

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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**SENATE BILL 786
Commerce Committee Substitute Adopted 5/20/14**

Short Title: Energy Modernization Act.

(Public)

Sponsors:

Referred to:

May 19, 2014

A BILL TO BE ENTITLED

1 AN ACT TO (1) EXTEND THE DEADLINE FOR DEVELOPMENT OF A MODERN
2 REGULATORY PROGRAM FOR THE MANAGEMENT OF OIL AND GAS
3 EXPLORATION, DEVELOPMENT, AND PRODUCTION IN THE STATE AND THE
4 USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING
5 TREATMENTS FOR THAT PURPOSE; (2) ENACT OR MODIFY CERTAIN
6 EXEMPTIONS FROM REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE
7 ACT APPLICABLE TO RULES FOR THE MANAGEMENT OF OIL AND GAS
8 EXPLORATION, DEVELOPMENT, AND PRODUCTION IN THE STATE AND THE
9 USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING
10 TREATMENTS FOR THAT PURPOSE; (3) ESTABLISH A DATE CERTAIN OF JULY
11 1, 2015, FOR ISSUANCE FOR PERMITS FOR OIL AND GAS EXPLORATION,
12 DEVELOPMENT, AND PRODUCTION ACTIVITIES; (4) CREATE THE NORTH
13 CAROLINA OIL AND GAS COMMISSION AND RECONSTITUTE THE NORTH
14 CAROLINA MINING COMMISSION; (5) AMEND MISCELLANEOUS STATUTES
15 GOVERNING OIL AND GAS EXPLORATION, DEVELOPMENT, AND
16 PRODUCTION ACTIVITIES; (6) ESTABLISH A SEVERANCE TAX APPLICABLE TO
17 OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ACTIVITIES;
18 (7) AMEND MISCELLANEOUS STATUTES UNRELATED TO OIL AND GAS
19 EXPLORATION, DEVELOPMENT, AND PRODUCTION ACTIVITIES; AND (8)
20 DIRECT STUDIES ON VARIOUS ISSUES, AS RECOMMENDED BY THE JOINT
21 LEGISLATIVE COMMISSION ON ENERGY POLICY.
22

23 The General Assembly of North Carolina enacts:

24
25 **PART I. EXTENSION OF RULE DEVELOPMENT DEADLINE**

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

27 **"SECTION 2.(m)** All rules required to be adopted by the Mining and Energy Commission,
28 the Environmental Management Commission, and the Commission for Public Health pursuant
29 to this act shall be adopted no later than ~~October 1, 2014~~ January 1, 2015. In order to provide
30 for the orderly, efficient, and effective development and adoption of rules and to prevent the
31 adoption of duplicative, inconsistent, or inadequate rules by these Commissions, the
32 Department of Environment and Natural Resources shall coordinate the adoption of the rules.
33 The Commissions and the Department shall develop the rules in an open and collaborative
34 process that includes (i) input from scientific and technical advisory groups; (ii) consultation
35 with the North Carolina League of Municipalities, the North Carolina Association of County
36 Commissioners, the Division of Energy of the Department of Commerce, the Department of



1 Transportation, the Division of Emergency Management of the Department of Public Safety,
2 the Consumer Protection Division of the Department of Justice, the Department of Labor, the
3 Department of Health and Human Services, the State Review of Oil and Natural Gas
4 Environmental Regulations (STRONGER), the American Petroleum Institute (API), and the
5 Rural Advancement Foundation (RAFI-USA); and (iii) broad public participation. During the
6 development of the rules, the Commissions and the Department shall identify changes required
7 to all existing rules and statutes necessary for the implementation of this act, including repeal or
8 modification of rules and statutes. Until such time as all of the rules are adopted pursuant to this
9 act, the Department shall submit quarterly reports to the Joint Legislative Commission on
10 Energy Policy, created under Section 6(a) of this act, and the Environmental Review
11 Commission on its progress in developing and adopting the rules. The quarterly reports shall
12 include recommendations on changes required to existing rules and statutes and any other
13 findings or recommendations necessary for the implementation of this act. The first report
14 required by this subsection is due January 1, 2013."
15

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

17 **SECTION 2.(a)** Notwithstanding G.S. 150B-21.3(b1) and Section 1(a) of S.L.
18 2013-365, all rules adopted pursuant to Section 2(m) of S.L. 2012-143 shall be subject to
19 legislative review during the next regular session of the General Assembly that begins after the
20 date the Rules Review Commission approved the rule or during the regular session that is
21 underway on the date the Commission approved the rule.

22 **SECTION 2.(b)** Notwithstanding G.S. 150B-21.3(b1) and any rule of either house
23 of the General Assembly, any member of the General Assembly may introduce a bill to
24 disapprove any rule adopted pursuant to Section 2(m) of S.L. 2012-143 that has been approved
25 by the Rules Review Commission and that either has not become effective or has become
26 effective by executive order, as follows: (i) if the Rules Review Commission approves the rule
27 prior to the start of a legislative session, during the first 30 calendar days of the regular session
28 of the General Assembly that begins after the date the Commission approved all rules adopted
29 pursuant to Section 2(m) of S.L. 2012-143 or (ii) if the Rules Review Commission approves the
30 rule during a legislative session, 30 calendar days from the date the Rules Review Commission
31 approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143.

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

- 35 (1) If the Rules Review Commission approves all rules adopted pursuant to
36 Section 2(m) of S.L. 2012-143 prior to the start of a legislative session, the
37 earlier of (i) the 31st calendar day of the regular session of the General
38 Assembly that begins after the date the Commission approved all rules
39 adopted pursuant to Section 2(m) of S.L. 2012-143 if a bill that specifically
40 disapproves any of these rules has not been introduced in either house of the
41 General Assembly by that date; (ii) if a bill that specifically disapproves a
42 rule is introduced in either house of the General Assembly before the 31st
43 calendar day of that session, the rule becomes effective on the earlier of
44 either the day an unfavorable final action is taken on the bill or the 61st
45 calendar day of that session if by that date a bill that specifically disapproves
46 the rule has not been ratified; or (iii) the day that session of the General
47 Assembly adjourns without ratifying a bill that specifically disapproves the
48 rule.
- 49 (2) If the Rules Review Commission approves all rules adopted pursuant to
50 Section 2(m) of S.L. 2012-143 during a legislative session, the earlier of (i)
51 the 31st calendar day after the date the Commission approved all rules

1 adopted pursuant to Section 2(m) of S.L. 2012-143 if a bill that specifically
2 disapproves a rule has not been introduced in either house of the General
3 Assembly by that date; (ii) if a bill that specifically disapproves a rule is
4 introduced in either house of the General Assembly within 30 calendar days
5 of the date that the Commission approved all rules adopted pursuant to
6 Section 2(m) of S.L. 2012-143, the rule becomes effective on the earlier of
7 either the day an unfavorable final action is taken on the bill or the 61st day
8 after the date that the Commission approved all rules adopted pursuant to
9 Section 2(m) of S.L. 2012-143 if by that date a bill that specifically
10 disapproves the rule has not been ratified; or (iii) the day that session of the
11 General Assembly adjourns without ratifying a bill that specifically
12 disapproves the rule.

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

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

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

22 "**SECTION 1.(b)** The Mining and Energy Commission, the Environmental Management
23 Commission, and the Commission for Public Health are exempt from the provisions of
24 Chapter 150B of the General Statutes that require the preparation of fiscal notes for any rule
25 proposed ~~for the creation of a modern regulatory program for that pertains to~~ the management
26 of oil and gas exploration and development activities in the State, including the use of
27 horizontal drilling and hydraulic fracturing for that purpose."

