

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 157
Committee Substitute Favorable 3/10/15
Committee Substitute #2 Favorable 3/11/15

Short Title: Amend Environmental Laws.

(Public)

Sponsors:

Referred to:

March 5, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS.
3 The General Assembly of North Carolina enacts:

4
5 **PART I. INTERSTATE MINING COMPACT CLARIFICATION**

6 **SECTION 1.** G.S. 74-37 reads as rewritten:

7 **"§ 74-37. Compact enacted into law.**

8 The Interstate Mining Compact is hereby enacted into law and entered into by this State
9 with all other jurisdictions legally joining therein in the form substantially as follows:

10
11 **INTERSTATE MINING COMPACT**

12 ...
13 Article V. The Commission

14 (a) There is hereby created an agency of the party states to be known as the "Interstate
15 Mining Commission," hereinafter called "the Commission." The Commission shall be
16 composed of one commissioner from each party state who shall be Governor thereof. Pursuant
17 to the laws of his party state, each Governor shall have the assistance of an advisory body
18 (including membership from mining industries, conservation interests, and such other public
19 and private interests as may be appropriate) in considering problems relating to mining and in
20 discharging his responsibilities as the commissioner of his state on the Commission. In any
21 instance where a Governor is unable to attend a meeting of the Commission or perform any
22 other function in connection with the business of the Commission, he shall designate an
23 alternate, from among the members of the advisory body required by this ~~paragraph, paragraph~~
24 or an official of the state environmental protection agency with responsibility for protecting and
25 restoring lands affected by mining, who shall represent him and act in his place and stead. The
26 designation of an alternate shall be communicated by the Governor to the Commission in such
27 manner as its bylaws may provide.

28 (b) The commissioners shall be entitled to one vote each on the Commission. No action
29 of the Commission making a recommendation pursuant to Article IV-3, IV-7, and IV-8 or
30 requesting, accepting or disposing of funds, services, or other property pursuant to this
31 paragraph, Articles V (g), V (h), or VII shall be valid unless taken at a meeting at which a
32 majority of the total number of votes on the Commission is cast in favor thereof. All other
33 action shall be by a majority of those present and voting: Provided that action of the
34 Commission shall be only at a meeting at which a majority of the commissioners, or their
35 alternates, is present. The Commission may establish and maintain such facilities as may be



1 necessary for the transacting of its business. The Commission may acquire, hold, and convey
2 real and personal property and any interest therein.

3 (c) The Commission shall have a seal.

4 (d) The Commission shall elect annually, from among its members, a chairman, a
5 vice-chairman, and a treasurer. The Commission shall appoint an executive director and fix his
6 duties and compensation. Such executive director shall serve at the pleasure of the
7 Commission. The executive director, the treasurer, and such other personnel as the Commission
8 shall designate shall be bonded. The amount or amounts of such bond or bonds shall be
9 determined by the Commission.

10 (e) Irrespective of the civil service, personnel or other merit system laws of any of the
11 party states, the executive director with the approval of the Commission, shall appoint, remove
12 or discharge such personnel as may be necessary for the performance of the Commission's
13 functions, and shall fix the duties and compensation of such personnel.

14 (f) The Commission may establish and maintain independently or in conjunction with a
15 party state, a suitable retirement system for its employees. Employees of the Commission shall
16 be eligible for social security coverage in respect of old age and survivor's insurance provided
17 that the Commission takes such steps as may be necessary pursuant to the laws of the United
18 States, to participate in such program of insurance as a governmental agency or unit. The
19 Commission may establish and maintain or participate in such additional programs of employee
20 benefits as it may deem appropriate.

21 (g) The Commission may borrow, accept or contract for the services of personnel from
22 any state, the United States, or any other governmental agency, or from any person, firm,
23 association or corporation.

24 (h) The Commission may accept for any of its purposes and functions under this
25 Compact any and all donations, and grants of money, equipment, supplies, materials and
26 services, conditional or otherwise, from any state, the United States, or any other governmental
27 agency, or from any person, firm, association or corporation, and may receive, utilize and
28 dispose of the same. Any donation or grant accepted by the Commission pursuant to this
29 paragraph or services borrowed pursuant to paragraph (g) of this Article shall be reported in the
30 annual report of the Commission. Such report shall include the nature, amount and conditions,
31 if any, of the donation, grant or services borrowed and the identity of the donor or lender.

32 (i) The Commission shall adopt bylaws for the conduct of its business and shall have
33 the power to amend and rescind these bylaws. The Commission shall publish its bylaws in
34 convenient form and shall file a copy thereof and a copy of any amendment thereto, with the
35 appropriate agency or officer in each of the party states.

36 (j) The Commission annually shall make to the Governor, legislature and advisory
37 body required by Article V (a) of each party state a report covering the activities of the
38 Commission for the preceding year, and embodying such recommendations as may have been
39 made by the Commission. The Commission may make such additional reports as it may deem
40 desirable.

41"

43 PART II. RECYCLED AND RECOVERED MATERIALS

44 SECTION 2.(a) G.S. 130A-290(a) reads as rewritten:

45 "§ 130A-290. Definitions.

46 (a) Unless a different meaning is required by the context, the following definitions shall
47 apply throughout this Article:

48 ...

