

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

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**SENATE BILL 71
House Committee Substitute Favorable 5/24/16**

Short Title: Comm'n Appointment Modifications.

(Public)

Sponsors:

Referred to:

February 12, 2015

A BILL TO BE ENTITLED

1
2 AN ACT TO (1) REQUIRE A COAL COMBUSTION RESIDUALS IMPOUNDMENT OWNER
3 TO PROVIDE PERMANENT ALTERNATIVE WATER SUPPLIES FOR RESIDENTS IN
4 AREAS SURROUNDING COAL COMBUSTION RESIDUALS SURFACE
5 IMPOUNDMENTS; (2) EXTEND THE PERIOD FOR PUBLIC COMMENT AND REVIEW
6 OF PROPOSED RISK CLASSIFICATIONS FOR COAL COMBUSTION RESIDUALS
7 SURFACE IMPOUNDMENTS; AND (3) MODIFY APPOINTMENTS TO THE COAL ASH
8 MANAGEMENT COMMISSION, THE MINING COMMISSION, AND THE OIL AND
9 GAS COMMISSION, IN ACCORD WITH THE HOLDING OF *MCCRORY V. BERGER*.

10 Whereas, the Coal Ash Management Act of 2014 required the owner of a coal
11 combustion residuals surface impoundment to sample and analyze the water quality of drinking
12 water supply wells in areas surrounding coal combustion residuals surface impoundments and, if
13 the sampling and water quality analysis indicated that water from a drinking water supply well
14 exceeded groundwater quality standards for constituents associated with the presence of the
15 impoundment, required the owner to replace the contaminated drinking water supply well with an
16 alternate supply of potable drinking water and an alternate supply of water that is safe for other
17 household uses; and

18 Whereas, the Department of Environmental Quality recently reported that well water of
19 residents living nearby coal ash residuals impoundments met federal requirements for safe
20 drinking water, but the General Assembly nonetheless recognizes that confusion and worry has
21 persisted with these residents in the aftermath of testing conducted by the Department of
22 Environmental Quality and issuance of "do-not-drink advisories" by the Department of Health and
23 Human Services, even after many of these advisories were subsequently withdrawn; and

24 Whereas, the General Assembly concludes that the owner of a coal combustion
25 residuals surface impoundment should establish permanent alternative water supplies for residents
26 in areas surrounding coal combustion residuals surface impoundments, to alleviate their concerns
27 about availability of clean, safe, pure, and wholesome water; and

28 Whereas, in 2014 the General Assembly developed and enacted groundbreaking
29 legislation, the Coal Ash Management Act, to comprehensively address the issue of proper
30 management of coal ash residuals impoundments in the State for the protection of public health,
31 safety, and welfare; the environment; and natural resources; and

32 Whereas, the Coal Ash Management Act of 2014 set forth closure requirements based
33 on a comprehensive assessment of a site's risk, taking into account a number of factors, including:

- 34 (1) Any hazards to public health, safety, or welfare resulting from the
35 impoundment.
36 (2) The structural condition and hazard potential of the impoundment.



- 1 (3) The proximity of surface waters to the impoundment and whether any surface
2 waters are contaminated or threatened by contamination as a result of the
3 impoundment.
- 4 (4) Information concerning the horizontal and vertical extent of soil and
5 groundwater contamination for all contaminants confirmed to be present in
6 groundwater in exceedance of groundwater quality standards and all significant
7 factors affecting contaminant transport.
- 8 (5) The location and nature of all receptors and significant exposure pathways.
- 9 (6) The geological and hydrogeological features influencing the movement and
10 chemical and physical character of the contaminants.
- 11 (7) The amount and characteristics of coal combustion residuals in the
12 impoundment.
- 13 (8) Whether the impoundment is located within an area subject to a 100-year flood;
14 and

15 Whereas, the Coal Ash Management Act of 2014 conclusively designated eight coal
16 combustion residuals surface impoundments as high-priority, including two impoundments each at
17 the following facilities: the Dan River Steam Station, the Riverbend Steam Station, the Asheville
18 Steam Electric Generating Plant, and the Sutton Plant; and,

19 Whereas, the Executive Branch agency tasked with developing proposed classifications
20 based on risk, the Department of Environmental Quality, issued proposed classifications on May
21 18, 2016, which designated all other coal combustion residuals surface impoundments located in
22 the State as intermediate priority; and

23 Whereas, upon issuance of the proposed classifications, the Department of
24 Environmental Quality requested that the General Assembly allow the Department an additional
25 18 months to enable the Department to reconsider the proposed classifications, indicating that
26 "work that is already either planned or underway could significantly change the risk posed by the
27 ponds"; and

28 Whereas, upon issuance of the proposed classifications, the Secretary of Environmental
29 Quality stated that that the Coal Ash Management Act of 2014 did "not allow for revisions to the
30 classifications based on new information about a pond's risk to public health and the
31 environment"; and

32 Whereas, the Secretary of Environmental Quality further stated that "making decisions
33 based on incomplete information could lead to the expenditure of billions of dollars when
34 spending millions now would provide equal or better protection"; and

35 Whereas, the General Assembly concurs that accurate classification of risk for coal
36 combustion residuals surface impoundments is essential to appropriate management of the
37 impoundments; and

38 Whereas the General Assembly created the Coal Ash Management Commission as an
39 integral part of the Coal Ash Management Act of 2014 to provide oversight to the Department of
40 Environmental Quality in establishment of risk classifications and closure plans for all coal
41 combustion residuals surface impoundments; and

42 Whereas, in reviewing a classification proposed by the Department of Environmental
43 Quality, the Coal Ash Management Act of 2014 directed the Coal Ash Management Commission
44 to evaluate all information submitted in accordance with the Coal Ash Management Act of 2014
45 related to the proposed classifications, and any other information the Coal Ash Management
46 Commission deemed relevant; and

47 Whereas, in reviewing a classification proposed by the Department of Environmental
48 Quality, the Act directed the Coal Ash Management Commission to approve a proposed
49 classification only if the Commission determined that the classification accurately reflected the
50 level of risk posed by the coal combustion residuals surface impoundment; and

1 Whereas, a mechanism existed under the Coal Ash Management Act of 2014, as
2 enacted, to allow sufficient time for the State to properly assess accurate risk for impoundments
3 given that the Act (i) authorized the Commission to consider all information submitted pursuant to
4 the law, and any other information the Commission deemed relevant, (ii) required that the
5 Commission approve plans that accurately reflected the level of risk posed by an impoundment,
6 and (iii) established no deadline for the Commission to issue final approval of an accurate
7 classification; and

