the infrastructure that is necessary to support a LNG export terminal.
  - b. Identify any idle publicly-owned infrastructure that may be utilized to support LNG export terminal operations.
  - c. Identify publicly-owned unutilized or underutilized lands that may be used to support LNG export terminal operations.
  - d. Potential impacts on infrastructure, including roads, pipelines, and water and wastewater services, and other provision of services by local governments including schools, law enforcement, and development.
- (4) Conduct a cost-benefit analysis for the construction and operation of an LNG export terminal. The analysis shall evaluate scenarios in which the State is the primary producer of the exported natural gas and scenarios in which the State is not the primary producer of the exported natural gas.
  - (5) Examine potential economic impacts, including:
    - a. Possible sources of revenue that could accrue to the benefit of the State if LNG is exported from a terminal in North Carolina.
    - b. The number of jobs that may be expected as a result from the construction and operation of a LNG export terminal.
  - (6) Identify and evaluate potential environmental impacts of construction and operation of a LNG export terminal. In examining this issue, the agencies shall gather information on regulatory programs in other states where LNG export terminals are in operation.
  - (7) Identify potential social impacts, including impacts of construction and operation of a LNG export terminal on nearby communities and quality of life within those communities, recreational activities, and commercial and residential development.
  - (8) Any other pertinent issues that the agencies deem relevant to the construction and operation of a LNG export facility in the State.

**SECTION 22.(b)** The Department of Commerce shall report its findings and recommendations to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission on or January 1, 2015.

**SECTION 23.(a)** The Department of Transportation shall study: (i) additional statutory authority that may be necessary or advisable for the Department to adequately address energy-related traffic, including authority that pertains to permitting and assessment of fees; (ii) the feasibility and advisability of including any requirements that the Department may recommend to manage energy-related traffic, and resulting impacts, in a coordinated permit in

1 conjunction with requirements of the Department of Environment and Natural  
2 Resources, or whether such requirements should be implemented through a  
3 separate permitting process; and (iii) performance bonding and other surety  
4 mechanisms, including road use agreements, to reclaim and repair any State  
5 posted roads that are damaged due to heavy vehicle, equipment, and machinery  
6 traffic used in support of and conjunction with horizontal drilling and hydraulic  
7 fracturing operations on State posted roads. For purposes of this study, the term  
8 "posted roads" means a system that records any secondary road on the State  
9 Highway System that is unable to carry heavy vehicles or equipment. In the  
10 conduct of its study, the Department shall:

- 11 (1) Consider mechanisms for requiring performance bonds running  
12 to the Department.
- 13 (2) Develop criteria for setting the amount of the bond, including the  
14 weight and size of the proposed vehicles, equipment and  
15 machinery projected to utilize posted roads, the planned route  
16 and projected number of trips, and the duration of the activity  
17 necessitating travel of heavy vehicles, equipment, and machinery  
18 along posted roads.
- 19 (3) Identify documentation necessary to support bonding of posted  
20 roads.
- 21 (4) Identify any statutory or regulatory changes necessary to  
22 maintain and protect the State's transportation infrastructure  
23 network.

24 **SECTION 23.(b)** The Department of Transportation shall report its  
25 finding and recommendations, including any legislative proposals, to the Joint  
26 Legislative Energy Policy Commission and the Joint Legislative Transportation  
27 Oversight Committee on or before January 1, 2015.

28 **SECTION 24.(a)** The State Board of Community Colleges shall study  
29 the feasibility and desirability of developing a program to prepare students with a  
30 general education foundation and technical competencies for employment  
31 opportunities in the oil and natural gas drilling, gathering, and field operations  
32 industry. In particular, the State Board shall consider developing such a program  
33 at one or more of the community colleges located where the potential for shale gas  
34 resources is highest. In the conduct of its study, the State Board shall evaluate  
35 similar education programs in community college systems in other states.

36 **SECTION 24.(b)** The State Board shall report its findings and  
37 recommendations, including any legislative proposals to the Joint Legislative  
38 Energy Policy Commission and the Joint Legislative Education Oversight  
39 Committee on or before January 1, 2015.

