

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 786
Commerce Committee Substitute Adopted 5/20/14
Third Edition Engrossed 5/22/14
House Committee Substitute Favorable 5/27/14
Fifth Edition Engrossed 5/29/14

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) AUTHORIZE ISSUANCE OF PERMITS
11 FOR OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION
12 ACTIVITIES SIXTY DAYS AFTER APPLICABLE RULES BECOME EFFECTIVE; (4)
13 CREATE THE NORTH CAROLINA OIL AND GAS COMMISSION AND
14 RECONSTITUTE THE NORTH CAROLINA MINING COMMISSION; (5) AMEND
15 MISCELLANEOUS STATUTES GOVERNING OIL AND GAS EXPLORATION,
16 DEVELOPMENT, AND PRODUCTION ACTIVITIES; (6) ESTABLISH A
17 SEVERANCE TAX APPLICABLE TO OIL AND GAS EXPLORATION,
18 DEVELOPMENT, AND PRODUCTION ACTIVITIES; (7) AMEND MISCELLANEOUS
19 STATUTES UNRELATED TO OIL AND GAS EXPLORATION, DEVELOPMENT,
20 AND PRODUCTION ACTIVITIES; AND (8) DIRECT STUDIES ON VARIOUS
21 ISSUES, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON
22 ENERGY POLICY.
23

24 The General Assembly of North Carolina enacts:
25

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

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

28 "**SECTION 2.(m)** All rules required to be adopted by the Mining and Energy Commission,
29 the Environmental Management Commission, and the Commission for Public Health pursuant
30 to this act shall be adopted no later than ~~October 1, 2014.~~ January 1, 2015. In order to provide
31 for the orderly, efficient, and effective development and adoption of rules and to prevent the
32 adoption of duplicative, inconsistent, or inadequate rules by these Commissions, the
33 Department of Environment and Natural Resources shall coordinate the adoption of the rules.



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1 The Commissions and the Department shall develop the rules in an open and collaborative
2 process that includes (i) input from scientific and technical advisory groups; (ii) consultation
3 with the North Carolina League of Municipalities, the North Carolina Association of County
4 Commissioners, the Division of Energy of the Department of Commerce, the Department of
5 Transportation, the Division of Emergency Management of the Department of Public Safety,
6 the Consumer Protection Division of the Department of Justice, the Department of Labor, the
7 Department of Health and Human Services, the State Review of Oil and Natural Gas
8 Environmental Regulations (STRONGER), the American Petroleum Institute (API), and the
9 Rural Advancement Foundation (RAFI-USA); and (iii) broad public participation. During the
10 development of the rules, the Commissions and the Department shall identify changes required
11 to all existing rules and statutes necessary for the implementation of this act, including repeal or
12 modification of rules and statutes. Until such time as all of the rules are adopted pursuant to this
13 act, the Department shall submit quarterly reports to the Joint Legislative Commission on
14 Energy Policy, created under Section 6(a) of this act, and the Environmental Review
15 Commission on its progress in developing and adopting the rules. The quarterly reports shall
16 include recommendations on changes required to existing rules and statutes and any other
17 findings or recommendations necessary for the implementation of this act. The first report
18 required by this subsection is due January 1, 2013."
19

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

21 **SECTION 2.(a)** Notwithstanding G.S. 150B-21.3(b1) and Section 1(a) of S.L.
22 2013-365, all rules adopted pursuant to Section 2(m) of S.L. 2012-143 shall be subject to
23 legislative review during the next regular session of the General Assembly that begins after the
24 date the Rules Review Commission approved the rule or during the regular session that is
25 underway on the date the Commission approved the rule.

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

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

- 39 (1) If the Rules Review Commission approves all rules adopted pursuant to
40 Section 2(m) of S.L. 2012-143 prior to the start of a legislative session, the
41 earlier of (i) the 31st calendar day of the regular session of the General
42 Assembly that begins after the date the Commission approved all rules
43 adopted pursuant to Section 2(m) of S.L. 2012-143 if a bill that specifically
44 disapproves any of these rules has not been introduced in either house of the
45 General Assembly by that date; (ii) if a bill that specifically disapproves a
46 rule is introduced in either house of the General Assembly before the 31st
47 calendar day of that session, the rule becomes effective on the earlier of
48 either the day an unfavorable final action is taken on the bill or the 61st
49 calendar day of that session if by that date a bill that specifically disapproves
50 the rule has not been ratified; or (iii) the day that session of the General

1 Assembly adjourns without ratifying a bill that specifically disapproves the
2 rule.

- 3 (2) If the Rules Review Commission approves all rules adopted pursuant to
4 Section 2(m) of S.L. 2012-143 during a legislative session, the earlier of (i)
5 the 31st calendar day after the date the Commission approved all rules
6 adopted pursuant to Section 2(m) of S.L. 2012-143 if a bill that specifically
7 disapproves a rule has not been introduced in either house of the General
8 Assembly by that date; (ii) if a bill that specifically disapproves a rule is
9 introduced in either house of the General Assembly within 30 calendar days
10 of the date that the Commission approved all rules adopted pursuant to
11 Section 2(m) of S.L. 2012-143, the rule becomes effective on the earlier of
12 either the day an unfavorable final action is taken on the bill or the 61st day
13 after the date that the Commission approved all rules adopted pursuant to
14 Section 2(m) of S.L. 2012-143 if by that date a bill that specifically
15 disapproves the rule has not been ratified; or (iii) the day that session of the
16 General Assembly adjourns without ratifying a bill that specifically
17 disapproves the rule.

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

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

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

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

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

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

44 45 **PART III. AUTHORIZE ISSUANCE OF PERMITS**

46 **SECTION 3.(a)** The Department of Environment and Natural Resources and the
47 Mining and Energy Commission are authorized to issue permits for oil and gas exploration and
48 development activities using horizontal drilling and hydraulic fracturing treatments in the State
49 pursuant to G.S. 113-395 on or after the 61st calendar day following the date that all rules
50 adopted pursuant to Section 2(m) of S.L. 2012-143 have become effective pursuant to Section
51 2(c) of this act.