8 Whereas, closure methods under the Coal Ash Management Act of 2014 cannot be
9 developed, approved, or implemented until accurate risk classifications for the impoundments
10 have been finalized; and

11 Whereas, the General Assembly believes addressing the issue of proper management of
12 coal combustion residuals surface impoundments is too pressing to grant a blanket extension of
13 finalization of risk classifications of the impoundments for 18 months, while recognizing that
14 accurate classifications of impoundments is imperative for timely and proper closure of coal ash
15 impoundments; and

16 Whereas, the General Assembly established the Coal Ash Management Commission in
17 2014, to be comprised of individuals qualified with particular experience and expertise, including
18 requirements for appointments of individuals who are representatives of an electric membership
19 corporation or that have a background in power supply resource planning and engineering,
20 individuals that have experience in economic development, and individuals that have expertise in
21 determining and evaluating the costs associated with electricity generation and establishing the
22 rates associated with electricity consumption, in order to facilitate thorough examination and
23 sound decision making on complex and wide-reaching issues surrounding coal ash management,
24 facets of which are beyond the jurisdictional responsibilities of the Department of Environmental
25 Quality; and

26 Whereas, in *McCrorry v. Berger*, the North Carolina Supreme Court expressed concerns
27 that the General Assembly retained a majority of appointments to the Coal Ash Management
28 Commission under the Coal Ash Management Act of 2014 and held the appointments provisions
29 violated the separation of powers clause of the Constitution of North Carolina; but stated that "the
30 appointments clause does not prohibit the General Assembly from appointing statutory officers,
31 and the General Assembly can appoint them in many instances"; and

32 Whereas, the Court expressed other separation of powers concerns that although the
33 Coal Ash Management Commission was administratively located within the Division of
34 Emergency Management of the Department of Public Safety, the Commission was directed to
35 exercise all of its power and duties independently and was not subject to the supervision, direction,
36 or control of the Division or Department; and

37 Whereas, Section 5 of Article III of the North Carolina Constitution ascribes to the
38 General Assembly the power to assign functions, powers, and duties to the Executive Branch; and

39 Whereas, in accord with the authority given to it under Section 5 of Article III of the
40 North Carolina Constitution, the General Assembly enacted the Coal Ash Management
41 Commission, and other statutorily created commissions, with varying functions, powers, and
42 duties; and

43 Whereas, Section 11 of Article III of the North Carolina Constitution provides that all
44 administrative departments, agencies, and offices of the State and their respective functions,
45 powers, and duties shall be allocated by law, and further provides that regulatory, quasi-judicial,
46 and temporary agencies may, but need not, be allocated within a principal department; and

47 Whereas, allocations of the functions, powers, and duties of administrative agencies, by
48 law, is the province and responsibility of the General Assembly through the aforementioned
49 provisions of the Constitution of North Carolina and Article II of the State's Constitution
50 establishing the purpose and power of the legislative branch; and

1 Whereas, the General Assembly intends to reconstitute the membership of the Coal
2 Ash Management Commission in accord with the Court's holding so that the authority of the Coal
3 Ash Management Commission established in 2014 to finalize accurate risk classifications, based
4 on evaluation of all information the Commission deems necessary to achieve accurate
5 classifications, can be exercised without further delay for the protection of public health, safety,
6 and welfare; the environment; or natural resources for the benefit of all citizens of North Carolina;
7 and

8 Whereas, the Court also expressed concerns that the General Assembly retained a
9 majority of appointments to the Oil and Gas Commission and the Mining Commission and held
10 the appointments provisions violated the separation of powers clause of the Constitution of North
11 Carolina but stated that "the appointments clause does not prohibit the General Assembly from
12 appointing statutory officers, and the General Assembly can appoint them in many instances"; and

13 Whereas, the General Assembly intends to reconstitute the membership of the Oil and
14 Gas Commission and the Mining Commission in accordance with the Court's holding; Now,
15 therefore,

16 The General Assembly of North Carolina enacts:

17 **SECTION 1.(a)** G.S. 130A-309.211 is amended by adding a new subsection to read:

18 "(c1) Provision of Permanent Water Supply. – As soon as practicable, but no later than June
19 1, 2017, the owner of a coal combustion residuals surface impoundment shall execute a
20 memorandum of agreement or other binding agreement with the Department of Environmental
21 Quality to establish permanent replacement water supplies for each household with a drinking
22 water supply well sampled and analyzed pursuant to subsection (c) of this section. Preference shall
23 be given to permanent replacement water supplies by connection to public water supplies;
24 however, if the State Water Infrastructure Authority determines that connection to a public water
25 supply to a particular household would be cost-prohibitive, the State Water Infrastructure
26 Authority shall authorize provision of a permanent replacement water supply to that household
27 through installation of a filtration system. No later than August 1, 2016, an impoundment owner
28 shall submit information on permanent replacement water supplies proposed to be provided to
29 each household to the State Water Infrastructure Authority, including, at a minimum, the type of
30 permanent water supply proposed, the location of the household and its proximity to the nearest
31 connection point to a public water supply, and projected cost of the permanent water supply option
32 proposed for the household. Projects involving permanent replacement water supplies by
33 connection to public water supplies shall be deemed approved by the State Water Infrastructure
34 Authority for this purpose, however, the need for other State and local permits and approvals shall
35 not be obviated by such approval. For projects involving installation of a filtration system, the
36 State Water Infrastructure Authority shall evaluate information submitted by the impoundment
37 owner to determine whether connection to a public water supply is cost-prohibitive and render a
38 decision to approve or disapprove the plan, including written findings of fact, no later than
39 December 1, 2016."

40 **SECTION 1.(b)** This section is effective when it becomes law.

41 **SECTION 2.(a)** G.S. 130A-309.202 reads as rewritten:

42 "**§ 130A-309.202. Coal Ash Management Commission.**

43 (a) Creation. – In recognition of the complexity and magnitude of the issues associated
44 with the management of coal combustion residuals and the proper closure and remediation of coal
45 combustion residuals surface impoundments, the Coal Ash Management Commission is hereby
46 established.

