

**ORANGE COUNTY BOARD OF COMMISSIONERS
ORANGE COUNTY PLANNING BOARD**

QUARTERLY PUBLIC HEARING AGENDA

November 23, 2015

7:00 P.M.

Richard Whitted Meeting Facility

300 West Tryon Street

Hillsborough, NC 27278

NOTE: Information is available on-line at the “Meeting Agendas” link at:

<http://www.orangecountync.gov/>

and also in the Planning Department or the County Clerk’s Office

NOTICE TO PEOPLE WITH IMPAIRED HEARING: Audio amplification equipment is available on request. If you need this assistance, please call the County Clerk’s Office at (919) 245-2130.

A. OPENING REMARKS FROM THE CHAIR

B. PUBLIC CHARGE

The Board of Commissioners pledges to the residents of Orange County its respect. The Board asks its residents to conduct themselves in a respectful, courteous manner, both with the Board and with fellow residents. At any time should any member of the Board or any resident fail to observe this public charge, the Chair will ask the offending member to leave the meeting until that individual regains personal control. Should decorum fail to be restored, the Chair will recess the meeting until such time that a genuine commitment to this public charge is observed. All electronic devices such as cell phones, pagers, and computers should please be turned off or set to silent/vibrate.

C. PUBLIC HEARING ITEMS

1. **Unified Development Ordinance (UDO) Text Amendment** - To review government-initiated amendments to the text of the UDO regarding sexually oriented businesses.
2. **Unified Development Ordinance (UDO) Text Amendment** - To review government-initiated amendments to the text of the UDO regarding car sales and rental operations.

D. ADJOURNMENT OF PUBLIC HEARING

E. BOCC WORK SESSION

1. **Impact of 2015 Legislative Updates on Orange County’s Erosion Control/Stormwater Programs and Riparian Buffer Regulations** – To review how legislative changes made in 2015 have or will impact the County’s Erosion Control/Stormwater programs and riparian buffer regulations.

**ORANGE COUNTY
BOARD OF COMMISSIONERS AND
PLANNING BOARD
QUARTERLY PUBLIC HEARING ACTION AGENDA ITEM ABSTRACT**
Meeting Date: November 23, 2015

**Action Agenda
Item No.** C.1

SUBJECT: Unified Development Ordinance Text Amendment – Sexually Oriented Business Land Use Regulations

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

Yes

ATTACHMENT(S):

1. Comprehensive Plan and Unified Development Ordinance Outline Form – Sexually Oriented Businesses (UDO/Zoning 2015-05)
2. Excerpts of State Regulations on Regulating Sexually Oriented Businesses
3. Proposed UDO Text Amendment(s)

INFORMATION CONTACT:

Michael Harvey Planner III, (919) 245-2597
Craig Benedict, Director, (919) 245-2585

PURPOSE: To hold a public hearing on Planning Director initiated Unified Development Ordinance (UDO) text amendments proposing land use regulations governing the development of sexually oriented businesses.

BACKGROUND: The Board of County Commissioners (BOCC) approved the Amendment Outline Form ([Attachment 1](#)) for this item at its May 5, 2015 regular meeting. Agenda materials from this meeting can be viewed at: http://www.orangecountync.gov/document_center/BOCCAgendaMinutes/150505.pdf.

As defined within NCGS 14-202.10 a sexually oriented business means, “*Any businesses, or enterprises that have as one of their principal business purposes, or as a significant portion of their business, an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities.*”

The County cannot prohibit sexually oriented businesses outright but is afforded the opportunity to regulate their location and certain operational characteristics in an effort to ensure identified secondary impacts are mitigated.

Staff is proposing to amend the UDO to establish locational criteria for such businesses including mandatory setbacks from identified sensitive uses (i.e. church, school, single-family residence, etc.) while allowing for their development consistent with applicable State and Federal requirements and prohibiting the consumption and/or sale of alcohol. In support of recommended land use regulations, staff offers the following information with respect to addressing identified secondary impacts.

1. A legal summary produced by Mr. David Owens of the UNC Institute of Government can be viewed by utilizing the following link: <http://www.sog.unc.edu/resources/legal-summaries/regulating-sexually-oriented-businesses>. This document provides an overview of the 'do's and don'ts with respect to the regulation of sexually oriented businesses.
2. In 2013 a study completed for Louisville Kentucky by Eric S. McCord and Richard Tewksbury found:

... sexually oriented businesses are associated with much higher rates of all types of offenses in the immediate vicinity of the business and continue to have significant effects on crime levels as one moves further from the business.

Secondary impacts can include increased levels of crime, sexual deviance, prostitution, and negative economic consequences for surrounding properties. The study can be viewed by utilizing the following link:

<http://secondaryeffectsresearch.com/files/McCord%20and%20Tewksbury,%202013.pdf>.

A 2011 study, entitled *The ASSOCIATION of Adult Businesses with Secondary Effects: Legal Doctrine, Social Theory, and Empirical Evidence* authored by Alan C. Weinstein and Richard McCleary made similar findings. This study can be viewed at: <http://secondaryeffectsresearch.com/files/Cardozo%20Law%20Review.pdf>.

3. A 1996 report completed by the American Center for Law and Justice found that:

... SOBs (sexually oriented businesses) support detrimental activities (i.e. personal and property crimes, prostitution, drugs, etc.) within the vicinity that are incompatible with activities occurring within residential areas. SOBs also have a negative impact on local businesses. Evidence indicates that when SOBs are located near each other or near businesses that serve alcohol, the harmful impact increases.

A summary of this report can be viewed at:

<http://secondaryeffectsresearch.com/files/Land%20Use%20summary%202005.pdf>.

4. A 2005 report completed by Duncan and Associates for Kenton and Campbell Counties in Kentucky, as well as the Northern Kentucky Area Planning Commission, found that:

A governmental body's key purpose in regulating sexually oriented businesses is to mitigate the negative secondary effects. One of the easiest ways is to ensure that the sexually oriented businesses are located away from the types of land uses on which they are most likely to have adverse secondary effects. Zoning is the classic tool for regulating the locations of various uses and for ensuring that uses that are incompatible are kept reasonably separate.

This report can be viewed at:

<http://secondaryeffectsresearch.com/files/Zoning%20for%20Sexually%20Oriented%20Entertainment%20and%20Related%20Businesses.pdf>.

5. Staff's review of these studies caused a conclusion that the secondary effects of sexually oriented businesses have negative impacts on the surrounding area, in the form of crime and property devaluation, which will be addressed by the proposed regulations.
6. Planning staff is recommending sexually oriented businesses observe a 1,000 ft. setback from each other as well as identified sensitive uses (i.e. church, residence, playground, etc.). Staff is recommending the setback for several reasons, including:
 - a. Referenced studies have found the clustering of such land uses in a given area could attract an undesirable quantity and quality of transients adversely impacting property values, creating blight for adjacent properties, cause an increase in crime and encourages residents and businesses to move elsewhere.
 - b. Courts have consistently found local communities have the legal ability and interest in promoting stable neighborhoods through requiring a setback.
 This was viewed as being a substantial government interest and the incidental impact of an ordinance regulating such businesses on protected speech. (United States versus O'Brien – US Supreme Court (1976) ; Young versus American Movie Theaters Inc. – US Supreme Court (1979) ; City of Renton versus Playtime Theaters – US Supreme Court (1986)).

The proposed setback does not restrict the activity that can occur within the business.

7. Planning staff is recommending sexually oriented businesses not be located within a structure or on property where alcohol is allowed to be sold or consumed. Staff is recommending the standard for several reasons including:
 - a. Referenced studies have found such land uses could attract an undesirable quantity and quality of transients adversely impacting property values, creating blight for adjacent properties, and causes an increase in crime (most notably prostitution).
 In some of these studies alcohol is identified as contributing factor.
 - b. Courts have found local communities have the legal ability to restrict or prohibit the consumption/sale of alcohol (Fay versus State Board of Alcoholic Control – NC Court of Appeals (1976).
 - c. State law allows governing bodies to restrict alcohol sales/consumption at sexually oriented businesses. Please refer to Attachment 2.

The prohibition on alcohol sales/consumption does not restrict the activity that can occur within the business.

For more background information please refer to Section B.1 of Attachment 1. Staff has also provided information on applicable State regulations associated with sexually oriented businesses in Attachment 2.

SOCIAL JUSTICE IMPACT: The following Orange County Social Justice Goals is applicable to this agenda item:

GOAL: Enable Full Civic Participation

Ensure that Orange County residents are able to engage government through voting and volunteering by eliminating disparities in participation and barriers to participation.

GOAL: ESTABLISH SUSTAINABLE AND EQUITABLE LAND-USE AND ENVIRONMENTAL POLICIES

The fair treatment and meaningful involvement of people of all races, cultures, incomes and educational levels with respect to the development and enforcement of environmental laws, regulations, policies, and decisions. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

FINANCIAL IMPACT: Please refer to Section C.3 of Attachment 1.

RECOMMENDATION(S): The Planning Director recommends that the Board:

1. Receive the request,
2. Conduct the Public Hearing and accept public, BOCC, and Planning Board comments.
3. Refer the matter to the Planning Board with a request that a recommendation be returned to the BOCC in time for its **February 2, 2016** regular meeting.
4. Adjourn the public hearing until **February 2, 2016** in order to receive and accept the Planning Board's recommendation and any submitted written comments.

COMPREHENSIVE PLAN / FUTURE LAND USE MAP AND UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT OUTLINE

UDO / Zoning-2015-05

Amendment(s) addressing establishment of land use regulations for sexually oriented businesses.

A. AMENDMENT TYPE

Map Amendments

- Comprehensive Plan – Future Land Use Element Map:
From: - - -
To: - - -
- Zoning Map:
From: - - -
To: - - -
- Other:

Text Amendments

- Comprehensive Plan Text:

Section(s):

- UDO Text:

- UDO General Text Changes
- UDO Development Standards
- UDO Development Approval Processes

Section(s): Section(s)

1. 5.2.1 *Table of Permitted Uses*,
2. 5.6 *Standards for Commercial Uses*,
3. Article 8 *Nonconformities*, and
4. Article 10 *Definitions*

- Other:

B. RATIONALE

1. Purpose/Mission

In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the UDO, the Planning Director has initiated a text amendment to establish regulations governing the development of sexually oriented businesses.

As defined within NCGS 14-202.10 a sexually oriented business means, “*Any businesses, or enterprises that have as one of their principal business purposes, or as a significant portion of their business, an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities.*”

Sexually oriented businesses, because of their very nature, are recognized as having potentially objectionable operational characteristics. Regulation of these uses are necessary to ensure adverse secondary effects do not contribute to the blighting of surrounding neighborhoods and to regulate acts, omissions or conditions that could be construed as detrimental to the public health, safety or welfare. This includes ensuring development of such businesses does not create a disincentive for additional economic development in a given area.

Such regulations, however, are required to be content neutral and shall not have the effect of imposing a limitation or restriction on the content of any communicative materials or deny access by adults to sexually oriented materials protected by the US Constitution’s First Amendment. Regulations also cannot be so restrictive as to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

Currently, Orange County does not permit the development of sexually oriented businesses within any general use zoning district. Existing definitions, including adult uses as contained in Article 10 of the UDO, are out of date and inconsistent with State regulations and recent court decisions.

2. **Analysis**

As required under Section 2.8.5 of the UDO, the Planning Director is required to: ‘*cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners*’.

The amendment(s) are necessary to ensure the County is consistent with provisions of State and Federal law.

The County cannot prohibit sexually oriented businesses outright but is afforded the opportunity to regulate their location and certain operational characteristics in an effort to ensure identified secondary impacts are mitigated as much as possible.

The proposed amendments establish locational criteria for such businesses including mandatory setbacks from identified sensitive uses (i.e. church, school, single-family residence, etc.) while allowing for their development consistent with applicable State and Federal requirements.

3. **Comprehensive Plan Linkage (i.e. Principles, Goals and Objectives)**

Land Use Goal 2: Land uses that are appropriate to on-site environmental conditions and features and that protect natural resources, cultural resources, and community character.

Land Use Goal 4: Land development regulations, guidelines, techniques and/or incentives that promote the integrated achievement of all Comprehensive Plan goals.

4. **New Statutes and Rules**

N/A

C. PROCESS

1. **TIMEFRAME/MILESTONES/DEADLINES**

a. BOCC Authorization to Proceed

May 5, 2015

b. Quarterly Public Hearing

November 23, 2015

c. BOCC Updates/Checkpoints

May 5, 2015 – Approval of UDO Amendment Outline Form

September 2, 2015 – Planning Board Ordinance Review Committee (ORC)

November 23, 2015 – Quarterly Public Hearing

February 2, 2016 – Receive Planning Board Recommendation

d. Other

N/A

2. **PUBLIC INVOLVEMENT PROGRAM**

Mission/Scope: Public Hearing process consistent with NC State Statutes and Orange County ordinance requirements

a. Planning Board Review:

September 2, 2015 – Ordinance Review Committee

The ORC met and reviewed this item at its September 2, 2015 meeting where the following comments were made:

- A Board member asked if there was sufficient legal precedent for the establishment of separation requirements.

STAFF COMMENT: State law grants local government the authority to regulate sexually oriented businesses including establishing separation requirements from sensitive uses (i.e. church, school,

playground, etc.).

- A Board member asked how many sexually oriented businesses there are in the County and inquired specifically on the status of the adult entertainment club off of NC Highway 86 North.

STAFF COMMENT: There were 2 sexually oriented businesses operating in the County but both are now closed including the facility off of NC Highway 86. If this Ordinance is passed they will be unable to reopen.

- A Board member asked if there were any properties zoned I-2 or I-3 that could accommodate a sexually oriented businesses.

STAFF COMMENT: There are currently no properties zoned I-2 or I-3. There is, however, available land area that could be rezoned to support such development.

- A Board member asked if these types of land uses create adverse economic impacts by scaring away other types of business operations.

STAFF COMMENT: Staff cannot guarantee adjacent property or business owners will be unfazed if a sexually oriented business locates adjacent to them. To some the business is no different than a night club or a video store. To others such businesses offend their sense of decency.

Staff is recommending the medium (I-2) and heavy (I-3) industrial districts as there are typically a lack of sensitive uses in these areas and, for the most part, commercial land uses in these districts will be closed during the time a sexually oriented business is open.

- A Board member asked if sexually oriented businesses create blight.

STAFF COMMENT: Any land use can create blight if not properly maintained. From staff’s standpoint a sexually oriented business creates more significant impacts if not properly regulated.

The ORC materials are available at: http://www.orangecountync.gov/ORC_Sep_2015_Agenda_Package.pdf. Meeting notes can be viewed by utilizing the following link: http://www.orangecountync.gov/9_2_15_ORC_Notes.pdf.

January 6, 2016 – Recommendation

b. Advisory Boards:

N/A

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c. Local Government Review:

Staff transmitted the proposed amendment to the Towns of Chapel

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Hill, Carrboro, and Hillsborough for courtesy review on October 21, 2015.

As of this date staff has not received any comment.

Staff and the Attorney have also met with the Sheriff's Office to discuss the proposal. The Sheriff did not express concerns over the establishment of land use regulations.

_____	_____
_____	_____
_____	_____

d. Notice Requirements

Legal advertisement was published on November 11 and 18, 2015 in accordance with the provisions of the UDO.

e. Outreach:

<input checked="" type="checkbox"/> General Public:	Consistent with NC State General Statutes and Orange County Ordinance requirements.
<input type="checkbox"/> Small Area Plan Workgroup:	
<input type="checkbox"/> Other:	

3. FISCAL IMPACT

Consideration and approval will not create the need for additional funding for the provision of County services. Costs for the required legal advertisement will be paid from FY2015-16 Departmental funds budgeted for this purpose. Existing Planning staff included in the Departmental staffing budget will accomplish the work required to process this amendment.

