

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 112*
Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/14/13
Third Edition Engrossed 5/15/13
House Committee Substitute Favorable 7/10/13

Short Title: Create Jobs Through Regulatory Reform. (Public)

Sponsors:

Referred to:

February 21, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER
3 TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION,
4 AND TO MAKE VARIOUS OTHER STATUTORY CHANGES.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. IMPROVE RULE-MAKING PROCESS**

8 **SECTION 1.** G.S. 150B-2 is amended by adding a new subdivision to read:

9 "(7a) "Policy" means any nonbinding interpretive statement within the delegated
10 authority of an agency that merely defines, interprets, or explains the
11 meaning of a statute or rule. The term includes any document issued by an
12 agency which is intended and used purely to assist a person to comply with
13 the law, such as a guidance document."

14 **SECTION 3.** G.S. 150B-21.4 reads as rewritten:

15 **"§ 150B-21.4. Fiscal notes on rules.**

16 (a) State Funds. – Before an agency ~~publishes in the North Carolina Register the~~
17 ~~proposed text of~~ adopts a permanent rule change that would require the expenditure or
18 distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it
19 must ~~submit the text of the proposed rule change, an analysis of the proposed rule change, and~~
20 ~~a fiscal note on the proposed rule change to the Office of State Budget and Management and~~
21 obtain certification from the Office of State Budget and Management that the funds that would
22 be required by the proposed rule change are available. The agency shall submit the text of the
23 proposed rule change, an analysis of the proposed rule change, and a fiscal note on the
24 proposed rule change to the Office at the same time as the agency submits the notice of text for
25 publication pursuant to G.S. 150B-21.2. The fiscal note must state the amount of funds that
26 would be expended or distributed as a result of the proposed rule change and explain how the
27 amount was computed. The Office of State Budget and Management must certify a proposed
28 rule change if funds are available to cover the expenditure or distribution required by the
29 proposed rule change.

30 (a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section,
31 any agency that adopts a rule affecting environmental permitting of Department of
32 Transportation projects shall conduct an analysis to determine if the rule will result in an
33 increased cost to the Department of Transportation. The analysis shall be conducted and
34 submitted to the Board of Transportation ~~before when~~ the agency ~~publishes the proposed text of~~



1 ~~the rule change in the North Carolina Register~~.submits the notice of text for publication. The
2 agency shall consider any recommendations offered by the Board of Transportation prior to
3 adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation
4 may submit any objection to the rule it may have to the Rules Review Commission. If the Rules
5 Review Commission receives an objection to a rule from the Board of Transportation no later
6 than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule
7 shall only become effective as provided in G.S. 150B-21.3(b1).

8 (b) Local Funds. – Before an agency ~~publishes in the North Carolina Register the~~
9 ~~proposed text of~~adopts a permanent rule change that would affect the expenditures or revenues
10 of a unit of local government, it must submit the text of the proposed rule change and a fiscal
11 note on the proposed rule change to the Office of State Budget and Management as provided by
12 G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the North Carolina
13 Association of County Commissioners, and the North Carolina League of Municipalities. The
14 fiscal note must state the amount by which the proposed rule change would increase or
15 decrease expenditures or revenues of a unit of local government and must explain how the
16 amount was computed.

17 (b1) Substantial Economic Impact. – Before an agency ~~publishes in the North Carolina~~
18 ~~Register the proposed text of~~adopts a permanent rule change that would have a substantial
19 economic impact and that is not identical to a federal regulation that the agency is required to
20 adopt, the agency shall prepare a fiscal note for the proposed rule change and have the note
21 approved by the Office of State Budget and Management. The agency may request the Office
22 of State Budget and Management to prepare the fiscal note only after, working with the Office,
23 it has exhausted all resources, internal and external, to otherwise prepare the required fiscal
24 note. If an agency requests the Office of State Budget and Management to prepare a fiscal note
25 for a proposed rule change, that Office must prepare the note within 90 days after receiving a
26 written request for the note. If the Office of State Budget and Management fails to prepare a
27 fiscal note within this time period, the agency proposing the rule change shall prepare a fiscal
28 note. A fiscal note prepared in this circumstance does not require approval of the Office of
29 State Budget and Management.

30 If an agency prepares the required fiscal note, the agency must submit the note to the Office
31 of State Budget and Management for review. The Office of State Budget and Management
32 shall review the fiscal note within 14 days after it is submitted and either approve the note or
33 inform the agency in writing of the reasons why it does not approve the fiscal note. After
34 addressing these reasons, the agency may submit the revised fiscal note to that Office for its
35 review. If an agency is not sure whether a proposed rule change would have a substantial
36 economic impact, the agency shall ask the Office of State Budget and Management to
37 determine whether the proposed rule change has a substantial economic impact. Failure to
38 prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for
39 objection to the rule under G.S. 150B-21.9(a)(4).

40 As used in this subsection, the term "substantial economic impact" means an aggregate
41 financial impact on all persons affected of at least ~~five hundred thousand dollars (\$500,000)~~
42 three million dollars (\$3,000,000) in a 12-month period. In analyzing substantial economic
43 impact, an agency shall do the following:

- 44 (1) Determine and identify the appropriate time frame of the analysis.
- 45 (2) Assess the baseline conditions against which the proposed rule is to be
46 measured.
- 47 (3) Describe the persons who would be subject to the proposed rule and the type
48 of expenditures these persons would be required to make.
- 49 (4) Estimate any additional costs that would be created by implementation of the
50 proposed rule by measuring the incremental difference between the baseline
51 and the future condition expected after implementation of the rule. The

- 1 analysis should include direct costs as well as opportunity costs. Cost
2 estimates must be monetized to the greatest extent possible. Where costs are
3 not monetized, they must be listed and described.
- 4 (5) For costs that occur in the future, the agency shall determine the net present
5 value of the costs by using a discount factor of seven percent (7%).
- 6 (b2) Content. – A fiscal note required by subsection (b1) of this section must contain the
7 following:
- 8 (1) A description of the persons who would be affected by the proposed rule
9 change.
- 10 (2) A description of the types of expenditures that persons affected by the
11 proposed rule change would have to make to comply with the rule and an
12 estimate of these expenditures.
- 13 (3) A description of the purpose and benefits of the proposed rule change.
- 14 (4) An explanation of how the estimate of expenditures was computed.
- 15 (5) A description of at least two alternatives to the proposed rule that were
16 considered by the agency and the reason the alternatives were rejected. The
17 alternatives may have been identified by the agency or by members of the
18 public.
- 19 (c) Errors. – An erroneous fiscal note prepared in good faith does not affect the validity
20 of a rule."

21 **SECTION 4.(a)** G.S. 150B-21.2(c) reads as rewritten:

- 22 "(c) Notice of Text. – A notice of the proposed text of a rule must include all of the
23 following:
- 24 (1) The text of the proposed ~~rule~~ rule, unless the rule is a readoption without
25 substantive changes to the existing rule proposed in accordance with
26 G.S. 150B-21.3A.
- 27 (2) A short explanation of the reason for the proposed rule and a link to the
28 agency's Web site containing the information required by G.S. 150B-19.1(c).
- 29 (3) A citation to the law that gives the agency the authority to adopt the rule.
- 30 (4) The proposed effective date of the rule.
- 31 (5) The date, time, and place of any public hearing scheduled on the rule.
- 32 (6) Instructions on how a person may demand a public hearing on a proposed
33 rule if the notice does not schedule a public hearing on the proposed rule and
34 subsection (e) of this section requires the agency to hold a public hearing on
35 the proposed rule when requested to do so.
- 36 (7) The period of time during which and the person to whom written comments
37 may be submitted on the proposed rule.
- 38 (8) If a fiscal note has been prepared for the rule, a statement that a copy of the
39 fiscal note can be obtained from the agency.
- 40 (9) The procedure by which a person can object to a proposed rule and the
41 requirements for subjecting a proposed rule to the legislative review
42 process."

43 **SECTION 4.(b)** Part 2 of Article 2A of Chapter 150B of the General Statutes is
44 amended by adding a new section to read:

45 **"§ 150B-21.3A. Periodic review and expiration of existing rules.**

46 (a) Definitions. – For purposes of this section, the following definitions apply:

- 47 (1) Commission. – Means the Rules Review Commission.
- 48 (2) Committee. – Means the Joint Legislative Administrative Procedure
49 Oversight Committee.
- 50 (3) Necessary with substantive public interest. – Means any rule for which the
51 agency has received public comments within the past two years. A rule is

1 also "necessary with substantive public interest" if the rule affects the
2 property interest of the regulated public and the agency knows or suspects
3 that any person may object to the rule.