49 (35) "Solid waste" means any hazardous or nonhazardous garbage, refuse or
50 sludge from a waste treatment plant, water supply treatment plant or air
51 pollution control facility, domestic sewage and sludges generated by the

1 treatment thereof in sanitary sewage collection, treatment and disposal
2 systems, and other material that is either discarded or is being accumulated,
3 stored or treated prior to being discarded, or has served its original intended
4 use and is generally discarded, including solid, liquid, semisolid or contained
5 gaseous material resulting from industrial, institutional, commercial and
6 agricultural operations, and from community activities. Notwithstanding
7 sub-sub-subdivision b.3. of this subdivision, the term includes coal
8 combustion residuals. The term does not include:

- 9 a. Fecal waste from fowls and animals other than humans.
- 10 b. Solid or dissolved material in:
- 11 1. Domestic sewage and sludges generated by treatment thereof
12 in sanitary sewage collection, treatment and disposal systems
13 which are designed to discharge effluents to the surface
14 waters.
- 15 2. Irrigation return flows.
- 16 3. Wastewater discharges and the sludges incidental to and
17 generated by treatment which are point sources subject to
18 permits granted under Section 402 of the Water Pollution
19 Control Act, as amended (P.L. 92-500), and permits granted
20 under G.S. 143-215.1 by the Commission, including coal
21 combustion products. However, any sludges that meet the
22 criteria for hazardous waste under RCRA shall also be a solid
23 waste for the purposes of this Article.
- 24 c. Oils and other liquid hydrocarbons controlled under Article 21A of
25 Chapter 143 of the General Statutes. However, any oils or other
26 liquid hydrocarbons that meet the criteria for hazardous waste under
27 RCRA shall also be a solid waste for the purposes of this Article.
- 28 d. Any source, special nuclear or byproduct material as defined by the
29 Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).
- 30 e. **(Effective until August 1, 2015)** Mining refuse covered by the North
31 Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the
32 North Carolina Mining and Energy Commission (as defined under
33 G.S. 143B-293.1). However, any specific mining waste that meets
34 the criteria for hazardous waste under RCRA shall also be a solid
35 waste for the purposes of this Article.
- 36 e. **(Effective August 1, 2015)** Mining refuse covered by the North
37 Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the
38 North Carolina Mining Commission (as defined under
39 G.S. 143B-293.1). However, any specific mining waste that meets
40 the criteria for hazardous waste under RCRA shall also be a solid
41 waste for the purposes of this Article.
- 42 f. Recovered material.
- 43 g. Steel slag that is a product of the electric arc furnace steelmaking
44 process; provided, that such steel slag is sold and distributed in the
45 stream of commerce for consumption, use, or further processing into
46 another desired commodity and is managed as an item of commercial
47 value in a controlled manner and not as a discarded material or in a
48 manner constituting disposal.

49

50 **SECTION 2.(b)** G.S. 130A-309.05 reads as rewritten:

51 **"§ 130A-309.05. Regulated wastes; certain exclusions.**

1 (a) Notwithstanding other provisions of this Article, the following waste shall be
2 regulated pursuant to this Part:

3 (1) Medical waste; and

4 (2) Ash generated by a solid waste management facility from the burning of
5 solid waste.

6 (b) Ash generated by a solid waste management facility from the burning of solid waste
7 shall be disposed of in a properly designed solid waste disposal area that complies with
8 standards developed by the Department for the disposal of the ash. The Department shall work
9 with solid waste management facilities that burn solid waste to identify and develop methods
10 for recycling and reusing incinerator ash or treated ash.

11 (c) Recovered material is not subject to regulation as solid waste under this Article. In
12 order for a material that would otherwise be regulated as solid waste to qualify as a recovered
13 material, the Department may require any person who owns or has control over the material to
14 demonstrate that the material meets the requirements of this subsection. In order to protect
15 public health and the environment, the Commission may adopt rules to implement this
16 subsection. Materials that are accumulated speculatively, as that term is defined under 40 Code
17 of Federal Regulations § 261 (July 1, 2014 Edition), shall not qualify as a recovered material,
18 and shall be subject to regulation as solid waste. In order to qualify as a recovered
19 material, the material shall be managed as a valuable commodity in a manner
20 consistent with the desired use or end use, and all of the following conditions shall be met:

21 (1) A majority—Seventy-five percent (75%), by weight or volume, of the
22 recovered material stored at a facility at the beginning of a calendar year
23 commencing January 1, shall be sold, used, or reused within one
24 year; removed from the facility through sale, use, or reuse by December 31 of
25 the same year.

26 (2) The recovered material or the products or by-products of operations that
27 process recovered material shall not be discharged, deposited, injected,
28 dumped, spilled, leaked, or placed into or upon any land or water so that the
29 products or by-products or any constituent thereof may enter other lands or
30 be emitted into the air or discharged into any waters including groundwaters,
31 or otherwise enter the environment or pose a threat to public health and
32 safety; and safety. Facilities that process recovered material shall be operated
33 in a manner to ensure compliance with this subdivision.

34 (3) The recovered material shall not be a hazardous waste or have been
35 recovered from a hazardous waste.

36 (4) The recovered material shall not contain significant concentrations of
37 foreign constituents that render it unserviceable or inadequate for sale, or its
38 intended use or reuse."

39 **SECTION 2.(c)** G.S. 130A-294 is amended by adding two new subsections to
40 read:

41 **"§ 130A-294. Solid waste management program.**

42 ...

43 (t) Construction and demolition debris diverted from the waste stream or collected as
44 source separated material is subject to a solid waste permit for transfer, treatment, and
45 processing in a permitted solid waste management facility. The Department may adopt rules to
46 implement this subsection.

47 (u) Garbage diverted from the waste stream or collected as source separated material is
48 subject to a solid waste permit for transfer, treatment, and processing in a permitted solid waste
49 management facility. The Department may adopt rules to implement this subsection."

50 **SECTION 2.(d)** G.S. 130A-309.131 reads as rewritten:

51 **"§ 130A-309.131. Definitions.**

1 As used in this Part, the following definitions apply:

2 (1) Business entity. – Defined in G.S. 55-1-40(2a).

3 (2) Computer equipment. – Any ~~desktop computer, notebook computer,~~ monitor
4 or video display unit for a computer system, and the ~~keyboard, mice, other~~
5 ~~peripheral equipment, equipment except keyboards and mice,~~ and a printing
6 device such as a printer, a scanner, a combination print-scanner-fax machine,
7 or other device designed to produce hard paper copies from a computer.
8 Computer equipment does not include an automated typewriter, professional
9 workstation, server, ICI device, ICI system, mobile telephone, portable
10 handheld calculator, portable digital assistant (PDA), MP3 player, or other
11 similar device; an automobile; a television; a household appliance; a large
12 piece of commercial or industrial equipment, such as commercial medical
13 equipment, that contains a cathode ray tube, a cathode ray tube device, a flat
14 panel display, or similar video display device that is contained within, and is
15 not separate from, the larger piece of equipment, or other medical devices as
16 that term is defined under the federal Food, Drug, and Cosmetic Act.