47 (b) ~~Membership.—The Commission shall consist of nine members as follows:~~

48 (1) ~~One appointed by the General Assembly upon recommendation of the President~~
49 ~~Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the~~
50 ~~time of appointment be a resident of the State.~~

- 1 (2) ~~One appointed by the General Assembly upon recommendation of the President~~
2 ~~Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the~~
3 ~~time of appointment have special training or scientific expertise in waste~~
4 ~~management, including solid waste disposal, hauling, or beneficial use.~~
- 5 (3) ~~One appointed by the General Assembly upon recommendation of the President~~
6 ~~Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the~~
7 ~~time of appointment be a licensed physician or a person with experience in~~
8 ~~public health.~~
- 9 (4) ~~One appointed by the General Assembly upon recommendation of the Speaker~~
10 ~~of the House of Representatives in accordance with G.S. 120-121 who shall at~~
11 ~~the time of appointment be a member of a nongovernmental conservation~~
12 ~~interest.~~
- 13 (5) ~~One appointed by the General Assembly upon recommendation of the Speaker~~
14 ~~of the House of Representatives in accordance with G.S. 120-121 who shall at~~
15 ~~the time of appointment have special training or scientific expertise in waste~~
16 ~~management, including solid waste disposal, hauling, or beneficial use, or is a~~
17 ~~representative of or on the faculty of a State college or university that conducts~~
18 ~~coal ash research.~~
- 19 (6) ~~One appointed by the General Assembly upon recommendation of the Speaker~~
20 ~~of the House of Representatives in accordance with G.S. 120-121 who shall at~~
21 ~~the time of appointment be a representative of an electric membership~~
22 ~~corporation organized under Article 2 of Chapter 117 of the General Statutes~~
23 ~~and have a background in power supply resource planning and engineering.~~
- 24 (7) ~~One appointed by the Governor who shall at the time of appointment have~~
25 ~~experience in economic development.~~
- 26 (8) ~~One appointed by the Governor who shall at the time of appointment have~~
27 ~~expertise in determining and evaluating the costs associated with electricity~~
28 ~~generation and establishing the rates associated with electricity consumption.~~
- 29 (9) ~~One appointed by the Governor who shall at the time of appointment be a~~
30 ~~person with experience in science or engineering in the manufacturing sector.~~
- 31 (b1) Membership. – The Commission shall consist of seven members as follows:
- 32 (1) One appointed by the Governor subject to confirmation by the General
33 Assembly, who shall at the time of appointment have special training or
34 scientific expertise in waste management, including solid waste disposal,
35 hauling, or beneficial use.
- 36 (2) One appointed by the Governor subject to confirmation by the General
37 Assembly, who shall at the time of appointment be a licensed physician or a
38 person with experience in public health.
- 39 (3) One appointed by the Governor subject to confirmation by the General
40 Assembly, who shall at the time of appointment be a representative of an
41 electric membership corporation organized under Article 2 of Chapter 117 of
42 the General Statutes and have a background in power supply resource planning
43 and engineering.
- 44 (4) One appointed by the Governor subject to confirmation by the General
45 Assembly, who shall at the time of appointment have expertise in determining
46 and evaluating the costs associated with electricity generation and establishing
47 the rates associated with electricity consumption.
- 48 (5) One appointed by the Governor subject to confirmation by the General
49 Assembly, who shall at the time of appointment be a person with experience in
50 science or engineering in hydrology or geology.

1 (6) One appointed by the General Assembly upon recommendation of the Speaker
2 of the House of Representatives in accordance with G.S. 120-121, who is a
3 member of a nongovernmental conservation interest.

4 (7) One appointed by the General Assembly upon recommendation of the President
5 Pro Tempore of the Senate in accordance with G.S. 120-121, who shall at the
6 time of appointment be a resident of the State.

7 (b2) Process for Appointments by the Governor. – The Governor shall transmit to the
8 presiding officers of the Senate and the House of Representatives, within four weeks of the
9 convening of the session of the General Assembly in the year for which the terms in question are
10 to expire, the names of the persons to be appointed by the Governor and submitted to the General
11 Assembly for confirmation by joint resolution. If an appointment is required pursuant to this
12 subsection when the General Assembly is not in session, the member may be appointed and serve
13 on an interim basis pending confirmation by the General Assembly. For the purpose of this
14 subsection, the General Assembly is not in session only (i) prior to convening of the regular
15 session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after sine
16 die adjournment of the Regular Session.

17 (c) Chair. – The Governor shall appoint the Chair of the Commission from among the
18 Commission's members, and that person shall serve at the pleasure of the Governor. The Chair
19 shall serve two-year terms. The Governor shall make:

20 (1) The initial appointment of the Chair no later than ~~October 1, 2014.~~ July 1, 2016.
21 If the initial appointment is not made by that date, the Chair shall be elected by
22 a vote of the membership; and

23 (2) Appointments of a subsequent Chair, including appointments to fill a vacancy
24 of the Chair created by resignation, dismissal, death, or disability of the Chair,
25 no later than 30 days after the last day of the previous Chair's term. If an
26 appointment of a subsequent Chair is not made by that date, the Chair shall be
27 elected by a vote of the membership.

28 (d) Vacancies. – ~~Any appointment to fill a vacancy on the Commission created by the~~
29 ~~resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired~~
30 ~~term. The Governor may reappoint a gubernatorial appointee of the Commission to an additional~~
31 ~~term if, at the time of the reappointment, the member qualifies for membership on the Commission~~
32 ~~under subdivisions (7) through (9) of subsection (b) of this section. In case of death, incapacity,~~
33 ~~resignation, or vacancy for any other reason in the office of any member appointed by the~~
34 ~~Governor, prior to the expiration of the member's term of office, the name of the successor shall be~~
35 ~~submitted by the Governor within four weeks after the vacancy arises to the General Assembly for~~
36 ~~confirmation by the General Assembly. In case of death, incapacity, resignation, or vacancy for~~
37 ~~any other reason in the office of any member appointed~~ Appointments by the General Assembly
38 shall be made in accordance with G.S. 120-121, and vacancies in those appointments
39 shall be filled in accordance with G.S. 120-122. If a vacancy arises or exists when the General
40 Assembly is not in session, and the appointment is deemed urgent by the Governor, the member
41 may be appointed by the Governor and serve on an interim basis pending confirmation or
42 appointment by the General Assembly, as applicable. An appointment to fill a vacancy shall be for
43 the unexpired balance of the term.

44 (e) Removal. – The Governor shall have the power to remove any member of the
45 Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the
46 provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

47 (f) Powers and Duties. – The Commission shall have all of the following powers and
48 duties:

49 (1) To review and approve the classification of coal combustion residuals surface
50 impoundments required by G.S. 130A-309.213.