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

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

3
4 **PART IV. CREATE OIL AND GAS COMMISSION AND RECONSTITUTE MINING**
5 **COMMISSION**

6 **SECTION 4.(a)** Part 6A of Article 7 of Chapter 143B of the General Statutes reads
7 as rewritten:

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

9 "**§ 143B-293.1. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – creation;**
10 **powers and duties.**

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

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

25 (c) The Commission shall submit ~~quarterly~~ annual written reports as to its operation,
26 activities, programs, and progress to the Joint Legislative Commission on Energy Policy and
27 the Environmental Review Commission. The Commission shall supplement the written reports
28 required by this subsection with additional written and oral reports as may be requested by the
29 Joint Legislative Commission on Energy Policy and the Environmental Review Commission.
30 The Commission shall submit the written reports required by this subsection whether or not the
31 General Assembly is in session at the time the report is due.

32 "**§ 143B-293.2. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – members;**
33 **selection; removal; compensation; quorum; services.**

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

36 (1) ~~The Chair of the North Carolina State University Minerals Research~~
37 ~~Laboratory Advisory Committee, or the Chair's designee, ex officio.~~

38 (2) ~~The State Geologist, or other designee of the Secretary of Environment and~~
39 ~~Natural Resources.~~

40 (3) ~~Repealed by Session Laws 2013-365, s. 3(a), effective July 29, 2013.~~

41 (3a) ~~One appointed by the Governor, at large.~~

42 (4) ~~One appointed by the General Assembly upon recommendation of the~~
43 ~~Speaker of the House of Representatives who is a member of a~~
44 ~~nongovernmental conservation interest.~~

45 (5) ~~One appointed by the General Assembly upon recommendation of the~~
46 ~~Speaker of the House of Representatives who, at the time of initial~~
47 ~~appointment, is an elected official of a municipal government located in a~~
48 ~~region of North Carolina that has oil and gas potential. A person serving in~~
49 ~~this seat may complete a term on the Commission even if the person is no~~
50 ~~longer serving as an elected official of a municipal government but may not~~
51 ~~be reappointed to a subsequent term.~~

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

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

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

- 1 longer serving as county commissioner but may not be reappointed to a
2 subsequent term.
- 3 (5) One appointed by the General Assembly upon recommendation of the
4 President Pro Tempore of the Senate who is a member of a nongovernmental
5 conservation interest.
- 6 (6) One appointed by the General Assembly upon recommendation of the
7 President Pro Tempore of the Senate who shall be an engineer with
8 experience in oil and gas exploration and development.
- 9 (7) One appointed by the Governor who shall be a representative of a publicly
10 traded natural gas company.
- 11 (8) One appointed by the Governor who shall be a licensed attorney with
12 experience in legal matters associated with oil and gas exploration and
13 development.
- 14 (9) One appointed by the Governor with experience in matters related to public
15 health.
- 16 (b) Terms. – The term of office of members of the Commission is three years. A
17 member may be reappointed to no more than two consecutive three-year terms. The term of a
18 member who no longer meets the qualifications of their respective appointment, as set forth in
19 subsection (a) of this section, shall terminate but the member may continue to serve until a new
20 member who meets the qualifications is appointed. The terms of members appointed under
21 subdivisions ~~(4), (6), (9), and (12)~~ (1), (4), and (7) of subsection ~~(a)~~ (a1) of this section shall
22 expire on June 30 of years evenly divisible by three. The terms of members appointed under
23 subdivisions ~~(7), (10), (13), and (14)~~ (2), (5), and (8) of subsection ~~(a)~~ (a1) of this section shall
24 expire on June 30 of years that precede by one year those years that are evenly divisible by
25 three. The terms of members appointed under subdivisions ~~(5), (8), (11), and (15)~~ (3), (6), and
26 (9) of subsection ~~(a)~~ (a1) of this section shall expire on June 30 of years that follow by one year
27 those years that are evenly divisible by three.
- 28 (c) Vacancies; Removal from Office. –
- 29 (1) Any appointment by the Governor to fill a vacancy on the Commission
30 created by the resignation, dismissal, death, or disability of a member shall
31 be for the balance of the unexpired term. The Governor shall have the power
32 to remove any member of the Commission from office for misfeasance,
33 malfeasance, or nonfeasance in accordance with the provisions of
34 G.S. 143B-13 of the Executive Organization Act of 1973.
- 35 (2) Members appointed by the President Pro Tempore of the Senate and the
36 Speaker of the House of Representatives shall be made in accordance with
37 G.S. 120-121, and vacancies in those appointments shall be filled in
38 accordance with G.S. 120-122. In accordance with Section 10 of Article VI
39 of the North Carolina Constitution, a member may continue to serve until a
40 successor is duly appointed.
- 41 (d) Compensation. – The members of the Commission shall receive per diem and
42 necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.
- 43 (e) Quorum. – A majority of the Commission shall constitute a quorum for the
44 transaction of business.
- 45 (f) Staff. – All staff support required by the Commission shall be supplied by the
46 Division of Energy, Mineral, and Land Resources and the North Carolina Geological Survey.
- 47 (g) Committees. – In addition to the Committee on Civil Penalty Remissions required to
48 be established under G.S. 143B-293.6, the chair may establish other committees from members
49 of the Commission to address specific issues as appropriate. No member of a committee may
50 hear or vote on any matter in which the member has an economic interest. A majority of a
51 committee shall constitute a quorum for the transaction of business. ~~At a minimum, the chair~~