28 **SECTION 2.(g)** The Mining and Energy Commission, the Environmental
29 Management Commission, and the Commission for Public Health are exempt from the
30 provisions of Chapter 150B of the General Statutes that require that a certification be obtained
31 from the Office of State Budget and Management, including requirements under
32 G.S. 150B-19.1(h) and G.S. 150B-21.4, and any requirement for preliminary review by the
33 Office of State Budget and Management pursuant to G.S. 150B-21.26, for any rule proposed
34 for the creation of a modern regulatory program for the management of oil and gas exploration
35 and development activities in the State, including the use of horizontal drilling and hydraulic
36 fracturing for that purpose.

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

39 **PART III. DATE CERTAIN FOR ISSUANCE OF PERMITS TO JULY 1, 2015**

40 **SECTION 3.(a)** Effective July 1, 2015, the Department of Environment and
41 Natural Resources and the Mining and Energy Commission are authorized to issue permits for
42 oil and gas exploration, development, and production activities using horizontal drilling and
43 hydraulic fracturing treatments in the State pursuant to G.S. 113-395.

44 **SECTION 3.(b)** Section 3(d) of S.L. 2012-143 is repealed.

45 **SECTION 3.(c)** Section 1(c) of S.L. 2013-365 is repealed.

46 **PART IV. CREATE OIL AND GAS COMMISSION AND RECONSTITUTE MINING** 47 **COMMISSION**

48 **SECTION 4.(a)** Part 6A of Article 7 of Chapter 143B of the General Statutes reads
49 as rewritten:
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1 "Part 6A. North Carolina ~~Mining and Energy~~ Oil and Gas Commission.

2 "**§ 143B-293.1. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – creation;**
3 **powers and duties.**

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

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

18 (c) The Commission shall submit ~~quarterly~~ annual written reports as to its operation,
19 activities, programs, and progress to the Joint Legislative Commission on Energy Policy and
20 the Environmental Review Commission. The Commission shall supplement the written reports
21 required by this subsection with additional written and oral reports as may be requested by the
22 Joint Legislative Commission on Energy Policy and the Environmental Review Commission.
23 The Commission shall submit the written reports required by this subsection whether or not the
24 General Assembly is in session at the time the report is due.

25 "**§ 143B-293.2. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – members;**
26 **selection; removal; compensation; quorum; services.**

27 (a) ~~Members Selection.~~ The North Carolina ~~Mining and Energy~~ Oil and Gas Commission shall
28 consist of 15 members appointed as follows:

- 29 (1) ~~The Chair of the North Carolina State University Minerals Research~~
30 ~~Laboratory Advisory Committee, or the Chair's designee, ex officio.~~
- 31 (2) ~~The State Geologist, or other designee of the Secretary of Environment and~~
32 ~~Natural Resources.~~
- 33 (3) ~~Repealed by Session Laws 2013-365, s. 3(a), effective July 29, 2013.~~
- 34 (3a) ~~One appointed by the Governor, at large.~~
- 35 (4) ~~One appointed by the General Assembly upon recommendation of the~~
36 ~~Speaker of the House of Representatives who is a member of a~~
37 ~~nongovernmental conservation interest.~~
- 38 (5) ~~One appointed by the General Assembly upon recommendation of the~~
39 ~~Speaker of the House of Representatives who, at the time of initial~~
40 ~~appointment, is an elected official of a municipal government located in a~~
41 ~~region of North Carolina that has oil and gas potential. A person serving in~~
42 ~~this seat may complete a term on the Commission even if the person is no~~
43 ~~longer serving as an elected official of a municipal government but may not~~
44 ~~be reappointed to a subsequent term.~~
- 45 (6) ~~One appointed by the General Assembly upon recommendation of the~~
46 ~~Speaker of the House of Representatives who is a representative of the~~
47 ~~mining industry.~~
- 48 (7) ~~One appointed by the General Assembly upon recommendation of the~~
49 ~~Speaker of the House of Representatives who shall be a geologist with~~
50 ~~experience in oil and gas exploration and development.~~

- 1 ~~(8) One appointed by the General Assembly upon recommendation of the~~
2 ~~President Pro Tempore of the Senate who is a member of a nongovernmental~~
3 ~~conservation interest.~~
- 4 ~~(9) One appointed by the General Assembly upon recommendation of the~~
5 ~~President Pro Tempore of the Senate who, at the time of initial appointment,~~
6 ~~is a member of a county board of commissioners of a county located in a~~
7 ~~region of North Carolina that has oil and gas potential. A person serving in~~
8 ~~this seat may complete a term on the Commission even if the person is no~~
9 ~~longer serving as county commissioner but may not be reappointed to a~~
10 ~~subsequent term.~~
- 11 ~~(10) One appointed by the General Assembly upon recommendation of the~~
12 ~~President Pro Tempore of the Senate who is a representative of the mining~~
13 ~~industry.~~
- 14 ~~(11) One appointed by the General Assembly upon recommendation of the~~
15 ~~President Pro Tempore of the Senate who shall be an engineer with~~
16 ~~experience in oil and gas exploration and development.~~
- 17 ~~(12) One appointed by the Governor who shall be a representative of a publicly~~
18 ~~traded natural gas company.~~
- 19 ~~(13) One appointed by the Governor who shall be a licensed attorney with~~
20 ~~experience in legal matters associated with oil and gas exploration and~~
21 ~~development.~~
- 22 ~~(14) One appointed by the Governor who is a member of the Environmental~~
23 ~~Management Commission.~~
- 24 ~~(15) One appointed by the Governor who is a member of the Commission for~~
25 ~~Public Health.~~

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

- 28 (1) One appointed by the General Assembly upon recommendation of the
29 Speaker of the House of Representatives who, at the time of initial
30 appointment, is an elected official of a municipal government located in a
31 region of North Carolina that has oil and gas potential. A person serving in
32 this seat may complete a term on the Commission even if the person is no
33 longer serving as an elected official of a municipal government but may not
34 be reappointed to a subsequent term.
- 35 (2) One appointed by the General Assembly upon recommendation of the
36 Speaker of the House of Representatives who shall be a geologist with
37 experience in oil and gas exploration and development.
- 38 (3) One appointed by the General Assembly upon recommendation of the
39 Speaker of the House of Representatives who is a member of a
40 nongovernmental conservation interest.
- 41 (4) One appointed by the General Assembly upon recommendation of the
42 President Pro Tempore of the Senate who, at the time of initial appointment,
43 is a member of a county board of commissioners of a county located in a
44 region of North Carolina that has oil and gas potential. A person serving in
45 this seat may complete a term on the Commission even if the person is no
46 longer serving as county commissioner but may not be reappointed to a
47 subsequent term.
- 48 (5) One appointed by the General Assembly upon recommendation of the
49 President Pro Tempore of the Senate who is a member of a nongovernmental
50 conservation interest.

- 1 (6) One appointed by the General Assembly upon recommendation of the
2 President Pro Tempore of the Senate who shall be an engineer with
3 experience in oil and gas exploration and development.
4 (7) One appointed by the Governor who shall be a representative of a publicly
5 traded natural gas company.
6 (8) One appointed by the Governor who shall be a licensed attorney with
7 experience in legal matters associated with oil and gas exploration and
8 development.
9 (9) One appointed by the Governor with experience in matters related to public
10 health.

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

23 (c) Vacancies; Removal from Office. –

- 24 (1) Any appointment by the Governor to fill a vacancy on the Commission
25 created by the resignation, dismissal, death, or disability of a member shall
26 be for the balance of the unexpired term. The Governor shall have the power
27 to remove any member of the Commission from office for misfeasance,
28 malfeasance, or nonfeasance in accordance with the provisions of
29 G.S. 143B-13 of the Executive Organization Act of 1973.
30 (2) Members appointed by the President Pro Tempore of the Senate and the
31 Speaker of the House of Representatives shall be made in accordance with
32 G.S. 120-121, and vacancies in those appointments shall be filled in
33 accordance with G.S. 120-122. In accordance with Section 10 of Article VI
34 of the North Carolina Constitution, a member may continue to serve until a
35 successor is duly appointed.