4 (4) Necessary without substantive public interest. – Means a rule for which the
5 agency has not received a public comment concerning the rule within the
6 past two years. A "necessary without substantive public interest" rule
7 includes a rule that merely identifies information that is readily available to
8 the public, such as an address or a telephone number.

9 (5) Public comment. – Means written comments objecting to the rule, in whole
10 or in part, received by an agency from any member of the public, including
11 an association or other organization representing the regulated community or
12 other members of the public.

13 (6) Unnecessary rule. – Means a rule that the agency determines to be obsolete,
14 redundant, or otherwise not needed.

15 (b) Automatic Expiration. – Any rule for which the agency that adopted the rule has not
16 conducted a review in accordance with this section shall expire on the date set in the schedule
17 established by the Commission pursuant to subsection (d) of this section.

18 (c) Review Process. – Each agency subject to this Article shall conduct a review of the
19 agency's existing rules at least once every 10 years in accordance with the following process:

20 (1) Step 1: The agency shall conduct an analysis of each existing rule and make
21 an initial determination as to whether the rule is (i) necessary with
22 substantive public interest, (ii) necessary without substantive public interest,
23 or (iii) unnecessary. The agency shall then post the results of the initial
24 determination on its Web site and invite the public to comment on the rules
25 and the agency's initial determination. The agency shall also submit the
26 results of the initial determination to the Office of Administrative Hearings
27 for posting on its Web site. The agency shall accept public comment for no
28 less than 60 days following the posting. The agency shall review the public
29 comments and prepare a brief response addressing the merits of each
30 comment. After completing this process, the agency shall submit a report to
31 the Commission. The report shall include the following items:

32 a. The agency's initial determination.

33 b. All public comments received in response to the agency's initial
34 determination.

35 c. The agency's response to the public comments.

36 (2) Step 2: The Commission shall review the reports received from the agencies
37 pursuant to subdivision (1) of this subsection. If a public comment relates to
38 a rule that the agency determined to be necessary and without substantive
39 public interest or unnecessary, the Commission shall determine whether the
40 public comment has merit and, if so, designate the rule as necessary with
41 substantive public interest. For purposes of this subsection, a public
42 comment has merit if it addresses the specific substance of the rule and
43 relates to any of the standards for review by the Commission set forth in
44 G.S. 150B-21.9(a). The Commission shall prepare a final determination
45 report and submit the report to the Committee for consultation in accordance
46 with subdivision (3) of this subsection. The report shall include the
47 following items:

48 a. The agency's initial determination.

49 b. All public comments received in response to the agency's initial
50 determination.

51 c. The agency's response to the public comments.

- 1 d. A summary of the Commission's determinations regarding public
2 comments.
- 3 e. A determination that all rules that the agency determined to be
4 necessary and without substantive public interest and for which no
5 public comment was received or for which the Commission
6 determined that the public comment was without merit be allowed to
7 remain in effect without further action.
- 8 f. A determination that all rules that the agency determined to be
9 unnecessary and for which no public comment was received or for
10 which the Commission determined that the public comment was
11 without merit shall expire on the first day of the month following the
12 date the report becomes effective in accordance with this section.
- 13 g. A determination that all rules that the agency determined to be
14 necessary with substantive public interest or that the Commission
15 designated as necessary with public interest as provided in this
16 subdivision shall be readopted as though the rules were new rules in
17 accordance with this Article.

18 (3) Step 3: The final determination report shall not become effective until the
19 agency has consulted with the Committee. The determinations contained in
20 the report pursuant to sub-subdivisions e., f., and g. of subdivision (2) of this
21 subsection shall become effective on the date the report is reviewed by the
22 Committee. If the Committee does not hold a meeting to hear the
23 consultation required by this subdivision within 60 days of receipt of the
24 final determination report, the consultation requirement is deemed satisfied,
25 and the determinations contained in the report become effective on the 61st
26 day following the date the Committee received the report. If the Committee
27 disagrees with a determination regarding a specific rule contained in the
28 report, the Committee may recommend that the General Assembly direct the
29 agency conduct a review of the specific rule in accordance with this section
30 in the next year following the consultation.

31 (d) Timetable. – Upon the effective date of this act, the Commission shall establish a
32 schedule for the review of existing rules in accordance with this section on a decennial basis by
33 assigning each Title of the Administrative Code a date by which the review required by this
34 section must be completed. In establishing the schedule, the Commission shall consider the
35 scope and complexity of rules subject to this section and the resources required to conduct the
36 review required by this section. If the agency fails to conduct the review by the date set by the
37 Commission, the rules contained in that Title will expire. The Commission may exempt rules
38 that have been adopted or amended within the previous 10 years from the review required by
39 this section. However, any rule exempted on this basis must be reviewed in accordance with
40 this section no more than 10 years following the last time the rule was amended.

41 (e) Other Reviews. – Notwithstanding any provision of this section, an agency may
42 subject a rule that it determines to be unnecessary to review under this section at any time by
43 notifying the Commission that it wishes to be placed on the schedule for the current year. The
44 Commission may also subject a rule to review under this section at any time by notifying the
45 agency that the rule has been placed on the schedule for the current year."

46 **SECTION 4.(c)** G.S. 150B-19.2 is repealed.

47 **SECTION 4.(d)** If G.S. 150B-21.3A, as enacted by subsection (b) of this section,
48 becomes law, the Rules Review Commission shall subject rules adopted by the Environmental
49 Management Commission related to surface water quality and wetlands to review in the first
50 year that the Rules Review Commission establishes for the review of existing rules in
51 accordance with G.S. 150B-21.3A.

1 **SECTION 5.** The Joint Legislative Administrative Procedure Oversight Committee
2 shall undertake a study of the exemptions from rule making contained in G.S. 150B-1(d) and
3 elsewhere in the General Statutes. For each exemption, the Committee shall evaluate the
4 continued need for the exemption and the potential consequences of repeal of the exemption.
5 The Committee shall report to the 2014 Session of the 2013 General Assembly on its findings
6 and recommendations, including any legislative recommendations for the repeal of exemptions.
7

8 **PART II. STATE AND LOCAL GOVERNMENT REGULATIONS**

9 10 **PROHIBIT DELAYED ENFORCEMENT OF LOCAL ORDINANCES AND PROHIBIT** 11 **CERTAIN CONTRACT REQUIREMENTS BY LOCAL GOVERNMENTS**

12 **SECTION 6.(a)** G.S. 153A-348 is amended by adding a new subsection to read:

13 "(d) When a use constituting a violation of a zoning or unified development ordinance is
14 in existence prior to adoption of the zoning or unified development ordinance creating the
15 violation, and that use is grandfathered and subsequently terminated for any reason, a county
16 shall bring an enforcement action within 10 years of the date of the termination of the
17 grandfathered status, unless the violation poses an imminent hazard to health or public safety."

18 **SECTION 6.(b)** G.S. 160A-364.1 is amended by adding a new subsection to read:

19 "(d) When a use constituting a violation of a zoning or unified development ordinance is
20 in existence prior to adoption of the zoning or unified development ordinance creating the
21 violation, and that use is grandfathered and subsequently terminated for any reason, a city shall
22 bring an enforcement action within 10 years of the date of the termination of the grandfathered
23 status, unless the violation poses an imminent hazard to health or public safety."

24 **SECTION 6.(c)** G.S. 153A-449 reads as rewritten:

25 **"§ 153A-449. Contracts with private entities.**

26 A county may contract with and appropriate money to any person, association, or
27 corporation, in order to carry out any public purpose that the county is authorized by law to
28 engage in. A county may not require a private contractor under this section to abide by any
29 restriction that the county could not impose on all employers in the county, such as paying
30 minimum wage or providing paid sick leave to its employees, as a condition of bidding on a
31 contract."

32 **SECTION 6.(d)** G.S. 160A-20.1 reads as rewritten:

33 **"§ 160A-20.1. Contracts with private entities.**

34 A city may contract with and appropriate money to any person, association, or corporation,
35 in order to carry out any public purpose that the city is authorized by law to engage in. A city
36 may not require a private contractor under this section to abide by any restriction that the city
37 could not impose on all employers in the city, such as paying minimum wage or providing paid
38 sick leave to its employees, as a condition of bidding on a contract."