1 shall establish a Committee on Mining, which shall consist of members appointed under
2 subdivisions (1), (4), (6), (8), (10), (14), and (15) of subsection (a) of this section. The
3 Committee on Mining shall have exclusive responsibility and authority over matters pertaining
4 to mining and implementation of the Mining Act of 1971, including all of the following powers
5 and duties:

- 6 (1) To act as the advisory body to the Governor pursuant to Article V(a) of the
7 Interstate Mining Compact, as set out in G.S. 74-37.
- 8 (2) To adopt rules necessary to administer the Mining Act of 1971 pursuant to
9 G.S. 74-63.
- 10 (3) To adopt rules necessary to administer the Control of Exploration for
11 Uranium in North Carolina Act of 1983 pursuant to G.S. 74-86.
- 12 (4) To adopt rules, not inconsistent with the laws of this State, as may be
13 required by the federal government for grants in aid for mining resource
14 purposes which may be made available to the State by the federal
15 government. This section is to be liberally construed in order that the State
16 and its citizens may benefit from such grants in aid.

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

21 **"§ 143B-293.3. Reserved for future codification purposes.**

22 **"§ 143B-293.4. North Carolina Mining and Energy Oil and Gas Commission – officers.**

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

28 **"§ 143B-293.5. North Carolina Mining and Energy Oil and Gas Commission – meetings.**

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

32 **"§ 143B-293.6. North Carolina Mining and Energy Oil and Gas Commission –
33 quasi-judicial powers; procedures.**

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

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

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

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

5 **SECTION 4.(b)** The terms of all members of the Mining and Energy Commission
6 serving on July 31, 2015, shall expire on that date. A new Oil and Gas Commission of nine
7 members shall be appointed in the manner provided by G.S. 143B-293.2(a1), as enacted by
8 Section 4(a) of this act, and this section. Members appointed in the manner provided by
9 G.S. 143B-293.2(a1), as enacted by Section 4(a) of this act, shall be appointed no later than
10 August 1, 2015.

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

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

17 "Part 6. North Carolina Mining Commission.

18 **"§ 143B-290. North Carolina Mining Commission – creation; powers and duties.**

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

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

45 **"§ 143B-291. North Carolina Mining Commission – members; selection; removal;
46 compensation; quorum; services.**

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

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

- 1 (2) One member who is a representative of the mining industry.
2 (3) One member who is a representative of the mining industry.
3 (4) One member who is a representative of the mining industry.
4 (5) One member who is a representative of nongovernmental conservation
5 interests.
6 (6) One member who is a representative of nongovernmental conservation
7 interests.
8 (7) One member who is a representative of nongovernmental conservation
9 interests.
10 (8) One who, at the time of the appointment to the Mining Commission, is a
11 member of the Environmental Management Commission and knowledgeable
12 in the principles of water and air resources management.
13 (9) One who, at the time of the appointment to the Mining Commission, is a
14 member of the Environmental Management Commission and knowledgeable
15 in the principles of water and air resources management.

16 (a1) Members, Selection. – The North Carolina Mining Commission shall consist of
17 eight members appointed as follows:

- 18 (1) One member who is the chair of the North Carolina State University
19 Minerals Research Laboratory Advisory Committee.
20 (2) The State Geologist, ex officio and nonvoting.
21 (3) One member appointed by the Governor who is a representative of the
22 mining industry.
23 (4) One member appointed by the Governor who is a representative of the
24 mining industry.
25 (5) One member appointed by the General Assembly upon recommendation of
26 the Speaker of the House of Representatives who is a representative of the
27 mining industry.
28 (6) One member appointed by the General Assembly upon recommendation of
29 the President Pro Tempore of the Senate who is a representative of the
30 mining industry.
31 (7) One member appointed by the General Assembly upon recommendation of
32 the Speaker of the House of Representatives who is a member of
33 nongovernmental conservation interests.
34 (8) One member appointed by the General Assembly upon recommendation of
35 the President Pro Tempore of the Senate who is a member of
36 nongovernmental conservation interests.

37 (b) Terms. – The term of office of a member of the Commission is six years. At the
38 expiration of each member's term, the ~~Governor appointing authority~~ shall replace the member
39 with a new member of like qualifications for a term of six years. The term of ~~members~~ the
40 member appointed under subdivisions (2), (5), and (8) subdivision (5) of subsection (a)-(a1) of
41 this section shall expire on 30-June 30 of years that precede by one year those years that are
42 evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of
43 subsection (a)-(a1) of this section shall expire on 30-June 30 of years that follow by one year
44 those years that are evenly divisible by six. The term of members appointed under subdivisions
45 (4), (7), and (9) (4) and (7) of subsection (a)-(a1) of this section shall expire on 30-June 30 of
46 years that follow by three years those years that are evenly divisible by six. Upon the expiration
47 of a six-year term, a member may continue to serve until a successor is appointed and duly
48 qualified as provided by G.S. 128-7.

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

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

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

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

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

10 **"§ 143B-292. North Carolina Mining Commission – officers.**

11 The North Carolina Mining Commission shall have a chair and a vice-chair. The chair shall
12 be designated by the Governor from among the members of the Commission to serve as chair at
13 the pleasure of the Governor. The vice-chair shall be elected by and from the members of the
14 Commission and shall serve for a term of two years or until the expiration of the vice-chair's
15 regularly appointed term.

16 **"§ 143B-293. North Carolina Mining Commission – meetings.**

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

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

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

29 **SECTION 6.** This Part becomes effective July 31, 2015.
30

31 **PART V. MISCELLANEOUS STATUTORY AMENDMENTS RELATED TO SHALE**
32 **GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION**

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

34 **"§ 113-391. Jurisdiction and authority; rules and orders.**

35 ...

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

40 (a6) The Commission shall have the authority to develop rules addressing requirements
41 for: permit applications; permit modifications; permit conditions; denial of applications for
42 permits; permit transfers from one person to another; and permit durations, suspensions,
43 revocations, and release.