40 **SECTION 25.(a)** The General Assembly finds that:

- 41 (1) Section 2(1) of S.L. 2012-143 directed the Mining and Energy  
42 Commission, in conjunction with the Department of Environment and Natural  
43 Resources and the Consumer Protection Division of the North Carolina

1 Department of Justice, to study the State's current law on the issue of integration  
2 or compulsory pooling and other states' laws on the matter; and,

3 Whereas, the Department was directed to report its findings and  
4 recommendations, including legislative proposals, to the Joint Legislative  
5 Commission on Energy Policy, and the Environmental Review Commission on or  
6 before January 1, 2013; and

7 (2) The Mining and Energy Commission and the Department issued  
8 separate reports pursuant to the study; and,

9 (3) The Mining and Energy Commission's report included specific  
10 recommendations for legislative changes related to compulsory pooling; and,

11 (4) The Department's report did not include specific  
12 recommendations for legislative changes related to compulsory pooling; and

13 (5) In lieu of specific recommendations for legislative changes, the  
14 Department recommended that "prior to establishing new laws related to  
15 compulsory pooling, the General Assembly should consider the rules adopted by  
16 the Mining and Energy Commission related to oil and gas exploration, including,  
17 but not limited to, rules concerning drilling units, spacing requirements, and  
18 setbacks, all of which will affect the regulation of compulsory pooling in the  
19 State." And the Department further recommended that "decisions on the status and  
20 implementation of a compulsory pooling law precede decisions related to cost  
21 sharing, notifications, and compensation for damages" and "further study on the  
22 issue of amending current dormant mineral statutes regarding extinguishment and  
23 other consumer protection issues related to split estates."

24 **SECTION 25.(b)** Based upon the findings of Section 25(a) of this act,  
25 the General Assembly directs the Department to:

26 (1) Examine the Mining and Energy Commission's rules, once  
27 adopted, related to oil and gas exploration, including, but not limited to, rules  
28 concerning drilling units, spacing requirements, and setbacks, and all rules the  
29 Department determines will affect the regulation of compulsory pooling in the  
30 State.

31 (2) Study, in conjunction with the Mining and Energy Commission  
32 and the Consumer Protection Division of the North Carolina Department of  
33 Justice, the issue of amending current dormant mineral statutes regarding  
34 extinguishment and other consumer protection issues related to split estates.

35 (3) Issue specific recommendations for legislative action related to  
36 compulsory pooling and dormant mineral statutes and report the findings of their  
37 study, including specific proposals for legislative action, to the Joint Legislative  
38 Commission on Energy Policy, and the Environmental Review Commission on or  
39 before October 1, 2015.

40 **SECTION 26.** The Mining and Energy Commission and the  
41 Department of Environment and Natural Resources shall study the development of  
42 midstream infrastructure in North Carolina, which is necessary or advisable to  
43 facilitate the exploration, development, and production of the State's oil and gas

1 resources. Infrastructure examined shall include development of pipelines,  
2 gathering systems, compressor stations, pumping systems, on-site and near-site  
3 storage tanks, and natural gas liquids processing systems. All State agencies,  
4 including the constituent institutions of the University of North Carolina, shall  
5 provide information and support to the Commission and the Department in the  
6 conduct of this study. The Commission shall report the findings of this study,  
7 including specific proposals for legislative action, to the Joint Legislative  
8 Commission on Energy Policy on or before March 1, 2015.

9 **SECTION 27.** The State Energy Office in the Department of  
10 Environment and Natural Resources shall study and make legislative  
11 recommendations on a comprehensive long-range State energy policy to achieve  
12 maximum effective management and use of present and future sources of energy.  
13 The Office shall study all of the following:

- 14 1. The long-term environmental impact of base load power  
15 generation of electric public utilities.
- 16 2. The use of all forms of energy, including renewable and  
17 alternative sources of energy.
- 18 3. The implementation of S.L. 2007-397, including  
19 recommendations on any changes to the law as necessary.
- 20 4. The impact of the elimination of natural gas franchise areas in  
21 order to allow competition in the provision of piped natural gas  
22 service in the State.