17 ...

18 (6) ~~Desktop computer.~~ Computer. – An electronic, magnetic, optical,
19 electrochemical, or other high-speed data processing device that has all of
20 the following features:

- 21 a. Performs logical, arithmetic, and storage functions for general
22 purpose needs that are met through interaction with a number of
23 software programs contained in the computer.
24 b. Is not designed to exclusively perform a specific type of limited or
25 specialized application.
26 c. Achieves human interface through a ~~stand-alone~~ keyboard,
27 ~~stand-alone monitor or other display unit, and a stand-alone mouse or~~
28 other pointing device.
29 d. Is designed for a single user.
30 e. ~~Has a main unit that is intended to be persistently located in a single~~
31 ~~location, often on a desk or on the floor.~~

32 ...

33 (9a) Electronic device. – Machinery that is powered by a battery or an electrical
34 cord.

35 ...

36 (11) ~~Notebook computer.~~ An electronic, magnetic, optical, electrochemical, or
37 other high-speed data processing device that has all of the following
38 features:

- 39 a. ~~Performs logical, arithmetic, or storage functions for general purpose~~
40 ~~needs that are met through interaction with a number of software~~
41 ~~programs contained in the computer.~~
42 b. ~~Is not designed to exclusively perform a specific type of limited or~~
43 ~~specialized application.~~
44 c. ~~Achieves human interface through a keyboard, video display greater~~
45 ~~than four inches in size, and mouse or other pointing device, all of~~
46 ~~which are contained within the construction of the unit that~~
47 ~~comprises the computer.~~
48 d. ~~Is able to be carried as one unit by an individual.~~
49 e. ~~Is able to use external power, internal power, or batteries for a power~~
50 ~~source.~~

1 Notebook computer includes those that have a supplemental stand-alone
2 interface device attached to the notebook computer. Notebook computer
3 does not include a portable handheld calculator, a PDA, or similar
4 specialized device. A notebook computer may also be referred to as a laptop
5 computer.

6"

7 **SECTION 2.(e)** Part 2H of Article 9 of Chapter 130A of the General Statutes is
8 amended by adding a new section to read:

9 **"§ 130A-309.142. Registration of facilities recovering or recycling electronics required.**

10 Facilities that recover or recycle covered devices or other electronic devices diverted from
11 the waste stream for transfer, treatment, or processing shall register annually with the
12 Department on or before August 1 of each year upon such form as the Department may
13 prescribe."

14
15 **PART III. COAL ASH MANAGEMENT TECHNICAL CORRECTIONS AND**
16 **AMENDMENTS**

17 **SECTION 3.1.(a)** G.S. 130A-309.201 reads as rewritten:

18 **"§ 130A-309.201. Definitions.**

19 Unless a different meaning is required by the context, the definitions of G.S. 130A-290 and
20 the following definitions apply throughout this Part:

21 ...

22 (7) "Commission" means the ~~Environmental~~ Coal Ash Management
23 Commission.

24"

25 **SECTION 3.1.(b)** G.S. 130A-309.205 is amended by adding a new subsection to
26 read:

27 **"§ 130A-309.205. Local ordinances regulating management of coal combustion residuals**
28 **and coal combustion products invalid; petition to preempt local ordinance.**

29 ...

30 (a1) As used in this section, "Commission" means the Environmental Management
31 Commission.

32"

33 **SECTION 3.1.(c)** G.S. 130A-309.220 reads as rewritten:

34 **"§ 130A-309.220. Design, construction, and siting requirements for projects using coal**
35 **combustion products for structural fill.**

36 (a) Design, Construction, and Operation of Structural Fill Sites. –

37 ...

38 (6) The coal combustion product structural fill project shall be effectively
39 maintained and operated to ensure no violations of groundwater standards
40 adopted by the Environmental Management Commission pursuant to Article
41 21 of Chapter 143 of the General Statutes due to the project.

42"

43 **SECTION 3.2.** Section 3(c) of S.L. 2014-122 reads as rewritten:

44 **"SECTION 3.(c)** The impoundments identified in subsection (b) of this section shall be
45 closed as follows:

46 ...

47 (3) If restoration of groundwater quality is degraded as a result of the
48 impoundment, corrective action to restore groundwater quality shall be
49 implemented by the owner or operator as provided in ~~G.S. 130A-309.204.~~
50 G.S. 130A-309.211."

51 **SECTION 3.3.** Section 3(f) of S.L. 2014-122 reads as rewritten:

1 "SECTION 3.(f) This section is effective when it becomes law. G.S. 130A-309.202, as
2 enacted by Section 3(a) of this act, is repealed June 30, 2030. Subpart 3 of Part 2I of Article 9
3 of the General Statutes, as enacted by Section 3(a) of this act, applies to the use of coal
4 combustion products as structural fill contracted for on or after that date. ~~The first report due~~
5 ~~under G.S. 130A-309.210, as enacted by Section 3(a) of this act, is due November 1, 2014.~~
6 Members to be appointed pursuant to G.S. 130A-309.202(b), as enacted by Section 3(a) of this
7 act, shall be appointed no later than October 1, 2014."

8 SECTION 3.4.(a) Section 4(b) of S.L. 2014-122 reads as rewritten:

9 "SECTION 4.(b) Coal combustion products may be used as structural fill for any of the
10 following types of projects:

11 (1) A project where the structural fill is used with a base liner, leachate
12 collection system, cap liner, ~~or~~ groundwater monitoring ~~system~~ system, and
13 where the constructor or operator establishes financial assurance, as required
14 by G.S. 130A-309.217.

15 (2) As the base or sub-base of a concrete or asphalt paved road constructed
16 under the authority of a public entity."

17 SECTION 3.4.(b) Section 4(f) of S.L. 2014-122 reads as rewritten:

18 "SECTION 4.(f) This section is effective when it becomes law and applies to the use of
19 coal combustion ~~residuals~~ products as structural fill contracted for on or after that date."