39 **SECTION 6.(e)** This section is effective when it becomes law and applies to
40 zoning and unified development ordinances adopted before, on, or after the effective date of
41 this act and to contracts entered on or after that date.
42

43 **EQUAL TREATMENT FOR FRATERNITIES AND SORORITIES BY LOCAL** 44 **GOVERNMENT**

45 **SECTION 7.(a)** G.S. 153A-340 is amended by adding a new subsection to read:

46 "(k) A zoning or unified development ordinance may not differentiate in terms of the
47 regulations applicable to fraternities or sororities between those fraternities or sororities that are
48 approved or recognized by a college or university and those that are not."

49 **SECTION 7.(b)** G.S. 160A-381 is amended by adding a new subsection to read:

1 "(g) A zoning or unified development ordinance may not differentiate in terms of the
2 regulations applicable to fraternities or sororities between those fraternities or sororities that are
3 approved or recognized by a college or university and those that are not."

4 **SECTION 7.(c)** Part 3 of Article 1 of Chapter 116 of the General Statutes is
5 amended by adding a new section to read:

6 **"§ 116-40.11. Disciplinary proceedings; right to counsel for students and organizations.**

7 (a) Any student enrolled at a constituent institution who is accused of a violation of the
8 disciplinary or conduct rules of the constituent institution shall have the right to be represented
9 by a licensed attorney or nonattorney advocate who may fully participate during any
10 disciplinary procedure or other procedure adopted and used by the constituent institution
11 regarding the alleged violation. However, a student shall not have the right to be represented by
12 a licensed attorney or nonattorney advocate in either of the following circumstances:

13 (1) If the constituent institution has implemented a "Student Honor Court"
14 which is fully staffed by students to address such violations.

15 (2) For any allegation of "academic dishonesty" as defined by the constituent
16 institution.

17 (b) Any student organization officially recognized by a constituent institution that is
18 accused of a violation of the disciplinary or conduct rules of the constituent institution shall
19 have the right to be represented by a licensed attorney or nonattorney advocate who may fully
20 participate during any disciplinary procedure or other procedure adopted and used by the
21 constituent institution regarding the alleged violation. However, a student organization shall not
22 have the right to be represented by a licensed attorney or nonattorney advocate if the
23 constituent institution has implemented a "Student Honor Court" which is fully staffed by
24 students to address such violations."

25 **SECTION 7.(d)** Subsection (c) of this section is effective when it becomes law and
26 applies to all allegations of violations beginning on or after August 1, 2013.

27 28 **AMEND PRIVATE CLUB DEFINITION**

29 **SECTION 8.** G.S. 130A-247 reads as rewritten:

30 **"§ 130A-247. Definitions.**

31 The following definitions shall apply throughout this Part:

32 ...

33 (2) "Private club" means an organization that (i) maintains selective members, is
34 operated by the membership, does not provide food or lodging for pay to
35 anyone who is not a member or a member's guest, and is either incorporated
36 as a nonprofit corporation in accordance with Chapter 55A of the General
37 Statutes or is exempt from federal income tax under the Internal Revenue
38 Code as defined in ~~G.S. 105-130.2(1)~~G.S. 105-130.2(1) or (ii) meets the
39 definition of a private club set forth in G.S. 18B-1000(5).

40 "

41 42 **OUTDOOR ADVERTISING AMENDMENTS**

43 **SECTION 9.(a)** G.S. 136-133.1 reads as rewritten:

44 **"§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

45 ...

46 (a1) Notwithstanding any law to the contrary, in order to promote the outdoor
47 advertiser's right to be clearly viewed as set forth in G.S. 136-127, the Department of
48 Transportation, at the request of a selective vegetation removal permittee, may approve plans
49 for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone
50 defined in subsection (a) of this section along acceleration or deceleration ramps so long as the

1 view to the outdoor advertising sign will be improved and the total aggregate area of cutting or
2 removal does not exceed the maximum allowed in subsection (a) of this section.

3 ...
4 (f) Tree branches within a highway right-of-way that encroach into the zone created by
5 points A, ~~C~~, and ~~DB~~, D, and E may be cut or pruned. Except as provided in subsection (g) of
6 this section, no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be
7 cut, trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor
8 advertising and within the limits of the highway right-of-way for the purpose of enhancing the
9 visibility of outdoor advertising unless permitted to do so by the Department in accordance
10 with this section, G.S. 136-93(b), 136-133.2, and 136-133.4.

11"
12 **SECTION 9.(b)** Article 11 of Chapter 136 of the General Statutes is amended by
13 adding a new section to read:

14 **"§ 136-131.2. Modernization of outdoor advertising devices.**

15 No municipality, county, local or regional zoning authority, or other political subdivision
16 shall, without the payment of just compensation as provided for in G.S. 136-131.1, regulate or
17 prohibit the repair or reconstruction of any outdoor advertising for which there is in effect a
18 valid permit issued by the Department of Transportation so long as the square footage of its
19 advertising surface area is not increased. As used in this section, reconstruction includes the
20 changing of an existing multipole outdoor advertising structure to a new monopole structure."

21
22 **DISPOSITION OF DMH/DD/SAS RECORDS**

23 **SECTION 10.** The Division of Mental Health, Developmental Disabilities, and
24 Substance Abuse Services shall amend its Records Retention and Disposition Schedule Manual
25 to provide that if a Medicaid service has been eliminated by the State, the provider must retain
26 records for two years after the last date of the service, unless a longer period is required by
27 federal law. At the termination of that time period, records may be destroyed or transferred to a
28 State agency or contractor identified by the Department of Health and Human Services.

29
30 **STUDY OCCUPATIONAL LICENSING BOARD AGENCY**

31 **SECTION 11.(a)** The Joint Legislative Program Evaluation Oversight Committee
32 shall include in the 2013-2014 Work Plan for the Program Evaluation Division of the General
33 Assembly a study to evaluate the structure, organization, and operation of the various
34 independent occupational licensing boards. For purposes of this act, the term "occupational
35 licensing board" has the same meaning as defined in G.S. 93B-1. The Program Evaluation
36 Division shall include the following within this study:

- 37 (1) Consideration of the feasibility of establishing a single State agency to
38 oversee the administration of all or some of the occupational licensing
39 boards.
40 (2) Whether greater efficiency and cost-effectiveness can be realized by
41 combining the administrative functions of the boards while allowing the
42 boards to continue performing the regulatory functions.
43 (3) Whether the total number of boards should be reduced by combining and/or
44 eliminating some boards.

45 **SECTION 11.(b)** The Program Evaluation Division shall submit its findings and
46 recommendations from Section 23(a) of this act to the Joint Legislative Program Evaluation
47 Oversight Committee and the Joint Legislative Administrative Procedure Oversight Committee
48 at a date to be determined by the Joint Legislative Program Evaluation Oversight Committee.

49 **SECTION 11.(c)** This section is effective when it becomes law.

50
51 **INDUSTRIAL COMMISSION**

1 **SECTION 12.(a)** G.S. 97-78(b) reads as rewritten:

2 "(b) The Commission may appoint an administrator whose duties shall be prescribed by
3 the ~~Commission, and who shall be subject to the State Personnel System-Commission.~~ The
4 Commission may appoint an executive secretary whose duties shall be prescribed by the
5 Commission, ~~and who shall be subject to the State Personnel System~~ and who, upon entering
6 upon his duties, shall give bond in such sum as may be fixed by the Commission. The
7 Commission may also employ such clerical or other assistance as it may deem necessary, and
8 fix the compensation of its staff, except that the salaries of the administrator and the executive
9 secretary shall be fixed by subsection (b1) of this section. The compensation of Commission
10 staff shall be in keeping with the compensation paid to the persons employed to do similar
11 work in other State departments."

12 **SECTION 12.(b)** G.S. 97-79(b) reads as rewritten:

13 "(b) The Commission may appoint deputies who shall have the same power as members
14 of the Commission pursuant to G.S. 97-80 and the same power to take evidence, and enter
15 orders, opinions, and awards based thereon as is possessed by the members of the Commission.
16 ~~The deputies shall be subject to the State Personnel System.~~ Deputies appointed pursuant to this
17 subsection shall not be considered hearing officers within the meaning of G.S. 126-5(d)(7)."

18 **PROHIBIT TRANSPORTATION IMPACT MITIGATION ORDINANCES**

19 **SECTION 13.(a)** Article 8 of Chapter 160A of the General Statutes is amended by
20 adding a new section to read as follows:

21 "§ 160A-203. Transportation impact mitigation ordinances prohibited.

22 No city may enact or enforce an ordinance, rule, or regulation that requires an employer to
23 assume financial, legal, or other responsibility for the mitigation of the impact of their
24 employees' commute or transportation to or from the employer's workplace, which may result
25 in the employer being subject to a fine, fee, or other monetary, legal, or negative
26 consequences."