44"

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

46 "(b) The Commission shall have the authority to make determinations and issue orders
47 pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells and to
48 establish drilling units as provided in G.S. 113-393; (ii) ~~require the operation of wells with~~
49 ~~efficient gas-oil ratios and to fix such ratios;~~ (iii) limit and prorate the production of oil or gas,
50 or both, from any pool or field for the prevention of waste as provided in G.S. 113-394; (iii)

1 classify wells for taxing purposes; and (iv) require integration of interests as provided in
2 G.S. 113-393."

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

5 **"§ 113-391.1. Trade secret and confidential information determination; protection;**
6 **retention; disclosure to emergency personnel.**

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

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

21 (1) Review confidential information that concerns hydraulic fracturing fluid, as
22 that term is defined in G.S. 113-389, to ensure compliance with all State and
23 federal laws, rules, and regulations concerning prohibited chemicals or
24 constituents, or exceedances of standards for chemicals or constituents. The
25 State Geologist, or the Geologist's designee, shall issue a written certification
26 within five days of completion of the review that the hydraulic fracturing
27 fluids, including chemicals and constituents contained therein, comply with
28 all State and federal laws, rules, and regulations; (ii) transmit the
29 certification to the Mining and Energy Commission and the Director of the
30 Division of Energy, Mining, and Land Resources; and (iii) transmit a copy
31 of the certification electronically to the permittee. Horizontal drilling and
32 hydraulic fracturing treatments shall not commence until this written
33 certification has been issued and transmitted as required by this subsection.

34 (2) Review, in consultation with the State Health Director, confidential
35 information that concerns hydraulic fracturing fluid, as that term is defined
36 in G.S. 113-389, to advise local health departments of additional parameters
37 that should be included in testing for private drinking water wells in their
38 jurisdictions in compliance with the requirements of G.S. 87-97 and the
39 Private Well Water Education Act enacted by S.L. 2013-122.

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

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

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

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

35 (d) Penalties for Unlawful Disclosure. – Except as provided in subsection (c) of this
36 section or as otherwise provided by law, any person who has access to confidential information
37 pursuant to this section and who knowingly and willfully discloses it to any person not
38 authorized to receive it shall be guilty of a Class 1 misdemeanor and shall be subject to civil
39 action for damages and injunction by the owner of the confidential information, including,
40 without limitation, actions under Article 24 of Chapter 66 of the General Statutes.

41 (e) Appeal From Commission Decisions Concerning Confidentiality. – Within 10 days
42 of any decision made pursuant to subsection (b) of this section, the Commission shall provide
43 notice to any person who submits information asserted to be confidential (i) that the
44 information is not entitled to confidential treatment and (ii) of any decision to release such
45 information to any person who has requested the information. Notwithstanding the provisions
46 of G.S. 132-9, or procedures for appeal provided under Article 4 of Chapter 150B of the
47 General Statutes, any person who requests information and any person who submits
48 information who is dissatisfied with a decision of the Commission to withhold or release
49 information made pursuant to subsection (b) of this section shall have 30 days after receipt of
50 notification from the Commission to appeal by filing an action in superior court and in
51 accordance with the procedures for a mandatory complex business case set forth in

1 G.S. 7A-45.4. Notwithstanding any other provision of G.S. 7A-45.4, the appeal shall be heard
2 de novo by a judge designated as a Business Court Judge under G.S. 7A-45.3. The information
3 may not be released by the Commission until the earlier of (i) the 30-day period for filing of an
4 appeal has expired without filing of an appeal or (ii) a final judicial determination has been
5 made in an action brought to appeal a decision of the Commission. In addition, the following
6 shall apply to actions brought pursuant to this section:

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

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

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

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

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

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

36 **SECTION 8.(c)** This section is effective when it becomes law, except that
37 113-391A(d), as enacted by Section 8(a) of this act, shall become effective December 1, 2014.

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

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

40 **SECTION 11.** G.S. 113-395 reads as rewritten:

41 "**§ 113-395. Permits, fees, and notice required for oil and gas activities.**

42 (a) Before any well, in search of oil or gas, shall be drilled, the person desiring to drill
43 the same shall submit an application for a permit to the Department upon such form as the
44 Department may prescribe and shall pay a fee of three thousand dollars (\$3,000) for ~~each well-~~
45 the first well to be drilled on a pad and one thousand five hundred dollars (\$1,500) for each
46 additional well to be drilled on the same pad. The drilling of any well is prohibited unless the
47 Department has issued a permit for the activity.

48 (b) Any person desiring to use hydraulic fracturing treatments in conjunction with oil
49 and gas operations or activities shall submit an application for a permit to the Department upon
50 such form as the Department may prescribe. The use of hydraulic fracturing treatments is
51 prohibited unless the Department has issued a permit for the activity.

1 (c) Each abandoned well and each dry hole shall be plugged promptly in the manner
2 and within the time required by rules prescribed by the ~~Department, Commission,~~ and the owner
3 of such well shall give notice, upon such form as the ~~Department-Commission~~ may prescribe,
4 of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a
5 fee of four hundred fifty dollars (\$450.00). No well shall be abandoned until such notice has
6 been given and such fee has been paid."

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

8 "**§ 113-420. Notice and entry to property.**

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

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

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

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

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

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

- 1 (1) A description of the exploration or development plan, including, the
2 proposed date on which the exploration or development will begin.
3 (2) The name, address, telephone number, and title of a contact person
4 employed by or representing the oil or gas developer or operator who the
5 lessor may contact following the receipt of notice.
6 (c) Venue. – If the oil or gas developer or operator fails to give notice or otherwise
7 comply with the provisions of this section, the surface owner may seek appropriate relief in the
8 superior court for the county in which the oil or gas well is located and may receive actual
9 damages."