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

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

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

42 (g) Committees. – In addition to the Committee on Civil Penalty Remissions required to
43 be established under G.S. 143B-293.6, the chair may establish other committees from members
44 of the Commission to address specific issues as appropriate. No member of a committee may
45 hear or vote on any matter in which the member has an economic interest. A majority of a
46 committee shall constitute a quorum for the transaction of business. ~~At a minimum, the chair~~
47 ~~shall establish a Committee on Mining, which shall consist of members appointed under~~
48 ~~subdivisions (1), (4), (6), (8), (10), (14), and (15) of subsection (a) of this section. The~~
49 ~~Committee on Mining shall have exclusive responsibility and authority over matters pertaining~~
50 ~~to mining and implementation of the Mining Act of 1971, including all of the following powers~~
51 ~~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
6 Uranium 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
8 required by the federal government for grants in aid for mining resource
9 purposes which may be made available to the State by the federal
10 government. This section is to be liberally construed in order that the State
11 and its citizens may benefit from such grants in aid.

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

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

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

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

23 **"§ 143B-293.5. North Carolina ~~Mining and Energy-Oil and Gas~~ Commission – meetings.**

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

27 **"§ 143B-293.6. North Carolina ~~Mining and Energy-Oil and Gas~~ Commission –
28 quasi-judicial powers; procedures.**

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

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

- 37 (1) Whether one or more of the civil penalty assessment factors in subsection (b)
38 of this section were wrongly applied to the detriment of the petitioner.
39 (2) Whether the violator promptly abated continuing environmental damage
40 resulting from the violation.
41 (3) Whether the violation was inadvertent or a result of an accident.
42 (4) Whether the violator had been assessed civil penalties for any previous
43 violations.
44 (5) Whether payment of the civil penalty will prevent payment for the remaining
45 necessary remedial actions.

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

50 **SECTION 4.(b)** The terms of all members of the Mining and Energy Commission
51 serving on July 31, 2015, shall expire on that date. A new Oil and Gas Commission of nine

1 members shall be appointed in the manner provided by G.S. 143B-293.2(a1), as enacted by
2 Section 4(a) of this act, and this section. Members appointed in the manner provided by
3 G.S. 143B-293.2(a1), as enacted by Section 4(a) of this act, shall be appointed no later than
4 August 1, 2015.

5 **SECTION 4.(c)** The Revisor of Statutes shall make the conforming statutory
6 changes necessary to the General Statutes to reflect renaming of the Mining and Energy
7 Commission to the Oil and Gas Commission, effective August 1, 2015, as provided in this
8 section.

9 **SECTION 5.(a)** Part 6 of Article 7 of Chapter 143B of the General Statutes is
10 reenacted and reads as rewritten:

11 "Part 6. North Carolina Mining Commission.

12 **"§ 143B-290. North Carolina Mining Commission – creation; powers and duties.**

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

- 16 (1) The North Carolina Mining Commission shall have the following powers
17 and duties:
18 a. To act as the advisory body to the Governor pursuant to Article V(a)
19 of the Interstate Mining Compact, as set out in G.S. 74-37.
20 b. Repealed by Session Laws 2002-165, s. 1.10, effective October 23,
21 2002.
22 c. To hear permit appeals, conduct a full and complete hearing on such
23 controversies and affirm, modify, or overrule permit decisions made
24 by the Department pursuant to G.S. 74-61.
25 d. To promulgate rules necessary to administer the Mining Act of 1971,
26 pursuant to G.S. 74-63.
27 e. To promulgate rules necessary to administer the Control of
28 Exploration for Uranium in North Carolina Act of 1983, pursuant to
29 G.S. 74-86.
30 (2) The Commission is authorized to make such rules, not inconsistent with the
31 laws of this State, as may be required by the federal government for
32 grants-in-aid for mining resource purposes which may be made available to
33 the State by the federal government. This section is to be liberally construed
34 in order that the State and its citizens may benefit from such grants-in-aid.
35 (3) The Commission shall make such rules consistent with the provisions of this
36 Chapter. All rules adopted by the Commission shall be enforced by the
37 Department of Environment and Natural Resources.
38 (4) Recodified as § 74-54.1 by c. 1039, s. 16, effective July 24, 1992.

39 **"§ 143B-291. North Carolina Mining Commission – members; selection; removal;
40 compensation; quorum; services.**

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

- 44 ~~(1) One member who is the chair of the North Carolina State University~~
45 ~~Minerals Research Laboratory Advisory Committee, ex officio.~~
46 ~~(2) One member who is a representative of the mining industry.~~
47 ~~(3) One member who is a representative of the mining industry.~~
48 ~~(4) One member who is a representative of the mining industry.~~
49 ~~(5) One member who is a representative of nongovernmental conservation~~
50 ~~interests.~~

- 1 ~~(6) One member who is a representative of nongovernmental conservation~~
2 ~~interests.~~
- 3 ~~(7) One member who is a representative of nongovernmental conservation~~
4 ~~interests.~~
- 5 ~~(8) One who, at the time of the appointment to the Mining Commission, is a~~
6 ~~member of the Environmental Management Commission and knowledgeable~~
7 ~~in the principles of water and air resources management.~~
- 8 ~~(9) One who, at the time of the appointment to the Mining Commission, is a~~
9 ~~member of the Environmental Management Commission and knowledgeable~~
10 ~~in the principles of water and air resources management.~~
- 11 (a1) Members, Selection. – The North Carolina Mining Commission shall consist of
12 seven members appointed as follows:
- 13 (1) One member who is the chair of the North Carolina State University
14 Minerals Research Laboratory Advisory Committee.
- 15 (2) The State Geologist.
- 16 (3) One member appointed by the Governor who is a representative of the
17 mining industry.
- 18 (4) One member appointed by the General Assembly upon recommendation of
19 the Speaker of the House of Representatives who is a representative of the
20 mining industry.
- 21 (5) One member appointed by the General Assembly upon recommendation of
22 the President Pro Tempore of the Senate who is a representative of the
23 mining industry.
- 24 (6) One member appointed by the General Assembly upon recommendation of
25 the Speaker of the House of Representatives who is a member of
26 nongovernmental conservation interests.
- 27 (7) One member appointed by the General Assembly upon recommendation of
28 the President Pro Tempore of the Senate who is a member of
29 nongovernmental conservation interests.
- 30 (b) Terms. – The term of office of a member of the Commission is six years. At the
31 expiration of each member's term, the ~~Governor appointing authority~~ shall replace the member
32 with a new member of like qualifications for a term of six years. The term of ~~members the~~
33 ~~member~~ appointed under ~~subdivisions (2), (5), and (8) subdivision (5)~~ of subsection ~~(a)-(a1)~~ of
34 this section shall expire on ~~30-June 30~~ of years that precede by one year those years that are
35 evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of
36 subsection ~~(a)-(a1)~~ of this section shall expire on ~~30-June 30~~ of years that follow by one year
37 those years that are evenly divisible by six. The term of members appointed under subdivisions
38 ~~(4), (7), and (9)~~ (4) and (7) of subsection ~~(a)-(a1)~~ of this section shall expire on ~~30-June 30~~
39 of years that follow by three years those years that are evenly divisible by six. Upon the expiration
40 of a six-year term, a member may continue to serve until a successor is appointed and duly
41 qualified as provided by G.S. 128-7.
- 42 (c) Vacancies. – An appointment to fill a vacancy shall be for the unexpired balance of
43 the term.
- 44 (d) Removal. – The Governor may remove any member of the Commission from office
45 for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of
46 G.S. 143B-13.
- 47 (e) Compensation. – The members of the Commission shall receive per diem and
48 necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.
- 49 (f) Quorum. – A majority of the Commission shall constitute a quorum for the
50 transaction of business.