27 **SECTION 13.(b)** Article 6 of Chapter 153A of the General Statutes is amended by
28 adding a new section to read as follows:

29 "§ 153A-145.1. Transportation impact mitigation ordinances prohibited.

30 No county may enact or enforce an ordinance, rule, or regulation that requires an employer
31 to assume financial, legal, or other responsibility for the mitigation of the impact of their
32 employees' commute or transportation to or from the employer's workplace, which may result
33 in the employer being subject to a fine, fee, or other monetary, legal, or negative
34 consequences."

35 **CLARIFY LOCAL GOVERNMENT PREEMPTION**

36 **SECTION 13.1.** G.S. 160A-174(b) reads as rewritten:

37 "(b) A city ordinance shall be consistent with the Constitution and laws of North
38 Carolina and of the United States. An ordinance is not consistent with State or federal law
39 when:

- 40 (1) The ordinance infringes a liberty guaranteed to the people by the State or
41 federal Constitution;
- 42 (2) The ordinance makes unlawful an act, omission or condition which is
43 expressly made lawful by State or federal law;
- 44 (3) The ordinance makes lawful an act, omission, or condition which is
45 expressly made unlawful by State or federal law;
- 46 (4) The ordinance purports to regulate a subject that cities are expressly
47 forbidden to regulate by State or federal law;
- 48 (4) The ordinance purports to regulate a subject that cities are expressly
49 forbidden to regulate by State or federal law;

- 1 (5) The ordinance purports to regulate a field for which a State or federal statute
2 clearly shows a legislative intent to provide a complete and integrated
3 regulatory scheme to the exclusion of local regulation;
4 (5a) The ordinance (i) regulates a field that is also regulated by a State or federal
5 statute enforced by, or a regulation promulgated by, an environmental
6 agency and (ii) is more stringent than the State or federal statute or
7 regulation; or
8 (6) The elements of an offense defined by a city ordinance are identical to the
9 elements of an offense defined by State or federal law.

10 ~~The~~ Except as provided in subdivision (5a) of this subsection, the fact that a State or federal
11 law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city
12 ordinances requiring a higher standard of conduct or condition.

13 (c) The limitation set forth in subdivision (5a) of subsection (b) of this section does not
14 apply to any ordinance if adoption of the ordinance was and continues to be required by one of
15 the following:

- 16 (1) A serious and unforeseen threat to the public health, safety, or welfare.
17 (2) An act of the General Assembly or United States Congress that expressly
18 requires the city to adopt an ordinance.
19 (3) A provision in federal or State budgetary policy.
20 (4) A federal regulation required by an act of the United States Congress to be
21 adopted or administered by the State.
22 (5) A court order.
23 (d) For purposes of this section, "an environmental agency" means any of the following:
24 (1) The Department of Environment and Natural Resources created pursuant to
25 G.S. 143B-279.1.
26 (2) The Environmental Management Commission created pursuant to
27 G.S. 143B-282.
28 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
29 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
30 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
31 (6) The Commission for Public Health created pursuant to G.S. 130A-29, when
32 regulating pursuant to the authority granted by Articles 9, 10, 11, 19, 19A,
33 and 19B of Chapter 130A of the General Statutes.
34 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.
35 (8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.
36 (9) The Pesticide Board created pursuant to G.S. 143-436.
37 (10) The Department of Transportation established pursuant to G.S. 143B-345."

38 **SECTION 13.2.** G.S. 153A-121 is amended by adding a new subsection to read:

39 "(a1) A county ordinance shall be consistent with the Constitution and laws of North
40 Carolina and of the United States. An ordinance is not consistent with State or federal law
41 when:

- 42 (1) The ordinance infringes a liberty guaranteed to the people by the State or
43 federal Constitution;
44 (2) The ordinance makes unlawful an act, omission, or condition which is
45 expressly made lawful by State or federal law;
46 (3) The ordinance makes lawful an act, omission, or condition which is
47 expressly made unlawful by State or federal law;
48 (4) The ordinance purports to regulate a subject that counties are expressly
49 forbidden to regulate by State or federal law;

- 1 (5) The ordinance purports to regulate a field for which a State or federal statute
2 clearly shows a legislative intent to provide a complete and integrated
3 regulatory scheme to the exclusion of local regulation;
4 (6) The ordinance (i) regulates a field that is also regulated by a State or federal
5 statute enforced by, or a regulation promulgated by, an environmental
6 agency and (ii) is more stringent than the State or federal statute or
7 regulation; or
8 (7) The elements of an offense defined by a county ordinance are identical to the
9 elements of an offense defined by State or federal law.

10 Except as provided in subdivision (6) of this subsection, the fact that a State or federal law,
11 standing alone, makes a given act, omission, or condition unlawful shall not preclude county
12 ordinances requiring a higher standard of conduct or condition.

13 (a2) The limitation set forth in subdivision (6) of subsection (a1) of this section does not
14 apply to any ordinance if adoption of the ordinance was and continues to be required by one of
15 the following:

- 16 (1) A serious and unforeseen threat to the public health, safety, or welfare.
17 (2) An act of the General Assembly or United States Congress that expressly
18 requires the county to adopt an ordinance.
19 (3) A provision in federal or State budgetary policy.
20 (4) A federal regulation required by an act of the United States Congress to be
21 adopted or administered by the State.
22 (5) A court order.

23 (a3) For purposes of this section, "an environmental agency" means any of the following:

- 24 (1) The Department of Environment and Natural Resources created pursuant to
25 G.S. 143B-279.1.
26 (2) The Environmental Management Commission created pursuant to
27 G.S. 143B-282.
28 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
29 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
30 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
31 (6) The Commission for Public Health created pursuant to G.S. 130A-29, when
32 regulating pursuant to the authority granted by Articles 9, 10, 11, 19, 19A,
33 and 19B of Chapter 130A of the General Statutes.
34 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.
35 (8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.
36 (9) The Pesticide Board created pursuant to G.S. 143-436.
37 (10) The Department of Transportation established pursuant to G.S. 143B-345."

39 REPEAL PROTEST PETITIONS

40 **SECTION 13.3.** G.S. 160A-385(a) is repealed.

42 PART III. BUSINESS AND LABOR REGULATIONS

44 LET BED & BREAKFASTS OFFER THREE MEALS/DAY

45 **SECTION 14.(a)** G.S. 130A-247 is amended by adding a new subdivision to read:

46 "(5a) "Bed and breakfast home" means a business in a private home of not more
47 than eight guest rooms that offers bed and breakfast accommodations for a
48 period of less than one week and that meets all of the following criteria:

- 49 a. Does not serve food or drink to the general public for pay.

- 1 b. Serves the breakfast meal, the lunch meal, the dinner meal, or a
2 combination of all or some of these three meals, only to overnight
3 guests of the home.
4 c. Includes the price of any meals served in the room rate.
5 d. Is the permanent residence of the owner or the manager of the
6 business."

7 **SECTION 14.(b)** G.S. 130A-248(a2) reads as rewritten:

8 "(a2) For the protection of the public health, the Commission shall adopt rules governing
9 the sanitation of ~~private homes offering bed and breakfast accommodations to eight or fewer~~
10 ~~persons per night, bed and breakfast homes, as defined in G.S. 130A-247, and rules governing~~
11 the sanitation of bed and breakfast ~~inns-inns, as defined in G.S. 130A-247. In carrying out this~~
12 function, the Commission shall adopt requirements that are the least restrictive so as to protect
13 the public health and not unreasonably interfere with the operation of bed and breakfast homes
14 and bed and breakfast inns."

15 **SECTION 14.(c)** This section becomes effective October 1, 2013.

17 PEO ACT AMENDMENTS

18 **SECTION 15.(a)** G.S. 58-89A-5(8) is repealed.