D. AMENDMENT IMPLICATIONS

The amendment will establish comprehensive regulations governing the development and operation of sexually oriented businesses consistent with applicable State and Federal law.

E. SPECIFIC AMENDMENT LANGUAGE

Please refer to Attachment 3.

Primary Staff Contact:

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Planning

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Article 26A.
Adult Establishments.

§ 14-202.10. Definitions.

As used in this Article:

- (1) "Adult bookstore" means a bookstore:
 - a. Which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; or
 - b. Having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section.
- (2) "Adult establishment" means an adult bookstore, adult motion picture theatre, adult mini motion picture theatre, adult live entertainment business, or massage business as defined in this section.
- (3) "Adult live entertainment" means any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section.
- (4) "Adult live entertainment business" means any establishment or business wherein adult live entertainment is shown for observation by patrons.
- (5) "Adult motion picture theatre" means an enclosed building or premises used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, for observation by patrons therein. "Adult motion picture theatre" does not include any adult mini motion picture theatre as defined in this section.
- (6) "Adult mini motion picture theatre" means an enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons therein.
- (7) "Massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.
- (8) "Massage business" means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors.
- (9) "Sexually oriented devices" means without limitation any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device.
- (10) "Specified anatomical areas" means:

- a. Less than completely and opaquely covered: (i) human genitals, pubic region, (ii) buttock, or (iii) female breast below a point immediately above the top of the areola; or
 - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (11) "Specified sexual activities" means:
- a. Human genitals in a state of sexual stimulation or arousal;
 - b. Acts of human masturbation, sexual intercourse or sodomy; or
 - c. Fondling or other erotic touchings of human genitals, pubic regions, buttocks or female breasts. (1977, c. 987, s. 1; 1985, c. 731, s. 1; 1998-46, s. 4.)

§ 14-202.11. Restrictions as to adult establishments.

(a) No person shall permit any building, premises, structure, or other facility that contains any adult establishment to contain any other kind of adult establishment. No person shall permit any building, premises, structure, or other facility in which sexually oriented devices are sold, distributed, exhibited, or contained to contain any adult establishment.

(b) No person shall permit any viewing booth in an adult mini motion picture theatre to be occupied by more than one person at any time.

(c) Nothing in this section shall be deemed to preempt local government regulation of the location or operation of adult establishments or other sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech. (1977, c. 987, s. 1; 1985, c. 731, s. 2; 1998-46, s. 5.)

§ 14-202.12. Violations; penalties.

Any person who violates G.S. 14-202.11 shall be guilty of a Class 3 misdemeanor. Any person who has been previously convicted of a violation of G.S. 14-202.11, upon conviction for a second or subsequent violation of G.S. 14-202.11, shall be guilty of a Class 2 misdemeanor.

As used herein, "person" shall include:

- (1) The agent in charge of the building, premises, structure or facility; or
- (2) The owner of the building, premises, structure or facility when such owner knew or reasonably should have known the nature of the business located therein, and such owner refused to cooperate with the public officials in reasonable measures designed to terminate the proscribed use; provided, however, that if there is an agent in charge, and if the owner did not have actual knowledge, the owner shall not be prosecuted; or
- (3) The owner of the business; or
- (4) The manager of the business. (1977, c. 987, s. 1; 1985, c. 731, s. 3; 1993, c. 539, s. 132; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 160A-181.1. Regulation of sexually oriented businesses.

(a) The General Assembly finds and determines that sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulation of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

(b) In addition to State laws on obscenity, indecent exposure, and adult establishments, local government regulation of the location and operation of sexually oriented businesses is necessary to prevent undue adverse secondary impacts that would otherwise result from these businesses.

(c) A city or county may regulate sexually oriented businesses through zoning regulations, licensing requirements, or other appropriate local ordinances. The city or county may require a fee for the initial license and any annual renewal. Such local regulations may include, but are not limited to:

- (1) Restrictions on location of sexually oriented businesses, such as limitation to specified zoning districts and minimum separation from sensitive land uses and other sexually oriented businesses;
- (2) Regulations on operation of sexually oriented businesses, such as limits on hours of operation, open booth requirements, limitations on exterior advertising and noise, age of patrons and employees, required separation of patrons and performers, clothing restrictions for masseuses, and clothing restrictions for servers of alcoholic beverages;
- (3) Clothing restrictions for entertainers; and
- (4) Registration and disclosure requirements for owners and employees with a criminal record other than minor traffic offenses, and restrictions on ownership by or employment of a person with a criminal record that includes offenses reasonably related to the legal operation of sexually oriented businesses.

(d) In order to preserve the status quo while appropriate studies are conducted and the scope of potential regulations is deliberated, cities and counties may enact moratoria of reasonable duration on either the opening of any new businesses authorized to be regulated under this section or the expansion of any such existing business. Businesses existing at the time of the effective date of regulations adopted under this section may be required to come into compliance with newly adopted regulations within an appropriate and reasonable period of time.

(e) Cities and counties may enter into cooperative agreements regarding coordinated regulation of sexually oriented businesses, including provision of adequate alternative sites for the location of constitutionally protected speech within an interrelated geographic area.

(f) For the purpose of this section, "sexually oriented businesses" means any businesses or enterprises that have as one of their principal business purposes or as a significant portion of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. Local governments may adopt detailed definitions of these and similar businesses in order to precisely define the scope of any local regulations. (1998-46, s. 1.)

TABLE OF PERMITTED USES – GENERAL USE ZONING DISTRICTS																				
* = PERMITTED USE		A = CLASS A SPECIAL USE				B = CLASS B SPECIAL USE				Δ = SUBJECT TO SPECIAL STANDARDS										
USE TYPE	GENERAL USE ZONING DISTRICTS																			
	RB	AR	R1	R2	R3	R4	R5	R8	R13	LC1	NC2	CC3	GC4	EC5	OI	AS	EI	I1	I2	I3
~ Use may not be permitted as a Conditional Use District; See Section 5.1.4(E) ^ Allowed as more than one principal use if located on a bona fide farm (see Section 6.2.5)																				
Repair Service Electronic & Appliance										*	*	*	*							
Restaurants: Carry Out											*	*	*	*						
Restaurants: Drive In												*	*	*						
Restaurants: General										*	*	*	*	*						
Retail, Class 1										*	*	*	*	*						
Retail, Class 2											*	*	*	*						
Retail, Class 3												*	*							
Rural Guest Establishment: Bed & Breakfast ^	*	*	*																	
Rural Guest Establishment: Bed & Breakfast Inn ^		B	B																	
Rural Guest Establishment: Country Inn ^		A	A																	
Sexually Oriented Businesses¹																			*	*
Storage of Goods, Outdoor ~														*				*	*	*
Storage or Warehousing: Inside Building													*	*	*			*	*	*
Studio (Art)										*	*	*	*	*	*			*	*	*
Taxidermy ^		B								*	*	*	*	*				*		
Tourist Home					*	*	*	*	*						*					
Wholesale Trade ~												*	*	*	*			*	*	*
Winery with Minor Events ^	B	B																B	B	B
EXTRACTIVE USES																				
Extraction of Earth Products ~		A														A		A	A	A

¹ Staff is recommending the uses be allowed in our medium and heavy industrial districts as a permitted use of property. This is due to the lack of identified sensitive uses (i.e. residential, schools, church, etc.) typically found in those areas of the County where large scale industrial/manufacturing operations are intended for development.

from adjacent residentially zoned property.

- (4) The site shall be located on a major road, as classified in the Orange County Comprehensive Plan, unless permitted as an ASE-CZ.
- (5) Parking shall not be located in the front yard space.
- (6) Application materials shall include a comprehensive groundwater study, for facilities expected to use more groundwater on an annual basis than an average single family residence (which uses 240 gallons of water per day) built at the highest density the existing zoning district would allow. For example, if the existing zoning district allows a residential density of 1 unit for 2 acres and the proposed use is on a six acre parcel (which could yield 3 residences), the proposed use(s) may use three times the water used by an average single family residence (or 720 gallons per day, on an annualized basis) before a comprehensive groundwater study is required. The water usage rates of any existing use subject to zoning regulations located on the same lot shall be taken into account when determining if a comprehensive groundwater study is required. Said study shall detail:
 - (a) The amount of water anticipated to be used on a daily, weekly, monthly, and annual basis by regulated uses located on the parcel (e.g., water usage by bona fide farm uses is not required to be included);
 - (b) An analysis of the amount of groundwater withdrawal considered to be safe and sustainable in the immediate vicinity; and
 - (c) An analysis of whether other wells in the vicinity of the proposed use are expected to be affected by withdrawals made by the proposed use.

5.6.15 Sexually Oriented Businesses

(A) Submittal Requirements

- (1) In addition to the site plan submittal criteria detailed within Section 2.5 of this Ordinance the applicant shall submit proof a license has been issued allowing for the operation of a sexually oriented business in accordance with Section 8-33 of the Orange County Code of Ordinances.**

(B) Standards of Evaluation

- (1) No sexually oriented business(es) shall be located in a building or on a premises where alcohol or alcoholic beverages are sold or in a building or on a premises that allows alcohol or alcoholic beverages to be consumed.**
- (2) Sexually oriented business(es) shall not be located in any building, or portion thereof, that is:**
 - (a) Within 1,000 feet of an existing sexually oriented business.**
 - (b) Within 1,000 feet of a:**
 - (i) Residential land use including any open space established as part of the residential subdivision approval process,**
 - (ii) Church and/or place of worship,**
 - (iii) School (public, private, or specialty),**
 - (iv) Public or private library,**
 - (v) State licensed child care facility, or**
 - (vi) Public park or recreational facility.**
 - (c) Measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building**

or structure used as the part of the premises where a sexually oriented business is conducted to the nearest portion of a building, structure, or open space area of a use listed above.

SECTION 5.7: STANDARDS FOR RECREATIONAL USES

5.7.1 Recreational Facilities

(A) General Standards of Evaluation

- (1) The standards included herein shall be applied to the following for-profit recreational facilities:
 - (a) Tennis clubs,
 - (b) Swim clubs,
 - (c) Racquet ball,
 - (d) Squash clubs,
 - (e) Pitch and putt courses,
 - (f) Amusement areas,
 - (g) Bowling alleys,
 - (h) Skating rinks,
 - (i) Shooting ranges,
 - (j) Billiard and pool halls,
 - (k) Indoor athletic facilities and
 - (l) Other similar uses.
- (2) The minimum lot area shall be two acres.
- (3) No building shall be closer than the minimum requirements of the district or 20 feet to the public right of way or private property line, whichever is greater.

(B) Standards for Class B Special Use Permit

(1) Submittal Requirements

In addition to the information required by Section 2.7, the following information shall be supplied as part of the application for approval of this use:

- (a) A description of the exact type facility planned, the amount of area, including and number of members or participants expected, a site plan showing siting and size of existing and proposed building.
- (b) Access, parking, service and recreation areas for all planned facilities or existing facilities.
- (c) Plans, and elevation for all proposed and existing structures and descriptions of the color and nature of all exterior materials.
- (d) A landscape plan showing, at the same scale as the site plan, existing and proposed trees, shrubs, ground cover and any other landscape materials.
- (e) A signed statement from the owners or operators that there shall be no activity allowed that will have adverse effects on adjacent property. The statement shall also include a complete list of all recreational activities that will take place on the site.

(2) Standards of Evaluation

ARTICLE 8: NONCONFORMITIES

SECTION 8.1: INTENT

8.1.1 Generally

Non-conforming uses shall not be enlarged, expanded, intensified, or altered, except in conformance with this Ordinance.

It is further the intent of this Ordinance that non-conformity shall not be used as grounds for adding other prohibited uses or structures, nor the enlarging by means of extension or expansion, except as specifically provided by this Ordinance.

In the case of requirements related to external factors, such as distance requirements from other specified uses or landscaping requirements dependent upon adjacent property use, the subject parcel shall be considered conforming so long as its continuous use was established first.²

SECTION 8.2: CLASSIFICATION

Non-conformities are classified as:

- (A) Lots (see Section 8.7);
- (B) Uses of land without structures or minor structures (see Section 8.8);
- (C) Uses of major structures and premises (see Section 8.9);
- (D) Structures (see Section 8.10); and/or
- (E) Characteristics of uses (see Section 8.11)

which were lawful but would be prohibited, regulated, or restricted by the enactment of this Ordinance or a subsequent amendment thereto.

SECTION 8.3: COMPLETION OF NON-CONFORMING PROJECTS

8.3.1 Valid Permit Issued

All non-conforming projects on which construction was begun at least 180 days before the effective date of this Ordinance, or any modification thereto, as well as all non-conforming projects that are at least 25% completed in terms of the total expected cost of the project on the effective date of this Ordinance, or any modification thereto, may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this subsection shall only apply to the particular phase under construction.

- (A) Except as provided this Section, all work on any non-conforming project shall cease on the effective date of this Ordinance, or any modification thereto, and all permits previously issued for work on non-conforming projects shall be revoked as of that date. Thereafter, work on non-conforming projects may begin or may be continued only pursuant to a zoning or special use permit issued in accordance with this Ordinance by the Planning Director or board authorized to issue permits for the type of development proposed. The county shall issue such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations in some substantial way in reasonable reliance on conditions as they existed before the effective date of this Ordinance, or any modification thereto, and thereby would be unreasonably prejudiced if not allowed to complete the project as proposed. In considering whether these findings may be made, the Planning Director or appropriate board shall be guided by the following:

² Language added to address situations where legal land uses are made nonconforming by external forces. By adding the language the land use will still be considered a legal, conforming, use of property.

ARTICLE 10: DEFINITIONS

SECTION 10.1: DEFINITIONS

For the purpose of this Ordinance, certain terms and words are herein defined and interpreted as follows:

AASHTO

American Association of State Highway and Transportation Officials.

Accessory Structure

A structure that is located on the same lot as a principal structure and houses an accessory use.

Accessory Use

An activity that may or may not be listed in the Permitted Use Table, which is conducted in conjunction with a permitted principal use, but constitutes only an incidental or insubstantial part of the total activity that takes place on the lot and is customary and ancillary to the established principal use of property. Accessory uses shall comply with all setback requirements for the district in which the use is located. For example, an in-ground swimming pool is required to meet all applicable setbacks including any required fencing around the physical pool, the concrete walkway around the pool, and any pump or utilities associated with the operation of the facility.

Adult Uses

~~An establishment which has a majority of its business which excludes minors by reason of age because of the sexually explicit nature of the material. Such establishments include, but are not limited to, adult bookstores, adult theaters (drive-in, picture and mini-picture), adult cabaret, etc.~~

Adult Arcade

~~Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of Specified Sexual Activities or Specified Anatomical Areas.~~

Adult Bookstore

A bookstore:

- ~~(a) Which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas, as defined in this article; or~~
- ~~(b) Having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas.~~

Adult Cabaret

~~A nightclub, bar, restaurant, theater, concert hall, auditorium or similar commercial establishment that for at least ten percent of its business hours in any day features:~~

- ~~(a) Persons who appear in a State of Nudity; or~~
- ~~(b) Live performances that are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities; or~~

- (c) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; or
- (d) Persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

Adult Escort

A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person for the purpose of participating in, engaging in, providing, or facilitating Specified Sexual Activities.

Adult Escort Agency

A person or business that furnishes, offers to furnish, or advertises to furnish adult escorts as one of its business purposes for a fee, tip, or other consideration.

Adult Merchandise

Any product dealing in or with explicitly sexual material as characterized by matter depicting, describing, or relating to Specified Sexual activities or Specified Anatomical Areas.