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

11 "**§ 113-421. Presumptive liability for water contamination; compensation for other**
12 **damages; responsibility for reclamation.**

13 (a) Presumptive Liability for Water Contamination. – It shall be presumed that an oil or
14 gas developer or operator is responsible for contamination of all water supplies that are within
15 ~~5,000 feet~~ a one-half mile radius of a wellhead that is part of the oil or gas developer's or
16 operator's activities unless the presumption is rebutted by a defense established as set forth in
17 subsection (a1) of this subsection. If a contaminated water supply is located within ~~5,000 feet~~ a
18 one-half mile radius of a wellhead, in addition to any other remedy available at law or in
19 equity, including payment of compensation for damage to a water supply, the developer or
20 operator shall provide a replacement water supply to the surface owner and other persons using
21 the water supply at the time the oil or gas developer's activities were commenced on the
22 property, which water supply shall be adequate in quality and quantity for those persons' use.

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

- 26 (1) The contamination existed prior to the commencement of the drilling
27 activities of the oil or gas developer or operator, as evidenced by a
28 pre-drilling test of the water supply in question conducted in conformance
29 with G.S. 113-423(f).
30 (2) The surface owner or owner of the water supply in question refused the oil
31 or gas developer or operator access to conduct a pre-drilling test of the water
32 supply conducted in conformance with G.S. 113-423(f).
33 (3) The water supply in question is not within ~~5,000 feet~~ a one-half mile radius
34 of a wellhead that is part of the oil or gas developer's or operator's activities.
35 (4) The contamination occurred as the result of a cause other than activities of
36 the developer or operator.

37 ...

38 (a3) Reclamation of Surface Property Required. – An oil or gas developer or operator
39 ~~shall reclaim~~ shall:

- 40 (1) Reclaim all surface areas affected by its operations no later than two years
41 following completion of the operations. If the developer or operator is not
42 the surface owner of the property, prior to commencement of activities on
43 the property, the oil or gas developer or operator shall provide a bond
44 running to the surface owner sufficient to cover reclamation of the surface
45 owner's property. Upon registration with the Department pursuant to
46 G.S. 113-378, a developer shall request that the Mining and Energy
47 Commission set the amount of the bond required by this subsection. As part
48 of its request, the developer shall provide supporting documentation,
49 including information about the proposed oil and gas activities to be
50 conducted, the site on which they are to occur, and any additional
51 information required by the Commission. The Commission shall set the

1 amount of the bond in accordance with the criteria adopted by the
2 Commission pursuant to G.S. 113-391(a)(13a) and notify the developer and
3 surface owner of the amount within 30 days of setting the amount of a bond.
4 A surface owner or developer may appeal the amount of a bond set pursuant
5 to this subsection to the Commission within 60 days after receipt of notice
6 from the Commission of the amount required. After evaluation of the appeal
7 and issuance of written findings, the Commission may order that the amount
8 of the bond be modified. Parties aggrieved by a decision of the Commission
9 pursuant to this subsection may appeal the decision as provided under
10 Article 4 of Chapter 150B of the General Statutes within 30 days of the date
11 of the decision.

12 (2) Provide a bond running to the State sufficient to cover any potential
13 environmental damage caused by the drilling process in an amount no less
14 than one million dollars (\$1,000,000). The Commission may increase the
15 amount of the bond required by this subdivision if the Commission
16 determines that the drilling operation would be sited in an environmentally
17 sensitive area.

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

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

27 "(f) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other
28 conveyance of any kind separating rights to oil or gas from the freehold estate of surface
29 property shall include a clause that requires the oil or gas developer or operator to pay for the
30 reasonable costs involved in testing~~conduct a test~~ of all water supplies within 5,000 feet a
31 one-half mile radius from a proposed wellhead that is part of the oil or gas developer's or
32 operator's activities at least 30 days prior to initial drilling activities and at least two-five
33 follow-up tests~~within a 24-month period~~ at six months, 12 months, 18 months, and 24 months
34 after production has commeneed-commenced and a test within 30 days after completion of
35 production activities at the site. The Department shall identify the location of all water supplies,
36 including wells, on a property on which drilling operations are proposed to occur. A surface
37 owner may elect to have the Department~~shall use an independent third party selected from a~~
38 laboratory certified by the Department's Wastewater/Groundwater Laboratory Certification
39 program to sample wells located on their property, and in lieu of sampling conducted by the oil
40 or gas developer or operator, in which case the developer or operator shall pay reimburse the
41 Department~~for the reasonable costs involved in testing of the wells in question. Developers~~
42 and operators may share analytical results obtained with other developers and operators as
43 necessary or advisable. All analytical results from testing conducted pursuant to this section (i)
44 shall be provided to the Department within 30 days of testing and (ii) shall constitute a public
45 record under Chapter 132 of the General Statutes, and the Department shall post any results to
46 the Department's Web site within 30 days of receipt of the results. Nothing in this subsection
47 shall be construed to preclude or impair the right of any surface owner to refuse pre-drilling
48 testing of wells located on their property."

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

"§ 113-415.1. Local ordinances prohibiting oil and gas exploration, development, and production activities invalid; petition to preempt local ordinance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (h) The decision of the Mining and Energy Commission shall be final unless a party to
40 the action files a written appeal under Article 4 of Chapter 150B of the General Statutes, as
41 modified by this section, within 30 days of the date of the decision. The record on appeal shall
42 consist of all materials and information submitted to or considered by the Commission, the
43 Commission's written decision, a complete transcript of the hearing, all written material
44 presented to the Commission regarding the location of the oil and gas exploration,
45 development, and production activities, the specific findings required by subsection (f) of this
46 section, and any minority positions on the specific findings required by subsection (f) of this
47 section. The scope of judicial review shall be as set forth in G.S. 150B-51, except as this
48 subsection provides regarding the record on appeal.