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

3 **"§ 143B-292. North Carolina Mining Commission – officers.**

4 The North Carolina Mining Commission shall have a chair and a vice-chair. The chair shall
5 be designated by the Governor from among the members of the Commission to serve as chair at
6 the pleasure of the Governor. The vice-chair shall be elected by and from the members of the
7 Commission and shall serve for a term of two years or until the expiration of the vice-chair's
8 regularly appointed term.

9 **"§ 143B-293. North Carolina Mining Commission – meetings.**

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

13 **SECTION 5.(b)** The terms of all members of the Mining and Energy Commission
14 serving on July 31, 2015, shall expire on that date. A new Mining Commission of seven
15 members shall be appointed in the manner provided by G.S. 143B-291(a1), as enacted by
16 Section 5(a) of this act, and this section. Members appointed in the manner provided by
17 G.S. 143B-291(a1), as enacted by Section 5(a) of this act, shall be appointed no later than
18 August 1, 2015.

19 **SECTION 5.(c)** The Revisor of Statutes shall make the conforming statutory
20 changes necessary to the General Statutes to reflect renaming of the Mining and Energy
21 Commission to the Mining Commission, effective August 1, 2015, as provided in this section.

22 **SECTION 6.** This Part becomes effective July 31, 2015.

23
24 **PART V. MISCELLANEOUS STATUTORY AMENDMENTS RELATED TO SHALE**
25 **GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION**

26 **SECTION 7.(a)** G.S. 113-391 reads as rewritten:

27 **"§ 113-391. Jurisdiction and authority; rules and orders.**

28 ...

29 (a5) Entry of rules in the North Carolina Administrative Code that address the areas
30 identified by subsections (a) and (a3) of this section by July 1, 2015, create a rebuttable
31 presumption that the rules are sufficient to meet the requirements for development of a modern
32 regulatory program pursuant to this section.

33"

34 **SECTION 7.(b)** G.S. 143B-293.1(b) reads as rewritten:

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

42 **SECTION 8.(a)** Article 27 of Chapter 113 of the General Statutes is amended by
43 adding a new section to read:

44 **"§ 113-391A. Trade secret and confidential information determination; protection;**
45 **retention; disclosure to emergency personnel.**

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

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

10 (c) Exceptions to Disclosure Prohibitions. – Confidential information obtained by the
11 Commission and the Department pursuant to this Article, and rules adopted thereunder, may be
12 disclosed to any officer, employee, or authorized representative of any federal or State agency
13 if disclosure is necessary to carry out a proper function of the Department or other agency or
14 when relevant in any proceeding under this Article. Confidential information shall be disclosed
15 to the following:

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

22 (2) A treating health care provider who determines that a medical emergency
23 exists and that the information is necessary for emergency or first aid
24 treatment. Regardless of the existence of a written statement of need or a
25 confidentiality agreement, the Department shall immediately disclose the
26 confidential information to the treating health care provider upon request. If
27 confidential information is disclosed pursuant to this subdivision, the
28 Department shall notify the owner of the confidential information as soon as
29 practicable, but no later than 24 hours after disclosure. The owner of the
30 confidential information may require execution of a written statement of
31 need and a confidentiality agreement from the treating health care provider
32 as soon as circumstances permit. The confidentiality agreement (i) may
33 restrict the use of the information to the health purposes indicated in a
34 written statement of need; (ii) may provide for appropriate legal remedies in
35 the event of a breach of the agreement, including stipulation of a reasonable
36 pre-estimate of likely damages; and (iii) may not include requirements for
37 the posting of a penalty bond. The parties are not precluded from pursuing
38 noncontractual remedies to the extent permitted by law.

39 (3) A Fire Chief, as that term is defined in G.S. 95-174, who determines that an
40 emergency exists and that the information is necessary to address the
41 emergency. Regardless of the existence of a written statement of need or a
42 confidentiality agreement, the Department shall immediately disclose the
43 confidential information to the Fire Chief upon request. If confidential
44 information is disclosed pursuant to this subdivision, the Department shall
45 notify the owner of the confidential information as soon as practicable, but
46 no later than 24 hours after disclosure. The owner of the confidential
47 information may require execution of a written statement of need and a
48 confidentiality agreement from the Fire Chief as soon as circumstances
49 permit. The confidentiality agreement (i) may restrict the use of the
50 information to the emergency purposes indicated in a written statement of
51 need; (ii) may provide for appropriate legal remedies in the event of a breach

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

5 (d) Penalties for Unlawful Disclosure. – Except as provided in subsection (c) of this
6 section or as otherwise provided by law, any person who has access to confidential information
7 pursuant to this section and who discloses it knowing it to be confidential information to any
8 person not authorized to receive it shall be guilty of a Class I felony, and if knowingly or
9 negligently disclosed to any person not authorized, shall be subject to civil action for damages
10 and injunction by the owner of the confidential information, including, without limitation,
11 actions under Article 24 of Chapter 66 of the General Statutes.

12 (e) Appeal From Commission Decisions Concerning Confidentiality. – Within 10 days
13 of any decision made pursuant to subsection (b) of this section, the Commission shall provide
14 notice to any person who submits information asserted to be confidential (i) that the
15 information is not entitled to confidential treatment and (ii) of any decision to release such
16 information to any person who has requested the information. Notwithstanding the provisions
17 of G.S. 132-9, or procedures for appeal provided under Article 4 of Chapter 150B of the
18 General Statutes, any person who requests information and any person who submits
19 information who is dissatisfied with a decision of the Commission to withhold or release
20 information made pursuant to subsection (b) of this section shall have 30 days after receipt of
21 notification from the Commission to bring an action in Business Court to appeal the decision in
22 accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and
23 the Business Court shall have exclusive jurisdiction over such actions. The information may not
24 be released by the Commission until the earlier of (i) the 30-day period for filing of an appeal
25 has expired without filing of an appeal or (ii) a final judicial determination has been made in an
26 action brought to appeal a decision of the Commission. In addition, the following shall apply to
27 actions brought pursuant to this section:

28 (1) Such actions shall be set down for immediate hearing.

29 (2) The burden shall be on the owner of the information to show that the
30 information is entitled to protection as confidential information pursuant to
31 G.S. 132-1.2.

32 (3) The court shall allow a party seeking disclosure of information who
33 substantially prevails to recover its reasonable attorneys' fees if attributed to
34 the information. The court may not assess attorneys' fees against the
35 Commission or the Department, however, but shall impose such fees on the
36 owner of the information asserting confidentiality.

37 (4) If the court determines that an action brought pursuant to this section was
38 filed in bad faith or was frivolous, the court shall assess reasonable attorneys'
39 fees against the person or persons instituting the action and award to the
40 prevailing party or parties."

41 **SECTION 8.(b)** G.S. 113-391(b1) reads as rewritten:

42 "(b1) In the exercise of their respective authority over oil and gas exploration and
43 development activities, the Commission and the Department, as applicable, shall have access to
44 all data, records, and information related to such activities, including, but not limited to,
45 seismic surveys, stratigraphic testing, geologic cores, proposed well bore trajectories, hydraulic
46 fracturing fluid chemicals and constituents, drilling mud chemistry, and geophysical borehole
47 logs. With the exception of information designated as a trade secret, as defined in
48 G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2,
49 the Department shall make any information it receives available to the public. The State
50 ~~Geologist~~ Geologist, or the State Geologist's designee, shall serve as the custodian of all data,
51 information, and records received by the Department pursuant to this ~~subsection~~ subsection,

1 including information designated as a trade secret, as defined in G.S. 66-152(3), and that is
2 designated as confidential or as a trade secret under G.S. 132-1.2, and shall ensure that all of
3 the ~~information~~ information, including information designated as a trade secret, as defined in
4 G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2, is
5 maintained securely as provided in G.S. 132-7."