20 SECTION 3.4.(c) This section is effective retroactively to September 20, 2014,
21 and applies to the use of coal combustion products as structural fill contracted for on or after
22 that date.

23 SECTION 3.5. G.S. 143-215.1(k) reads as rewritten:

24 "(k) Where operation of a disposal system permitted under this section results in
25 exceedances of the groundwater quality standards at or beyond the compliance boundary, the
26 Commission shall require the permittee to undertake corrective action, without regard to the
27 date that the system was first permitted, to restore the groundwater quality by assessing the
28 cause, significance, and extent of the violation of standards and submit the results of the
29 investigation and a plan and proposed schedule for corrective action to the ~~Director or the~~
30 ~~Director's designee~~ Secretary. The permittee shall implement the plan as approved by, and in
31 accordance with, a schedule established by the ~~Director or the Director's designee~~ Secretary. In
32 establishing a schedule the ~~Director or the Director's designee~~ Secretary shall consider any
33 reasonable schedule proposed by the permittee."

34 SECTION 3.6. G.S. 62-302.1 reads as rewritten:

35 "§ 62-302.1. Regulatory fee for combustion residuals surface impoundments.

36 ...

37 (c) When Due. – The fee shall be paid in quarterly installments. The fee is payable to
38 the Coal Ash Management Commission on or before the 15th of the second month following
39 the end of each quarter. Each public utility subject to this fee shall, on or before the date the fee
40 is due for each quarter, prepare and render a report on a form prescribed by the Coal Ash
41 Management Commission. The report shall state the public utility's total North Carolina
42 jurisdictional revenues for the preceding quarter and shall be accompanied by any supporting
43 documentation that the Coal Ash Management Commission may by rule require. Receipts shall
44 be reported on an accrual basis.

45 (d) Use of Proceeds. – A special fund in the Office of State Treasurer and the Coal Ash
46 Management Commission is created. The fees collected pursuant to this section and all other
47 funds received by the Coal Ash Management Commission shall be deposited in the Coal
48 Combustion Residuals Management Fund. The Fund shall be placed in an interest-bearing
49 account, and any interest or other income derived from the Fund shall be credited to the Fund.
50 Moneys in the Fund shall only be spent pursuant to appropriation by the General Assembly.
51 The Coal Ash Management Commission shall be subject to the provisions of the State Budget

1 Act, except that no unexpended surplus of the Coal Combustion Residuals Management Fund
2 shall revert to the General Fund. All funds credited to the Fund shall be used only to pay the
3 expenses of the Coal Ash Management Commission and the Department of Environment and
4 Natural Resources in providing oversight of coal combustion residuals.

5 (e) Recovery of Fee. – The North Carolina Utilities Commission shall not allow an
6 electric public utility to recover this fee from the retail electric customers of the State."

7 **SECTION 3.7.** G.S. 113-415 reads as rewritten:

8 "**§ 113-415. Conflicting laws.**

9 No provision of this Article shall be construed to repeal, amend, abridge or otherwise affect
10 the authority and responsibility (i) vested in the Environmental Management Commission by
11 Article 7 of Chapter 87 of the General Statutes, pertaining to the location, construction, repair,
12 operation and abandonment of wells; (ii) vested in the Environmental Management
13 Commission related to the control of water and air pollution as provided in Articles 21 and 21A
14 of Chapter 143 of the General Statutes; (iii) vested in the Department and the ~~Environmental~~
15 ~~Management~~ Commission for Public Health by Article 10 of Chapter 130A of the General
16 Statutes pertaining to public water-supply requirements; or (iv) vested in the Environmental
17 Management Commission related to the management of solid and hazardous waste as provided
18 in Article 9 of Chapter 130A of the General Statutes."
19

20 **PART IV. CHANGE NAME OF ECOSYSTEM ENHANCEMENT PROGRAM TO** 21 **DIVISION OF MITIGATION SERVICES**

22 **SECTION 4.1.** G.S. 143-214.8 reads as rewritten:

23 "**§ 143-214.8. ~~Ecosystem Enhancement Program~~ Division of Mitigation Services:**
24 **established.**

25 The ~~Ecosystem Enhancement Program~~ Division of Mitigation Services is established within
26 the Department of Environment and Natural Resources. The ~~Ecosystem Enhancement~~
27 ~~Program~~ Division of Mitigation Services shall be developed by the Department as a
28 nonregulatory statewide ~~ecosystem enhancement~~ mitigation services program for the
29 acquisition, maintenance, restoration, enhancement, and creation of wetland and riparian
30 resources that contribute to the protection and improvement of water quality, flood prevention,
31 fisheries, wildlife habitat, and recreational opportunities. The ~~Ecosystem Enhancement~~
32 ~~Program~~ Division of Mitigation Services shall consist of the following components:

- 33 (1) Restoration and perpetual maintenance of wetlands.
- 34 (2) Development of restoration plans.
- 35 (3) Landowner contact and land acquisition.
- 36 (4) Evaluation of site plans and engineering studies.
- 37 (5) Oversight of construction and monitoring of restoration sites.
- 38 (6) Land ownership and management.
- 39 (7) Mapping, site identification, and assessment of wetlands functions.
- 40 (8) Oversight of private wetland mitigation banks to facilitate the components of
41 the ~~Ecosystem Enhancement Program~~ Division of Mitigation Services."

42 **SECTION 4.2.** G.S. 143-214.9 reads as rewritten:

43 "**§ 143-214.9. ~~Ecosystem Enhancement Program~~ Division of Mitigation Services:**
44 **purposes.**

45 The purposes of the ~~program~~ Division of Mitigation Services are as follows:

- 46 (1) To restore wetlands functions and values across the State to replace critical
47 functions lost through historic wetlands conversion and through current and
48 future permitted impacts. It is not the policy of the State to destroy upland
49 habitats unless it would further the purposes of the ~~Wetlands Restoration~~
50 ~~Program~~ Division of Mitigation Services.