19 **SECTION 15.(b)** G.S. 58-89A-50 reads as rewritten:

20 **"§ 58-89A-50. Surety bond; letter of credit; other deposits.**

21 (a) An applicant for licensure shall file with the Commissioner a surety ~~bond for the~~
22 ~~benefit of the Commissioner as follows:~~

- 23 (1) ~~If the applicant was initially licensed prior to October 1, 2008, the bond, or~~
24 ~~other items as provided for in subsection (f) of this section, shall be in the~~
25 ~~amount of one hundred thousand dollars (\$100,000).~~
26 (2) ~~If the applicant was not initially licensed prior to October 1, 2008, the bond,~~
27 ~~or other items as provided for in subsection (f) of this section, shall be in an~~
28 ~~amount equal to five percent (5%) of the applicant's prior year's total North~~
29 ~~Carolina wages, benefits, workers compensation premiums, and~~
30 ~~unemployment compensation contributions, but not greater than five~~
31 ~~hundred thousand dollars (\$500,000), or such greater amount as the~~
32 ~~Commissioner may require.~~

33 bond, or other items as set forth in subsection (f) of this section, in the amount of one hundred
34 thousand dollars (\$100,000) for the benefit of the Commissioner. An applicant whose current
35 assets do not exceed current liabilities pursuant to G.S. 58-89A-60(b) shall file an additional
36 surety bond or other items set forth in subsection (f) of this section equal to or in excess of
37 current liabilities less current assets.

38 (b) The surety bond required by this section shall be in a form acceptable to the
39 Commissioner, issued by an insurer authorized by the Commissioner to write surety business in
40 this State, and maintained in force while the license remains in effect or any obligations or
41 liabilities of the applicant, licensee or PEO previously licensed by this State remain
42 outstanding.

43 (c) The surety bond required by this section may be exchanged or replaced with another
44 surety bond if (i) the surety bond applies to obligations and liabilities that arose during the
45 period of the original surety bond, (ii) the surety bond meets the requirements of this section,
46 and (iii) 90 days' advance written notice is provided to the Commissioner.

47 (d) ~~A licensee shall not require a client company to contribute in any manner to the~~
48 ~~payment of the surety bond required by this section.~~

49 "

50 **SECTION 15.(c)** G.S. 58-89A-60(b) reads as rewritten:

1 "(b) Every applicant shall file with the Commissioner ~~evidence of financial~~
2 ~~responsibility. Evidence of financial responsibility includes~~ an audited GAAP financial
3 statement, prepared as of a date not more than 90 days before the date of application that
4 demonstrates that the applicant or ~~licensee is not in a hazardous financial condition~~ licensee's
5 current assets exceed current liabilities and attached to which is a separate document signed by
6 the chief executive and the chief financial officer certifying that (i) each has reviewed the
7 financial statement; (ii) based on each signatory's knowledge, the financial statement does not
8 contain any untrue or misleading statement of material fact or omit a fact with respect to the
9 period covered by the financial statement; and (iii) based on each signatory's knowledge, the
10 financial statement fairly presents in all material respects the financial condition of the licensee
11 as of, and for, the period presented in the financial statement.

12 Notwithstanding the requirements of this subsection, the Commissioner may, in the
13 Commissioner's discretion, accept an audited GAAP financial statement that has been prepared
14 more than 90 days before submission to the Commissioner if the Commissioner deems such
15 acceptance appropriate. The Commissioner may, in the Commissioner's discretion, impose
16 conditions upon such acceptance of financial statements prepared more than 90 days prior to
17 submission.

18 The audited GAAP financial statement shall be prepared in accordance with generally
19 accepted accounting principles and audited by an independent certified public accountant
20 licensed to practice in the jurisdiction in which such accountant is located and shall be without
21 qualification as to the going concern status of the PEO. A PEO group may submit combined or
22 consolidated audited financial statements to meet the requirements of this section, except that a
23 PEO that has not had sufficient operating history to have audited financial statements based
24 upon at least 12 months of operating history must meet the financial capacity requirements of
25 this subsection and present financial statements reviewed by a certified public accountant."

26 **SECTION 15.(d)** G.S. 58-89A-85 reads as rewritten:

27 "**§ 58-89A-85. Supervision; rehabilitation; liquidation.**

28 If at any time the Commissioner determines, after notice and an opportunity for the licensee
29 to be heard, that a licensee (i) has been or will be unable, in such a manner as may endanger the
30 ability of the licensee, to fully perform its obligations pursuant to this Article or (ii) is ~~bankrupt~~
31 ~~or in a hazardous financial condition, bankrupt,~~ the Commissioner may either (i) commence a
32 supervision proceeding pursuant to Article 30 of this Chapter or (ii) apply to the Superior Court
33 of Wake County or to the federal bankruptcy court that has previously taken jurisdiction over
34 the licensee, if applicable, for an order directing the Commissioner or authorizing the
35 Commissioner to rehabilitate or to liquidate a licensee in accordance with Article 30 of this
36 Chapter."

37 **SECTION 15.(e)** G.S. 58-89A-95 reads as rewritten:

38 "**§ 58-89A-95. Agreement; notice.**~~Agreement.~~

39 (a) A licensee shall establish the terms of a PEO agreement by a written contract
40 between the licensee and the client company.

41 (b) The licensee shall give written notice of the agreement, by agreement or otherwise,
42 as it affects assigned employees to each employee assigned to a client company work site. ~~This~~
43 ~~written notice shall be given to each assigned employee not later than the first payday after the~~
44 ~~date on which that individual becomes an assigned employee.~~

45 ~~(c) The licensee shall give each employee written notice when the employee ceases to~~
46 ~~be an employee of the licensee."~~

47 **SECTION 15.(f)** G.S. 58-89A-100 reads as rewritten:

48 "**§ 58-89A-100. Contract requirements.**

49 A contract between a licensee and a client company shall provide:

50 (1) ~~That the licensee reserves a right of direction and control over employees~~
51 ~~assigned to a client company's work sites. However, a~~ Unless otherwise

1 expressly agreed by a professional employer organization and a client
2 company in a PEO agreement, the client company ~~may retain such sufficient~~
3 retains the exclusive right of direction and control over the assigned
4 employees as is necessary to conduct the client company's business and
5 without which the client company would be unable to conduct its business,
6 to discharge any fiduciary responsibility that it may have, or to comply with
7 any applicable licensure, regulatory, or statutory requirement of the client
8 company. ~~company or an assigned employee.~~ The PEO agreement shall
9 provide that employment responsibilities not allocated to the licensee by the
10 PEO agreement or this section remain with the client company.

- 11 (2) That the licensee assumes responsibility for the payment of wages to the
12 assigned employees as agreed to in the PEO agreement.
- 13 (3) That the licensee assumes responsibility for the payment of payroll taxes and
14 collection of taxes from payroll on assigned employees.
- 15 (4) ~~That the licensee reserves a right to hire, fire, and discipline the assigned~~
16 ~~employees.~~ That the licensee shall have a right to hire, discipline, and
17 terminate an assigned employee as may be necessary to fulfill the licensee's
18 responsibilities under this Chapter and a PEO agreement. The client
19 company shall have a right to hire, discipline, and terminate an assigned
20 employee.
- 21 (5) That the licensee retains a right of direction and control over the adoption of
22 employment policies and the management of workers' compensation claims,
23 claim filings, and related procedures in accordance with applicable federal
24 laws and the laws of this State.
- 25 (6) That responsibility to obtain workers' compensation coverage for assigned
26 employees, from an entity authorized to do business in this State and
27 otherwise in compliance with all applicable requirements, shall be
28 specifically allocated in the PEO agreement to either the client company or
29 the licensee. If the responsibility is allocated to the licensee under any such
30 agreement, that agreement shall require that the licensee maintain and
31 provide to the client company, at the termination of the agreement if
32 requested by the client company, records regarding the loss experience
33 related to workers' compensation insurance provided to assigned employees
34 pursuant to the agreement."

35 **SECTION 15.(g)** G.S. 58-89A-145 reads as rewritten:

36 **"§ 58-89A-145. Examinations.**

37 (a) The Commissioner may conduct an examination of a licensee as often as the
38 Commissioner considers appropriate.

39 (b) An examination under this Article shall be conducted in accordance with the
40 Examination Law of this Chapter, G.S. 58-2-131 through G.S. 58-2-134.

41 (c) In lieu of an examination of any foreign or alien person licensed under this Article,
42 the Commissioner may, in the Commissioner's discretion, accept an examination report on the
43 licensee prepared by the appropriate regulator for the licensee's state of domicile.

44 (d) When making an examination under this Article, the Commissioner may retain
45 attorneys, appraisers, independent actuaries, independent certified public accountants, or other
46 professionals and specialists as examiners, the reasonable cost of which ~~shall be borne by the~~
47 ~~licensee that is the subject of the examination, may only be recovered pursuant to~~
48 G.S. 58-89A-65(d)."

49 **SECTION 15.(h)** G.S. 58-89A-155(a)(4) is repealed.

50 **SECTION 15.(i)** This section becomes effective October 1, 2013.