Adult Motel

A hotel, motel or similar commercial establishment that offers accommodation to the public for any form of consideration and:

- (a) Provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; and has a sign visible from the public rights-of-way that advertises the availability of this adult type of photographic reproductions; or
- (b) Offers a sleeping room for rent for a period of time that is less than six hours; or
- (c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twelve hours.

Adult Patron

Any person who is physically present on the premises of a sexually oriented business and who is not an owner, employee, agent, subcontractor, or independent contractor of said business, or any entertainer or performer at said business.

Adult Video Store

A commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video tapes or cassettes, video reproductions, CD-ROMs, slides, or other visual representations which depict or describe Specified Sexual Activities or Specified Anatomical Areas; or any combination thereof.

Agricultural Processing Facility, Community

~~A facility utilized for the processing of produce and/or other commodities produced by no more than 5 cooperative farm partners for the consumption of others (e.g. small canning operation); Activities shall include, but may not be limited to, canning, dehydrations, washing, cutting or basic preparation of raw produce but does not include processing of live animals (see Meat Processing Facility). May include accessory retail sales of products processed on-site.~~

Agricultural Processing Facility

~~A facility utilized for the processing and packaging of produce and/or other commodities for transport to off-site wholesale or retail establishments. Facilities may be utilized by farm-based producers, restaurateurs, caterers, food entrepreneurs, and the like. Activities shall include, but may not be limited to, canning, dehydrations, washing, cutting or basic preparation of raw produce prior to shipment but does~~

Institutions of higher learning (universities, colleges and technical institutes). On-site faculty development workshops and fellowship training programs may also be provided as part of the organization's purpose.

Non-Residential Development

Development of any land use which is not residential in nature, including uses (such as churches) which are allowed in residential zoning districts.

Non-Residential Floor Area - Inclusions and Exclusions

The sum of areas for non-residential use on all floors of the building measured from the outside faces of the exterior walls, including halls, lobbies, arcades, stairways, elevator shafts, enclosed porches and balconies, and below-grade floor areas used for non-residential access and storages. Not countable as floor area are:

- a) Open terraces, patios, atriums, or balconies.
- b) Any residential space.

Non-Residential Land Area

All land for non-residential development and related uses, including open space, within the district in the case of locations which are controlled by these regulations. Non-residential land area shall not be construed to include lands not beneficial to non-residential use due to location or character, or areas used predominantly for residential purposes.

Nudity or a State of Nudity

The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

Nursing Home

A facility, licensed by the appropriate state agency for the care of aged or infirmed individuals, that meet the requirements set forth in this Ordinance.

Nutrient Sensitive Waters

Those waters which are so designated in the classification schedule in order to limit the discharge of nutrients (usually nitrogen and phosphorous). They are designated by "NSW" following the water classification.

Obstruction

Includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across, or projecting into any watercourse, which may alter, impede, retard, or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

Office Use

A use of property for professional and clerical activities associated with the operation of a business.

Offices & Personal Services, Class 1

Offices and personal services that attract few customers or clients on premises other than employees, generate low traffic volumes (< 100 trips/day), and have no adverse impacts beyond the space occupied by the building.

Offices & Personal Services, Class 2

Offices and personal services that generate medium traffic volumes (100-400 trips/day), and have no adverse impacts beyond the lot boundaries.

Offices & Personal Services, Class 3

Any approved ground absorption sewage treatment and disposal system other than an approved privy or an approved septic tank system.

Septic Tank System

A subsurface sanitary sewage system consisting of a septic tank and a subsurface disposal field.

Setback

Yard space other than a court unoccupied and unobstructed by any structure or portion of a structure from thirty inches above the general ground level of the graded lot upward, except as specifically provided in these regulations; provided, however, that fences and walls may be permitted in any setback subject to height limitations established generally or for the district and, further provided that poles, posts and other customary accessories, ornaments, furniture and landscaping shall be permitted in any setback if they do not constitute substantial impediments to free flow of light and air across the setback or violate provisions of these or other regulations regarding visibility.

Sexually Oriented Devices

Any artificial or simulated Specified Anatomical Area or other device or paraphernalia that is designed principally for Specified Sexual Activities but shall not mean any contraceptive device.

Sexually Oriented Business

A business which offers its customers or adult patrons any device, activity or demonstration depicting Specified Sexual Activities , or which is intended to appeal to sexual interests, titillation or arousal of the customer or adult patron. A sexually oriented business shall include an adult establishment as in NCGS § 14-202.10(2) and, in addition, without limitation shall include: Adult Arcade, Adult Bookstore, Adult Video Store, Adult Cabaret, Adult Motel, and Adult Escort Agency.

Sign

Any letter, figure, character, mark, plane, point, marquee, design, poster, pictorial, picture, stroke, stripe, line, trademark, reading matter, or illuminated surface which is constructed, placed, attached, painted, erected, fastened or manufactured in any manner so that the same shall be used for the attraction of the public to any place, subject, person, firm, corporation, public performance, article, machine, or merchandise, which are displayed in any manner, including out-of-doors.

Sign, Abandoned

A sign for which no legal owner can be found or any sign face or sign structure that advertises a business not conducted on the premises for over 90 days. In making the determination that a sign advertises a business no longer being conducted, the Planning Director shall consider the following: the existence or absence of a current occupational license, utility service deposit, or account; use of the premises; and relocation of the business.

Abandoned Sign shall also include the following:

- a) Through age and/or obsolescence a sign that no longer conforms to structural or maintenance specifications of Section 6.12, or
- b) Any pole, pylon, or structure expressly installed for the purpose of affixing a sign that bears no sign or copy.

Sign, Advertiser

Any person who is a lessee or owner of a sign, an agent of same, or anyone that has beneficial use of a sign.

Sign, Advertising Display Area

The advertising display surface area encompassed within any polygon that would enclose all parts of the sign. The structural supports for a sign, whether, they be columns, pylons, or a building, or a part thereof, shall not be included in the advertising area. Also known as Sign Area.

- An example of how advertising display area or sign area is calculated is as follows:

Special Event

A commercial activity attracting at least 20 people at any given time, that typically does not involve permanent structures, and does not occur more frequently than seven days in a 30-day period or more than 50 days per year. Examples of special events are craft shows, small festivals, concerts, medical or veterinary clinics, and sites operated by businesses engaged in hosting outdoor social events such as picnics or receptions sponsored by a restaurant or caterer.

Activities which are not included in this definition include:

- a) Events of a personal or non-profit, nature such as family reunions and church activities;
- b) Farm-related or rural events such as horse shows, 4-H events and auctions; and
- c) Fund-raising events for non-profit organizations.

Special Flood Hazard Area (SFHA)

The land in the floodplain subject to a 1% or greater chance of being flooded in any given year as determined in Section 4.3 of this Ordinance, as defined by the base flood elevation. The mapped special flood hazard area approximates the base flood elevation.

Special Flood Hazard Area Overlay District

An overlay district establishing standards for development for properties within identified floodplains.

Special-Purpose Unit of Government

Any special district or public authority.

Special Use

A use which would not be appropriate generally throughout the zoning district or without special study, but which, if controlled as to number, area, location or relation to neighborhood, would be appropriate. Such uses which are listed as Special Uses in the Permitted Use Table, Section 5.2, may be installed and operated only after approval by the Board of Commissioners or by the Board of Adjustment, as appropriate, subject to the general and specific standards.

Specified Anatomical Areas

- (a) Less than completely and opaquely covered human: (i) genitals, pubic region, (ii) buttocks, or (iii) female breast below a point immediately above the top of the areola; or
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified Sexual Activities

- (a) Human genitals in a state of sexual stimulation or arousal;
- (b) Acts of human masturbation, sexual intercourse or sodomy; or
- (c) Fondling or other erotic touchings of human genitals, pubic regions, buttocks or female breasts.

Start of Construction

Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

State Agency

Every department, agency, institution, public authority, board, commission, bureau, division, council, member of Council of State, or officer of the State government of the State of North Carolina.

Telecommunication Facilities, Whip Antenna

A cylindrical antenna that transmits and/or receives signals in 360 degrees.

Telecommunication Facilities, Wireless facility

The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area. This may also be referred to as a Personal Wireless Facility.

Telecommunication Facilities, Wireless facility Stealth

A wireless support structure designed using stealth technology such that its primary purpose is, or visually appears to be, something other than the support of telecommunications equipment, the apparent purpose of the wireless support structure is customarily considered as accessory to a use that is allowed in the zoning district, and the structure and its primary use comply with this Ordinance.

Telecommunication Facilities, Wireless support structure

A new or existing structure, such as a monopole, lattice, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

Telecommunication Facilities, Wireless Telecommunications Facility (WTF), Includes both Telecommunications Site and Personal Wireless Facility

A structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes without limit wireless support structures of all types, kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the facility. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services, and any commercial wireless telecommunication service not licensed by the FCC.

Temporary Residential Mobile Home

A mobile home, intended for residential use for a limited period of time, for purposes of providing for custodial care under a Class B Special Use Permit or providing temporary residential space during the installation of a replacement mobile home or construction of a stick-built or modular residential unit on the same lot, and for 30 days after the issuance of Certificate of Occupancy for the permanent unit. The temporary mobile home is not attached to a permanent or semi-permanent foundation.

Temporary Use Building

A building, not intended for residential use, consisting of one or more modules constructed off the ultimate site of use. The building is also not attached to a permanent or semi-permanent foundation.

Ten-Year Transition Land

Land located in areas that are in the process of changing from rural to urban densities and/or intensities, that are suitable for higher densities and/or intensities and could be provided with public utilities and services within the first 10-year phase of the Comprehensive Plan update or where such utilities and services are already present or planned. Non-residential uses implemented in accordance with small area plans and/or overlay districts may be appropriate.

Touch or Touching

In the context of a sexually oriented business any form of intentional physical, bodily contact regardless of whether exposed or clothed parts of any body are involved.

Tourist Home

A building or group of attached or detached buildings containing, in combination, three to nine lodging units for occupancy for daily or weekly periods, with or without board, and primarily for occupancy by

**ORANGE COUNTY
BOARD OF COMMISSIONERS AND
PLANNING BOARD
QUARTERLY PUBLIC HEARING ACTION AGENDA ITEM ABSTRACT**
Meeting Date: November 23, 2015

**Action Agenda
Item No.** C.2

SUBJECT: Unified Development Ordinance Text Amendment – Display of Vehicles at Motor Vehicle Sales/Rental Land Uses

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

Yes

ATTACHMENT(S):

1. Comprehensive Plan and Unified Development Ordinance Outline Form – Display of Vehicles at Motor Vehicle Sales/Rental Land Uses (UDO/Zoning 2015-06)
2. Examples of Existing Motor Vehicle Sales/Rental Businesses
3. Proposed UDO Text Amendment(s)

INFORMATION CONTACT:

Michael Harvey Planner III, (919) 245-2597
Craig Benedict, Director, (919) 245-2585

PURPOSE: To hold a public hearing on Planning Director initiated Unified Development Ordinance (UDO) text amendments proposing the adoption of regulations governing display of vehicles at motor vehicle sales/rental businesses.

BACKGROUND: The Board of County Commissioners (BOCC) approved the Amendment Outline Form (Attachment 1) for this item at its May 5, 2015 regular meeting. Agenda materials from this meeting can be viewed at: http://www.orangecountync.gov/document_center/BOCCAgendaMinutes/150505.pdf.

Staff has seen an increase in the number of automotive sale/rental business operating within the County and has begun receiving complaints related to the storage and display of vehicles (i.e. too many cars being displayed, parking over septic fields, parking in required buffer areas, parking in public road rights-of-way, etc.). Currently, the County limits only the total number of cars that can be parked and/or displayed for an automotive sales business located within the Neighborhood Commercial (NC-2) general use zoning district.

Staff is proposing to develop comprehensive regulations designed to limit the overcrowding of automotive sales operations within all general use zoning districts where such land uses are permitted.

For more background information please refer to Section B.1 of Attachment 1. Staff has also provided pictures of existing motor vehicles sales/rental businesses in Attachment 2 to assist in illustrating the concern(s).

SOCIAL JUSTICE IMPACT: The following Orange County Social Justice Goals are applicable to this agenda item:

GOAL: Enable Full Civic Participation

Ensure that Orange County residents are able to engage government through voting and volunteering by eliminating disparities in participation and barriers to participation.

GOAL: ESTABLISH SUSTAINABLE AND EQUITABLE LAND-USE AND ENVIRONMENTAL POLICIES

The fair treatment and meaningful involvement of people of all races, cultures, incomes and educational levels with respect to the development and enforcement of environmental laws, regulations, policies, and decisions. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

FINANCIAL IMPACT: Please refer to Section C.3 of Attachment 1.

RECOMMENDATION(S): The Planning Director recommends that the Board:

1. Receive the request,
2. Conduct the Public Hearing and accept public, BOCC, and Planning Board comments.
3. Refer the matter to the Planning Board with a request that a recommendation be returned to the BOCC in time for its **February 2, 2016** regular meeting.
4. Adjourn the public hearing until **February 2, 2016** in order to receive and accept the Planning Board's recommendation and any submitted written comments.

COMPREHENSIVE PLAN / FUTURE LAND USE MAP AND UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT OUTLINE

UDO / Zoning-2015-06

Amendment(s) establishing regulations for automotive sales and rental business
addressing the display and advertising of cars for sale

A. AMENDMENT TYPE

Map Amendments

- Comprehensive Plan – Future Land Use Element Map:
From: - - -
To: - - -
- Zoning Map:
From: - - -
To: - - -
- Other:

Text Amendments

- Comprehensive Plan Text:
Section(s):
- UDO Text:
 - UDO General Text Changes
 - UDO Development Standards
 - UDO Development Approval Processes
 Section(s): Section(s)

1. 5.2.1 *Table of Permitted Uses*, and
 2. 5.15 *Standards for Automotive/Transportation Related Uses*
- Other:

B. RATIONALE

1. Purpose/Mission

In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the UDO, the Planning Director has

initiated a text amendment to establish regulations governing the development and operation of automotive sales.

Staff has seen an increase in the number of automotive sale business operating within the County and has begun receiving complaints related to the storage and display of vehicles being offered for sale, specifically too many cars being placed on a parcel of property blocking or impeding access for both customers and emergency vehicles. In certain instances, cars have been parked in required land use buffer areas killing required landscaping or have been encroaching into adjacent rights-of-way creating additional enforcement problems.

Staff is proposing to develop comprehensive regulations designed to limit the overcrowding of automotive sales operations within all general use zoning districts where such land uses are permitted.

2. Analysis

As required under Section 2.8.5 of the UDO, the Planning Director is required to: *'cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners'*.

Automotive sales are allowed in the following general use zoning districts as a permitted use (i.e. administrative approval) of property:

1. Neighborhood Commercial (NC-2) with special standards;
2. General Commercial (GC-4);
3. Existing Commercial (EC-5);
4. Existing Industrial (EI);
5. Light Industrial (I-1);
6. Medium Industrial (I-2);
7. Heavy Industrial (I-3);
8. Economic Development Eno High Intensity (EDE-2); and
9. Master Planned Development Conditional Zoning (MPD-CZ) district.

This use is also permitted within the Economic Development Buckhorn Low and High Intensity (EDB-1 and EDB-2) districts with the review and approval of a Conditional Use (i.e. a rezoning and Class A Special Use Permit) application by the BOCC.

Currently, the County limits only the total number of cars that can be parked and/or displayed for an automotive sales business located within the Neighborhood Commercial (NC-2) general use zoning district. It should be noted that staff has an active code enforcement case against an existing business along Highway 70 within the Cheeks Township.