- 1 (2) To provide a consistent and simplified approach to address mitigation
2 requirements associated with permits or authorizations issued by the United
3 States Army Corps of Engineers under 33 U.S.C. § 1344.
4 (3) To streamline the wetlands permitting process, minimize delays in permit
5 decisions, and decrease the burden of permit applicants of planning and
6 performing compensatory mitigation for wetlands losses.
7 (4) To increase the ecological effectiveness of compensatory mitigation.
8 (5) To achieve a net increase in wetland acres, functions, and values in each
9 major river basin.
10 (6) To foster a comprehensive approach to environmental protection."

11 **SECTION 4.3.** G.S. 143-214.10 reads as rewritten:

12 "**§ 143-214.10. ~~Ecosystem Enhancement Program~~:Division of Mitigation Services:**
13 **development and implementation of basinwide restoration plans.**

14 Develop Basinwide Restoration Plans. – The Department shall develop basinwide plans for
15 wetlands and riparian area restoration with the goal of protecting and enhancing water quality,
16 flood prevention, fisheries, wildlife habitat, and recreational opportunities within each of the 17
17 major river basins in the State. The Department shall develop and implement a basinwide
18 restoration plan for each of the 17 river basins in the State in accordance with the basinwide
19 schedule currently established by the Division of Water Resources."

20 **SECTION 4.4.** G.S. 143-214.11 reads as rewritten:

21 "**§ 143-214.11. ~~Ecosystem Enhancement Program~~:Division of Mitigation Services:**
22 **compensatory mitigation.**

23 (a) Definitions. – The following definitions apply to this section:

- 24 (1) Compensatory mitigation. – The restoration, creation, enhancement, or
25 preservation of jurisdictional waters required as a condition of a permit
26 issued by the Department or by the United States Army Corps of Engineers.
27 (1a) Compensatory mitigation bank. – A private compensatory mitigation bank or
28 an existing local compensatory mitigation bank.
29 (1b) Existing local compensatory mitigation bank. – A mitigation bank operated
30 by a unit of local government that is a party to a mitigation banking
31 instrument executed on or before July 1, 2011, notwithstanding subsequent
32 amendments to such instrument executed after July 1, 2011.
33 (2) Government entity. – The State and its agencies and subdivisions, or the
34 federal government. "Government entity" does not include a unit of local
35 government unless the unit of local government was a party to a mitigation
36 banking instrument executed on or before July 1, 2011, notwithstanding
37 subsequent amendments to such instrument executed after July 1, 2011.
38 (3) Hydrologic area. – An eight-digit Cataloging Unit designated by the United
39 States Geological Survey.
40 (4) Jurisdictional waters. – Wetlands, streams, or other waters of the State or of
41 the United States.
42 (4a) Mitigation banking instrument. – The legal document for the establishment,
43 operation, and use of a mitigation bank.
44 (4b) Private compensatory mitigation bank. – A site created by a private
45 compensatory mitigation provider and approved for mitigation credit by
46 State and federal regulatory authorities through execution of a mitigation
47 banking instrument. No site owned by a government entity or unit of local
48 government shall be considered a "private compensatory mitigation bank."
49 (5) Unit of local government. – A "local government," "public authority," or
50 "special district" as defined in G.S. 159-7.

1 (b) Department to Coordinate Compensatory Mitigation. – All compensatory mitigation
2 required by permits or authorizations issued by the Department or by the United States Army
3 Corps of Engineers shall be coordinated by the Department consistent with the basinwide
4 restoration plans and rules developed by the Environmental Management Commission. All
5 compensatory mitigation, whether performed by the Department or by permit applicants, shall
6 be consistent with the basinwide restoration plans. All compensatory mitigation shall be
7 consistent with rules adopted by the Commission for wetland and stream mitigation and for
8 protection and maintenance of riparian buffers.

9 (c) Compensatory Mitigation Emphasis on Replacing Ecological Function Within Same
10 River Basin. – The emphasis of compensatory mitigation is on replacing functions within the
11 same river basin unless it is demonstrated that restoration of other areas would be more
12 beneficial to the overall purposes of the ~~Ecosystem Enhancement Program~~Division of
13 Mitigation Services.

14 (d) Compensatory Mitigation Options Available to Government Entities. – A
15 government entity may satisfy compensatory mitigation requirements by the following actions,
16 if those actions are consistent with the basinwide restoration plans and also meet or exceed the
17 requirements of the Department or of the United States Army Corps of Engineers, as
18 applicable:

- 19 (1) Payment of a fee established by the Commission into the Ecosystem
20 Restoration Fund established in G.S. 143-214.12.
- 21 (2) Donation of land to the ~~Ecosystem Enhancement Program~~Division of
22 Mitigation Services or to other public or private nonprofit conservation
23 organizations as approved by the Department.
- 24 (3) Participation in a compensatory mitigation bank that has been approved by
25 the United States Army Corps of Engineers, provided that the Department or
26 the United States Army Corps of Engineers, as applicable, approves the use
27 of such bank for the required compensatory mitigation.
- 28 (4) Preparing and implementing a compensatory mitigation plan.

29 (d1) Compensatory Mitigation Options Available to Applicants Other than Government
30 Entities. – An applicant other than a government entity may satisfy compensatory mitigation
31 requirements by the following actions, if those actions meet or exceed the requirements of the
32 United States Army Corps of Engineers:

- 33 (1) Participation in a compensatory mitigation bank that has been approved by
34 the United States Army Corps of Engineers, provided that the Department or
35 the United States Army Corps of Engineers, as applicable, approves the use
36 of such bank for the required compensatory mitigation. This option is only
37 available in a hydrologic area where there is at least one compensatory
38 mitigation bank that has been approved by the United States Army Corps of
39 Engineers.
- 40 (2) Payment of a fee established by the Commission into the Ecosystem
41 Restoration Fund established in G.S. 143-214.12. – This option is only
42 available to an applicant who demonstrates that the option under subdivision
43 (1) of this subsection is not available.
- 44 (3) Donation of land to the ~~Ecosystem Enhancement Program~~Division of
45 Mitigation Services or to other public or private nonprofit conservation
46 organizations as approved by the Department.
- 47 (4) Preparing and implementing a compensatory mitigation plan.