6 **SECTION 8.(c)** This section is effective when it becomes law, except that
7 113-391A(d), as enacted by Section 8(a) of this act, shall become effective December 1, 2014.

8 **SECTION 9.** G.S. 113-391(a)(6) is repealed.

9 **SECTION 10.** G.S. 113-392(c) is repealed.

10 **SECTION 11.** G.S. 113-395(a) reads as rewritten:

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

17 **SECTION 12.** G.S. 113-420 reads as rewritten:

18 "**§ 113-420. Notice and entry to property.**

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

28 (1) The identity of person(s) requesting entry upon the property.

29 (2) The purpose for entry on the property.

30 (3) The dates, times, and location on which entry to the property will occur,
31 including the estimated number of entries.

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

38 (1) A description of the exploration or development plan, including, but not
39 limited to (i) the proposed locations of any roads, drill pads, pipeline routes,
40 and other alterations to the surface estate and (ii) the proposed date on or
41 after which the proposed alterations will begin.

42 (2) An offer of the oil and gas developer or operator to consult with the surface
43 owner to review and discuss the location of the proposed alterations.

44 (3) The name, address, telephone number, and title of a contact person
45 employed by or representing the oil or gas developer or operator who the
46 surface owner may contact following the receipt of notice concerning the
47 location of the proposed alterations.

48 (b1) Persons Entering Land; Identification Required; Presumption of Proper Protection
49 While on Surface Owners' Property. – Persons who enter land on behalf of an oil or gas
50 developer or operator for oil and gas operations shall carry on their person identification
51 sufficient to identify themselves and their employer or principal and shall present the

1 identification to the surface owner upon request. Entry upon land by such a person creates a
2 rebuttable presumption that the surface owner properly protected the person against personal
3 injury or property damage while the person was on the land.

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

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

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

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

19 **SECTION 13.(a)** G.S. 113-421 reads as rewritten:

20 "**§ 113-421. Presumptive liability for water contamination; compensation for other**
21 **damages; responsibility for reclamation.**

22 (a) Presumptive Liability for Water Contamination. – It shall be presumed that an oil or
23 gas developer or operator is responsible for contamination of all water supplies that are within
24 ~~5,000 feet~~ a one-half mile radius of a wellhead that is part of the oil or gas developer's or
25 operator's activities unless the presumption is rebutted by a defense established as set forth in
26 subsection (a1) of this subsection. If a contaminated water supply is located within ~~5,000 feet~~ a
27 one-half mile radius of a wellhead, in addition to any other remedy available at law or in
28 equity, including payment of compensation for damage to a water supply, the developer or
29 operator shall provide a replacement water supply to the surface owner and other persons using
30 the water supply at the time the oil or gas developer's activities were commenced on the
31 property, which water supply shall be adequate in quality and quantity for those persons' use.

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

35 (1) The contamination existed prior to the commencement of the drilling
36 activities of the oil or gas developer or operator, as evidenced by a
37 pre-drilling test of the water supply in question conducted in conformance
38 with G.S. 113-423(f).

39 (2) The surface owner or owner of the water supply in question refused the oil
40 or gas developer or operator access to conduct a pre-drilling test of the water
41 supply conducted in conformance with G.S. 113-423(f).

42 (3) The water supply in question is not within ~~5,000 feet~~ a one-half mile radius
43 of a wellhead that is part of the oil or gas developer's or operator's activities.

44 (4) The contamination occurred as the result of a cause other than activities of
45 the developer or operator.

46 ...

47 (e) Joint and Several Liability. – In order to provide maximum protection for the public
48 interest, any actions brought for recovery of cleanup costs, damages, or for civil penalties
49 brought pursuant to this section or any other section of this Article or rules adopted thereunder
50 may be brought against any one or more of the persons having control over the activities that
51 contributed to the contamination, damage to property, or other violations. All such persons

1 shall be jointly and severally liable, but ultimate liability as between the parties may be
2 determined by common-law principles."

3 **SECTION 13.(b)** G.S. 113-423(f) reads as rewritten:

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

21 **SECTION 14.** Article 27 of Chapter 113 of the General Statutes is amended by
22 adding a new section to read:

23 **"§ 113-415A. Local ordinances prohibiting oil and gas exploration, development, and**
24 **production activities invalid; petition to preempt local ordinance.**

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

- 38 (1) Prohibit the siting of wells for oil and gas exploration, development, and
39 production within any county, city, or other political subdivision.
- 40 (2) Prohibit the use of horizontal drilling or hydraulic fracturing for the purpose
41 of oil or gas exploration or development within any county, city, or other
42 political subdivision.
- 43 (3) Place any restriction or condition not placed by this Article upon oil and gas
44 exploration, development, and production activities and use of horizontal
45 drilling or hydraulic fracturing for that purpose within any county, city, or
46 other political subdivision.
- 47 (4) In any manner are in conflict or inconsistent with the provisions of this
48 Article.

49 (b) No special, local, or private act or resolution enacted or taking effect hereafter may
50 be construed to modify, amend, or repeal any portion of this Article, unless it expressly
51 provides for such by specific references to the appropriate section of this Article. Further to this

1 end, all provisions of local ordinances, including those regulating land use, adopted by
2 counties, municipalities, or other local authorities that prohibit or have the effect of prohibiting
3 oil and gas exploration, development, and production activities and use of horizontal drilling or
4 hydraulic fracturing for that purpose within the jurisdiction of a local government are
5 invalidated to the extent preempted by the Commission pursuant to this section.

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

13 (d) When a petition described in subsection (c) of this section has been filed with the
14 Mining and Energy Commission, the Commission shall hold a public hearing to consider the
15 petition. The public hearing shall be held in the affected locality within 60 days after receipt of
16 the petition by the Commission. The Commission shall give notice of the public hearing by
17 both of the following means:

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

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

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

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

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

44 (2) That all legally required State and federal permits or approvals have been
45 issued by the appropriate State and federal agencies or that all State and
46 federal permit requirements have been satisfied and that the permits or
47 approvals have been denied or withheld only because of the local ordinance.

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

50 (4) That the oil and gas exploration, development, and production activities, and
51 use of horizontal drilling or hydraulic fracturing for that purpose, will not

1 pose an unreasonable health or environmental risk to the surrounding
2 locality and that the operator has taken or consented to take reasonable
3 measures to avoid or manage foreseeable risks and to comply to the
4 maximum feasible extent with applicable local ordinances.

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

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

21 (1) In violation of constitutional provisions.

22 (2) In excess of the statutory authority or jurisdiction of the Commission.

23 (3) Made upon unlawful procedure.

24 (4) Affected by other error of law.

25 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or
26 G.S. 150B-30 in view of the entire record as submitted.

27 (6) Arbitrary or capricious.

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

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

33 **SECTION 15.(a)** Article 27 of Chapter 113 of the General Statutes is amended by
34 adding four new sections to read:

35 **"§ 113-395A. Miscellaneous permit requirements.**

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

38 **"§ 113-395B. Subsurface injection of waste prohibited.**

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

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

45 (a) For purposes of this section, "applicant" means an applicant for a permit and a
46 permit holder and includes the owner or operator of the facility, and if the owner or operator is
47 a business entity, applicant also includes (i) the parent, subsidiary, or other affiliate of the
48 applicant; (ii) a partner, officer, director, member, or manager of the business entity, parent,
49 subsidiary, or other affiliate of the applicant; and (iii) any person with a direct or indirect
50 interest in the applicant, other than a minority shareholder of a publicly traded corporation who

1 has no involvement in management or control of the corporation or any of its parents,
2 subsidiaries, or affiliates.