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

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

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

5 **"§ 113-395.1. Miscellaneous permit requirements.**

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

8 **"§ 113-395.2. Subsurface injection of waste prohibited.**

9 (a) Disposal of wastes produced in connection with oil and gas exploration,
10 development, and production, and use of horizontal drilling and hydraulic fracturing treatments
11 for that purpose by injection to subsurface or groundwaters of the State by means of wells is
12 prohibited in accordance with G.S. 143-214.2.

13 (b) Notwithstanding G.S. 143-214.2, a violation of subsection (a) of this section shall
14 constitute a Class 1 misdemeanor.

15 **"§ 113-395.3. Environmental compliance review requirements for applicants and permit**
16 **holders.**

17 (a) For purposes of this section, "applicant" means an applicant for a permit and a
18 permit holder and includes the owner or operator of the facility, and if the owner or operator is
19 a business entity, applicant also includes (i) the parent, subsidiary, or other affiliate of the
20 applicant; (ii) a partner, officer, director, member, or manager of the business entity, parent,
21 subsidiary, or other affiliate of the applicant; and (iii) any person with a direct or indirect
22 interest in the applicant, other than a minority shareholder of a publicly traded corporation who
23 has no involvement in management or control of the corporation or any of its parents,
24 subsidiaries, or affiliates.

25 (b) The Department shall conduct an environmental compliance review of each
26 applicant for a new permit under this Article. The environmental compliance review shall
27 evaluate the environmental compliance history of the applicant for a period of five years prior
28 to the date of the application and may cover a longer period at the discretion of the Department.
29 The environmental compliance review of an applicant may include consideration of the
30 environmental compliance history of the parents, subsidiaries, or other affiliates of an applicant
31 or parent that is a business entity, including any business entity or joint venturer with a direct or
32 indirect interest in the applicant, and other facilities owned or operated by any of them. The
33 Department shall determine the scope of the review of the environmental compliance history of
34 the applicant, parents, subsidiaries, or other affiliates of the applicant or parent, including any
35 business entity or joint venturer with a direct or indirect interest in the applicant, and of other
36 facilities owned or operated by any of them. An applicant for a permit shall provide
37 environmental compliance history information for each facility, business entity, joint venture,
38 or other undertaking in which any of the persons listed in this subsection is or has been an
39 owner, operator, officer, director, manager, member, or partner, or in which any of the persons
40 listed in this subsection has had a direct or indirect interest as requested by the Department.

41 (c) The Department shall determine the extent to which the applicant, or a parent,
42 subsidiary, or other affiliate of the applicant or parent, or a joint venturer with a direct or
43 indirect interest in the applicant, has substantially complied with the requirements applicable to
44 any activity in which any of these entities previously engaged and has substantially complied
45 with federal, North Carolina, and other states' laws, regulations, and rules for the protection of
46 the environment. The Department may deny an application for a permit if the applicant has a
47 history of significant or repeated violations of statutes, rules, orders, or permit terms or
48 conditions for the protection of the environment or for the conservation of natural resources as
49 evidenced by civil penalty assessments, administrative or judicial compliance orders, or
50 criminal penalties.

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

"§ 113-395.4. Seismic or geophysical data collection.

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

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

SECTION 15.(b) This section is effective when it becomes law, except that G.S. 113-395.4(b) and G.S. 113-395.2(b), as enacted by Section 15(a) of this act, shall become effective December 1, 2014, and shall apply to offenses committed on or after that date.

SECTION 16. G.S. 87-98.4(b) is amended by adding a new subdivision to read:

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

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

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

...

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

...."

PART VI. ESTABLISH SEVERANCE TAX

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

"Article 5I.

"Severance Tax.

"§ 105-187.71. Definitions.

The following definitions apply in this Article:

(1) Casinghead gas. – Gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

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

40 **§ 105-187.72. Tax on severance of energy minerals.**

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

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

- 49 (1) Condensates. – The applicable percentage rate of the gross price paid.
50 (2) Gas. – The applicable percentage rate of the market value as determined in
51 G.S. 105-187.73.

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

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

4 (d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to
5 the Mining and Energy Commission for a determination that the well qualifies as a marginal
6 gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate.
7 For severance of gas from a marginal gas well the percentage rate is four-tenths of one percent
8 (0.4%).

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

10 **"§ 105-187.73. Delivered to Market Value.**

11 (a) Delivered to Market Value of Natural Gas. – The delivered to market value of
12 natural gas is the total actual gross price as adjusted in this section. The delivered to market
13 value of gas is determined by subtracting the producer's actual costs to deliver the gas to the
14 market from the producer's total gross cash receipts from the sale of the natural gas. A producer
15 receiving a cost reimbursement from the gas purchaser shall include the reimbursement in the
16 gross cash receipts and is entitled to deduct the actual costs of delivering the gas to market
17 incurred.

18 (b) Records. – In order to be eligible to subtract the actual costs to deliver the gas to the
19 market from the producer's gross receipts for purposes of calculating the delivered-to-market
20 value of natural gas, the producer shall provide any information required by the Secretary.
21 Every producer subtracting the costs to deliver the gas to the market as permitted under this
22 subsection shall maintain and make available for inspection by the Secretary any records the
23 Secretary considers necessary to determine and verify the amount of the costs to deliver the gas
24 to the market the producer is eligible to subtract. The burden of proving eligibility for
25 subtracting the costs to deliver the gas to the market and the amount of the costs to deliver the
26 gas to the market to be subtracted shall rest upon the producer, and no subtraction of costs to
27 deliver the gas to the market shall be allowed to a producer that fails to maintain adequate
28 records or to make them available for inspection.

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

37 (1) Costs for compressing the gas sold.

38 (2) Costs for dehydrating the gas sold.

39 (3) Costs for sweetening and treating the gas sold.

40 (4) Costs for delivering the gas to the purchaser.

41 (5) Reasonable charges for depreciation of the facility used to deliver the gas to
42 market being used, provided that, if the facility is rented, the actual rental fee
43 is added.