CHILD CARE PROVIDERS' CRIMINAL HISTORY CHECKS

SECTION 16.(a) G.S. 110-90.2(a) is amended by adding a new subdivision to read:

"(3a) "Provisional provider" means an employee who has started the preservice criminal records check process to be hired and who is waiting for a determination letter from the Department. A provisional provider may be hired, begin orientation and training, and be counted in the staff to child ratio so long as the provisional provider is accompanied by a qualified child care provider when supervising any child and is clearly identifiable as a provisional provider by means of a lanyard, name tag, or clothing. An existing employee who is subject to a criminal records check every three years in accordance with this section shall be treated as a provisional provider during the pendency of the criminal record check process."

SECTION 16.(b) G.S. 110-90.2 is amended by adding a new subsection to read:

"(h) The check of the State and National Repositories for the criminal history of a person required to be conducted by this section and directed to the State Bureau of Investigation shall be completed within 15 calendar days of the receipt of the request from the Department of Health and Human Services. The criminal history check of a person required to be conducted by the Department of Health and Human Services by this section shall be completed within 15 calendar days of the receipt of the application from the child care provider."

SCHOOL BUSES FOR AGRICULTURAL PURPOSES

SECTION 18.(a) G.S. 20-4.01 reads as rewritten:

"§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

...

(2a) Class A Motor Vehicle. – A combination of motor vehicles that meets either of the following descriptions:

- a. Has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
- b. Has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2b) Class B Motor Vehicle. – Any of the following:

- a. A single motor vehicle that has a GVWR of at least 26,001 pounds.
- b. A combination of motor vehicles that includes as part of the combination a towing unit that has a GVWR of at least 26,001 pounds and a towed unit that has a GVWR of less than 10,001 pounds.

(2c) Class C Motor Vehicle. – Any of the following:

- a. A single motor vehicle not included in Class B.
- b. A combination of motor vehicles not included in Class A or Class B.
- c. A vehicle originally manufactured as a school bus that is in operation for agricultural purposes with a GVWR of less than 26,501 pounds.

...."

SECTION 18.(b) G.S. 20-7(a) reads as rewritten:

"(a) License Required. – To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and

1 must carry the license while driving the vehicle. The Division issues regular drivers licenses
2 under this Article and issues commercial drivers licenses under Article 2C.

3 A license authorizes the holder of the license to drive any vehicle included in the class of
4 the license and any vehicle included in a lesser class of license, except a vehicle for which an
5 endorsement is required. To drive a vehicle for which an endorsement is required, a person
6 must obtain both a license and an endorsement for the vehicle. A regular drivers license is
7 considered a lesser class of license than its commercial counterpart.

8 The classes of regular drivers licenses and the motor vehicles that can be driven with each
9 class of license are:

- 10 (1) Class A. – A Class A license authorizes the holder to drive any of the
11 following:
- 12 a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the
13 commercial drivers license requirements.
 - 14 b. A Class A motor vehicle that has a combined GVWR of less than
15 26,001 pounds and includes as part of the combination a towed unit
16 that has a GVWR of at least 10,001 pounds.
- 17 (2) Class B. – A Class B license authorizes the holder to drive any Class B
18 motor vehicle that is exempt under G.S. 20-37.16 from the commercial
19 drivers license requirements.
- 20 (3) Class C. – A Class C license authorizes the holder to drive any of the
21 following:
- 22 a. A Class C motor vehicle that is not a commercial motor vehicle.
 - 23 b. When operated by a volunteer member of a fire department, a rescue
24 squad, or an emergency medical service (EMS) in the performance of
25 duty, a Class A or Class B fire-fighting, rescue, or EMS motor
26 vehicle or a combination of these vehicles.
 - 27 c. A combination of noncommercial motor vehicles that have a GVWR
28 of more than 10,000 pounds but less than 26,001 pounds. This
29 sub-subdivision does not apply to a Class C license holder less than
30 18 years of age.
 - 31 d. A vehicle originally manufactured as a school bus that is in operation
32 for agricultural purposes with a GVWR of less than 26,501 pounds.

33 The Commissioner may assign a unique motor vehicle to a class that is different from the
34 class in which it would otherwise belong.

35 A person holding a commercial drivers license issued by another jurisdiction must apply for
36 a transfer and obtain a North Carolina issued commercial drivers license within 30 days of
37 becoming a resident. Any other new resident of North Carolina who has a drivers license issued
38 by another jurisdiction must obtain a license from the Division within 60 days after becoming a
39 resident."
40

41 **VETERANS PREFERENCE FOR PRIVATE EMPLOYERS**

42 **SECTION 19.** Article 3 of Chapter 95 of the General Statutes is amended by
43 adding a new section to read:

44 **"§ 95-28.4. Veterans preference.**

45 A private, nonpublic employer in the State may provide a preference to a veteran for
46 employment. Spouses of honorably discharged veterans who have a service-connected
47 permanent and total disability also may be preferred for employment. Granting of this
48 preference is not a violation of any State or local equal employment opportunity law."
49

50 **AGRICULTURAL RIGHT TO WORK**

51 **SECTION 20.** G.S. 95-79 reads as rewritten:

"§ 95-79. Certain agreements declared illegal.

(a) Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for said employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against the public policy and an illegal combination or conspiracy in restraint of trade or commerce in the State of North Carolina.

(b) Any provision that directly or indirectly conditions the purchase of agricultural products or the terms of an agreement for the purchase of agricultural products upon an agricultural producer's status as a union or nonunion employer or entry into or refusal to enter into an agreement with a labor union or labor organization is invalid and unenforceable as against public policy in restraint of trade or commerce in the State of North Carolina. For purposes of this subsection, the term "agricultural producer" means any producer engaged in any service or activity included within the provisions of Section 3(f) of the Fair Labor Standards Act of 1938, 29 U.S.C. § 203, or Section 3121(g) of the Internal Revenue Code of 1986, 26 U.S.C. § 3121.

EXCEPTIONS TO WEIGHT LIMITS FOR TRANSPORTATION OF CERTAIN AGRICULTURAL MATERIAL

SECTION 21. G.S. 20-118(c) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(12) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle combination that meets all of the conditions set out below:

- a. Is transporting any of the following items within 150 miles of the point of origination:
 1. Agriculture crop products transported from a farm to a processing plant or market.
 2. Water, fertilizer, pesticides, seeds, fuel, or animal waste transported to or from a farm by a farm vehicle as defined in G.S. 20-37.16(e)(3).
 3. Meats, livestock, or live poultry transported from the farm where they were raised to a processing plant or market.
 4. Forest products originating and transported from a farm or woodlands to market with delay interruption or delay for further packaging or processing after initiating transport.
 5. Wood residuals, including wood chips, sawdust, mulch, or tree bark from any site.
 6. Raw logs to market.
 7. Trees grown as Christmas trees from field, farm, stand, or grove to a processing point.
 8. Feed ingredients that are being transported to the livestock or poultry feed manufacturing or compounding facility and livestock and poultry by-products which are being transported from a livestock or poultry slaughter or processing plant.

CLARIFY AGRICULTURAL ZONING

SECTION 22.(a) G.S. 153A-340(b) reads as rewritten:

"§ 153A-340. Grant of power.

...

- 1 (b) (1) These regulations may affect property used for bona fide farm purposes only
2 as provided in subdivision (3) of this subsection. This subsection does not
3 limit regulation under this Part with respect to the use of farm property for
4 nonfarm purposes.
- 5 (2) Except as provided in G.S. 106-743.4 for farms that are subject to a
6 conservation agreement under G.S. 106-743.2, bona fide farm purposes
7 include the production and activities relating or incidental to the production
8 of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy,
9 livestock, poultry, and all other forms of ~~agriculture~~ agriculture, as defined
10 in G.S. 106-581.1. For purposes of this subdivision, "when performed on the
11 farm" in G.S. 106-581.1(6) shall include the farm within the jurisdiction of
12 the county and any other farm owned or leased to or from others by the bona
13 fide farm operator, no matter where located. For purposes of this
14 subdivision, the production of a nonfarm product that the Department of
15 Agriculture and Consumer Services recognizes as a "Goodness Grows in
16 North Carolina" product that is produced on a farm subject to a conservation
17 agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes
18 of determining whether a property is being used for bona fide farm purposes,
19 any of the following shall constitute sufficient evidence that the property is
20 being used for bona fide farm purposes:
- 21 a. A farm sales tax exemption certificate issued by the Department of
22 Revenue.
 - 23 b. A copy of the property tax listing showing that the property is
24 eligible for participation in the present use value program pursuant to
25 G.S. 105-277.3.
 - 26 c. A copy of the farm owner's or operator's Schedule F from the owner's
27 or operator's most recent federal income tax return.
 - 28 d. A forest management plan.
 - 29 e. A Farm Identification Number issued by the United States
30 Department of Agriculture Farm Service Agency.
- 31 (3) The definitions set out in G.S. 106-802 apply to this subdivision. A county
32 may adopt zoning regulations governing swine farms served by animal waste
33 management systems having a design capacity of 600,000 pounds steady
34 state live weight (SSLW) or greater provided that the zoning regulations
35 may not have the effect of excluding swine farms served by an animal waste
36 management system having a design capacity of 600,000 pounds SSLW or
37 greater from the entire zoning jurisdiction."