23 The State Energy Office shall report its findings to the Joint Legislative  
24 Commission on Energy Policy on or before January 1, 2015.

25 **SECTION 28.(a)** The Division of Purchase and Contract in the  
26 Department of Administration shall, in coordination with the Department of Public  
27 Instruction, provide that any fuel option may be considered for the award of a  
28 school bus contract. In the development of requests for proposals for school  
29 buses, the Departments shall include any fuel option practicable, including diesel,  
30 propane, liquefied natural gas, compressed natural gas, and electricity.

31 **SECTION 28.(b)** The consideration of any fuel sources in Section  
32 28(a) of this act shall apply to any changes or modifications to term contracts  
33 executed on or after the effective date of this Section.

34 **SECTION 28.(c)** The Department of Administration and the  
35 Department of Public Instruction shall jointly study the infrastructure that would  
36 be necessary to support school bus fleets fueled by natural gas and report any  
37 findings and recommendations to the Joint Legislative Energy Policy Commission  
38 on or before January 1, 2015.

## 39 **PART VII. MISCELLANEOUS PROVISIONS UNRELATED TO SHALE GAS**

40 **SECTION 29.(a)** G.S. 114-4.2D is repealed.

41 **SECTION 29.(b)** G.S. 113B-11(e) reads as rewritten:  
42



1       "(e) Staff support required by the Council shall be supplied by the Division  
2 of Energy, Mineral, and Land Resources of the Department of Environment and  
3 Natural Resources. The Department of Environment and Natural Resources shall  
4 provide legal support to the Council as needed from the Department's staff. The  
5 Department of Commerce and the Utilities Commission are hereby authorized to  
6 make their staff available to the Council to assist in the development of a State  
7 energy policy."

8       **SECTION 30.(a)** G.S. 105-449.130 is amended by adding a new  
9 subdivision to read:

10       "(1f) Diesel gallon equivalent of liquefied natural gas. – The energy  
11       equivalent of 6.06 pounds of liquefied natural gas."

12       **SECTION 30.(b)** G.S. 105-449.130 is amended by adding a new  
13 subdivision to read:

14       "(1g) Gas gallon equivalent of compressed natural gas. – The energy  
15       equivalent of 5.66 pounds of compressed natural gas."

16       **SECTION 30.(c)** G.S. 105-449.136 reads as rewritten:

17       "**§ 105-449.136. Tax on alternative fuel.**

18       (a) Rate. – A tax at the motor fuel rate is imposed on liquid alternative fuel  
19 used to operate a highway vehicle by means of a vehicle supply tank that stores  
20 fuel only for the purpose of supplying fuel to operate the vehicle. The tax on  
21 liquefied natural gas is imposed on each diesel gallon equivalent of liquefied  
22 natural gas. A tax at the equivalent of the motor fuel rate is imposed on all other  
23 alternative fuel used to operate a highway vehicle. The tax on compressed natural  
24 gas is imposed on each gas gallon equivalent of compressed natural gas. The  
25 Secretary must determine the equivalent ~~rate~~ rate for all other non-liquid  
26 alternative fuels.

27       (b) Administration. – The exemptions from the tax on motor fuel in  
28 G.S. 105-449.88 apply to the tax imposed by this section. The refunds for motor  
29 fuel tax allowed by Part 5 of Article 36C of this Chapter apply to the tax imposed  
30 by this section, except that the refund allowed by G.S. 105-449.107(b) for certain  
31 vehicles that use power takeoffs does not apply to a vehicle whose use of  
32 alternative fuel is taxed on the basis of miles driven. The proceeds of the tax  
33 imposed by this section must be allocated in accordance with G.S. 105-449.125."

34       **SECTION 30.(d)** This section is effective January 1, 2015.  
35

## 36 **PART VIII. SEVERABILITY AND EFFECTIVE DATE**

37       **SECTION 31.(a)** If any section or provision of this act is declared  
38 unconstitutional or invalid by the courts, it does not affect the validity of this act as  
39 a whole or any part other than the part so declared to be unconstitutional or  
40 invalid.

41       **SECTION 31.(b)** Except as otherwise provided, this act is effective  
42 when it becomes law.

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