44 (6) Costs of direct or allocated labor associated with the facility used to deliver
45 the gas to market.

46 (7) Costs of materials, supplies, maintenance, repairs, and fuel associated with
47 the facility used to deliver the gas to market.

48 (8) Property taxes paid on the facility used to deliver the gas to market.

49 (9) Charges for fees paid by the producer to any provider of dehydration,
50 treating, compression, and delivery services.

51 **"§ 105-187.74. On-site use exemption from the tax.**

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

9 **"§ 105-187.75. Returns and payment of tax.**

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

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

17 (c) Quarterly. – A taxpayer who is consistently liable for less than one thousand dollars
18 (\$1,000) a month in severance taxes must file a return and pay the taxes due on a quarterly
19 basis. A quarterly return covers a calendar quarter and is due by the 25th day of the second
20 month following the end of the quarter.

21 (d) Monthly. – A taxpayer who is consistently liable for at least one thousand dollars
22 (\$1,000) a month in severance taxes must file a return and pay the taxes due on a monthly
23 basis. A monthly return is due by the 25th day of the second month following the calendar
24 month covered by the return.

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

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

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

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

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

40 (g) Additional Information. – To claim an exemption for on-site use, the producer or
41 taxpayer of a proposed or existing gas well shall apply to the Secretary for determination of
42 eligibility. The Secretary may require an applicant to provide any information required to
43 administer this provision. The Secretary shall make the determination within 15 calendar days
44 of the receipt of all information required by the Secretary from the producer or taxpayer, and
45 the producer or taxpayer shall attach the determination of eligibility to its severance tax form
46 next due, as applicable. The taxpayer shall provide any information required by the Secretary.
47 Every taxpayer claiming the exemption shall maintain and make available for inspection by the
48 Secretary of Revenue any records the Secretary considers necessary to determine and verify the
49 claim to which the taxpayer is entitled. The burden of proving eligibility shall rest upon the
50 taxpayer, and no exemption shall be allowed to a taxpayer who fails to maintain adequate
51 records or to make them available for inspection. The portion of the severance tax that is

1 required to be deducted from the royalty owner or other interest shall be calculated in the same
2 manner as the portion of the severance tax borne by the producer.

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

6 **"§ 105-187.76. Bond or letter of credit required.**

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

16 **"§ 105-187.77. Liability of producer for tax.**

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

23 **"§ 105-187.78. Royalty owner's records.**

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

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

31 **"§ 105-187.79. Permits suspended for failure to report.**

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

39 **"§ 105-187.80. No local taxation.**

40 A city or county may not impose a franchise, privilege, license, income, or excise tax on the
41 severing, production, treating, processing, ownership, sale, storage, purchase, marketing, or
42 transportation on any energy minerals produced in the State, or upon the business of severing,
43 producing, treating, processing, owning, selling, buying, storing, marketing, or transporting
44 such energy minerals, or upon the ownership, operation, or maintenance of plants, facilities,
45 machinery, pipelines, and gathering lines related to the severing, production, treating,
46 processing, ownership, storage, sale, purchase, marketing, or transportation of energy minerals.
47 This section does not preclude the taxation of the property in accordance with Article 11 of this
48 Chapter."

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

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

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

SECTION 17.(d) G.S. 105-187.72, as enacted by Section 17(a) 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 ~~two percent (2%)~~ three and one-half percent (3.5%).

(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 ~~four-tenths of one percent (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.

<u>Over</u>	<u>Up to</u>	<u>Rate</u>
<u>-0-</u>	<u>\$3.00 per MCF</u>	<u>0.9%</u>
<u>\$3.01 per MCF</u>	<u>\$4.00</u>	<u>1.9%</u>
<u>\$4.01</u>	<u>N/A</u>	<u>2.9%</u>

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.

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

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.

<u>Over</u>	<u>Up to</u>	<u>Rate</u>
<u>-0-</u>	<u>\$3.00 per MCF</u>	<u>0.9%</u>

1	\$3.01 per MCF	\$4.00	1.9%
2	\$4.01	\$5.00	2.9%
3	\$5.01	\$6.00	3.9%
4	\$6.01	\$7.00	4.9%
5	\$7.01	N/A \$8.00	5% 5.9%
6	<u>\$8.01</u>	<u>\$9.00</u>	<u>6.9%</u>
7	<u>\$9.01</u>	<u>\$10.00</u>	<u>7.9%</u>
8	<u>\$10.01</u>	<u>N/A</u>	<u>9%</u>

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

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

13 **SECTION 19.** Sections 17(a), 17(b), and 17(c) become effective July 1, 2015, and
 14 apply to energy minerals severed on or after that date. Section 17(d) becomes effective January
 15 1, 2019, and applies to energy minerals severed on or after that date. Section 17(e) becomes
 16 effective January 1, 2021, and applies to energy minerals severed on or after that date. Section
 17 17(f) becomes effective January 1, 2023, and applies to energy minerals severed on or after that
 18 date. Section 18 is effective for taxes imposed for taxable years beginning on or after July 1,
 19 2015. The remainder of this Part is effective when it becomes law.

20
 21 **PART VII. STUDIES**

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

27 **SECTION 21.** The Joint Legislative Commission on Energy Policy shall study
 28 how the development of the oil and gas industry in the State would affect the property tax
 29 revenues of local governments. The study shall examine how the presence of energy minerals
 30 will affect property enrolled in the present use value program. The study shall also study ways
 31 to limit the growth of property tax revenues that result from increased property valuations due
 32 to the development of the oil and gas industry in the State. The Commission shall report to the
 33 2015 General Assembly on its findings and recommendations, including any legislative
 34 recommendations.