The amendments are necessary to address congestion at automotive sales operations due to too many vehicles being displayed for sale.

3. Comprehensive Plan Linkage (i.e. Principles, Goals and Objectives)

Land Use Goal 2: Land uses that are appropriate to on-site environmental conditions and features and that protect natural resources, cultural resources, and community character.

Land Use Goal 4: Land development regulations, guidelines, techniques and/or incentives that promote the integrated achievement of all Comprehensive Plan goals.

4. New Statutes and Rules

N/A

C. PROCESS

1. TIMEFRAME/MILESTONES/DEADLINES

a. BOCC Authorization to Proceed

May 5, 2015

b. Quarterly Public Hearing

November 23, 2015

c. BOCC Updates/Checkpoints

May 5, 2015 – Approval of UDO Amendment Outline Form

September 2, 2015 – Planning Board Ordinance Review Committee (ORC)

November 23, 2015 – Quarterly Public Hearing

February 2, 2016 – Receive Planning Board Recommendation

d. Other

N/A

2. PUBLIC INVOLVEMENT PROGRAM

Mission/Scope: Public Hearing process consistent with NC State Statutes and Orange County ordinance requirements

a. Planning Board Review:

September 2, 2015 – Ordinance Review Committee

The ORC met and reviewed this item at its September 2, 2015 meeting where the following comments were made:

- A Board member asked how prevalent the problem is.

STAFF COMMENT: We have approximately 5 motor vehicle sales businesses within the County where we have problems with vehicles being stored and displayed throughout the property. The problem this creates is

that required land use buffers, customer parking areas, and septic fields are being used to support the display of motor vehicles.

The proposed amendment is designed to assist staff in establishing a methodology to delineate allowable vehicle display areas on properties used to support motor vehicles sales/rental.

- A Board member asked how staff came up with the recommended vehicle limits.

STAFF COMMENT: The typical display area for a vehicle is 288 sq. ft., which includes the required parking area for said vehicle and the portion of drive isle allowing access.

Staff then identified the acceptable levels of intensity for the various base zoning districts with respect to the display of motor vehicle sales/rental.

Ultimately the recommended numbers were designed to allow for approximately 20% of the property to be used in support of motor vehicle display allowing for the remaining area to satisfy setback, office, customer parking, and required land use buffer development.

- Several Board members asked if the proposed text amendment will impact allowable impervious surface area on a given parcel.

STAFF COMMENT: Development of such land uses will have to comply with applicable impervious surface limits based on the Watershed Protection Overlay District where the property is located.

- A Board member asked is staff could quantify the number of motor vehicle sales/rental businesses operating in the County and if pictures of the vehicle display issues could be provided.

STAFF COMMENT: Staff will provide this material at the November 23, 2015 Quarterly Public Hearing.

The ORC materials are available at: http://www.orangecountync.gov/ORC_Sep_2015_Agenda_Package.pdf. Meeting notes can be viewed by utilizing the following link: http://www.orangecountync.gov/9_2_15_ORC_Notes.pdf.

January 6, 2016 – Recommendation

b. Advisory Boards:

N/A

<hr/>	<hr/>
<hr/>	<hr/>

c. Local Government Review:

N/A

<hr/>	<hr/>
<hr/>	<hr/>

d. Notice Requirements

Legal advertisement was published on November 11 and 18, 2015 in accordance with the provisions of the UDO.

e. Outreach:

- | | |
|---|---|
| <input checked="" type="checkbox"/> General Public: | Consistent with NC State General Statutes and Orange County Ordinance requirements. |
| <input type="checkbox"/> Small Area Plan Workgroup: | |
| <input type="checkbox"/> Other: | |

3. FISCAL IMPACT

Consideration and approval will not create the need for additional funding for the provision of County services. Costs for the required legal advertisement will be paid from FY2015-16 Departmental funds budgeted for this purpose. Existing Planning staff included in the Departmental staffing budget will accomplish the work required to process this amendment.

D. AMENDMENT IMPLICATIONS

The amendment will establish comprehensive regulations governing the number and placement of vehicles being offered for sale at an automotive sales operation in an effort to address overcrowding concerns and eliminate impediments to vehicular ingress/egress from the property.

E. SPECIFIC AMENDMENT LANGUAGE

Please refer to Attachment 3.

Primary Staff Contact:

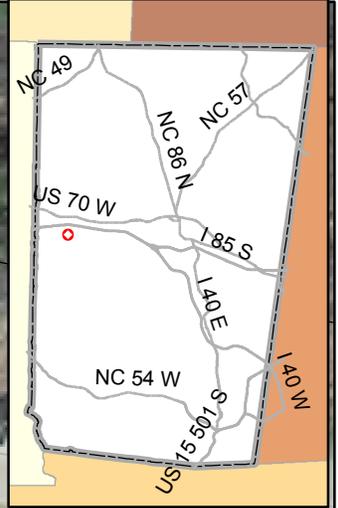
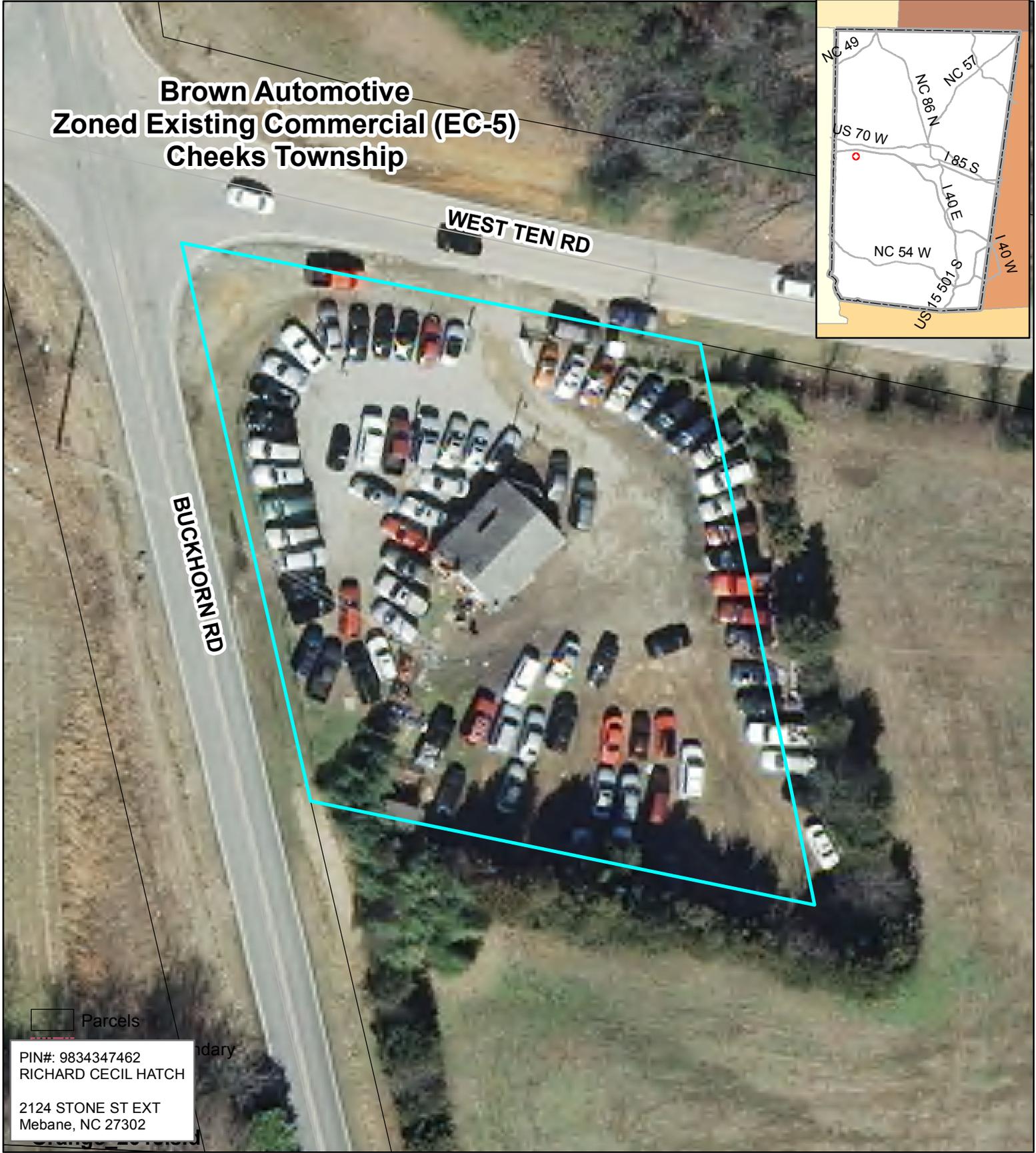
Michael D. Harvey

Planning

(919) 245-2597

mharvey@orangecountync.gov

**Brown Automotive
Zoned Existing Commercial (EC-5)
Cheeks Township**



PIN#: 9834347462
RICHARD CECIL HATCH
2124 STONE ST EXT
Mebane, NC 27302

RGB

-  Red: Band_1
-  Green: Band_2
-  Blue: Band_3

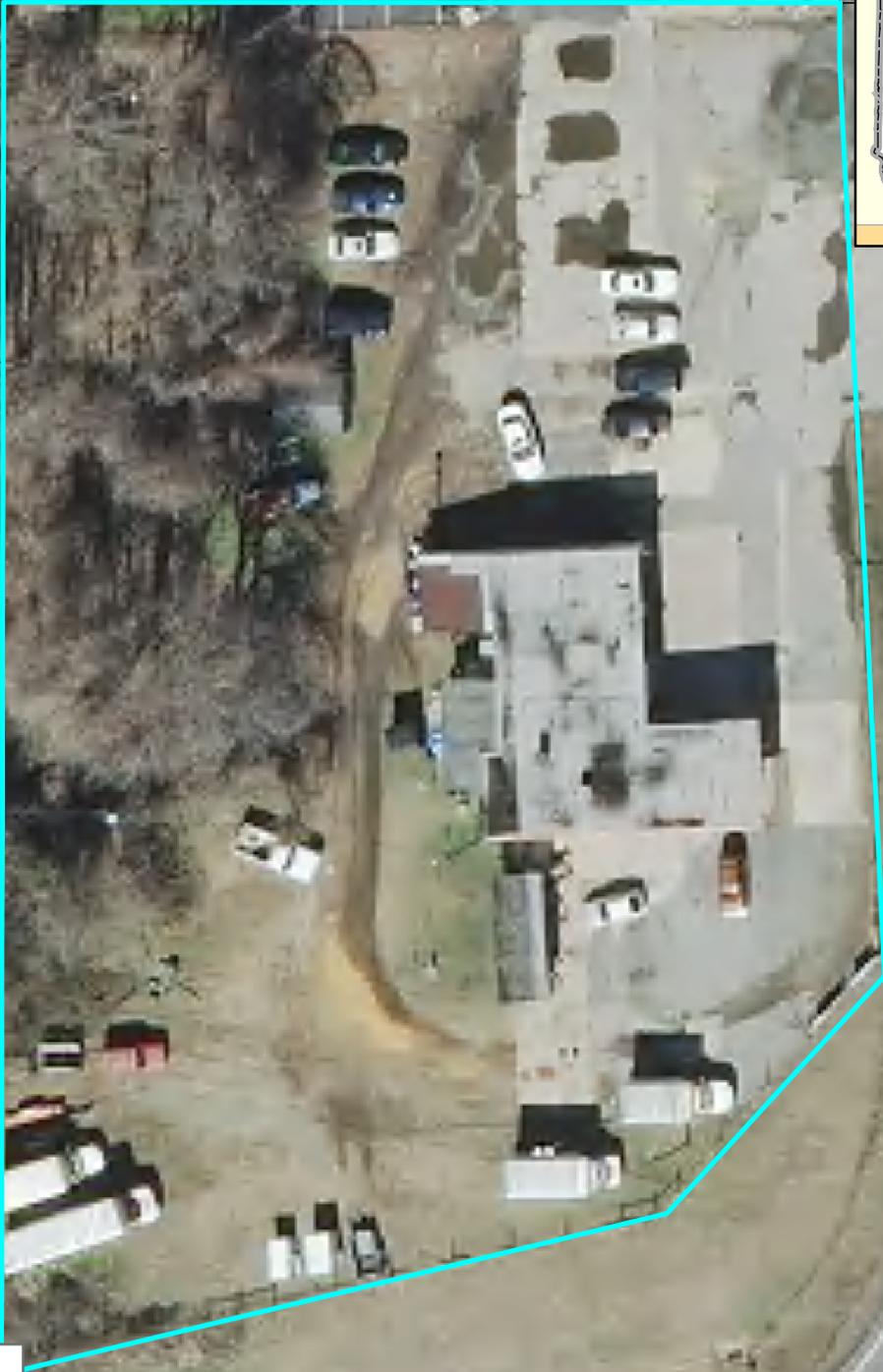
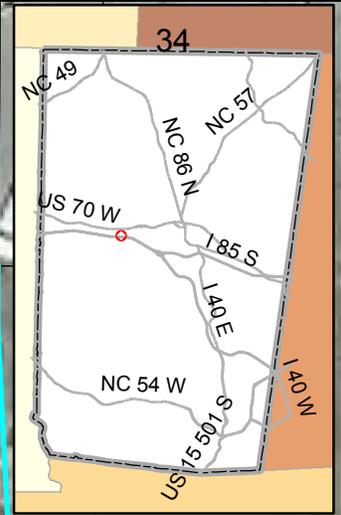


1 inch = 40 feet

Orange County Planning and Inspections Department
11/13/2015



Automotive Sales Neighborhood Commercial (NC-2) Cheeks Township



MT WILLING RD

I 85 S | I 40 W EXIT 160

Parcels

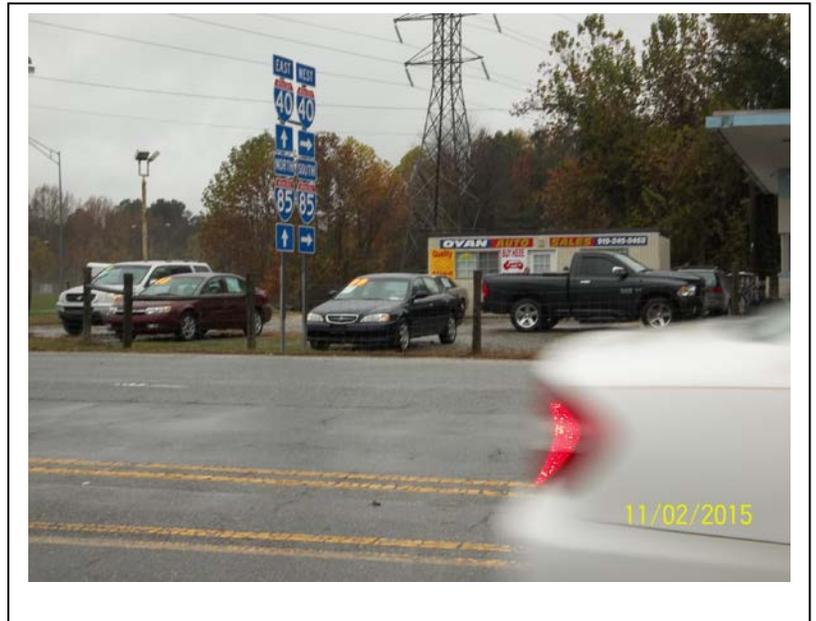
PIN#: 9844965134
EFLAND FOWLER M M INC #230
4220 NEAL RD
DURHAM, NC 27705

RGB

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- Green: Band_2
- Blue: Band_3