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

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

30 (d) Upon request of the Department, a permit holder shall notify the Department of any
31 significant change in its environmental compliance history or any significant change in the (i)
32 identity of any person or structure of the business entity that holds the permit for the facility;
33 (ii) identity of any person or structure of the business entity that owns or operates the facility;
34 or (iii) assets of the permit holder, owner, or operator of the facility. If requested by the
35 Department, the permit holder shall notify the Department within 30 days of a significant
36 change. A change shall be considered significant if it would result in a change in the identity of
37 the permit holder, owner, or operator for purposes of environmental compliance review. Based
38 on its review of the changes, the Department may modify or revoke a permit, or require
39 issuance of a new permit.

40 **"§ 113-395D. Seismic or geophysical data collection.**

41 (a) Notwithstanding any other provision of law, no liability for trespass shall arise from
42 activities conducted for the purpose of seismic or geophysical data collection. Provided,
43 however, (i) persons conducting seismic and geophysical data collection may only conduct
44 such activity by undershooting from an off-site location and without physical entry to private
45 land, unless the landowner's consent for such activity is obtained in writing and (ii) persons
46 conducting seismic or geophysical data collection shall be civilly liable for any physical or
47 property damage determined to be a direct result of their seismic or geophysical data collection
48 activities, whether or not the seismic or geophysical data collection was conducted by
49 undershooting the land at an off-site location or by physical entry to land as permitted by the
50 landowner.

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

3 **SECTION 15.(b)** This section is effective when it becomes law, except that
4 G.S. 113-395D(b), as enacted by Section 15(a) of this act, shall become effective December 1,
5 2014.

6 **SECTION 16.** G.S. 87-98.4(b) is amended by adding a new subdivision to read:
7 **"§ 87-98.4. Well contractor certification required; exemptions.**

8 (a) Certification Required. – No person shall perform, manage, or supervise any well
9 contractor activity without being certified under this Article. A person who is not a certified
10 well contractor or who is not employed by a certified well contractor shall not offer to perform
11 any well contractor activity unless the person utilizes a certified well contractor to perform the
12 well contractor activity and, prior to the performance of the well contractor activity, the person
13 discloses to the landowner in writing the name of the certified well contractor who will perform
14 the well contractor activity, the certification number of the well contractor, and the name of the
15 company that employs the certified well contractor.

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

18 ...

19 (14) Construction, repair, or abandonment of a well used for the exploration or
20 development of oil or gas.

21 "

22 23 **PART VI. ESTABLISH SEVERANCE TAX**

24 **SECTION 17.(a)** Chapter 105 of the General Statutes is amended by adding a new
25 Article to read:

26 "Article 5I.

27 "Severance Tax.

28 **"§ 105-187.71. Definitions.**

29 The following definitions apply in this Article:

- 30 (1) Casinghead gas. – Gas or vapor indigenous to an oil stratum and produced
31 from the stratum with oil.
32 (2) Commission. – The Mining and Energy Commission.
33 (3) Condensate. – Liquid hydrocarbon that is or can be recovered from gas by a
34 separator or other means.
35 (4) Energy mineral. – All forms of natural gas, oil, and related condensates.
36 (5) First purchaser. – A person who purchases an energy mineral from a
37 producer.
38 (6) Gas. – All natural gas, including casinghead gas, and all other hydrocarbons
39 not defined as condensates.
40 (7) Gross price. – The total price paid by the first purchaser of the energy
41 mineral at the wellhead.
42 (8) Marginal gas well. – A well incapable of producing more than 100 MCF per
43 day, as determined by the Commission using the current wellhead
44 deliverability rate methodology utilized by the Commission, during the
45 calendar month for which the severance tax report is filed.
46 (9) MCF. – One thousand cubic feet of natural gas.
47 (10) Oil. – Crude petroleum oil, and other hydrocarbons, regardless of gravity,
48 which are produced at the well in liquid form by ordinary production
49 methods and which are not the result of condensation of gas after it leaves
50 the reservoir.

- 1 (11) Owner. – An owner of a landowner's royalty interest, of an overriding
2 royalty, of profits and working interests, or any combination thereof in
3 energy minerals. The term does not include an owner of federal, State, or
4 local governmental royalty interest.
- 5 (12) Person. – Defined in G.S. 105-228.90.
- 6 (13) Producer. – A person who takes an energy mineral from the soil or water in
7 this State.
- 8 (14) Return. – Any report or statement required to be filed under this Article to
9 determine the tax due.
- 10 (15) Royalty interest. – An interest in mineral rights in a producing leasehold in
11 the State. A royalty interest does not include the interest of a person having
12 only the management and operation of a well.
- 13 (16) Secretary. – The Secretary of Revenue.
- 14 (17) Severance. – The extraction or other removal of an energy mineral from the
15 soil or water of this State.
- 16 (18) Severed. – The point at which the energy mineral has been separated from
17 the soil or water of this State.
- 18 (19) Standard barrel of oil. – A barrel of oil containing 42 gallons.
- 19 (20) Taxpayer. – Any person required to pay the severance tax levied by this
20 Article.

21 **"§ 105-187.72. Tax on severance of energy minerals.**

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

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

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

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

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

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

36 (d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to
37 the Mining and Energy Commission for a determination that the well qualifies as a marginal
38 gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate.
39 For severance of gas from a marginal gas well the percentage rate is four-tenths of one percent
40 (0.4%).

41 (e) Gas Rate. – The percentage rate for gas is nine-tenths of one percent (0.9%).

42 **"§ 105-187.73. Delivered to Market Value.**

43 (a) Delivered to Market Value of Natural Gas. – The delivered to market value of
44 natural gas is the total actual gross price as adjusted in this section. The delivered to market
45 value of gas is determined by subtracting the producer's actual costs to deliver the gas to the
46 market from the producer's total gross cash receipts from the sale of the natural gas. A producer
47 receiving a cost reimbursement from the gas purchaser shall include the reimbursement in the
48 gross cash receipts and is entitled to deduct the actual costs of delivering the gas to market
49 incurred.

50 (b) Records. – In order to be eligible to subtract the actual costs to deliver the gas to the
51 market from the producer's gross receipts for purposes of calculating the delivered-to-market

1 value of natural gas, the producer shall provide any information required by the Secretary.
2 Every producer subtracting the costs to deliver the gas to the market as permitted under this
3 subsection shall maintain and make available for inspection by the Secretary any records the
4 Secretary considers necessary to determine and verify the amount of the costs to deliver the gas
5 to the market the producer is eligible to subtract. The burden of proving eligibility for
6 subtracting the costs to deliver the gas to the market and the amount of the costs to deliver the
7 gas to the market to be subtracted shall rest upon the producer, and no subtraction of costs to
8 deliver the gas to the market shall be allowed to a producer that fails to maintain adequate
9 records or to make them available for inspection.

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

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

32 **§ 105-187.74. On-site use exemption from the tax.**

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

41 **§ 105-187.75. Returns and payment of tax.**

42 (a) General. – Severance taxes are payable when a return is due. A return is due
43 quarterly or monthly as specified in this section. A return must be filed by the producer of the
44 energy mineral with the Secretary on a form prescribed by the Secretary and in the manner
45 required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

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

49 (c) Quarterly. – A taxpayer who is consistently liable for less than one thousand dollars
50 (\$1,000) a month in severance taxes must file a return and pay the taxes due on a quarterly

1 basis. A quarterly return covers a calendar quarter and is due by the 25th day of the second
2 month following the end of the quarter.