- 1 (2) To review and approve Coal Combustion Residuals Surface Impoundment
2 Closure Plans as provided in G.S. 130A-309.214.
- 3 (3) To review and make recommendations on the provisions of this Part and other
4 statutes and rules related to the management of coal combustion residuals.
- 5 (4) To undertake any additional studies as requested by the General Assembly.
- 6 (g) Reimbursement. – The members of the Commission shall receive per diem and
7 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.
- 8 (h) Quorum. – ~~Five-Four~~ members of the ~~Commission-Commission~~, at least three of whom
9 must be gubernatorial appointees, shall constitute a quorum for the transaction of business.
- 10 (i) Staff. – The Commission is authorized and empowered to employ staff as the
11 Commission may determine to be necessary for the proper discharge of the Commission's duties
12 and responsibilities. The Chair of the Commission shall organize and direct the work of the
13 Commission staff. The salaries and compensation of all such personnel shall be fixed in the
14 manner provided by law for fixing and regulating salaries and compensation by other State
15 agencies. The Chair, within allowed budgetary limits and as allowed by law, shall authorize and
16 approve travel, subsistence, and related expenses of such personnel incurred while traveling on
17 official business. All State agencies, including the constituent institutions of The University of
18 North Carolina, shall provide information and support to the Commission upon request.
- 19 (j) Repealed by Session Laws 2015-9, s. 1.1, effective April 27, 2015.
- 20 (k) Covered Persons; Conflicts of Interest; Disclosure. – All members of the Commission
21 are covered persons for the purposes of Chapter 138A of the General Statutes, the State
22 Government Ethics Act. As covered persons, members of the Commission shall comply with the
23 applicable requirements of the State Government Ethics Act, including mandatory training, the
24 public disclosure of economic interests, and ethical standards for covered persons. Members of the
25 Commission shall comply with the provisions of the State Government Ethics Act to avoid
26 conflicts of interest. The Governor may require additional disclosure of potential conflicts of
27 interest by members. The Governor may promulgate criteria regarding conflicts of interest and
28 disclosure thereof for determining the eligibility of persons under this subsection, giving due
29 regard to the requirements of federal legislation, and, for this purpose, may promulgate rules,
30 regulations, or guidelines in conformance with those established by any federal agency
31 interpreting and applying provisions of federal law.
- 32 (l) Meetings. – The Commission shall meet at least once every two months and may hold
33 special meetings at any time and place within the State at the call of the Chair or upon the written
34 request of at least five members.
- 35 (m) Reports. – The Commission shall submit quarterly written reports as to its operation,
36 activities, programs, and progress to the Environmental Review Commission. The Commission
37 shall supplement the written reports required by this subsection with additional written and oral
38 reports as may be requested by the Environmental Review Commission. The Commission shall
39 submit the written reports required by this subsection whether or not the General Assembly is in
40 session at the time the report is due.
- 41 (n) ~~Administrative Location; Independence-Location.~~ – The Commission shall be
42 administratively located in the Division of Emergency Management of the Department of Public
43 ~~Safety-Safety~~, the head of which is the Secretary of Public Safety, who, as provided in
44 G.S. 143B-602, has powers and duties as delegated to the Secretary by the Governor and conferred
45 on the Secretary by the Constitution and laws of this State. ~~The Commission shall exercise all of~~
46 ~~its powers and duties independently and shall not be subject to the supervision, direction, or~~
47 ~~control of the Division or Department.~~
- 48 (o) Terms of Members. – Members of the Commission shall serve terms of ~~six-four~~ years,
49 beginning effective ~~July 1-January 1~~ of the year of ~~appointment-appointment~~, and terminate on
50 December 31 of the year of expiration. At the expiration of each member's term, the appointing
51 authority shall replace the member with a new member of like qualifications for a term of four

1 years. A member shall continue to serve until the member's successor is duly confirmed and
2 qualified but such holdover shall not affect the expiration date of such succeeding term. In order to
3 establish regularly overlapping terms, initial appointments shall be made effective June 1, 2016, or
4 as soon as feasible thereafter, and expire as follows:

5 (1) The initial appointments made by the Governor:

6 a. Pursuant to subdivision (b1)(1) of this section shall expire December 31,
7 2020.

8 b. Pursuant to subdivision (b1)(2) of this section shall expire December 31,
9 2020.

10 c. Pursuant to subdivision (b1)(3) of this section shall expire December 31,
11 2020.

12 d. Pursuant to subdivision (b1)(4) of this section shall expire December 31,
13 2019.

14 e. Pursuant to subdivision (b1)(5) of this section shall expire December 31,
15 2019.

16 (2) The initial appointment made by the General Assembly upon recommendation
17 of the Speaker of the House of Representatives pursuant to subdivision (b1)(6)
18 of this section shall expire December 31, 2018.

19 (3) The initial appointment made by the General Assembly upon recommendation
20 of the President Pro Tempore of the Senate pursuant to subdivision (b1)(7) of
21 this section shall expire December 31, 2018."

22 **SECTION 2.(b)** G.S. 130A-309.213 reads as rewritten:

23 **"§ 130A-309.213. Prioritization of coal combustion residuals surface impoundments.**

24 (a) As soon as practicable, but no later than December 31, 2015, the Department shall
25 develop proposed classifications for all coal combustion residuals surface impoundments,
26 including active and retired sites, for the purpose of closure and remediation based on these sites'
27 risks to public health, safety, and welfare; the environment; and natural resources and shall
28 determine a schedule for closure and required remediation that is based on the degree of risk to
29 public health, safety, and welfare; the environment; and natural resources posed by the
30 impoundments and that gives priority to the closure and required remediation of impoundments
31 that pose the greatest risk. In assessing the risk, the Department shall evaluate information
32 received pursuant to G.S. 130A-309.211 and G.S. 130A-309.212 and any other information
33 deemed relevant and, at a minimum, consider all of the following:

34 (1) Any hazards to public health, safety, or welfare resulting from the
35 impoundment.

36 (2) The structural condition and hazard potential of the impoundment.

37 (3) The proximity of surface waters to the impoundment and whether any surface
38 waters are contaminated or threatened by contamination as a result of the
39 impoundment.

40 (4) Information concerning the horizontal and vertical extent of soil and
41 groundwater contamination for all contaminants confirmed to be present in
42 groundwater in exceedance of groundwater quality standards and all significant
43 factors affecting contaminant transport.