38 **SECTION 22.(b)** G.S. 106-581.1 reads as rewritten:

39 **"§ 106-581.1. Agriculture defined.**

40 For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to
41 all of the following:

- 42 (1) The cultivation of soil for production and harvesting of crops, including but
43 not limited to fruits, vegetables, sod, flowers and ornamental plants.
- 44 (2) The planting and production of trees and timber.
- 45 (3) Dairying and the raising, management, care, and training of livestock,
46 including horses, bees, poultry, and other animals for individual and public
47 use, consumption, and marketing.
- 48 (4) Aquaculture as defined in G.S. 106-758.
- 49 (5) The operation, management, conservation, improvement, and maintenance
50 of a farm and the structures and buildings on the farm, including building

1 and structure repair, replacement, expansion, and construction incident to the
2 farming operation.

3 (6) When performed on the farm, "agriculture", "agricultural", and "farming"
4 also include the marketing and selling of agricultural products, agritourism,
5 the storage and use of materials for agricultural purposes, packing, treating,
6 processing, sorting, storage, and other activities performed to add value to
7 crops, livestock, and agricultural items produced on the farm, and similar
8 activities incident to the operation of a farm.

9 (7) A public or private grain warehouse or warehouse operation where grain is
10 held 10 days or longer and includes, but is not limited to, all buildings,
11 elevators, equipment, and warehouses consisting of one or more warehouse
12 sections and considered a single delivery point with the capability to receive,
13 load out, weigh, dry, and store grain."

15 W/C/TAXI DRIVER/INDEPENDENT CONTRACTOR

16 SECTION 23.(a) Article 1 of Chapter 97 of the General Statutes is amended by
17 adding a new section to read:

18 "§ 97-5.1. Presumption that taxicab drivers are independent contractors.

19 (a) It shall be a rebuttable presumption under this Chapter that any person who
20 operates, and who has an ownership or leasehold interest in, a passenger motor vehicle that is
21 operated as a taxicab is an independent contractor for the purposes of this Chapter and not an
22 employee as defined in G.S. 97-2. The presumption is not rebutted solely (i) because the
23 operator is required to comply with rules and regulations imposed on taxicabs by the local
24 governmental unit that licenses companies, taxicabs, or operators or (ii) because a taxicab
25 accepts a trip request to be at a specific place at a specific time, but the presumption may be
26 rebutted by application of the common law test for determining employment status.

27 (b) The following definitions apply in this section:

28 (1) Lease. – A contract under which the lessor provides a vehicle to a lessee for
29 consideration.

30 (2) Leasehold. – Includes, but is not limited to, a lease for a shift or a longer
31 period.

32 (3) Passenger motor vehicle that is operated as a taxicab. – Any vehicle that:

33 a. Has a passenger seating capacity that does not exceed seven persons
34 and

35 b. Is transporting persons, property, or both on a route that begins or
36 ends in this State and either:

37 1. Carries passengers for hire when the destination and route
38 traveled may be controlled by a passenger and the fare is
39 calculated on the basis of any combination of an initial fee,
40 distance traveled, or waiting time; or

41 2. Is in use under a contract between the operator and a third
42 party to provide specific service to transport designated
43 passengers or to provide errand services to locations selected
44 by the third party."

45 SECTION 23.(b) This section is effective when it becomes law and applies to
46 persons affected on or after that date.

48 PART IV. ENVIRONMENTAL AND PUBLIC HEALTH REGULATIONS

50 SCRAP TIRE DISPOSAL

51 SECTION 25. G.S. 130A-309.57 reads as rewritten:

1 **"§ 130A-309.57. Scrap tire disposal program.**

2 (a) The owner or operator of any scrap tire collection site shall, within six months after
3 October 1, 1989, provide the Department with information concerning the site's location, size,
4 and the approximate number of scrap tires that are accumulated at the site and shall initiate
5 steps to comply with subsection (b) of this section.

6 (b) On or after July 1, 1990:

7 (1) A person may not maintain a scrap tire collection site or a scrap tire disposal
8 site unless the site is permitted.

9 (2) It is unlawful for any person to dispose of scrap tires in the State unless the
10 scrap tires are disposed of at a scrap tire collection site or at a tire disposal
11 site, or disposed of for processing at a scrap tire processing facility.

12 (c) The Commission shall adopt rules to carry out the provisions of this section. Such
13 rules shall:

14 (1) Provide for the administration of scrap tire collector and collection center
15 permits and scrap tire disposal site permits, which may not exceed two
16 hundred fifty dollars (\$250.00) annually.

17 (2) Set standards for scrap tire processing facilities and associated scrap tire
18 sites, scrap tire collection centers, and scrap tire collectors.

19 (3) Authorize the final disposal of scrap tires at a permitted solid waste disposal
20 facility provided the tires have been cut into sufficiently small parts to assure
21 their proper disposal.

22 (4) ~~Provide that permitted scrap tire collectors may not contract with a scrap tire
23 processing facility unless the processing facility documents that it has access
24 to a facility permitted to receive scrap tires.~~

25 (d) A permit is not required for:

26 (1) A tire retreading business where fewer than 1,000 scrap tires are kept on the
27 business premises;

28 (2) A business that, in the ordinary course of business, removes tires from motor
29 vehicles if fewer than 1,000 of these tires are kept on the business premises;
30 or

31 (3) A retail tire-selling business which is serving as a scrap tire collection center
32 if fewer than 1,000 scrap tires are kept on the business premises.

33 (e) The Department shall encourage the voluntary establishment of scrap tire collection
34 centers at retail tire-selling businesses, scrap tire processing facilities, and solid waste disposal
35 facilities, to be open to the public for the deposit of used and scrap tires. The Department may
36 establish an incentives program for individuals to encourage them to return their used or scrap
37 tires to a scrap tire collection center.

38 (f) Permitted scrap tire collectors may not contract with a scrap tire processing facility
39 unless the processing facility documents that it has access to a facility permitted to receive the
40 scrap tires."

41
42 **CARBON MONOXIDE DETECTORS**

43 **SECTION 26.** G.S. 143-138 reads as rewritten:

44 **"§ 143-138. North Carolina State Building Code.**

45 ...

46 (b2) ~~The Code~~ Code (i) may contain provisions requiring the installation of either
47 battery-operated or electrical carbon monoxide detectors in every dwelling unit having a
48 fossil-fuel burning heater, appliance, or fireplace, and in any dwelling unit having an attached
49 garage-garage and (ii) shall contain provisions requiring the installation of electrical carbon
50 monoxide detectors at a lodging establishment. Violations of this subsection and rules adopted

1 pursuant to this subsection shall be punishable in accordance with subsection (h) of this section
2 and G.S. 143-139. In particular, the rules shall provide:

3 (1) For dwelling units, carbon~~Carbon~~ monoxide detectors shall be those listed
4 by a nationally recognized testing laboratory that is OSHA-approved to test
5 and certify to American National Standards Institute/Underwriters
6 Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be
7 installed in accordance with either the standard of the National Fire
8 Protection Association or the minimum protection designated in the
9 manufacturer's instructions, which the property owner shall retain or provide
10 as proof of compliance. A carbon monoxide detector may be combined with
11 smoke detectors if the combined detector does both of the following: (i)
12 complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms
13 and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner
14 that clearly differentiates between detecting the presence of carbon
15 monoxide and the presence of smoke.