3 (d) Monthly. – A taxpayer who is consistently liable for at least one thousand dollars
4 (\$1,000) a month in severance taxes must file a return and pay the taxes due on a monthly
5 basis. A monthly return is due by the 25th day of the second month following the calendar
6 month covered by the return.

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

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

18 (1) The gross amount of energy minerals produced that are subject to the tax
19 imposed by this Article.

20 (2) The leases from which the energy minerals were produced.

21 (3) The names and addresses of the first purchasers of the energy minerals.

22 (g) Additional Information. – To claim an exemption for on-site use, the producer or
23 taxpayer of a proposed or existing gas well shall apply to the Secretary for determination of
24 eligibility. The Secretary may require an applicant to provide any information required to
25 administer this provision. The Secretary shall make the determination within 15 calendar days
26 of the receipt of all information required by the Secretary from the producer or taxpayer, and
27 the producer or taxpayer shall attach the determination of eligibility to its severance tax form
28 next due, as applicable. The taxpayer shall provide any information required by the Secretary.
29 Every taxpayer claiming the exemption shall maintain and make available for inspection by the
30 Secretary of Revenue any records the Secretary considers necessary to determine and verify the
31 claim to which the taxpayer is entitled. The burden of proving eligibility shall rest upon the
32 taxpayer, and no exemption shall be allowed to a taxpayer who fails to maintain adequate
33 records or to make them available for inspection. The portion of the severance tax that is
34 required to be deducted from the royalty owner or other interest shall be calculated in the same
35 manner as the portion of the severance tax borne by the producer.

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

39 **"§ 105-187.76. Bond or letter of credit required.**

40 A producer must file with the Secretary a bond or an irrevocable letter of credit if the
41 producer fails to file a return required under this Article. A bond or an irrevocable letter of
42 credit must be conditioned upon compliance with the requirements of this Article, be payable to
43 the State, and be in the form required by the Secretary. The amount of the bond or irrevocable
44 letter of credit is two times the applicant's average expected monthly tax liability under this
45 Article, as determined by the Secretary. When notified to do so by the Secretary, a person who
46 is required to file a bond or an irrevocable letter of credit must file the bond or irrevocable letter
47 of credit in the amount required by the Secretary within 30 days after receiving the notice from
48 the Secretary.

49 **"§ 105-187.77. Liability of producer for tax.**

50 The tax imposed by this Article is the primary liability of the producer, except as provided
51 in this section. A first purchaser may not take delivery of energy minerals from a producer

1 unless the producer furnishes the purchaser with a taxpayer identification number assigned by
2 the Secretary. A first purchaser failing to secure the producer's taxpayer number, either from
3 the producer or the Secretary, will be liable for any tax, penalty, and interest due on the energy
4 minerals purchased from the producer.

5 **"§ 105-187.78. Royalty owner's records.**

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

- 8 (1) A record of all money received as royalty from each producing leasehold in
9 the State.
- 10 (2) A copy of all settlement sheets furnished by a purchaser or operator or other
11 statement showing the amount of energy minerals for which a royalty was
12 received and the amount of severance tax deducted.

13 **"§ 105-187.79. Permits suspended for failure to report.**

14 If an entity fails to file any report or return or to pay any tax or fee required by this Article
15 for 90 days after it is due, the Secretary shall inform the Secretary of Environment and Natural
16 Resources of this failure. The Secretary of Environment and Natural Resources shall suspend
17 permits for oil and gas exploration using horizontal drilling and hydraulic fracturing under
18 G.S. 113-395 of any entity that fails to file a return under this Article. The Secretary of
19 Environment and Natural Resources shall immediately notify by mail an entity of a suspension
20 under this section.

21 **"§ 105-187.80. No local taxation.**

22 A city or county may not impose a franchise, privilege, license, income, or excise tax on the
23 severing, production, treating, processing, ownership, sale, storage, purchase, marketing, or
24 transportation on any energy minerals produced in the State, or upon the business of severing,
25 producing, treating, processing, owning, selling, buying, storing, marketing, or transporting
26 such energy minerals, or upon the ownership, operation, or maintenance of plants, facilities,
27 machinery, pipelines, and gathering lines related to the severing, production, treating,
28 processing, ownership, storage, sale, purchase, marketing, or transportation of energy minerals.
29 This section does not preclude the taxation of the property in accordance with Article 11 of this
30 Chapter."

31 **SECTION 17.(b)** G.S. 105-259(b) is amended by adding a new subdivision to
32 read:

33 "(46) To furnish to the Department of Environment and Natural Resources the
34 name, address, tax year end, and account and identification numbers of an
35 entity liable for severance tax to enable the Secretary of Environment and
36 Natural Resources to notify the entity that the Department of Environment
37 and Natural Resources shall suspend permits of the entity for oil and gas
38 exploration using horizontal drilling and hydraulic fracturing under
39 G.S. 113-395."

40 **SECTION 17.(c)** G.S. 113-387 and G.S. 113-388 are repealed.

41 **SECTION 17.(d)** G.S. 105-187.72, as enacted by Section 17(a) of this act, reads as
42 rewritten:

43 **"§ 105-187.72. Tax on severance of energy minerals.**

44 ...

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

47 (d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to
48 the Mining and Energy Commission for a determination that the well qualifies as a marginal
49 gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate.
50 For severance of gas from a marginal gas well the percentage rate is ~~four-tenths of one percent~~
51 ~~(0.4%).~~ six-tenths of one percent (0.6%).

(e) Gas Rate. – The percentage rate for gas is ~~nine tenths of one percent (0.9%)~~ is set in the table below. The tax 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	N/A	2.9%

SECTION 17.(e) G.S. 105-187.72, as enacted by Section 17(a) of this act, and amended by Section 17(d) of this act, reads as rewritten:

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

...

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

(d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is ~~six tenths of one percent (0.6%)~~ eight-tenths of one percent (0.8%).

(e) Gas Rate. – The percentage rate for gas is set in the table below. The tax 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	N/A \$5.00	2.9%
\$5.01	\$6.00	3.9%
\$6.01	\$7.00	4.9%
\$7.01	N/A	5%"

SECTION 17.(f) G.S. 105-187.72(e), as enacted by Section 17(a) of this act, and amended by Sections 17(d) and 17(e) of this act, reads as rewritten:

"(e) Gas Rate. – The percentage rate for gas is set in the table below. The tax 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	N/A \$8.00	5% 5.9%
\$8.01	\$9.00	6.9%
\$9.01	\$10.00	7.9%
\$10.01	N/A	9%"

SECTION 18. G.S. 105-275 is amended by adding a new subdivision to read:

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

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

PART VII. STUDIES

SECTION 20. The Local Government Division of the Department of Revenue shall study how other states value energy minerals for the purpose of property taxation. The Division shall establish guidelines for counties to ensure the consistent and fair taxation of energy minerals throughout the State. The Local Government Division shall report its findings to the Joint Legislative Commission on Energy Policy by January 1, 2015.

SECTION 21. The Joint Legislative Commission on Energy Policy shall study how the development of the oil and gas industry in the State would affect the property tax revenues of local governments. The study shall examine how the presence of energy minerals will affect property enrolled in the present use value program. The study shall also study ways to limit the growth of property tax revenues that result from increased property valuations due to the development of the oil and gas industry in the State. The Commission shall report to the 2015 General Assembly on its findings and recommendations, including any legislative recommendations.

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

- (1) Identify the State, federal, and local regulatory programs under which LNG export terminals are permitted and approved.
- (2) Identify any State statutory or regulatory barriers to siting, constructing, or operating a LNG export terminal in the State.
- (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. Identify 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

1 life within those communities, recreational activities, and commercial and
2 residential development.