44 (5) The location and nature of all receptors and significant exposure pathways.

45 (6) The geological and hydrogeological features influencing the movement and
46 chemical and physical character of the contaminants.

47 (7) The amount and characteristics of coal combustion residuals in the
48 impoundment.

49 (8) Whether the impoundment is located within an area subject to a 100-year flood.

50 (9) Any other factor the Department deems relevant to establishment of risk.

1 (b) The Department shall issue a proposed classification for each coal combustion
2 residuals surface impoundment based upon the assessment conducted pursuant to subsection (a) of
3 this section as high-risk, intermediate-risk, or low-risk. Within 30 days after a proposed
4 classification has been issued, the Department shall issue a written declaration, including findings
5 of fact, documenting the proposed classification. The Department shall provide for public
6 participation on the proposed risk classification as follows:

7 (1) The Department shall make copies of the written declaration issued pursuant to
8 this subsection available for inspection as follows:

- 9 a. A copy of the declaration shall be provided to the local health director.
10 b. A copy of the declaration shall be provided to the public library located
11 in closest proximity to the site in the county or counties in which the site
12 is located.
13 c. The Department shall post a copy of the declaration on the Department's
14 Web site.
15 d. The Department shall place copies of the declaration in other locations
16 so as to assure the reasonable availability thereof to the public.

17 (2) The Department shall give notice of the written declaration issued pursuant to
18 this subsection as follows:

- 19 a. A notice and summary of the declaration shall be published weekly for a
20 period of three consecutive weeks in a newspaper having general
21 circulation in the county or counties where the site is located.
22 b. Notice of the written declaration shall be given by first-class mail to
23 persons who have requested such notice. Such notice shall include a
24 summary of the written declaration and state the locations where a copy
25 of the written declaration is available for inspection. The Department
26 shall maintain a mailing list of persons who request notice pursuant to
27 this section.
28 c. Notice of the written declaration shall be given by electronic mail to
29 persons who have requested such notice. Such notice shall include a
30 summary of the written declaration and state the locations where a copy
31 of the written declaration is available for inspection. The Department
32 shall maintain a mailing list of persons who request notice pursuant to
33 this section.

34 (3) No later than 60 days after issuance of the written declaration, the Department
35 shall conduct a public meeting in the county or counties in which the site is
36 located to explain the written declaration to the public. The Department shall
37 give notice of the hearing at least 15 days prior to the date thereof by all of the
38 following methods:

- 39 a. Publication as provided in subdivision (1) of this subsection, with first
40 publication to occur not less than 30 days prior to the scheduled date of
41 the hearing.
42 b. First-class mail to persons who have requested notice as provided in
43 subdivision (2) of this subsection.
44 c. Electronic mail to persons who have requested notice as provided in
45 subdivision (2) of this subsection.

46 (4) At least 30 days from the latest date on which notice is provided pursuant to
47 subdivision (2) of this subsection shall be allowed for the receipt of written
48 comment on the written declaration prior to issuance of a final risk
49 classification. At least 20 days will be allowed for receipt of written comment
50 following a hearing conducted pursuant to subdivision (3) of this subsection
51 prior to issuance of a final risk classification.

1 (c) ~~Within 30 days of the receipt~~After receipt of all written comment as required by
2 subdivision (4) of subsection (b) of this section, the Department shall submit a proposed
3 classification for a coal combustion residuals surface impoundment to the Coal Ash Management
4 Commission established pursuant to ~~G.S. 130A-309.202.~~ G.S. 130A-309.202 as soon as legally
5 practicable but no later than 10 days after all appointments have been made pursuant to
6 G.S. 130A-309.202(b1). The Commission shall evaluate all information submitted in accordance
7 with this Part related to the proposed ~~classification~~classification, including memorandums of
8 agreement or other binding agreements to provide permanent replacement water supplies in
9 accordance with the requirements of G.S. 130A-309.211 to reduce risks to public health, safety,
10 and welfare, and any other information the Commission deems relevant. The Commission shall
11 only approve the proposed classification if it determines that the classification was developed in
12 accordance with this section and that the classification accurately reflects the level of risk posed
13 by the coal combustion residuals surface impoundment. The Commission shall issue its
14 determination in writing, including findings in support of its ~~determination~~determination, which
15 shall constitute a final decision of the Commission for purposes of an appeal under Article 3 of
16 Chapter 150B of the General Statutes. If the ~~Commission~~Commission, appointed as provided by
17 G.S. 130A-309.202(b1), fails to act on a proposed classification within 60-120 days of receipt of
18 the proposed classification, the proposed classification shall be deemed approved. ~~disapproved.~~ If
19 a proposed classification is deemed disapproved on the basis that a final decision, including a
20 written determination with findings of facts, has not been issued by the Commission prior to
21 expiration of the 120-day period, the Commission may extend the deadline for no more than 120
22 days if necessary for adequate review of a proposed classification. Parties aggrieved by a final
23 decision of the Commission pursuant to this subsection may appeal the decision as provided under
24 Article 3 of Chapter 150B of the General Statutes. A classification deemed disapproved as a result
25 of the Commission's failure to act within the 120-day review period, and, if applicable, a
26 subsequent 120-day review period resulting from an extension issued by the Commission to allow
27 additional review shall not constitute a final decision of the Commission for purposes of an appeal
28 under Article 3 of Chapter 150B of the General Statutes."

29 **SECTION 2.(c)** Notwithstanding the provisions of G.S. 130A-309.202(b2) and
30 G.S. 130A-309.202(o), as enacted and amended by Section 2(a) of this act, no later than 30 days
31 after the date this act becomes law, the Governor shall transmit to the presiding officers of the
32 Senate and the House of Representatives, the names of the persons nominated by the Governor for
33 appointment to the Coal Ash Management Commission pursuant to G.S. 130A-309.202(b1), as
34 enacted by Section 2(a) of this act, for confirmation by the General Assembly by joint resolution.

35 **SECTION 2.(d)** Notwithstanding G.S. 130A-309.213(c) and G.S. 130A-309.214(d),
36 the Environmental Management Commission shall assume all powers and duties for review and
37 approval of proposed classifications for all coal combustion residuals surface impoundments and
38 closure plans for all coal combustion residuals surface impoundments pursuant to those sections, if
39 (i) upon expiration of the period established for public comment set forth in Section 2(f) of this
40 act, the Coal Ash Management Commission has not been appointed as provided by
41 G.S. 130A-309.202(b1), as enacted by Section 2(a) of this act, or (ii) if at any point a court of
42 competent jurisdiction issues a temporary or permanent order enjoining the authority, operation, or
43 activities of the Coal Ash Management Commission appointed as provided by
44 G.S. 130A-309.202(b1), as enacted by Section 2(a) of this act, or issues any other decision or
45 order that prevents the Commission from carrying out its statutory duties.