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

- 40 (1) Identify the State, federal, and local regulatory programs under which LNG
 41 export terminals are permitted and approved.
- 42 (2) Identify any State statutory or regulatory barriers to siting, constructing, or
 43 operating a LNG export terminal in the State.
- 44 (3) Evaluate infrastructure needs and impacts as follows:
 45 a. Identify the infrastructure that is necessary to support a LNG export
 46 terminal.
- 47 b. Identify any idle publicly owned infrastructure that may be utilized to
 48 support LNG export terminal operations.
- 49 c. Identify publicly owned unutilized or underutilized lands that may be
 50 used to support LNG export terminal operations.

1 d. Identify potential impacts on infrastructure, including roads,
2 pipelines, and water and wastewater services, and other provision of
3 services by local governments including schools, law enforcement,
4 and development.

5 (4) Conduct a cost-benefit analysis for the construction and operation of an
6 LNG export terminal. The analysis shall evaluate scenarios in which the
7 State is the primary producer of the exported natural gas and scenarios in
8 which the State is not the primary producer of the exported natural gas.

9 (5) Examine potential economic impacts, including:

10 a. Possible sources of revenue that could accrue to the benefit of the
11 State if LNG is exported from a terminal in North Carolina.

12 b. The number of jobs that may be expected as a result from the
13 construction and operation of a LNG export terminal.

14 (6) Identify and evaluate potential environmental impacts of construction and
15 operation of a LNG export terminal. In examining this issue, the agencies
16 shall gather information on regulatory programs in other states where LNG
17 export terminals are in operation.

18 (7) Identify potential social impacts, including impacts of construction and
19 operation of a LNG export terminal on nearby communities and quality of
20 life within those communities, recreational activities, and commercial and
21 residential development.

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

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

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

41 (1) Consider mechanisms for requiring performance bonds running to the
42 Department.

43 (2) Develop criteria for setting the amount of the bond, including the weight and
44 size of the proposed vehicles, equipment and machinery projected to utilize
45 posted roads, the planned route and projected number of trips, and the
46 duration of the activity necessitating travel of heavy vehicles, equipment,
47 and machinery along posted roads.

48 (3) Identify documentation necessary to support bonding of posted roads.

49 (4) Identify any statutory or regulatory changes necessary to maintain and
50 protect the State's transportation infrastructure network.

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

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

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

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

- 16 (1) Section 2(l) of S.L. 2012-143 directed the Mining and Energy Commission,
17 in conjunction with the Department of Environment and Natural Resources
18 and the Consumer Protection Division of the North Carolina Department of
19 Justice, to study the State's current law on the issue of integration or
20 compulsory pooling and other states' laws on the matter; and
- 21 (2) Whereas, the Department was directed to report its findings and
22 recommendations, including legislative proposals, to the Joint Legislative
23 Commission on Energy Policy and the Environmental Review Commission
24 on or before January 1, 2013; and
- 25 (3) The Mining and Energy Commission and the Department issued separate
26 reports pursuant to the study; and
- 27 (4) The Mining and Energy Commission's report included specific
28 recommendations for legislative changes related to compulsory pooling; and
- 29 (5) The Department's report did not include specific recommendations for
30 legislative changes related to compulsory pooling; and
- 31 (6) In lieu of specific recommendations for legislative changes, the Department
32 recommended that "prior to establishing new laws related to compulsory
33 pooling, the General Assembly should consider the rules adopted by the
34 Mining and Energy Commission related to oil and gas exploration,
35 including, but not limited to, rules concerning drilling units, spacing
36 requirements, and setbacks, all of which will affect the regulation of
37 compulsory pooling in the State." And the Department further recommended
38 that "decisions on the status and implementation of a compulsory pooling
39 law precede decisions related to cost sharing, notifications, and
40 compensation for damages" and "further study on the issue of amending
41 current dormant mineral statutes regarding extinguishment and other
42 consumer protection issues related to split estates."

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

- 45 (1) Examine the Mining and Energy Commission's rules, once adopted, related
46 to oil and gas exploration, including, but not limited to, rules concerning
47 drilling units, spacing requirements, and setbacks, and all rules the
48 Department determines will affect the regulation of compulsory pooling in
49 the State.
- 50 (2) Study, in conjunction with the Mining and Energy Commission and the
51 Consumer Protection Division of the North Carolina Department of Justice,

1 the issue of amending current dormant mineral statutes regarding
2 extinguishment and other consumer protection issues related to split estates.

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

8 **SECTION 26.** The Mining and Energy Commission and the Department of
9 Environment and Natural Resources shall study the development of midstream infrastructure in
10 North Carolina, which is necessary or advisable to facilitate the exploration, development, and
11 production of the State's oil and gas resources. Infrastructure examined shall include
12 development of pipelines, gathering systems, compressor stations, pumping systems, on-site
13 and near-site storage tanks, and natural gas liquids processing systems. All State agencies,
14 including the constituent institutions of The University of North Carolina, shall provide
15 information and support to the Commission and the Department in the conduct of this study.
16 The Commission shall report the findings of this study, including specific proposals for
17 legislative action, to the Joint Legislative Commission on Energy Policy on or before March 1,
18 2015.

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

- 23 (1) The long-term environmental and economic impact of base load power
24 generation of electric public utilities.
25 (2) The comparison of base load power generation alongside all other forms of
26 energy used for power generation, including renewable and alternative
27 sources of energy, and the environmental and economic impact of all forms
28 of power generation.
29 (3) The implementation of S.L. 2007-397, including environmental and
30 economic impacts of the law, and recommendations on any changes to the
31 law as necessary.
32 (4) The impact to the electrical grid and to the economy of allowing third-party
33 sales of electricity on the State's military installations.

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

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

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

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

49
50 **PART VIII. MISCELLANEOUS PROVISIONS UNRELATED TO SHALE GAS**

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

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

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

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

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

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

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

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

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

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

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

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

32 **PART IX. SEVERABILITY AND EFFECTIVE DATE**

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

36 **SECTION 31.(b)** Except as otherwise provided, this act is effective when it
37 becomes law.
38