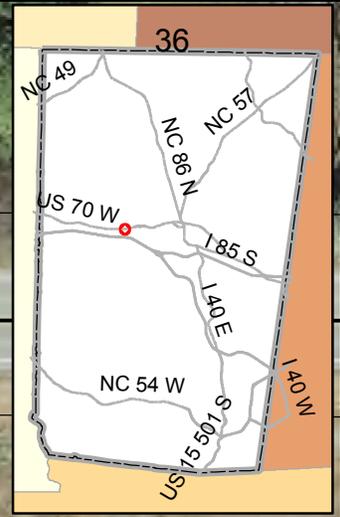
1 inch = 40 feet



J and R Automotive Sales Neighborhood Commercial (NC-2) Cheeks Township

US 70 W US 70 W

MAPLE ST



Parcels

PIN#: 9854180304
INVESTMENT COMPANY LLC ANDY LLOYD LAND

2701 HWY 70
C/O BEN LLOYD
EFLAND, NC 27243

RGB

- Red: Band_1
- Green: Band_2
- Blue: Band_3



1 inch = 53.6 feet



TABLE OF PERMITTED USES – GENERAL USE ZONING DISTRICTS																					
* = PERMITTED USE A = CLASS A SPECIAL USE B = CLASS B SPECIAL USE Δ = SUBJECT TO SPECIAL STANDARDS																					
USE TYPE	GENERAL USE ZONING DISTRICTS																				
	RB	AR	R1	R2	R3	R4	R5	R8	R13	LC1	NC2	CC3	GC4	EC5	OI	AS	EI	I1	I2	I3	PID
~ Use may not be permitted as a Conditional Use District; See Section 5.1.4(E) ^ Allowed as more than one principal use if located on a bona fide farm (see Section 6.2.5)																					
Temporary Mobile Home (Use during construction/installation of permanent residential unit and for 30 days following issuance of Certificate of Occupancy)	*	*	*	*	*	*															
AUTOMOTIVE / TRANSPORTATION																					
Bus Passenger Shelter	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Bus Terminals & Garages ~													*					*	*	*	
Motor Freight Terminals ~																		*	*	*	
Motor Vehicle Maintenance & Repair (Body Shop) ~												*	*	*							
Motor Vehicle Repair Garage ~												*	*								
Motor Vehicle Sales / Rental (New & Used) ¹											Δ ¹	*	*	*		*	*	*	*	*	
Motor Vehicle Services Stations										*	*	*	*	*							
Parking As Principal Use, Surface or Structure											*	*	*								
Petroleum Products: Storage & Distribution ~																		*	*	*	
Postal & Parcel Delivery Services												*	*		*						
UTILITIES																					
Elevated Water Storage Tanks	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
Public Utility Stations & Sub-Stations, Switching Stations, Telephone Exchanges, Water & Sewage Treatment Plants	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Electric, Gas, and Liquid Fuel Transmission Lines	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
Water & Sanitary Sewer Pumping	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Solar Array – Large Facility	B	B	B	B	B	B	B	B	B	B	B	B	B		B	B		B	B	B	B
Solar Array – Public Utility	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A		A	A	A	A

¹ As we are extending vehicle display standards/limits to all districts there is no reason to single out vehicle sales/rentals in NC-2 anymore.

from the property line.

- (3) Hours of operation shall be limited to the hours between 7 a.m. and 7 p.m.
- (4) Site shall have direct access to a major road, as classified in the Orange County Comprehensive Plan, and shall use said road as the primary access, unless approved otherwise in the permit.

5.14.4 Winery, production only

(A) Standards for Class B Special Use Permit or ASE-CZ Zoning District

- (1) If located in an AR or RB zoning district, the winery must be located on a bona fide farm.
 - (a) A winery, production only, that is located on a bona fide farm, and which utilizes primarily crops produced on-site is considered a bona fide farming use and is not subject to zoning regulations.
 - (b) A winery, production only, that does not utilize primarily crops produced on-site, regardless of whether it is located on a bona fide farm, is not considered a bona fide farming use and is subject to the regulations contained in this Ordinance.
- (2) If located adjacent to residentially zoned property, all buildings shall be located a minimum of 100 feet from the property line.
- (3) Application materials shall include a comprehensive groundwater study, for facilities expected to use more groundwater on an annual basis than an average single family residence (which uses 240 gallons of water per day) built at the highest density the existing zoning district would allow. For example, if the existing zoning district allows a residential density of 1 unit for 2 acres and the proposed use is on a six acre parcel (which could yield 3 residences), the proposed use(s) may use three times the water used by an average single family residence (or 720 gallons per day, on an annualized basis) before a comprehensive groundwater study is required. The water usage rates of any existing use subject to zoning regulations located on the same lot shall be taken into account when determining if a comprehensive groundwater study is required. Said study shall detail:
 - (a) The amount of water anticipated to be used on a daily, weekly, monthly, and annual basis by regulated uses located on the parcel (e.g., water usage by bona fide farm uses is not required to be included);
 - (b) An analysis of the amount of groundwater withdrawal considered to be safe and sustainable in the immediate vicinity; and
 - (c) An analysis of whether other wells in the vicinity of the proposed use are expected to be affected by withdrawals made by the proposed use.

SECTION 5.15: STANDARDS FOR AUTOMOTIVE/TRANSPORTATION RELATED USES

5.15.1 Motor Vehicle Sales / Rental (New & Used) ~~in the NC-2 Zoning District~~²

(A) Submittal Requirements

- (1) In addition to the information required by Section 2.5, the site plan shall show the area for the display of vehicles for sale or rental

² Originally the County adopted regulations establishing a specific limit on the display of motor vehicles for sale in the NC-2 zoning district. This amendment establishes a limit on the outdoor display of motor vehicles offered for sale in every zoning district where the land use is permitted.

- (B) General Standards**
- (1)** Property shall have frontage and direct access onto a State maintained roadway.
 - (2)** Areas of the property designated for the display of vehicles for sale or rent shall be improved with an all-weather surface (i.e. concrete, asphalt, gravel)³ and shall not be used for any other purpose.⁴
 - (3)** Additional vehicles, other than those offered for sale or rent, shall be screened from view from adjacent properties and public rights-of-way.⁵
- (C) Standards for the NC-2, EC-5, and E-I Zoning District(s)**
- (4)** ~~This use shall only be permitted within the Commercial Transition Activity or Commercial Industrial Transition Activity Node land use classifications, as designated on the Land Use Element Map of the adopted Comprehensive Plan.⁶~~
 - (1)** The display of vehicles outdoors shall be limited to 25 vehicles per acre of property.⁷
- (D) Standards for GC-4, I-1, I-2, I-3, EDB-1, EDB-2, and EDE-2.⁸**
- (1)** The display of vehicles outdoors shall be limited to 45 vehicles per acre of property.⁹

SECTION 5.16: STANDARDS FOR MEDICAL USES

5.16.1 Veterinary Clinic

- (A) Standards for Class B Special Use Permit or ASE-CZ or MPD-CZ Zoning District**
- (1)** ~~In the AR and ASE-CZ zoning districts, this use is intended primarily for large animal facilities but may also contain an ancillary small animal component.~~
 - (2)** ~~If located adjacent to residentially zoned property, all buildings and facilities shall be located a minimum of 100 feet from the property line.~~

³ Staff is recommending the area identified on the site plan as serving as the display area for vehicles be improved (i.e. asphalt, concrete, gravel) is to avoid unnecessary disturbance of property as vehicles are moved in and out of the area. A concern we have is constant moving and parking of cars will result in unnecessary disturbance of the ground, kill vegetation serving as a stabilizing mechanism for soil, and increase sediment runoff from the property in contradiction of our regulations.

⁴ We have had problems in the past with identified parking areas for vehicles being displayed for sale or rent being used as primary parking areas for customers and staff. This provision will give staff greater ability to prohibit same and ensure there is adequate display area as well as required parking for patrons/staff.

⁵ In consultation with the Director, it was determined additional storage area could be allowed on-site for vehicles not intended for sale or rental so long as said storage area was screened from view.

⁶ This language is recommended for deletion to address a concern from the Attorney's office with respect to establishing land use prohibitions associated with acceptable land uses on the land use categories contained within the Comprehensive Plan.

⁷ A typical display area for a vehicle is 288 sq. ft., which includes the required parking area for said vehicle and the portion of drive isle allowing access. The proposal would allow approximately 17% of every acre of property to be dedicated to the display of vehicles offered for sale or rent. This regulation does not eliminate the property owner from having to comply with other ratio/dimensional standards contained within the UDO.

⁸ This includes the GC-4, I-1, I-2, I-3, and the Buckhorn and Eno Economic Development districts.

⁹ The proposal would allow approximately 30% of every acre of property to be dedicated to the display of vehicles offered for sale or rent. This regulation does not eliminate the property owner from having to comply with other ratio/dimensional standards contained within the UDO.

**ORANGE COUNTY
BOARD OF COMMISSIONERS**

ACTION AGENDA ITEM ABSTRACT

Meeting Date: November 23, 2015

**Action Agenda
Item No. E.1**

SUBJECT: Impact of 2015 Legislative Updates on Orange County's Erosion Control/Stormwater Programs, Riparian Buffer and Impervious (Built-Upon Area) Regulations

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

N

ATTACHMENT(S):

1. Memorandum on SL2015-246 (H44) – Stormwater Impacts
2. Memorandum on SL2015-286 (H765) – Stormwater Impacts
3. Memorandum on SL2015-246 (H44) – Riparian Buffer Impacts
4. Session Law 2015-149 (H634)
5. Session Law 2015-246 (H44)
6. Session Law 2015-286 (H765)
7. Matrix Outlining State and County Riparian Buffer Requirements

INFORMATION CONTACT:

Howard W. Fleming, Jr., PE,
Engineering/Stormwater Supervisor,
(919) 245-2586
Michael Harvey, Planner III, (919) 245-2597
Craig Benedict, Planning Director,
(919) 245-2592
James Bryan, Staff Attorney, (919) 245-2319

PURPOSE: To review how legislative changes made in 2015 have or will impact the County's Erosion Control/Stormwater programs and riparian buffer regulations as enforced by the Current Planning division. This abstract provides staff background and information on each individual item with requests for direction and/or identification on identified next steps.

BACKGROUND:

- **Session Law (SL) 2015-149 (H634)** - An act to clarify the definition of built-upon area (BUA) for purposes of stormwater programs.

The basic change per this SL is, for the purposes of implementing stormwater programs, "built-upon area" does not include...a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; or a trail as defined in G.S. 113A-85 that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour)."

Please refer to Attachment 4 for a copy of the legislation.

This only (at this time in our planning opinion) affects the stormwater calculations for runoff retention which would require less storage. This BUA will likely not be widely used.

- **Session Law 2015-246 (H44)** - An act to reform various provisions of the law related to local government including modifications to riparian buffer standards and changes to the enforcement of voluntary State regulations (i.e. stormwater).

A copy of the legislation is contained in Attachment 5.

An analysis on the legislations impact on the County's stormwater program is contained in Attachment 1 and Attachment 3 contains our assessment of its impacts on our riparian buffer program.

This **will** greatly affect the existing stormwater program in the Jordan Lake watershed where we implemented rules in advance of pending state regulations (which have been delayed).

A primary consideration relates to what regulations should be implemented if current ordinances are determined to be non-enforceable?

- **Session Law 2015-286 (H765)** - An act to provide further regulatory relief to the citizens of North Carolina by providing for various administrative reforms, by eliminating certain unnecessary or outdated statutes and regulations and modernizing or simplifying cumbersome or outdated regulations, and by making various other statutory changes.

A copy of the legislation is contained in Attachment 6. An analysis on the legislations impact on the County's stormwater program is contained in Attachment 2.

FINANCIAL IMPACT: Consideration will not create the need for additional funding for the provision of County services; however...

Item A –If we decide to amend the UDO, there would be staff time commitments and a resulting public hearing.

1. Costs for the required legal advertisement will be paid from FY2015-16 Departmental funds budgeted for this purpose.
2. Existing Planning and stormwater staff, included in the Departmental staffing budget, will accomplish the work required to process these amendments.

Item B – We will examine the legal ramifications of other actions

Item C - Staff will proceed with a Riparian buffer study with present cost unknown and unfunded. Approximate cost could be \$40,000 to \$50,000. We will seek cost sharing and collaboration where possible.

Service Impact: Current Planning, Engineering/Stormwater staff, and the County Attorney's office would need to be involved with all of the scenario pathways. It should be noted, however, that some impact to service might result, due to the extensive nature of these regulations, if revised, and the fact they are reviewable by the State for compliance and subject to additional revision until approved.

SOCIAL JUSTICE IMPACT: The following Orange County Social Justice Goal is applicable to this agenda item:

GOAL: ESTABLISH SUSTAINABLE AND EQUITABLE LAND-USE AND ENVIRONMENTAL POLICIES

The fair treatment and meaningful involvement of people of all races, cultures, incomes and educational levels with respect to the development and enforcement of environmental laws, regulations, policies, and decisions. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

RECOMMENDATION(S): The Manager recommends that the Board receive the information and provide comments:

1. Stormwater Rules: Collaborate with the Attorney's Office and seek guidance from NC DEMLR and DEQ as to what "rules Orange County should default to, if we need to suspend present UDO regulations because of the delayed rules enforcement prohibited by SL 2015-246 (H44).
2. Riparian Buffers: Proceed with study to justify present standards.

PLANNING & INSPECTIONS DEPARTMENT
Craig N. Benedict, AICP, Director

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Control / Stormwater
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(919) 644-3002 (FAX)
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Suite 201
P. O. Box 8181
Hillsborough, NC 27278



MEMORANDUM

TO: Orange County Board of County Commissioners
FROM: Howard W. Fleming, Jr., PE, Engineering/Stormwater Supervisor
DATE: 11/23/15
PROJECT: GENERAL
SUBJECT: Session Law 2015-246 (HB 44)

The following is the Engineering/Stormwater Division's analysis of the impacts of subject legislation on the Erosion Control/Stormwater program of Orange County.

ADDED § 153A-145.6. Requiring compliance with voluntary State regulations and rules prohibited. (For full text see Attachment 4)

Based on this new law, it appears that our ability to enforce the Jordan Lake Stormwater regulations for new development is rescinded. This is based on the fact that [SL2012-200](#) (*enacted 08/01/12 versus Orange County UDO amendment ordinance 2012-011, adopted 04/17/12*) delayed our required implementation to August 10, 2014. Subsequently, [SL2013-395](#) delayed implementation of all Jordan Lake Rules "that begin July 1, 2013, or later" for a period of three years. So, it appears that the requirement for us to implement the Jordan Lake new development stormwater regulations has been delayed until 2017.

Even though the title of 153A-145.6 says "voluntary State regulations", the text of the first paragraph says:

*"If a State department or agency declares a regulation or rule to be voluntary or the General Assembly delays the effective date of a regulation or rule proposed or adopted by the Environmental Management Commission, or any other board or commission, a county shall **not** require or enforce compliance with the applicable regulation or rule, including any regulation or rule previously or hereafter incorporated as a condition or contractual obligation imposed by, agreed upon, or accepted by the county in any zoning, land use, subdivision, or other developmental approval, including, without limitation, a development permit issuance, development agreement, site-specific development plan, or phased development plan."*

Since the required implementation has been delayed by the General Assembly until 2017, Engineering/Stormwater Division's interpretation is that the County "shall not require or force compliance with the" new development rules for Jordan Lake. We recommend consideration and interpretation by the County Attorney's office.

These are the rules which form the basis of the stormwater regulations for almost half of the County. In the absence of these rules, research will need to be done to determine how the UDO would need to be modified in order to meet the requirements of state law.