48 (e) Payment Schedule. – A standardized schedule of compensatory mitigation payment
49 amounts shall be established by the Commission. Compensatory mitigation payments shall be
50 made by applicants to the Ecosystem Restoration Fund established in G.S. 143-214.12. The
51 monetary payment shall be based on the ecological functions and values of wetlands and

1 streams permitted to be lost and on the cost of restoring or creating wetlands and streams
2 capable of performing the same or similar functions, including directly related costs of wetland
3 and stream restoration planning, long-term monitoring, and maintenance of restored areas.
4 Compensatory mitigation payments for wetlands shall be calculated on a per acre basis.
5 Compensatory mitigation payments for streams shall be calculated on a per linear foot basis.

6 (f) Mitigation Banks. – State agencies and mitigation banks shall demonstrate that
7 adequate, dedicated financial surety exists to provide for the perpetual land management and
8 hydrological maintenance of lands acquired by the State as mitigation banks, or proposed to the
9 State as privately operated and permitted mitigation banks.

10 (g) Payment for Taxes. – A State agency acquiring land to restore, enhance, preserve, or
11 create wetlands must also pay a sum in lieu of ad valorem taxes lost by the county in
12 accordance with G.S. 146-22.3.

13 (h) Sale of Mitigation Credits by Existing Local Compensatory Mitigation Bank. – An
14 existing local compensatory mitigation bank shall comply with the requirements of Article 12
15 of Chapter 160A of the General Statutes applicable to the disposal of property whenever it
16 transfers any mitigation credits to another person.

17 (i) ~~The Ecosystem Enhancement Program~~Division of Mitigation Services shall exercise
18 its authority to provide for compensatory mitigation under the authority granted by this section
19 to use mitigation procurement programs in the following order of preference:

20 (1) Full delivery/bank credit purchase program. – ~~The Ecosystem Enhancement~~
21 ~~Program~~Division of Mitigation Services shall first seek to meet
22 compensatory mitigation procurement requirements through the ~~Program's~~
23 ~~Division's~~ full delivery program or by the purchase of credits from a private
24 compensatory mitigation bank.

25 (2) Existing local compensatory mitigation bank credit purchase program. – Any
26 compensatory mitigation procurement requirements that are not fulfillable
27 under subdivision (1) of this subsection shall be procured from an existing
28 local compensatory mitigation bank, provided that the credit purchase is
29 made to mitigate the impacts of a project located within the mitigation bank
30 service area and hydrologic area of the existing local compensatory
31 mitigation bank.

32 (3) Design/build program. – Any compensatory mitigation procurement
33 requirements that are not fulfillable under subdivision (1) or (2) of this
34 subsection shall be procured under a program in which ~~Ecosystem~~
35 ~~Enhancement Program~~the Division of Mitigation Services contracts with one
36 private entity to lead or implement the design, construction, and
37 postconstruction monitoring of compensatory mitigation at sites obtained by
38 the ~~Ecosystem Enhancement Program~~Division of Mitigation Services. Such
39 a program shall be considered the procurement of compensatory mitigation
40 credits.

41 (4) Design-bid-build program. – Any compensatory mitigation procurement
42 requirements that are not fulfillable under either subdivision (1) or (2) of this
43 subsection may be procured under the ~~Ecosystem Enhancement~~
44 ~~Program's~~Division of Mitigation Services' design-bid-build program. The
45 ~~Ecosystem Enhancement Program~~Division of Mitigation Services may
46 utilize this program only when procurement under subdivision (1) or (2) of
47 this subsection is not feasible. Any mitigation site design work currently
48 being performed through contracts awarded under the design-bid-build
49 program shall be allowed to continue as scheduled. Contracts for
50 construction of projects with a design already approved by the ~~Ecosystem~~
51 ~~Enhancement Program~~Division of Mitigation Services shall be awarded by

1 the ~~Ecosystem Enhancement Program~~ Division of Mitigation Services by
2 issuing a Request for Proposal (RFP). Only contractors who have
3 prequalified under procedures established by the ~~Ecosystem Enhancement~~
4 ~~Program~~ Division of Mitigation Services shall be eligible to bid on
5 ~~Ecosystem Enhancement Program~~ Division of Mitigation Services
6 construction projects. Construction contracts issued under this subdivision
7 shall be exempt from the requirements of Article 8B of Chapter 143 of the
8 General Statutes.

9 (j) The regulatory requirements for the establishment, operation, and monitoring of a
10 compensatory mitigation bank or full delivery project shall vest at the time of the execution of
11 the mitigation banking instrument or the award of a full delivery contract."

12 **SECTION 4.5.** G.S. 143-214.12 reads as rewritten:

13 "**§ 143-214.12. ~~Ecosystem Enhancement Program~~ Division of Mitigation Services:**
14 **Ecosystem Restoration Fund.**

15 (a) Ecosystem Restoration Fund. – The Ecosystem Restoration Fund is established as a
16 nonreverting fund within the Department. The Fund shall be treated as a special trust fund and
17 shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and
18 G.S. 147-69.3. The Ecosystem Restoration Fund shall provide a repository for monetary
19 contributions and donations or dedications of interests in real property to promote projects for
20 the restoration, enhancement, preservation, or creation of wetlands and riparian areas and for
21 payments made in lieu of compensatory mitigation as described in subsection (b) of this
22 section. No funds shall be expended from this Fund for any purpose other than those directly
23 contributing to the acquisition, perpetual maintenance, enhancement, restoration, or creation of
24 wetlands and riparian areas in accordance with the basinwide plan as described in
25 G.S. 143-214.10. The cost of acquisition includes a payment in lieu of ad valorem taxes
26 required under G.S. 146-22.3 when the Department is the State agency making the acquisition.