46 **SECTION 2.(e)** No classification for any coal combustion residuals surface
47 impoundment, regardless of when such classification was issued, shall be construed to be deemed
48 approved or final, or implemented as such by the Department of Environmental Quality, until the
49 classification is approved by the (i) Coal Ash Management Commission, as appointed pursuant to
50 G.S. 130A-309.202(b1), as enacted by Section 2(a) of this act, or (ii) the Environmental
51 Management Commission, if applicable, pursuant to Section 2(d) of this act.

1 **SECTION 2.(f)** Notwithstanding G.S. 130A-309.213, the Department of
2 Environmental Quality shall do all of the following:

- 3 (1) Extend the period for receipt of public comment on the written declarations for
4 proposed classifications for all coal combustion residuals surface
5 impoundments until August 1, 2016, consider any comments, information, and
6 data received during this period, including memorandums of agreement or other
7 binding agreements to provide permanent replacement water supplies in
8 accordance with the requirements of G.S. 130A-309.211, as amended by
9 Section 2(a) of this act, to reduce risk to public health, safety, and welfare; and
10 incorporate any comments, information, and data necessary for issuance of a
11 classification that accurately reflects the level of risk posed by the coal
12 combustion residuals surface impoundment.
- 13 (2) No later than September 1, 2016, submit a proposed classification for review
14 and approval to the (i) Coal Ash Management Commission, as appointed
15 pursuant to G.S. 130A-309.202(b1), as enacted by Section 2(a) of this act, or
16 (ii) the Environmental Management Commission, if applicable, pursuant to
17 Section 2(d) of this act.

18 **SECTION 2.(g)** Up to five receipt-supported positions are created in the Division of
19 Emergency Management of the Department of Public Safety to carry out the duties in
20 G.S. 130A-309.202. There is appropriated a sum of up to four hundred thousand dollars
21 (\$400,000) to the Coal Ash Management Commission from the Coal Combustion Residuals
22 Management Fund cash balance on June 30, 2016. These positions shall be used to provide
23 assistance to the Coal Ash Management Commission established by G.S. 130A-309.202, as
24 enacted by Section 2(a) of this act. The Division of Emergency Management in the Department of
25 Public Safety shall consult with the Chair of the Commission in hiring the staff for the Coal Ash
26 Management Commission. The Division of Emergency Management in the Department of Public
27 Safety shall provide support to the Commission until the staff of the Commission is hired,
28 including the designation of an individual to serve as an interim executive director of the staff.
29 Provided, however, that if the Environmental Management Commission assumes all powers and
30 duties for review and approval of proposed classifications for all coal combustion residuals surface
31 impoundments and closure plans for all coal combustion residuals surface impoundments pursuant
32 to Section 2(d) of this act, then funds to be appropriated pursuant to this section shall instead be
33 appropriated to the Environmental Management Commission, which funds shall be used solely to
34 support the work of the Commission to review and approve proposed classifications and proposed
35 closure plans.

36 **SECTION 2.(h)** This section is effective when it becomes law.

37 **SECTION 3.(a)** G.S. 143B-291 reads as rewritten:

38 **"§ 143B-291. North Carolina Mining Commission – members; selection; removal;**
39 **compensation; quorum; services.**

40 (a) Repealed by 2014-4, s. 5(a), effective July 31, 2015.

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

- 43 (1) One member who is the chair of the North Carolina State University Minerals
44 Research Laboratory Advisory Committee.
- 45 (2) The State Geologist, ex officio and nonvoting.
- 46 (3) One member appointed by the Governor subject to confirmation by the General
47 Assembly, who is a representative of the mining industry.
- 48 (4) One member appointed by the Governor subject to confirmation by the General
49 Assembly, who is a representative of the mining industry.

- 1 (5) One member appointed by the ~~General Assembly upon recommendation of the~~
2 ~~Speaker of the House of Representatives-Governor~~ subject to confirmation by
3 ~~the General Assembly~~ who is a representative of the mining industry.
- 4 (6) One member appointed by the ~~General Assembly upon recommendation of the~~
5 ~~President Pro Tempore of the Senate-Governor~~ subject to confirmation by the
6 ~~General Assembly~~ who is a representative of the mining industry.
- 7 (7) One member appointed by the General Assembly upon recommendation of the
8 Speaker of the House of Representatives in accordance with G.S. 120-121, who
9 is a member of nongovernmental conservation interests.
- 10 (8) One member appointed by the General Assembly upon recommendation of the
11 President Pro Tempore of the Senate in accordance with G.S. 120-121, who is a
12 member of nongovernmental conservation interests.

13 (a2) Process for Appointments by the Governor. – The Governor shall transmit to the
14 presiding officers of the Senate and the House of Representatives, within four weeks of the
15 convening of the session of the General Assembly in the year for which the terms in question are
16 to expire, the names of the persons to be appointed by the Governor and submitted to the General
17 Assembly for confirmation by joint resolution. If an appointment is required pursuant to this
18 subsection when the General Assembly is not in session, the member may be appointed and serve
19 on an interim basis pending confirmation by the General Assembly. For the purpose of this
20 subsection, the General Assembly is not in session only (i) prior to convening of the regular
21 session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after sine
22 die adjournment of the regular session.