Unfortunately, the North Carolina Department of Environment and Natural Resources Energy Mineral and Land Resources (DEMLR) is right in the middle of a comprehensive review of stormwater regulations, which involves significant reorganization, repeals of duplications and amendments. Why is DEMLR doing this?

- #1 [S.L. 2013-82](#) requires new rules for Fast-Track permitting. Minimum Design Criteria (MDC) are part of the Fast-Track requirements, so they have to be codified too.
- #2 [G.S. §150B-21.3A](#) directs state agencies to review and update their rules every 10 years.
- #3 It's a good opportunity to update & streamline.

Substantive changes resulting from this that will affect Orange County include:

- 1. Minimum Design Criteria (MDC) and fast-track permitting
- 2. Project density
- 3. Disconnection instead of swales

The recodified comprehensive rules adoption is scheduled for July of 2016.

- Sep-Dec 2015 DEMLR develops fiscal note
- Nov 12, 2015 WQC approves rule text
- Jan 14, 2016 EMC approves rule & fiscal note
- Jan 15, 2016 OSBM certifies fiscal note
- Jan 20, 2016 DEMLR files rule & fiscal note in Register
- Feb 17, 2016 Comment period begins
- Mar 2016 Public hearing(s)
- Apr 17, 2016 Comment period ends
- Jul 13, 2016 EMC adopts rules**

ADDED: § 160A-499.4. and § 153A-457. Notice prior to construction.

Article 21, Chapter 160A and Article 23 of Chapter 153A of the General Statutes were amended to include new sections requiring counties to provide notice prior to construction

- (a) A county shall notify the property owners and adjacent property owners prior to commencement of any construction project by the county.*
- (b) Notice under this section shall be in writing at least 15 days prior to the commencement of construction, except in any of the following instances:*
 - (1) If the construction is a repair of an emergency nature, the notice may be given by any means, including verbally, that the county has for contacting the property owner within a reasonable time prior to, or after, commencement of the repair.*
 - (2) The property owner requests action of the county that requires construction activity.*
 - (3) The property owner consents to less than 15 days' notice.*
 - (4) Notice of the construction project is given in any open meeting of the county prior to the commencement of the construction project.*

The Engineering group believes category (4) will prevail as the primary vehicle for such notifications to occur, thereby ensuring Orange County Compliance.

PLANNING & INSPECTIONS DEPARTMENT
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MEMORANDUM

TO: Craig Benedict
FROM: Howard W. Fleming, Jr., PE, Engineering/Stormwater Supervisor
DATE: 11/23/15
PROJECT: GENERAL
SUBJECT: Session Law 2015-286 (HB 765)

The following is my analysis of the impacts of subject legislation on the Erosion Control/Stormwater program of Orange County. (For full text of SL 2015-286, see Attachment 5.)

Michael Harvey has reviewed this memorandum in advance of finalization, as it touches upon ordinances enforced by Current Planning. I have incorporated his one comment.

1. The Environmental Review Commission (EMC) is required to study “open and fair competition with respect to materials used in wastewater, stormwater, and other water projects”; whether to require public entities to consider all acceptable piping materials before determining which piping material should be used in the constructing, developing, financing, maintaining, rebuilding, improving, repairing, procuring, or operating of a water, wastewater, or stormwater drainage project. Recommendations are due to the 2016 Regular Session of the 2015 General Assembly, which starts April 25, 2016.

The outcome of this provision cannot be determined at this point in time. **As Orange County Engineering (a division of Planning & Inspections) engages in the development of water, sewer and potentially other infrastructure that would promote development in the Economic Development Districts (EDD’s), changes may be expected to Orange County’s construction documents for such future projects.**

2. Session Law 2015-286 (HB 765) amends the laws governing isolated wetlands.
 - a) Regulated discharges to **isolated wetlands and isolated waters were modified by this legislation to apply only to Basin Wetlands and Bogs** and no other wetland types and shall not apply to an isolated man-made ditch or pond constructed for stormwater management purposes or any other man-made isolated pond.
 - b) No later than March 1, 2016, the EMC is to establish three zones (Coastal, Piedmont and Mountain) for purposes of regulating impacts to isolated wetlands. Orange County is in the Piedmont. **Our threshold for impacts not requiring mitigation will be less than or equal to one-half acre of isolated wetlands. Mitigation requirements for impacts to isolated wetlands greater than this threshold shall only apply to the amount of impact that exceeds the threshold. The mitigation ratio remains the same (1:1).**
 - c) **Impacts** to isolated wetlands **shall not be combined** with the project impacts to 404 jurisdictional wetlands or streams for the purpose of determining when impact thresholds that trigger a mitigation requirement are met.
 - d) These regulations have a “delayed effective date” per as provided in G.S. 150B-21.3, which is full of entirely confusing language. Most likely, these regulations will become **effective sometime during the 2016 spring session of the General Assembly.**
 - e) The Department of Environment and Natural Resources (DENR) is directed to study a number of issues surrounding "isolated wetlands" and report its findings and recommendations to the EMC on or before November 1, 2014. **The year of this date must be in error, as it predates the ratification date.** The implications are that this study could reverse or amend the very rules discussed above. It almost reads as if the legislators are saying, “please confirm our direction”.
3. EMC development deadline for developing fast-track permitting for stormwater management systems has been pushed back to November 1, 2016. **NC DEQ has staff working on this. Their current direction is paired with the development of the Minimum Design Criteria (MDC), which applies to the Best Management Practice (BMP) Manual. The MDC are currently published and are undergoing public review. We assume there may be some eventual downstream implications for Orange County to implement a clone process.**
4. Apparently effective immediately, as no effective date paragraph was included. **§143-214.7 Stormwater runoff rules and programs is modified** to allow “...any acceptable engineering hydrologic and hydraulic methods.” (Genesis and intent unknown; other related provisions do not apply in Orange County.)

5. **[POTENTIAL ORANGE COUNTY UDO TEXT AMENDMENT REQUIRED]**
Session Law 2015-286 (HB 765) removes the previously allowed latitude of local stormwater management programs to “exceed” the requirements of the model program adopted by the Commission and requires Orange County to submit our current or revised stormwater management program to the Environmental Management Commission (EMC) by March 1, 2016. The EMC will then review and approve, approve with modifications, or disapprove our revised stormwater management program by December 1, 2016.

The EMC reviewed and approved Orange County's stormwater management program in January of 2012; however, it must be stated that the focus of the EMC at that time was compliance with the Falls Lake Rules. Due to the fact that Orange County is about 45% Falls Lake watershed and 50% Jordan Lake watershed (and about 5% Hyco Creek watershed), our presentation was an overview of our entire UDO regulations, with a focus on how they pertain to the Falls nutrient strategy. **It is hard to predict the outcome of this 2016 review, as the focus appears to be on excessive differences (i.e. where Orange County is more restrictive). These regulations are extremely detailed and it appears Orange County has incorporated most of the nutrient limitations verbatim from both the Falls and Jordan nutrient strategies.** Orange County's mix of watersheds caused us to be conservative in trying to make the stormwater regulations consistent across the entire county. Other reasons for Orange County's more restrictive regulations are less obvious to those of us without the benefit of historic context. In discussing this matter with Current Planning, it is our joint opinion that “stormwater program” could and probably will be interpreted in a broad manner. We expect it will encompass built-upon area (BUA) limitations, as defined in the Fresh Surface Water Quality Standards for Class WS-II through IV Waters, 15A NCAC 02B .0214 through .0216.

Using this broad interpretation, **Orange County's “stormwater program” differences appear to be primarily in the areas of impervious surface (built-upon area) allowances and riparian buffers (both of which are enforced by Current Planning), where Orange County approaches these limitations in a manner different than that outlined in the North Carolina Administrative Code (NCAC). The EMC may find that UDO revisions are required.**

[15A NCAC 02B .0262](#) Jordan Water Supply Nutrient Strategy

[15A NCAC 02B.0275](#) Falls Nutrient Strategy

[15A NCAC 02B .0233](#) Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers

[15A NCAC 02B .0267](#) Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers

[15A NCAC 02B .0214](#) Fresh Surface Water Quality Standards for Class WS-II Waters

[15A NCAC 02B .0215](#) Fresh Surface Water Quality Standards for Class WS-III Waters

[15A NCAC 02B .0216](#) Fresh Surface Water Quality Standards for WS-IV Waters

6. Requires the Environmental Review Commission (ERC), with the assistance of the Department of Environment and Natural Resources (DENR), to perform a comprehensive review of all regulations related to the management of stormwater in the State, and make recommendations as to whether they should be recodified or reorganized in order to clarify State law for the management of stormwater. The reporting timeline for this starts April 25, 2016 and the outcome cannot be determined at this point in time. **No resulting changes are expected to Orange County's stormwater management program; however we welcome clarification!**
7. Excludes cluster mailbox units from calculation of built-upon area for the development for stormwater permitting purposes. This only applies to single-family or duplex developments. For retrofits, local government shall not require a modification to any stormwater permit for that development. Effective immediately but expires on December 31, 2017, or when regulations on cluster box design and placement by the United States Postal Service become effective and those regulations are adopted by local governments, whichever is earlier.
8. By March 1, 2016, DENR is required to report to the ERC the results of a study, including any recommendations as they relate to exempting linear utility projects from "certain" environmental regulations. "Linear utility projects" are defined as electric power lines, water lines, sewage lines, stormwater drainage lines, telephone lines, cable television lines, data transmission lines, communications-related lines, or natural gas pipelines. **The outcome and effects of this legislation on Orange County cannot be determined at this point in time.**
9. §143-214.7C was added and DENR / EMC must amend their rules to be consistent with **not requiring mitigation for impacts to intermittent streams**, except as required by federal law. For purposes of the added section, "intermittent stream" was defined as a well-defined channel that has all of the following characteristics:
 - (1) It contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table.
 - (2) The flow of water in the intermittent stream may be heavily supplemented by stormwater runoff.
 - (3) It often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.

Apparently effective immediately, this prohibition seems problematic, as intermittent streams are considered "waters of the US" under the Clean Water Act and therefore "jurisdictional", requiring 404 permitting for impacts and the corresponding 401 water quality certification by the State. Orange County is prohibited from issuing a land disturbance permit until what is commonly referred to as the "404/401 permit" is issued.

Except as otherwise provided, all provision of the act are effective when it becomes law.

PLANNING & INSPECTIONS DEPARTMENT
Craig N. Benedict, AICP, Director

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MEMORANDUM

TO: Board of County Commissioners
 Bonnie Hamersley, County Manager
 Travis Myren, Deputy County Manager
 John Roberts, County Attorney

FROM: Michael D. Harvey AICP, CFM, CZO – Current Planning Supervisor

DATE: November 12, 2015

SUBJECT: IDENTIFICATION of impacts associated with NC Session Law 2015-246

Session Law 2015-246, ratified on September 23, 2015, potentially has significant impacts on the County's stream buffer program as detailed within Section 6.13 of the Orange County Unified Development Ordinance (UDO).

A summary of these impacts are:

1. Local governments are prohibited from adopting, implementing, and enforcing riparian buffer (i.e. stream buffer) regulations that exceed State requirements. Exceptions to this prohibition include:
 - a. The adoption of more restrictive standards to comply with, or implement, Federal or State law;

STAFF COMMENT: Staff is still researching the implications and meaning of this standard with State officials.

Part of our argument is our current program is consistent with State regulations (i.e. the County only requires only a 50 ft. State designated riparian buffer). We do, however, require more restrictive buffers based on a water features location within an identified Watershed Protection Overlay District and all soil survey streams throughout the County.

From our standpoint existing regulations are connected within our watershed management/protection program and are not

necessarily riparian buffer based. Support for this conclusion is referenced throughout Section 6.13 *Stream Buffers* of the UDO.

We **may have** a defensible opportunity in this exception in this area to preserve our current program.

It needs to be remembered there has been a comingling of watershed management/riparian buffer regulations over the years which complicates this position. We may find ourselves having to modify existing language and re-adopt development standards to ensure proper delineation of our policies to avoid conflict.

- b. Represents a condition of a permit, certificate, or other approval issued by a Federal or State agency;

STAFF COMMENT: Orange County **does not** meet the criteria.

- c. Was enacted prior to August 1, 1997 and meets listed requirements;

STAFF COMMENT: Section 143-214 23(A) (c) of the North Carolina General Statutes requires communities demonstrate the ordinances implementing these regulations included that following, specific, findings to qualify for this exemption:

.... the requirement was imposed for purposes that include the protection of aesthetics, fish and wildlife habitat, and recreational use by maintaining water temperature, healthy tree canopy and understory, and the protection of the natural shoreline through minimization of erosion and potential chemical pollution in addition to the protection of water quality and the prevention of excess nutrient runoff,

and

(ii) the ordinance would permit small or temporary structures within 50 feet of the water body and docks and piers within and along the edge of the water body under certain circumstances.

While we are still researching the adoption of stream buffer regulations, dating back to the mid 1980's, we are unable to verify ordinances adopted by the County implementing this program contained the required language or allowances.

It is our professional opinion we **will not** have sufficient documentation demonstrating we complied with this exemption.

- d. Said regulation(s) are reviewed and approved by the State Environmental Management Commission (EMC) through the review of a scientific study providing documentation on the need for increased/more restrictive standards based on local physical and environmental conditions.

STAFF COMMENT: Staff was informed by the Attorney's office, based on County Commissioner direction, we received authorization to begin developing a Request for Qualifications

(RFQ) to select a firm to complete this required scientific study. The RFQ will be released for peer review/comment by November 23, 2015. As part of this process staff will be reaching out to the Upper Neuse River Basin Association (UNRBA) who may be able to provide assistance.

At this time staff is unsure how much this study will cost but estimates range from approximately \$40,000.00 to \$80,000.00. It should be noted funds for this study **do not** exist within the Planning Department budget.

This study needs to be completed and submitted to the EMC by August of 2016.

The EMC has 90 days to take action on the request and should make a final decision by November of 2016.

It has also been suggested by State staff we submit formal notification by February 1, 2016 of our intention to complete and submit a scientific study for review.

This is the exception we are pursuing to maintain our current standards as written.

2. Local governments shall not treat land within identified riparian buffers area as if the land is: *'the property of the State or any of its subdivisions unless the land or an interest therein has been acquired by the State or its subdivisions by a conveyance or by eminent domain'*.

STAFF COMMENT: Staff believes we **already comply** with this standard.

3. Riparian buffer areas are required to be denoted on subdivision plats.

STAFF COMMENT: Staff believes we **already comply** with this standard.

It should be known, however, State law does not require this area to be surveyed (i.e. established by actual field location/delineation by a surveyor). All the surveyor has to do is denote the approximate required buffer area. **We may have to withdraw the survey requirement.**

4. When riparian buffers are located within designated common areas or open space areas located within a minor/major subdivision each abutting parcel shall be viewed as having an equal interest in that buffer area. The County is required to allow adjacent lots to 'count' this buffer area towards lot size, density, perimeter buffer, and conservation purposes.

STAFF COMMENT: Staff believes we **already comply** with this standard.

5. Staff interprets the Session Law as prohibiting the County from requiring property owners from voluntarily agreeing to more restrictive riparian buffer standards in

order to receive development approval(s). If this interpretation is correct this will impact current regulations governing private road justification as contained within Section 7.8.5 of the UDO.

We may have to modify and lessen our private road justification standard(s) to comply with the law.

Ultimately the County has until **January 1, 2017** to be compliant with applicable State regulations associated with the implementation and enforcement of riparian buffer standards. Having said that the State is requesting formal, written notification from local governments outlining their anticipated course of action (i.e. preparing a scientific study for review by the EMC ; amending ordinances to be consistent with State law ; demonstrating existing regulations already comply, etc.) by **February 1, 2016**.