27 (a1) The Department may distribute funds from the Ecosystem Restoration Fund directly
28 to a federal or State agency, a local government, or a private, nonprofit conservation
29 organization to acquire, manage, and maintain real property or an interest in real property for
30 the purposes set out in subsection (a) of this section. A recipient of funds under this subsection
31 shall grant a conservation easement in the real property or interest in real property acquired
32 with the funds to the Department in a form that is acceptable to the Department. The
33 Department may convey real property or an interest in real property that has been acquired
34 under the ~~Ecosystem Enhancement Program~~ Division of Mitigation Services to a federal or
35 State agency, a local government, or a private, nonprofit conservation organization to acquire,
36 manage, and maintain real property or an interest in real property for the purposes set out in
37 subsection (a) of this section. A grantee of real property or an interest in real property under
38 this subsection shall grant a conservation easement in the real property or interest in real
39 property to the Department in a form that is acceptable to the Department.

40 (b) Authorized Methods of Payment. – A person subject to a permit or authorization
41 issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 may contribute
42 to the ~~Ecosystem Enhancement Program~~ Division of Mitigation Services in order to comply
43 with conditions to, or terms of, the permit or authorization if participation in the ~~Ecosystem~~
44 ~~Enhancement Program~~ Division of Mitigation Services will meet the mitigation requirements of
45 the United States Army Corps of Engineers. The Department shall, at the discretion of the
46 applicant, accept payment into the Ecosystem Restoration Fund in lieu of other compensatory
47 mitigation requirements of any authorizations issued by the United States Army Corps of
48 Engineers under 33 U.S.C. § 1344 if the contributions will meet the mitigation requirements of
49 the United States Army Corps of Engineers. Payment may be made in the form of monetary
50 contributions according to a fee schedule established by the Environmental Management

1 Commission or in the form of donations of real property provided that the property is approved
2 by the Department as a suitable site consistent with the basinwide wetlands restoration plan.

3 (c) Accounting of Payments. – The Department shall provide an itemized statement that
4 accounts for each payment into the Fund. The statement shall include the expenses and
5 activities financed by the payment."

6 **SECTION 4.6.** G.S. 143-214.13 reads as rewritten:

7 "**§ 143-214.13. ~~Ecosystem Enhancement Program~~ Division of Mitigation Services:**
8 **reporting requirement.**

9 (a) The Department of Environment and Natural Resources shall report each year by
10 November 1 to the Environmental Review Commission and to the Joint Legislative
11 Commission on Governmental Operations regarding its progress in implementing the
12 ~~Ecosystem Enhancement Program~~ Division of Mitigation Services and its use of the funds in the
13 Ecosystem Restoration Fund. The report shall document statewide wetlands losses and gains
14 and compensatory mitigation performed under G.S. 143-214.8 through G.S. 143-214.12. The
15 report shall also provide an accounting of receipts and disbursements of the Ecosystem
16 Restoration Fund, an analysis of the per-acre cost of wetlands restoration, and a cost
17 comparison on a per-acre basis between the State's ~~Ecosystem Enhancement Program~~ Division
18 of Mitigation Services and private mitigation banks. The Department shall also send a copy of
19 its report to the Fiscal Research Division of the General Assembly.

20 (b) The Department shall maintain an inventory of all property that is held, managed,
21 maintained, enhanced, restored, or used to create wetlands under the ~~Ecosystem Enhancement~~
22 ~~Program~~ Division of Mitigation Services. The inventory shall also list all conservation
23 easements held by the Department. The inventory shall be included in the annual report
24 required under subsection (a) of this section."

25 **SECTION 4.7.** G.S. 143-214.14 reads as rewritten:

26 "**§ 143-214.14. Cooperative State-local coalition water quality protection plans.**

27 (a) Definitions. – The following definitions apply in this section:

- 28 (1) "Basin" means a river basin as defined in G.S. 143-215.22G or any subbasin
29 or segment thereof.
30 (2) "Coalition plan" means a water quality protection plan developed by a
31 coalition of local governments for water quality protection of a basin.
32 (3) "Local government" means a city, county, special district, authority, or other
33 political subdivision of the State.
34 (4) "Water quality protection" means management of water use, quantity, and
35 quality.

36 (b) Legislative Findings. – This section establishes a framework to encourage
37 State-local pollutant reduction strategies for basins under the supervision and coordination of
38 the Commission. The General Assembly finds that:

- 39 (1) Water quality conditions and sources of water contamination may vary from
40 one basin to another.
41 (2) Water quality conditions and sources of water contamination may vary
42 within a basin.
43 (3) Some local governments have demonstrated greater capacity than others to
44 protect and improve water quality conditions.
45 (4) In some areas of the State artificial alteration of watercourses by surface
46 water impoundments or other means may have a significant effect on water
47 quality.
48 (5) Imposition of standard basinwide water quality protection requirements and
49 strategies may not equitably address the varying conditions and needs of all
50 areas.

1 (6) There is a need to develop distinct approaches to address water quality
2 protection in basins in the State, drawing upon the resources of local
3 governments and the State, under the supervision and coordination of the
4 Commission.

5 (c) Legislative Goals and Policies. – It is the goal of the General Assembly that, to the
6 extent practicable, the State shall adopt water quality protection plans that are developed and
7 implemented in cooperation and coordination with local governments and that the State shall
8 adopt water quality protection requirements that are proportional to the relative contributions of
9 pollution from all sources in terms of both the loading and proximity of those sources.
10 Furthermore, it is the goal of the General Assembly to encourage and support State-local
11 partnerships for improved water quality protection through the provision of technical and
12 financial assistance available through the Clean Water Management Trust Fund, the ~~Ecosystem~~
13 ~~Enhancement Program, Division of Mitigation Services,~~ the Ecosystem Restoration Fund, water
14 quality planning and project grant programs, the State's revolving loan and grant programs for
15 water and wastewater facilities, other funding sources, and future appropriations. The
16 Commission shall implement these goals in accordance with the standards, procedures, and
17 requirements set out in this section.

18 (d) The Commission may, as an alternative method of attaining water quality standards
19 in a basin, approve a coalition plan proposed by a coalition of local governments whose
20 territorial area collectively includes the affected basin in the manner provided by this section.
21 The Commission may approve a coalition plan proposed by a coalition of local governments
22 whose territorial area or water quality protection plan does not include all of an affected basin if
23 the Commission determines that the omission will not adversely affect water quality.