23 (b) Terms. – The term of office of a member of the Commission is ~~six years-four years,~~
24 beginning effective January 1 of the year of appointment and terminating on December 31 of the
25 year of expiration. At the expiration of each member's term, the appointing authority shall replace
26 the member with a new member of like qualifications for a term of ~~six-four~~ years. The term of the
27 member appointed under subdivision (5) of subsection (a1) of this section shall expire on June 30
28 of years that precede by one year those years that are evenly divisible by six. The term of members
29 appointed under subdivisions (3) and (6) of subsection (a1) of this section shall expire on June 30
30 of years that follow by one year those years that are evenly divisible by six. The term of members
31 appointed under subdivisions (4) and (7) of subsection (a1) of this section shall expire on June 30
32 of years that follow by three years those years that are evenly divisible by six. Upon the expiration
33 of a six-year term, a member may continue to serve until a successor is appointed and duly
34 qualified as provided by G.S. 128-7. In order to establish regularly overlapping terms, initial
35 appointments shall be made effective June 1, 2016, or as soon as feasible thereafter, and expire as
36 follows:

- 37 (1) The initial appointments made by the Governor:
- 38 a. Pursuant to subdivision (a1)(3) of this section shall expire December 31,
39 2020.
- 40 b. Pursuant to subdivision (a1)(4) of this section shall expire December 31,
41 2020.
- 42 c. Pursuant to subdivision (a1)(5) of this section shall expire December 31,
43 2019.
- 44 d. Pursuant to subdivision (a1)(6) of this section shall expire December 31,
45 2019.
- 46 (2) The initial appointment made by the General Assembly upon recommendation
47 of the Speaker of the House of Representatives pursuant to subdivision (a1)(7)
48 of this section shall expire December 31, 2018.
- 49 (3) The initial appointment made by the General Assembly upon recommendation
50 of the President Pro Tempore of the Senate pursuant to subdivision (a1)(8) of
51 this section shall expire December 31, 2018.

1 (c) Vacancies. – In case of death, incapacity, resignation, or vacancy for any other reason
2 in the office of any member appointed by the Governor, prior to the expiration of the member's
3 term of office, the name of the successor shall be submitted by the Governor within four weeks
4 after the vacancy arises to the General Assembly for confirmation by the General Assembly. In
5 case of death, incapacity, resignation, or vacancy for any other reason in the office of any member
6 appointed by the General Assembly, vacancies in those appointments shall be filled in accordance
7 with G.S. 120-122. If a vacancy arises or exists when the General Assembly is not in session, and
8 the appointment is deemed urgent by the Governor, the member may be appointed by the
9 Governor and serve on an interim basis pending confirmation or appointment by the General
10 Assembly, as applicable. An appointment to fill a vacancy shall be for the unexpired balance of
11 the term.

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

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

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

18 (g) Staff. – All clerical and other services required by the Commission shall be supplied by
19 the Secretary of Environmental Quality."

20 **SECTION 3.(b)** Notwithstanding the provisions of G.S. 143B-291(a2) and
21 G.S. 143B-291(b), as enacted and amended by Section 3(a) of this act, no later than 30 days after
22 the date this act becomes law, the Governor shall transmit to the presiding officers of the Senate
23 and the House of Representatives the names of the persons nominated by the Governor for
24 appointment to the Mining Commission pursuant to G.S. 143B-291(a1), as enacted by Section
25 3(a) of this act, for confirmation by the General Assembly by joint resolution. Upon failure of the
26 Governor to submit names as provided herein by December 1, 2016, the Lieutenant Governor
27 shall make such appointments, and if such appointments made by the Lieutenant Governor occur
28 when the General Assembly is not in session, the member may be appointed and serve on an
29 interim basis pending confirmation by the General Assembly.

30 **SECTION 3.(c)** This section is effective when it becomes law.

31 **SECTION 4.(a)** G.S. 143B-293.2 reads as rewritten:

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

34 (a) Repealed by Session Laws 2014-4, s. 4(a), effective July 31, 2015.

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

37 (1) One appointed by the ~~General Assembly upon recommendation of the Speaker~~
38 ~~of the House of Representatives~~ Governor subject to confirmation by the
39 General Assembly who, at the time of initial appointment, is an elected official
40 of a municipal government located in a region of North Carolina that has oil
41 and gas potential. A person serving in this seat may complete a term on the
42 Commission even if the person is no longer serving as an elected official of a
43 municipal government but may not be reappointed to a subsequent term.

44 (2) One appointed by the General Assembly upon recommendation of the Speaker
45 of the House of Representatives in accordance with G.S. 120-121, who shall be
46 a geologist with experience in oil and gas exploration and development.

47 (3) One appointed by the General Assembly upon recommendation of the Speaker
48 of the House of Representatives in accordance with G.S. 120-121, who is a
49 member of a nongovernmental conservation interest.

50 (4) One appointed by the ~~General Assembly upon recommendation of the President~~
51 ~~Pro Tempore of the Senate~~ Governor subject to confirmation by the General

1 Assembly who, at the time of initial appointment, is a member of a county
2 board of commissioners of a county located in a region of North Carolina that
3 has oil and gas potential. A person serving in this seat may complete a term on
4 the Commission even if the person is no longer serving as county commissioner
5 but may not be reappointed to a subsequent term.

6 (5) One appointed by the General Assembly upon recommendation of the President
7 Pro Tempore of the Senate in accordance with G.S. 120-121, who is a member
8 of a nongovernmental conservation interest.

9 (6) One appointed by the General Assembly upon recommendation of the President
10 Pro Tempore of the Senate in accordance with G.S. 120-121, who shall be an
11 engineer with experience in oil and gas exploration and development.

12 (7) One appointed by the Governor subject to confirmation by the General
13 Assembly, who shall be a representative of a publicly traded natural gas
14 company.

15 (8) One appointed by the Governor subject to confirmation by the General
16 Assembly, who shall be a licensed attorney with experience in legal matters
17 associated with oil and gas exploration and development.

18 (9) One appointed by the Governor subject to confirmation by the General
19 Assembly, with experience in matters related to public health.

20 (a2) Process for Appointments by the Governor. – The Governor shall transmit to the
21 presiding officers of the Senate and the House of Representatives, within four weeks of the
22 convening of the session of the General Assembly in the year for which the terms in question are
23 to expire, the names of the persons to be appointed by the Governor and submitted to the General
24 Assembly for confirmation by joint resolution. If an appointment is required pursuant to this
25 subsection when the General Assembly is not in session, the member may be appointed and serve
26 on an interim basis pending confirmation by the General Assembly. For the purpose of this
27 subsection, the General Assembly is not in session only (i) prior to convening of the regular
28 session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after sine
29 die adjournment of the regular session.