16 (2) For lodging establishments, carbon monoxide detectors shall be installed in
17 every enclosed space having a fossil fuel burning heater, appliance, or
18 fireplace and in any enclosed space, including a sleeping room, that shares a
19 common wall, floor, or ceiling with an enclosed space having a fossil fuel
20 burning heater, appliance, or fireplace. Carbon monoxide detectors shall be
21 (i) listed by a nationally recognized testing laboratory that is
22 OSHA-approved to test and certify to American National Standards
23 Institute/Underwriters Laboratories Standards ANSI/UL2034 or
24 ANSI/UL2075, (ii) installed in accordance with either the standard of the
25 National Fire Protection Association or the minimum protection designated
26 in the manufacturer's instructions, which the lodging establishment shall
27 retain or provide as proof of compliance, (iii) receive primary power from
28 the building's wiring, where such wiring is served from a commercial source,
29 and (iv) receive power from a battery when primary power is interrupted. A
30 carbon monoxide detector may be combined with smoke detectors if the
31 combined detector complies with the requirements of this subdivision for
32 carbon monoxide alarms and ANSI/UL217 for smoke detectors. For
33 purposes of this subsection, "lodging establishment" means any hotel, motel,
34 tourist home, or other establishment permitted under authority of
35 G.S. 130A-248 to provide lodging accommodations for pay to the public.

36"

37 38 LAGOON CLOSURE RULE

39 **SECTION 27.(a)** The definitions set out in G.S. 143-212, 15A NCAC 02T .0103
40 (Definitions) and 15A NCAC 02T .1302 (Definitions) apply to this section.

41 **SECTION 27.(b)** 15A NCAC 02T .1306 (Closure Requirements). – Until the
42 effective date of the revised permanent rule that the Commission is required to adopt pursuant
43 to Section 27(d) of this act, the Commission and the Department shall implement 15A NCAC
44 02T .1306 (Closure Requirements) as provided in Section 27(c) of this act.

45 **SECTION 27.(c)** Implementation. – Notwithstanding 15A NCAC 02T .1306
46 (Closure Requirements), any containment basin, such as a lagoon or a waste storage structure,
47 permitted at a cattle facility under the Section 1300 Rules, shall continue to be subject to the
48 conditions and requirements of the facility's permit until that permit is rescinded by the
49 Division. Upon request of the permittee, the permit may be rescinded by the Division prior to
50 closure of the containment basin if the average size of the confined cattle herd at the cattle
51 facility, calculated on an annual basis during the three years prior to the request for rescission,

1 is less than one hundred confined cattle. Upon permit rescission, all of the following
2 requirements shall apply:

- 3 (1) The cattle facility shall be subject to the requirements of 15A NCAC 02T
4 .1303 (Permitting By Regulation) and 15A NCAC 02T .0113 (Permitting By
5 Regulation) until the containment area is closed in accordance with
6 standards adopted by the NRCS.
- 7 (2) The farm owner shall maintain records of land application and weekly
8 records of containment basin waste levels on forms provided by or approved
9 by the Division.
- 10 (3) Closure shall include prenotification to the Division and, within 15 days of
11 completion of closure, submittal of a closure form supplied by the Division
12 or closure forms approved by the Division that provide the same information
13 required by the forms supplied by the Division.

14 The Division shall have the authority to deny a request for permit rescission based on the
15 factors set out in subsection (e) of 15A NCAC 02T .0113 (Permitting By Regulation).

16 **SECTION 27.(d)** Additional Rule-Making Authority. – The Commission shall
17 adopt a rule to amend 15A NCAC 02T .1306 (Closure Requirements) consistent with Section
18 27(c) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission
19 pursuant to this section shall be substantively identical to the provisions of Section 27(c) of this
20 act. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter
21 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as
22 provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as
23 provided by G.S. 150B-21.3(b2).

24 **SECTION 27.(e)** Sunset. – Section 27(c) of this act expires on the date that rules
25 adopted pursuant to Section 27(d) of this act become effective.

26 **SECTION 28.(a)** 15A NCAC 02T .1302 (Definitions). – Until the effective date of
27 the revised permanent rule that the Environmental Management Commission is required to
28 adopt pursuant to Section 28(c) of this act, the Commission and the Department of
29 Environment and Natural Resources shall implement 15A NCAC 02T .1302 (Definitions) as
30 provided in Section 28(b) of this act.

31 **SECTION 28.(b)** Implementation. – Notwithstanding 15A NCAC 02T .1302
32 (Definitions), "new animal waste management system" means animal waste management
33 systems which are constructed and operated at a site where no feedlot existed previously, where
34 a system serving a feedlot has been abandoned or unused for a period of four years or more and
35 is then put back into service, or where a permit for a system has been rescinded, and is then
36 reissued when the permittee confines animals in excess of the thresholds established in
37 G.S. 143-215.10B.

38 **SECTION 28.(c)** Additional Rule-Making Authority. – The Environmental
39 Management Commission shall adopt a rule to amend 15A NCAC 02T .1302 (Definitions)
40 consistent with Section 28(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by
41 the Commission pursuant to this section shall be substantively identical to the provisions of
42 Section 28(b) of this act. Rules adopted pursuant to this section are not subject to Part 3 of
43 Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall
44 become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections
45 had been received as provided by G.S. 150B-21.3(b2).

46 **SECTION 28.(d)** Sunset. – Section 28(b) of this act expires on the date that rules
47 adopted pursuant to Section 28(c) of this act become effective.

49 **RECLAIMED WATER IRRIGATION SETBACK RULE**

50 **SECTION 29.(a)** The definitions set out in G.S. 143-212 and 15A NCAC 02U
51 .0103 (Definitions) apply to this section.

1 **SECTION 29.(b)** 15A NCAC 02U .0701 (Setbacks). – Until the effective date of
2 the revised permanent rule that the Commission is required to adopt pursuant to Section 29(d)
3 of this act, the Commission and the Department shall implement 15A NCAC 02U .0701
4 (Setbacks) as provided in Section 29(c) of this act.

5 **SECTION 29.(c)** Implementation. – Notwithstanding 15A NCAC 02U .0701
6 (Setbacks), the rule shall be implemented as provided in this section.

7 (1) Setbacks in subsection (c) of the rule for surface waters not classified as SA
8 shall not apply provided that the reclaimed water to be utilized contains no
9 more than 10 mg/l of Total Nitrogen and no more than 2 mg/l of Total
10 Phosphorus. The elimination of setbacks to surface waters does not exempt
11 any discharge of reclaimed water to waters of the State from meeting permit
12 requirements established in 15A NCAC 02U .0101 (Purpose).

13 (2) Notwithstanding subsections (a) and (b) of the rule, no setback shall be
14 required between final reclaimed water effluent storage facilities and
15 property lines provided that the proposed final effluent storage facility was
16 constructed prior to June 18, 2011.

17 (3) Setbacks between reclaimed water storage ponds and property lines or wells
18 under separate ownership may be waived by the adjoining property owner. A
19 copy of the signed waiver shall be provided to the Department.

20 (4) Setbacks between reclaimed water storage ponds and wells under the same
21 ownership as the reclaimed water storage pond may be waived by the
22 property owner.

23 **SECTION 29.(d)** Additional Rule-Making Authority. – The Environmental
24 Management Commission shall adopt a rule to amend 15A NCAC 02U .0701 (Setbacks)
25 consistent with Section 29(c) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by
26 the Commission pursuant to this section shall be substantively identical to the provisions of
27 Section 29(c) of this act. Rules adopted pursuant to this section are not subject to Part 3 of
28 Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall
29 become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections
30 had been received as provided by G.S. 150B-21.3(b2).

31 **SECTION 29.(e)** Sunset. – Section 29(c) of this act expires on the date that rules
32 adopted pursuant to Section 29(d) of this act become effective.

33 34 **SMOKING BAN RULES**

35 **SECTION 30.** No later than January 1, 2014, the Commission for Public Health
36 shall amend and clarify its rules adopted pursuant to G.S. 130A-497 for the implementation of
37 the prohibition on smoking in restaurants and bars. The rules shall ensure the consistent
38 interpretation and enforcement of Part 1C of Article 23 of Chapter 130A of the General
39 Statutes and shall specifically clarify the definition of enclosed areas for purposes of
40 implementation of the Part. Rules adopted pursuant to this section (i) shall be exempt from the
41 requirements of G.S. 150B-21.4, (ii) are not subject to Part 3 of Article 2A of Chapter 150B of
42 the General Statutes, and (iii) shall become effective as provided in G.S. 150B-21.3(b1) as
43 though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2). No
44 later than November 1, 2013, the Commission shall report to the Joint Legislative Oversight
45 Committee on Health and Human Services on its progress in amending and clarifying the rules.

46 47 **PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

48 **SECTION 31.** If any provision of this act or its application is held invalid, the
49 invalidity does not affect other provisions or applications of this act that can be given effect
50 without the invalid provisions or application, and to this end the provisions of this act are
51 severable.

1 **SECTION 32.** Except as otherwise provided, this act is effective when it becomes
2 law.