It should be noted these issues and impacts are different from those being addressed by the Erosion Control/Stormwater division as State law changes with respect to stormwater regulations require local governments to cease and desist enforcement of temporary regulations (i.e. Jordan Lake rules) in its entirety until further and formal rulemaking occurs at the State level. There will be a more immediate impact that will have to be addressed by staff on this topic.

IMPACTS: The impacts of the Session Law are broken down as follows:

a. IMMEDIATE:

- i. Staff will continue the current dialogue with State officials arguing our buffer requirements are connected with our watershed management program and are, therefore, consistent with State law and can continue to be implemented as written.

Clarification of existing language will still be required and staff believes we will be required to re-submit our watershed management program to the State for re-certification.

- ii. Staff will finalize and release for internal peer review the RFQ soliciting a professional firm to complete the required scientific study for presentation to the EMC in the event the State rejects our argument(s) outlined herein.
- iii. Staff will have to complete an assessment of all section(s) of the UDO that will have to be amended to ensure compliance with State law in case we do not prevail with our 2 viable options.

b. INTERMEDIATE/LONG RANGE:

- i. Staff will need to complete an assessment of adopted Comprehensive Plan policies for potential modification to address compliance with new State regulations.
- ii. Staff will need to engage in public outreach to 'educate' local residents on revised buffer regulations.

Staff is available to provide additional feedback and guidance as necessary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2015-149
HOUSE BILL 634

AN ACT TO CLARIFY THE DEFINITION OF BUILT-UPON AREA FOR PURPOSES OF
STORMWATER PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143-214.7(b2) reads as rewritten:

"(b2) For purposes of implementing stormwater programs, "built-upon area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a slatted ~~deck or deck~~; the water area of a ~~swimming pool~~ swimming pool; a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; or a trail as defined in G.S. 113A-85 that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour)."

SECTION 1.(b) Notwithstanding Section 45(c) of S.L. 2014-120, the Environmental Management Commission shall adopt rules to implement this section no later than December 1, 2015.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of July, 2015.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 9:24 a.m. this 16th day of July, 2015



**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2015-246
HOUSE BILL 44**

AN ACT TO REFORM VARIOUS PROVISIONS OF THE LAW RELATED TO LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

NOTICE TO CHRONIC VIOLATORS

SECTION 1.(a) G.S. 160A-200 is repealed.

SECTION 1.(b) G.S. 160A-200.1 reads as rewritten:

"§ 160A-200.1. Annual notice to chronic violators of public nuisance or overgrown vegetation ordinance.

(a) A city may notify a chronic violator of the city's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the city shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes.

(b) The notice shall be sent by registered or certified mail. When service is attempted by registered or certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected. ~~A chronic violator is a person who owns property whereupon, in the previous calendar year, the city gave notice of violation at least three times under any provision of the public nuisance ordinance.~~

(c) A city may also give notice to a chronic violator of the city's overgrown vegetation ordinance in accordance with this section.

(d) For purposes of this section, a chronic violator is a person who owns property whereupon, in the previous calendar year, the city gave notice of violation at least three times under any provision of the public nuisance ordinance."

AUTHORIZE CITIES TO REGULATE CERTAIN STRUCTURES THAT UNREASONABLY RESTRICT THE PUBLIC'S RIGHT TO USE THE STATE'S OCEAN BEACHES

SECTION 1.5. G.S. 160A-205 reads as rewritten:

"§ 160A-205. Cities enforce ordinances within public trust areas.

(a) Notwithstanding the provisions of G.S. 113-131 or any other provision of law, a city may, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions upon the State's ocean beaches and prevent or abate any unreasonable restriction of the public's rights to use the State's ocean beaches. In addition, a city may, in the interest of promoting the health, safety, and welfare of the public, regulate, restrict, or prohibit the placement, maintenance, location, or use of structures that are uninhabitable and without water and sewer services for more than 120 days, as determined by the city with notice provided to the owner of record of the determination by certified mail at the time of the determination, equipment, personal property, or debris upon the State's ocean beaches. A city may enforce any ordinance adopted pursuant to this section or any other provision of law upon the State's ocean beaches located within or adjacent to the city's jurisdictional boundaries to the same extent that a city may enforce ordinances within the city's jurisdictional boundaries. A city may enforce an ordinance adopted pursuant to this section by any remedy provided for in G.S. 160A-175. For purposes of this section, the term "ocean beaches" has the same meaning as in G.S. 77-20(e).



(b) Nothing in this section shall be construed to (i) limit the authority of the State or any State agency to regulate the State's ocean beaches as authorized by G.S. 113-131, or common law as interpreted and applied by the courts of this State; (ii) limit any other authority granted to cities by the State to regulate the State's ocean beaches; (iii) deny the existence of the authority recognized in this section prior to the date this section becomes effective; (iv) impair the right of the people of this State to the customary free use and enjoyment of the State's ocean beaches, which rights remain reserved to the people of this State as provided in G.S. 77-20(d); (v) change or modify the riparian, littoral, or other ownership rights of owners of property bounded by the Atlantic Ocean; or (vi) apply to the removal of permanent residential or commercial structures and appurtenances thereto from the State's ocean ~~beaches~~beaches, except as provided in subsection (a) of this section."

PROHIBIT CITIES AND COUNTIES FROM REQUIRING COMPLIANCE WITH VOLUNTARY REGULATIONS AND RULES ADOPTED BY STATE DEPARTMENTS OR AGENCIES

SECTION 2.(a) Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read as follows:

"§ 153A-145.6. Requiring compliance with voluntary State regulations and rules prohibited.

(a) If a State department or agency declares a regulation or rule to be voluntary or the General Assembly delays the effective date of a regulation or rule proposed or adopted by the Environmental Management Commission, or any other board or commission, a county shall not require or enforce compliance with the applicable regulation or rule, including any regulation or rule previously or hereafter incorporated as a condition or contractual obligation imposed by, agreed upon, or accepted by the county in any zoning, land use, subdivision, or other developmental approval, including, without limitation, a development permit issuance, development agreement, site-specific development plan, or phased development plan.

(b) This section shall apply to the following regulations and rules:

- (1) Those currently in effect.
- (2) Those repealed or otherwise expired.
- (3) Those temporarily or permanently held in abeyance.
- (4) Those adopted but not yet effective.

(c) This section shall not apply to any water usage restrictions during either extreme or exceptional drought conditions as determined by the Drought Management Advisory Council pursuant to G.S. 143-355.1."

SECTION 2.(b) Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read as follows:

"§ 160A-205.1. Requiring compliance with voluntary State regulations and rules prohibited.

(a) If a State department or agency declares a regulation or rule to be voluntary or the General Assembly delays the effective date of a regulation or rule proposed or adopted by the Environmental Management Commission, or any other board or commission, a city shall not require or enforce compliance with the applicable regulation or rule, including any regulation or rule previously or hereafter incorporated as a condition or contractual obligation imposed by, agreed upon, or accepted by the city in any zoning, land use, subdivision, or other developmental approval, including, without limitation, a development permit issuance, development agreement, site-specific development plan, or phased development plan.

(b) This section shall apply to the following regulations and rules:

- (1) Those currently in effect.
- (2) Those repealed or otherwise expired.
- (3) Those temporarily or permanently held in abeyance.
- (4) Those adopted but not yet effective.

(c) This section shall not apply to any water usage restrictions during either extreme or exceptional drought conditions as determined by the Drought Management Advisory Council pursuant to G.S. 143-355.1."

LOCAL PUBLIC HEALTH MAINTENANCE OF EFFORT MONIES

SECTION 2.5.(a) G.S. 130A-34.4(a)(2) is repealed.

SECTION 2.5.(b) This section becomes effective July 1, 2016.

DEVELOPMENTS LOCATED IN THE CITY AND THE COUNTY

SECTION 3. G.S. 160A-365 reads as rewritten:

"§ 160A-365. Enforcement of ordinances.

(a) Subject to the provisions of the ordinance, any ordinance adopted pursuant to authority conferred by this Article may be enforced by any remedy provided by G.S. 160A-175.

(b) When any ordinance adopted pursuant to authority conferred by this Article is to be applied or enforced in any area outside the territorial jurisdiction of the city as described in G.S. 160A-360(a), the city and the property owner shall certify that the application or enforcement of the city ordinance is not under coercion or otherwise based upon any representation by the city that the city's approval of any land use planning would be withheld from the property owner without the application or enforcement of the city ordinance outside the territorial jurisdiction of the city. The certification may be evidenced by a signed statement of the parties on any approved plat recorded in accordance with this Article."

WELL DRILLING CHANGES

SECTION 3.5.(a) G.S. 87-97 reads as rewritten:

"§ 87-97. Permitting, inspection, and testing of private drinking water wells.

(a) **Mandatory Local Well Programs.** – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article. No person shall unduly delay or refuse to permit a well that can be constructed or repaired and operated in compliance with the requirements set out in this Article and rules adopted pursuant to this Article.

(a1) **Use of Standard Forms.** – Local well programs shall use the standard forms created by the Department for all required submittals and shall not create their own forms ~~unless the local program submits a petition for rule-making to the Environmental Management Commission, and the Commission by rule finds that conditions or circumstances unique to the area served by the local well program constitute a threat to public health that will be mitigated by use of a local form different from the form used by the Department.~~ forms.

(b) **Permit Required.** – Except for those wells required to be permitted by the Environmental Management Commission pursuant to G.S. 87-88, no person shall:

- (1) Construct or assist in the construction of a private drinking water well unless a construction permit has been obtained from the local health department.
- (2) Repair or assist in the repair of a private drinking water well unless a repair permit has been obtained from the local health department, except that a permit shall not be required for the repair or replacement of a pump or tank.

(b1) **Permit to Include Authorization for Electrical.** – When a permit is issued under this section, that permit shall also be deemed to include authorization for the installation, construction, maintenance, or repair of electrical wiring, devices, appliances, or equipment by a person certified as a well contractor under Article 7A of this Chapter when running electrical wires from the well pump to the pressure switch. The local health department shall be responsible for notifying the appropriate building inspector of the issuance of the well permit.

(c) **Permit Not Required for Maintenance or Pump Repair or Replacement.** – A repair permit shall not be required for any private drinking water well maintenance work that does not involve breaking or opening the well seal. A repair permit shall not be required for any private drinking water well repair work that involves only the repair or replacement of a pump or tank.

(d) **Well Site Evaluation.** – The local health department shall conduct a field investigation to evaluate the site on which a private drinking water well is proposed to be located before issuing a permit pursuant to this section. The field investigation shall determine whether there is any abandoned well located on the site, and if so, the construction permit shall be conditioned upon the proper closure of all abandoned wells located on the site in accordance with the requirements of this Article and rules adopted pursuant to this Article. If a private drinking water well is proposed to be located on a site on which a wastewater system subject to the requirements of Article 11 of Chapter 130A of the General Statutes is located or proposed to be located, the application for a construction permit shall be accompanied by a plat or site plan, as defined in G.S. 130A-334.

If the well location marked on the map submitted with an application to a local well program is also marked with a stake or similar marker on the property, then the local well program may not require the contractor to be on site during the on-site predrill inspection, as long as the contractor is available by telephone to answer questions.

(e) Issuance of Permit. – ~~Within~~ In accordance with G.S. 87-97.1 and G.S. 87-97.2, within 30 days of receipt of an application to construct or repair a well, a local health department shall make a determination whether the proposed private drinking water well can be constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article and shall issue a permit or denial accordingly. If a local health department fails to act within 30 days, the permit shall automatically be issued, and the local health department may challenge issuance of the permit as provided in Chapter 150B of the General Statutes. The local health department may impose any conditions on the issuance of a construction permit or repair permit that it determines to be necessary to ensure compliance with this Article and rules adopted pursuant to this Article. Notwithstanding any other provision of law, no permit for a well that is in compliance with this Article and the rules adopted pursuant to this Article shall be denied on the basis of a local government policy that discourages or prohibits the drilling of new wells.

(e1) Notice for Wells at Contamination Sites. – The Commission shall adopt rules governing permits issued for private drinking water wells for circumstances in which the local health department has determined that the proposed site for a private drinking water well is located within 1,000 feet of a known source of release of contamination. Rules adopted pursuant to this subsection shall provide for notice and information of the known source of release of contamination and any known risk of issuing a permit for the construction and use of a private drinking water well on such a site.

(f) Expiration and Revocation. – A construction permit or repair permit shall be valid for a period of five years except that the local health department may revoke a permit at any time if it determines that there has been a material change in any fact or circumstance upon which the permit is issued. The foregoing shall be prominently stated on the face of the permit. The validity of a construction permit or a repair permit shall not be affected by a change in ownership of the site on which a private drinking water well is proposed to be located or is located if the location of the well is unchanged and the well and the facility served by the well remain under common ownership.

(f1) Chlorination of the Well. – Upon completion of construction of a private drinking water well, the well shall be sterilized in accordance with the standards of drinking water wells established by the United States Public Health Service.

(g) Certificate of Completion. – Upon completion of construction of a private drinking water well or repair of a private drinking water well for which a permit is required under this section, the local health department shall inspect the well to determine whether it was constructed or repaired in compliance with the construction permit or repair permit. If the local health department determines that the private drinking water well has been constructed or repaired in accordance with the requirements of the construction permit or repair permit, the construction and repair requirements of this Article, and rules adopted pursuant to this Article, the local health department shall issue a certificate of completion. No person shall place a private drinking water well into service without first having obtained a certificate of completion. No person shall return a private drinking water well that has undergone repair to service without first having obtained a certificate of completion.

(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well or ensure that the water obtained from the well has been sampled and tested by a certified laboratory in accordance with rules adopted by the Commission for Public Health. The water shall be tested for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

(i) Commission for Public Health to Adopt Drinking Water Testing Rules. – The Commission for Public Health shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Public Health may by rule require testing for additional parameters, including volatile organic

compounds, if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health. If the Commission finds that testing for certain volatile organic compounds is necessary to protect public health and initiates rule making to require testing for certain volatile organic compounds, the Commission shall consider all of the following factors in the development of the rule: (i) known current and historic land uses around well sites and associated contaminants; (ii) known contaminated sites within a given radius of a well and any known data regarding dates of contamination, geology, and other relevant factors; (iii) any GIS-based information on known contamination sources from databases available to the Department of Environment and Natural Resources; and (iv) visual on-site inspections of well sites. In addition, the rules shall require local health departments to educate citizens for whom new private drinking water wells are constructed and for citizens who contact local health departments regarding testing an existing well on all of the following:

- (1) The scope of the testing required pursuant to this Article.
- (2) Optional testing available pursuant to this Article.
- (3) The limitations of both the required and optional testing.
- (4) Minimum drinking water standards.

(j) **Test Results.** – The local health department shall provide test results to the owner of the newly constructed private drinking water well and, to the extent practicable, to any leaseholder of a dwelling unit or other facility served by the well at the time the water is sampled. The local health department shall include with any test results provided to an owner of a private drinking water well, information regarding the scope of the required and optional testing as established by rules adopted pursuant to subsection (i) of this section.

(k) **Registry of Permits and Test Results.** – Each local health department shall maintain a registry of all private drinking water wells for which a construction permit or repair permit is issued that is searchable by address or addresses served by the well. The registry shall specify the physical location of each private drinking water well and shall include the results of all tests of water from each well. The local health department shall retain a record of the results of all tests of water from a private drinking water well until the well is properly closed in accordance with the requirements of this Article and rules adopted pursuant to this Article.

(l) **Authority Not Limited.** – This section shall not be construed to limit any authority of local boards of health, local health departments, the Department of Health and Human Services, or the Commission for Public Health to protect public health."