30 (b) Terms. – The term of office of members of the Commission is ~~three years~~four years,
31 beginning effective January 1 of the year of appointment and terminating on December 31 of the
32 year of expiration. A member may be reappointed to no more than two consecutive
33 ~~three year~~four-year terms. The term of a member who no longer meets the qualifications of their
34 respective appointment, as set forth in subsection ~~(a)~~(a1) of this section, shall terminate but the
35 member may continue to serve until a new member who meets the qualifications is appointed. ~~The~~
36 ~~terms of members appointed under subdivisions (1), (4), and (7) of subsection (a1) of this section~~
37 ~~shall expire on June 30 of years evenly divisible by three. The terms of members appointed under~~
38 ~~subdivisions (2), (5), and (8) of subsection (a1) of this section shall expire on June 30 of years that~~
39 ~~precede by one year those years that are evenly divisible by three. The terms of members~~
40 ~~appointed under subdivisions (3), (6), and (9) of subsection (a1) of this section shall expire on~~
41 ~~June 30 of years that follow by one year those years that are evenly divisible by three. In order to~~
42 ~~establish regularly overlapping terms, initial appointments shall be made effective June 1, 2016, or~~
43 ~~as soon as feasible thereafter, and expire as follows:~~

44 (1) The initial appointments made by the Governor:

45 a. Pursuant to subdivision (a1)(1) of this section shall expire December 31,
46 2020.

47 b. Pursuant to subdivision (a1)(4) of this section shall expire December 31,
48 2020.

49 c. Pursuant to subdivision (a1)(7) of this section shall expire December 31,
50 2020.

- 1 d. Pursuant to subdivision (a1)(8) of this section shall expire December 31,
2 2019.
- 3 e. Pursuant to subdivision (a1)(9) of this section shall expire December 31,
4 2019.
- 5 (2) The initial appointments made by the General Assembly upon recommendation
6 of the Speaker of the House of Representatives:
- 7 a. Pursuant to subdivision (a1)(2) of this section shall expire December 31,
8 2018.
- 9 b. Pursuant to subdivision (a1)(3) of this section shall expire December 31,
10 2019.
- 11 (3) The initial appointments made by the General Assembly upon recommendation
12 of the President Pro Tempore of the Senate:
- 13 a. Pursuant to subdivision (a1)(5) of this section shall expire December 31,
14 2018.
- 15 b. Pursuant to subdivision (a1)(6) of this section shall expire December 31,
16 2019.
- 17 (c) ~~Vacancies; Removal from Office.~~ Vacancies. – In case of death, incapacity,
18 resignation, or vacancy for any other reason in the office of any member appointed by the
19 Governor, prior to the expiration of the member's term of office, the name of the successor shall be
20 submitted by the Governor within four weeks after the vacancy arises to the General Assembly for
21 confirmation by the General Assembly. In case of death, incapacity, resignation, or vacancy for
22 any other reason in the office of any member appointed by the General Assembly, vacancies in
23 those appointments shall be filled in accordance with G.S. 120-122. If a vacancy arises or exists
24 when the General Assembly is not in session, and the appointment is deemed urgent by the
25 Governor, the member may be appointed by the Governor and serve on an interim basis pending
26 confirmation or appointment by the General Assembly, as applicable. An appointment to fill a
27 vacancy shall be for the unexpired balance of the term.
- 28 (c1) Removal. –
- 29 (1) ~~Any appointment by the Governor to fill a vacancy on the Commission created by the~~
30 ~~resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired~~
31 ~~term.~~ The Governor shall have the power to remove any member of the Commission from office
32 for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13
33 of the Executive Organization Act of 1973.
- 34 (2) ~~Members appointed by the President Pro Tempore of the Senate and the Speaker of the~~
35 ~~House of Representatives shall be made in accordance with G.S. 120-121, and vacancies in those~~
36 ~~appointments shall be filled in accordance with G.S. 120-122. In accordance with Section 10 of~~
37 ~~Article VI of the North Carolina Constitution, a member may continue to serve until a successor is~~
38 ~~duly appointed.~~
- 39 (d) Compensation. – The members of the Commission shall receive per diem and
40 necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.
- 41 (e) Quorum. – A majority of the Commission shall constitute a quorum for the transaction
42 of business.
- 43 (f) Staff. – All staff support required by the Commission shall be supplied by the Division
44 of Energy, Mineral, and Land Resources and the North Carolina Geological Survey.
- 45 (g) Committees. – In addition to the Committee on Civil Penalty Remissions required to be
46 established under G.S. 143B-293.6, the chair may establish other committees from members of the
47 Commission to address specific issues as appropriate. No member of a committee may hear or
48 vote on any matter in which the member has an economic interest. A majority of a committee shall
49 constitute a quorum for the transaction of business.
- 50 (h) Office May Be Held Concurrently With Others. – Membership on the Oil and Gas
51 Commission is hereby declared to be an office that may be held concurrently with other elective or

1 appointive offices in addition to the maximum number of offices permitted to be held by one
2 person under G.S. 128-1.1."

3 **SECTION 4.(b)** Notwithstanding the provisions of G.S. 143B-293.2(a1) and
4 G.S. 143B-293.2(b), as enacted and amended by Section 4(a) of this act, no later than 30 days after
5 the date this act becomes law the Governor shall transmit to the presiding officers of the Senate
6 and the House of Representatives, the names of the persons nominated by the Governor for
7 appointment to the Oil and Gas Commission pursuant to G.S. 143B-293.2(a1), as enacted by
8 Section 4(a) of this act, for confirmation by the General Assembly by joint resolution. Upon
9 failure of the Governor to submit names as provided herein by December 1, 2016, the Lieutenant
10 Governor shall make such appointments, and if such appointments made by the Lieutenant
11 Governor occur when the General Assembly is not in session, the member may be appointed and
12 serve on an interim basis pending confirmation by the General Assembly.

13 **SECTION 4.(c)** For purposes of the rules set forth in 15A NCAC 05H (Oil and Gas
14 Conservation Rules), modifications made to the Oil and Gas Commission under Section 4(a) of
15 this act shall, pursuant to G.S. 150B-21.7, be construed to (1) have repealed authority to adopt
16 such rules given to previously constituted commissions and (2) transferred the authority to adopt
17 such rules to the Oil and Gas Commission as modified by Section 4(a) of this act. Therefore,
18 pursuant to G.S. 150B-21.7, rules set forth in 15A NCAC 05H (Oil and Gas Conservation Rules)
19 shall be effective until the Oil and Gas Commission, as modified Section 4(a) of this act, amends
20 or repeals the rules.

21 **SECTION 4.(d)** This section is effective when it becomes law.

22 **SECTION 5.** The provisions of this act shall be severable, and if any phrase, clause,
23 sentence, or provision is declared to be unconstitutional or otherwise invalid, the validity of the
24 remainder of this act shall not be affected thereby.

25 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes law.