- 3 (8) Examine any other pertinent issues that the agencies deem relevant to the
4 construction and operation of a LNG export facility in the State.

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

8 **SECTION 23.(a)** The Department of Transportation shall study (i) additional
9 statutory authority that may be necessary or advisable for the Department to adequately address
10 energy-related traffic, including authority that pertains to permitting and assessment of fees; (ii)
11 the feasibility and advisability of including any requirements that the Department may
12 recommend to manage energy-related traffic, and resulting impacts, in a coordinated permit in
13 conjunction with requirements of the Department of Environment and Natural Resources, or
14 whether such requirements should be implemented through a separate permitting process; and
15 (iii) performance bonding and other surety mechanisms, including road use agreements, to
16 reclaim and repair any State posted roads that are damaged due to heavy vehicle, equipment,
17 and machinery traffic used in support of and conjunction with horizontal drilling and hydraulic
18 fracturing operations on State posted roads. For purposes of this study, the term "posted roads"
19 means a system that records any secondary road on the State Highway System that is unable to
20 carry heavy vehicles or equipment. In the conduct of its study, the Department shall do the
21 following:

- 22 (1) Consider mechanisms for requiring performance bonds running to the
23 Department.
24 (2) Develop criteria for setting the amount of the bond, including the weight and
25 size of the proposed vehicles, equipment and machinery projected to utilize
26 posted roads, the planned route and projected number of trips, and the
27 duration of the activity necessitating travel of heavy vehicles, equipment,
28 and machinery along posted roads.
29 (3) Identify documentation necessary to support bonding of posted roads.
30 (4) Identify any statutory or regulatory changes necessary to maintain and
31 protect the State's transportation infrastructure network.

32 **SECTION 23.(b)** The Department of Transportation shall report its findings and
33 recommendations, including any legislative proposals, to the Joint Legislative Energy Policy
34 Commission and the Joint Legislative Transportation Oversight Committee on or before
35 January 1, 2015.

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

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

46 **SECTION 25.(a)** The General Assembly finds the following:

- 47 (1) Section 2(1) of S.L. 2012-143 directed the Mining and Energy Commission,
48 in conjunction with the Department of Environment and Natural Resources
49 and the Consumer Protection Division of the North Carolina Department of
50 Justice, to study the State's current law on the issue of integration or
51 compulsory pooling and other states' laws on the matter; and

- 1 (2) Whereas, the Department was directed to report its findings and
2 recommendations, including legislative proposals, to the Joint Legislative
3 Commission on Energy Policy and the Environmental Review Commission
4 on or before January 1, 2013; and
- 5 (3) The Mining and Energy Commission and the Department issued separate
6 reports pursuant to the study; and
- 7 (4) The Mining and Energy Commission's report included specific
8 recommendations for legislative changes related to compulsory pooling; and
- 9 (5) The Department's report did not include specific recommendations for
10 legislative changes related to compulsory pooling; and
- 11 (6) In lieu of specific recommendations for legislative changes, the Department
12 recommended that "prior to establishing new laws related to compulsory
13 pooling, the General Assembly should consider the rules adopted by the
14 Mining and Energy Commission related to oil and gas exploration,
15 including, but not limited to, rules concerning drilling units, spacing
16 requirements, and setbacks, all of which will affect the regulation of
17 compulsory pooling in the State." And the Department further recommended
18 that "decisions on the status and implementation of a compulsory pooling
19 law precede decisions related to cost sharing, notifications, and
20 compensation for damages" and "further study on the issue of amending
21 current dormant mineral statutes regarding extinguishment and other
22 consumer protection issues related to split estates."

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

- 25 (1) Examine the Mining and Energy Commission's rules, once adopted, related
26 to oil and gas exploration, including, but not limited to, rules concerning
27 drilling units, spacing requirements, and setbacks, and all rules the
28 Department determines will affect the regulation of compulsory pooling in
29 the State.
- 30 (2) Study, in conjunction with the Mining and Energy Commission and the
31 Consumer Protection Division of the North Carolina Department of Justice,
32 the issue of amending current dormant mineral statutes regarding
33 extinguishment and other consumer protection issues related to split estates.
- 34 (3) Issue specific recommendations for legislative action related to compulsory
35 pooling and dormant mineral statutes and report the findings of their study,
36 including specific proposals for legislative action, to the Joint Legislative
37 Commission on Energy Policy and the Environmental Review Commission
38 on or before October 1, 2015.

39 **SECTION 26.** The Mining and Energy Commission and the Department of
40 Environment and Natural Resources shall study the development of midstream infrastructure in
41 North Carolina, which is necessary or advisable to facilitate the exploration, development, and
42 production of the State's oil and gas resources. Infrastructure examined shall include
43 development of pipelines, gathering systems, compressor stations, pumping systems, on-site
44 and near-site storage tanks, and natural gas liquids processing systems. All State agencies,
45 including the constituent institutions of The University of North Carolina, shall provide
46 information and support to the Commission and the Department in the conduct of this study.
47 The Commission shall report the findings of this study, including specific proposals for
48 legislative action, to the Joint Legislative Commission on Energy Policy on or before March 1,
49 2015.

50 **SECTION 27.** The State Energy Office in the Department of Environment and
51 Natural Resources shall study and make legislative recommendations on a comprehensive

1 long-range State energy policy to achieve maximum effective management and use of present
2 and future sources of energy. The Office shall study all of the following:

- 3 (1) The long-term environmental and economic impact of base load power
4 generation of electric public utilities.
- 5 (2) The comparison of base load power generation alongside all other forms of
6 energy used for power generation, including renewable and alternative
7 sources of energy, and the environmental and economic impact of all forms
8 of power generation.
- 9 (3) The implementation of S.L. 2007-397, including environmental and
10 economic impacts of the law, and recommendations on any changes to the
11 law as necessary.

12 The State Energy Office shall report its findings to the Joint Legislative
13 Commission on Energy Policy on or before December 1, 2014.

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

20 **SECTION 28.(b)** The consideration of any fuel sources in Section 27(a) of this act
21 shall apply to any changes or modifications to term contracts executed on or after the effective
22 date of this section.

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

27 **PART VIII. MISCELLANEOUS PROVISIONS UNRELATED TO SHALE GAS**

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

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

30 "(e) Staff support required by the Council shall be supplied by the Division of Energy,
31 Mineral, and Land Resources of the Department of Environment and Natural Resources. The
32 Department of Environment and Natural Resources shall provide legal support to the Council
33 as needed from the Department's staff. The Department of Commerce and the Utilities
34 Commission are hereby authorized to make their staff available to the Council to assist in the
35 development of a State energy policy."

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

38 "(1f) Diesel gallon equivalent of liquefied natural gas. – The energy equivalent of
39 6.06 pounds of liquefied natural gas."

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

42 "(1g) Gas gallon equivalent of compressed natural gas. – The energy equivalent of
43 5.66 pounds of compressed natural gas."

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

45 **"§ 105-449.136. Tax on alternative fuel.**

46 (a) Rate. – A tax at the motor fuel rate is imposed on liquid alternative fuel used to
47 operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the
48 purpose of supplying fuel to operate the vehicle. The tax on liquefied natural gas is imposed on
49 each diesel gallon equivalent of liquefied natural gas. A tax at the equivalent of the motor fuel
50 rate is imposed on all other alternative fuel used to operate a highway vehicle. The tax on
51

1 compressed natural gas is imposed on each gas gallon equivalent of compressed natural gas.
2 The Secretary must determine the equivalent ~~rate~~-rate for all other non-liquid alternative fuels.

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

9 **SECTION 30.(d)** This section becomes effective January 1, 2015.

10
11 **PART IX. SEVERABILITY AND EFFECTIVE DATE**

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

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