24 (e) A coalition of local governments choosing to propose a coalition plan to the
25 Commission shall do so through a nonprofit corporation the coalition of local governments
26 incorporates with the Secretary of State.

27 (f) The Commission may approve a coalition plan only if the Commission first
28 determines that:

- 29 (1) The basin under consideration is an appropriate unit for water quality
30 planning.
- 31 (2) The coalition plan meets the requirements of subsection (g) of this section.
- 32 (3) The coalition of local governments has formed a nonprofit corporation
33 pursuant to subsection (e) of this section.
- 34 (4) The coalition plan has been approved by the governing board of each local
35 government that is a member of the coalition of local governments
36 proposing the coalition plan.
- 37 (5) The coalition plan will provide a viable alternative method of attaining
38 equivalent compliance with federal and State water quality standards,
39 classifications, and management practices in the affected basin.

40 (g) A coalition plan shall include all of the following:

- 41 (1) An assessment of water quality and related water quantity management in
42 the affected basin.
- 43 (2) A description of the goals and objectives for protection and improvement of
44 water quality and related water quantity management in the affected basin.
- 45 (3) A workplan that describes proposed water quality protection strategies,
46 including point and nonpoint source programs, for achieving the specified
47 goals and objectives; an implementation strategy including specified tasks,
48 timetables for action, implementation responsibilities of State and local
49 agencies; and sources of funding, where applicable.

1 (4) A description of the performance indicators and benchmarks that will be
2 used to measure progress in achieving the specified goals and objectives, and
3 an associated monitoring framework.

4 (5) A timetable for reporting to the Commission on progress in implementing
5 the coalition plan.

6 (h) A coalition plan shall cover a specified period. The coalition plan may provide for
7 the phasing in of specific strategies, tasks, or mechanisms by specified dates within the period
8 covered by the plan. The Commission may approve one or more successive coalition plan
9 periods. The coalition plan may include strategies that vary among the subareas or jurisdictions
10 of the geographic area covered by the coalition plan.

11 (i) If a local government chooses to withdraw from a coalition of local governments or
12 fails to implement a coalition plan, the remaining members of a coalition of local governments
13 may prepare and submit a revised coalition plan for approval by the Commission. If the
14 Commission determines that an approved coalition plan no longer provides a viable alternative
15 method of attaining equivalent compliance with federal and State water quality standards,
16 classifications, and management practices, the Commission may suspend or revoke its approval
17 of the coalition plan.

18 (j) The Commission may approve one or more amendments to a coalition plan
19 proposed by a coalition of local governments through its nonprofit corporation with the
20 approval of the governing board of each local government that is a member of the coalition of
21 local governments that proposed the coalition plan.

22 (k) With the approval of the Commission, any coalition of local governments with an
23 approved coalition plan may establish and implement a pollutant trading program for specific
24 pollutants between and among point source dischargers and nonpoint pollution sources.

25 (l) The Commission shall submit an annual progress report on the implementation of
26 this section to the Environmental Review Commission on or before 1 October of each year."
27

28 PART V. ENERGY POLICY COUNCIL AMENDMENTS

29 SECTION 5. G.S. 113B-3 reads as rewritten:

30 "§ 113B-3. **Composition of Council; appointments; terms of members; removal;**
31 **qualifications.**

32 (a) The Energy Policy Council shall consist of 13 members to be appointed as follows:

33 (1), (2) Repealed by Session Laws 2013-365, s. 8(c), effective July 29, 2013.

34 (2a) The Secretary of Environment and Natural ~~Resources~~.Resources, or the
35 Secretary's designee.

36 (2b) The Secretary of ~~Commerce~~.Commerce, or the Secretary's designee.

37 (2c) The Lieutenant ~~Governor~~.Governor, or the Lieutenant Governor's designee.

38 (3) Ten public members who are citizens of the State of North Carolina and who
39 are appointed in accordance with subsection (c) of this section.

40 (4) Repealed by Session Laws 2009-446, s. 4, effective August 7, 2009.

41 ...

42 (d) A Council member shall be automatically removed from the Council if he or she
43 fails to attend three successive Council meetings without just cause as determined by the
44 remainder of the Council.

45 (e) The Governor shall have the power to remove any member of the Council from
46 office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of
47 G.S. 143B-13 of the Executive Organization Act of 1973."
48

49 PART VI. CLARIFY RULEMAKING DIRECTIVE

50 SECTION 6.(a) G.S. 113-391(a3) reads as rewritten:

1 "(a3) The Environmental Management Commission shall adopt rules, after consideration
2 of recommendations from the Mining and Energy Commission, for all of the following
3 purposes:

4 (1) Stormwater control for sites on which oil and gas exploration and
5 development activities are conducted.

6 (2) Regulation of toxic air emissions from drilling ~~operations~~ operations, if it
7 determines that the State's current air toxics program and any federal
8 regulations governing toxic air emissions from drilling operations to be
9 adopted by the State by reference are inadequate to protect public health,
10 safety, welfare, and the environment. In formulating appropriate standards,
11 the Department shall assess emissions from oil and gas exploration and
12 development activities that use horizontal drilling and hydraulic fracturing
13 technologies, including emissions from associated truck traffic, in order to
14 (i) determine the adequacy of the State's current air toxics program to protect
15 landowners who lease their property to drilling operations and (ii) determine
16 the impact on ozone levels in the area in order to determine measures needed
17 to maintain compliance with federal ozone standards."

18 **SECTION 6.(b)** This section is effective retroactively to July 2, 2012.

19
20 **PART VII. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

21 **SECTION 7.1.** If any provision of this act or its application is held invalid, the
22 invalidity does not affect other provisions or applications of this act that can be given effect
23 without the invalid provisions or application, and to this end the provisions of this act are
24 severable.

25 **SECTION 7.2.** Except as otherwise provided, this act is effective when it becomes
26 law.