SECTION 3.5.(b) Article 7A of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-98.14. Reciprocity.

To the extent that other states provide for the licensing or certification of well contractors, the Commission shall permit those individuals who present valid proof of licensure or certification in good standing in one or more of those states to sit for examination for a license of the same or equivalent classification in North Carolina without delay, upon satisfactory proof furnished to the Commission that the qualifications of the applicant are equal to the qualifications of holders of similar licenses in North Carolina and upon payment of the required fee."

SECTION 3.5.(c) Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-97.1. Issuance of permit for irrigation water well.

(a) A property owner may apply for, and be issued, a permit for an irrigation water well, whether the property is connected to, or served by, a public water system. The application shall be in accordance with G.S. 87-97 and shall specifically state that the irrigation water well will not be interconnected to plumbing required that is connected to any public water system and will be used for irrigation or other nonpotable purposes only.

(b) This section shall not apply if the property is connected to, or may be served by, a public water system that the public authority or unit of government operating the public water system is being assisted by the Local Government Commission.

(c) For purposes of this section, "irrigation water well" shall mean any water well that is not interconnected to any plumbing required to be connected to any public water system and that produces water that is used for irrigation or other nonpotable purposes only."

SECTION 3.5.(d) Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-97.2. Issuance of permit for property within service area of a public water system.

(a) Notwithstanding G.S. 130A-55(16), 153A-284, 160A-317, 162A-6(a)(14d), and 162A-14(2), a property owner may apply for, and be issued, a permit for a private drinking water well to serve any undeveloped or unimproved property located so as to be served by a public water system.

(b) Notwithstanding G.S. 130A-55(16), 153A-284, 160A-317, 162A-6(a)(14d), and 162A-14(2), a property owner of developed or improved property located so as to be served by a public water system may apply for, and be issued, a permit for a private drinking water well if the public water system has not yet installed water lines directly available to the property or otherwise cannot provide water service to the property at the time the property owner desires water service.

(c) Upon compliance with this Article, the property owner receiving a permit pursuant to subsection (a) or (b) of this section shall not be required to connect to the public water system for so long as the permitted private drinking water well remains compliant and in use. A property owner may opt to connect to the public water system if the property owner so desires. If the property owner opts to connect, the property owner may continue to operate the private drinking water well if that well is not interconnected to any plumbing connected to the public water system and that produces water that is used for irrigation or other nonpotable purposes only.

(d) Nothing in this section shall require a property owner to install a private drinking water well if the property is located so as to be served by a public water system and the public water system is willing to provide service to the property.

(e) This section shall not apply, and a public water system may mandate connection to that public water system, in any of the following situations:

- (1) The private drinking water well serving the property has failed and cannot be repaired.
- (2) The property is located in an area where the drinking water removed by the private drinking water well is contaminated or likely to become contaminated due to nearby contamination.
- (3) The public authority or unit of government operating the public water system is being assisted by the Local Government Commission.
- (4) The public authority or unit of government operating the public water system is in the process of expanding or repairing the public water system and is actively making progress to having water lines installed directly available to provide water service to that property within the 24 months of the time the property owner applies for the private drinking water well permit."

SECTION 3.5.(e) G.S. 153A-284 reads as rewritten:

"§ 153A-284. Power to require connections.

(a) A county may require the owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located so as to be served by a water line or sewer collection line owned, leased as lessee, or operated by the county or on behalf of the county to connect the owner's premises with the water or sewer line and may fix charges for these connections.

(b) In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the county has installed water or sewer lines or a combination thereof directly available to the property, the county may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.

(c) In accordance with G.S. 87-97.1, when developed property is located so as to be served by a county water line and the property owner has connected to that water line, the property owner may continue to use any private water well located on the property for nonpotable purposes as long as the water well is not interconnected to the county water line and the county shall not require the owner of any such water well to abandon, cap, or otherwise compromise the integrity of the water well."

SECTION 3.5.(f) G.S. 160A-317 is amended by adding a new subsection to read:

"(d) In accordance with G.S. 87-97.1, when developed property is located so as to be served by a city water line and the property owner has connected to that water line, the property owner may continue to use any private water well located on the property for nonpotable purposes as long as the water well is not interconnected to the city water line and the city shall

not require the owner of any such water well to abandon, cap, or otherwise compromise the integrity of the water well."

SECTION 3.5.(g) G.S. 130A-55(16)a. reads as rewritten:

"a. To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the district and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the district to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by a district only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the district is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the district has installed water or sewer lines or a combination thereof directly available to the property, the district may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. In accordance with G.S. 87-97.1, when developed property is located so as to be served by a sanitary district water line and the property owner has connected to that water line, the property owner may continue to use any private water well located on the property for nonpotable purposes as long as the water well is not interconnected to the sanitary district water line and the sanitary district shall not require the owner of any such water well to abandon, cap, or otherwise compromise the integrity of the water well."

SECTION 3.5.(h) G.S. 162A-6(a)(14d) reads as rewritten:

"(14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. In accordance with G.S. 87-97.1, when developed property is located so as to be served by an authority water line and the property owner has connected to that water line, the property owner may continue to use any private water well located on the property for nonpotable purposes as long as the water well is not interconnected to the sanitary district water line and the sanitary district shall not require the owner of any such water well to abandon, cap, or otherwise compromise the integrity of the water well. This subdivision applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State Budget Officer."

SECTION 3.5.(i) G.S. 162A-14(2)d. reads as rewritten:

"d. For requiring the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the corporate limits of the political subdivision and located within a reasonable distance of any waterline or sewer connection line owned, leased as lessee, or operated by the authority to connect to the line and collecting, on behalf of the authority, charges for the connections and requiring, as a condition to the issuance of any development permit or building permit by the political subdivision, evidence that any impact fee by the authority has been paid by or on behalf of the applicant for the permit. In accordance with G.S. 87-97.1, when developed property is located so as to be served by the authority's water line and the property owner has connected to that water line, the property owner may continue to use any private water well located on the property for nonpotable purposes as long as the water well is not interconnected to the authority's water line and the authority shall not require the owner of any such water well to abandon, cap, or otherwise compromise the integrity of the water well."

SECTION 3.5.(j) Subsections (c) through (i) of this section become effective August 1, 2016. The remainder of this section becomes effective December 1, 2015, and applies to permits and licenses issued on or after that date. G.S. 87-97.2(e)(4), as enacted by subsection (d) of this section, expires on July 1, 2017.

REGULATION OF SIGNAGE

SECTION 4.(a) G.S. 153A-340 is amended by adding a new subsection to read:

"(n) Fence wraps displaying signage when affixed to perimeter fencing at a construction site are exempt from zoning regulation pertaining to signage under this Article until the certificate of occupancy is issued for the final portion of any construction at that site or 24 months from the time the fence wrap was installed, whichever is shorter. If construction is not completed at the end of 24 months from the time the fence wrap was installed, the county may regulate the signage but shall continue to allow fence wrapping materials to be affixed to the perimeter fencing. No fence wrap affixed pursuant to this subsection may display any advertising other than advertising sponsored by a person directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required."

SECTION 4.(b) G.S. 160A-381 is amended by adding a new subsection to read:

"(j) Fence wraps displaying signage when affixed to perimeter fencing at a construction site are exempt from zoning regulation pertaining to signage under this Article until the certificate of occupancy is issued for the final portion of any construction at that site or 24 months from the time the fence wrap was installed, whichever is shorter. If construction is not completed at the end of 24 months from the time the fence wrap was installed, the city may regulate the signage but shall continue to allow fence wrapping materials to be affixed to the perimeter fencing. No fence wrap affixed pursuant to this subsection may display any advertising other than advertising sponsored by a person directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required."

PERMIT CHOICE

SECTION 5.(a) G.S. 143-755 reads as rewritten:

"§ 143-755. Permit choice.

(a) If a permit applicant submits a permit application for any type of development and a rule or ordinance changes between the time the permit application was submitted and a permit decision is made, the permit applicant may choose which version of the rule or ordinance will apply to the permit.

(b) This section applies to all development permits issued by the State and by local governments.

(c) ~~This section shall not apply to any zoning permit.~~"

SECTION 5.(b) This section is effective when this act becomes law and applies to permits for which a permit decision has not been made by that date.

PREAUDIT CERTIFICATIONS

SECTION 6.(a) G.S. 159-28 reads as rewritten:

"§ 159-28. Budgetary accounting for appropriations.

(a) Incurring Obligations. – No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project or a grant project authorized by a project ordinance unless that project ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. Nothing in this section shall require a contract to be reduced to writing.

(a1) ~~Preaudit Requirement. – If an obligation is evidenced by reduced to a written contract or written agreement requiring the payment of money-money, or is evidenced by a written purchase order for supplies and materials, the written contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection unless the obligation or a document related to the obligation has been approved by the Local Government Commission, in which case no certificate shall be required.~~ (a) of this section. The certificate, which shall be signed by the finance officer-officer, or any deputy finance officer approved for this purpose by the governing board, shall take substantially the following form:

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

(Signature of finance officer)."

~~Certificates in the form prescribed by G.S. 153-130 or 160-411 as those sections read on June 30, 1973, or by G.S. 159-28(b) as that section read on June 30, 1975, are sufficient until supplies of forms in existence on June 30, 1975, are exhausted.~~

(a2) ~~Failure to Preaudit. – An obligation incurred in violation of this subsection~~ subsection (a) or (a1) of this section is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this ~~subsection~~ section, in accordance with any rules adopted by the Local Government Commission.

(b) Disbursements. – When a bill, invoice, or other claim against a local government or public authority is presented, the finance officer shall either approve or disapprove the necessary disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget ordinance or a capital project or a grant project authorized by a project ordinance, the finance officer may approve the claim only if both of the following apply:

- (1) ~~He~~ The finance officer determines the amount to be payable and payable.
- (2) The budget ordinance or a project ordinance includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

The finance officer may approve a bill, invoice, or other claim requiring disbursement from an intragovernmental service fund or trust or agency fund not included in the budget ordinance, only if the amount claimed is determined to be payable. A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (c) of this section, by the governing board. The finance officer shall establish procedures to assure compliance with this ~~subsection~~ subsection, in accordance with any rules adopted by the Local Government Commission.

(c) Governing Board Approval of Bills, Invoices, or Claims. – The governing board may, as permitted by this subsection, approve a bill, invoice, or other claim against the local government or public authority that has been disapproved by the finance officer. ~~It~~ The governing board may not approve a claim for which no appropriation appears in the budget ordinance or in a project ordinance, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The governing board shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the ~~board~~ board, or some other member designated

for this ~~purpose~~ purpose, shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(d) Payment. – A local government or public authority may not pay a bill, invoice, salary, or other claim except by any of the following methods:

- (1) ~~a check~~ Check or draft on an official ~~depository,~~ depository.
- (2) ~~a bank~~ Bank wire transfer from an official ~~depository,~~ depository.
- (3) ~~or an electronic~~ Electronic payment or an electronic funds transfer originated by the local government or public authority through an official depository.
- (4) Cash, if the local government has adopted an ordinance authorizing the use of cash, and specifying the limits of the use of cash.

(d1) Except as provided in this ~~subsection~~ section, each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or a deputy finance officer approved for this purpose by the governing board (or signed by the chairman or some other member of the board pursuant to subsection (c) of this section). The certificate shall take substantially the following form:

"This disbursement has been approved as required by the Local Government Budget and Fiscal Control Act.

(Signature of finance officer)."

(d2) An electronic payment or electronic funds transfer ~~must~~ shall be subject ~~subject~~ to the ~~pre-audit process.~~ Execution ~~preaudit~~ process in accordance with this section and any rules adopted by the Local Government Commission. The rules so adopted shall address execution of ~~the~~ the electronic payment or electronic funds transfer ~~shall~~ and how to indicate that the finance officer or duly appointed deputy finance officer has performed the ~~pre-audit~~ preaudit process as ~~required by G.S. 159-28(a).~~ in accordance with this section. A finance officer or duly appointed deputy finance officer shall be presumed in compliance with this section if the finance officer or duly appointed deputy finance officer complies with the rules adopted by the Local Government Commission.

~~Certificates in the form prescribed by G.S. 153-131 or 160-411.1 as those sections read on June 30, 1973, or by G.S. 159-28(a) as that section read on June 30, 1975, are sufficient until supplies in existence on June 30, 1975, are exhausted.~~

~~No certificate is required on payroll checks or drafts on an imprest account in an official depository, if the check or draft depositing the funds in the imprest account carried a signed certificate.~~

~~As used in this subsection, the term "electronic payment" means payment by charge card, credit card, debit card, or by electronic funds transfer, and the term "electronic funds transfer" means a transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.~~

(e) Penalties. – If an officer or employee of a local government or public authority incurs an obligation or pays out or causes to be paid out any funds in violation of this section, ~~he~~ that officer or employee, and the sureties on ~~his~~ any official bond ~~for that officer or employee,~~ are liable for any sums so committed or disbursed. If the finance officer or any ~~properly designated~~ duly appointed deputy finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, ~~he~~ the finance officer or duly appointed deputy finance officer, and the sureties on ~~his~~ any official ~~bond~~ bond, are liable for any sums illegally committed or disbursed thereby. The governing board shall determine, by resolution, if payment from the official bond shall be sought and if the governing body will seek a judgment from the finance officer or duly appointed deputy finance officer for any deficiencies in the amount.

(f) The certifications required by subsections (a1) and (d1) of this section shall not apply to any of the following:

- (1) An obligation or a document related to the obligation has been approved by the Local Government Commission.
- (2) Payroll expenditures, including all benefits for employees of the local government.

- (3) Electronic payments, as specified in rules adopted by the Local Government Commission.
- (g) As used in this section, the following terms shall have the following meanings:
- (1) Electronic funds transfer. – A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.
- (2) Electronic payment. – Payment by charge card, credit card, debit card, gas card, procurement card, or electronic funds transfer."

SECTION 6.(b) G.S. 115C-441 reads as rewritten:

"§ 115C-441. Budgetary accounting for appropriations.

(a) Incurring Obligations. – Except as set forth below, no obligation may be incurred by a local school administrative unit unless the budget resolution includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. Nothing in this section shall require a contract to be reduced to writing.

(a1) Preaudit Requirement. – If an obligation is evidenced by reduced to a written contract or written agreement requiring the payment of money or by money, or is evidenced by a purchase order for supplies and materials, the written contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with subsection (a) of this section. The certificate, which shall be signed by the finance officer, shall take substantially the following form:

"This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

(Date)

(Signature of finance officer)"

(a2) Failure to Preaudit. – An obligation incurred in violation of subsection (a) or (a1) of this section is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this section-section, in accordance with any rules adopted by the Local Government Commission.

(b) Disbursements. – When a bill, invoice, or other claim against a local school administrative unit is presented, the finance officer shall either approve or disapprove the necessary disbursement. The finance officer may approve the claim only if he determines the amount if all of the following apply:

- (1) The amount claimed is determined to be payable, payable.
- (2) the—The budget resolution includes an appropriation authorizing the expenditure and either expenditure.
- (3) Either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (c) of this section, by the board of education. The finance officer shall establish procedures to assure compliance with this subsection, in accordance with any rules adopted by the Local Government Commission.

(c) Board of Education Approval of Bills, Invoices, or Claims. – The board of education may, as permitted by this subsection, approve a bill, invoice, or other claim against the local school administrative unit that has been disapproved by the finance officer. ~~It—The board of education~~ may not approve a claim for which no appropriation appears in the budget resolution, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The board of education shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the ~~board—board,~~ or some other member designated for this ~~purpose—purpose,~~ shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(c1) Continuing Contracts for Capital Outlay. – ~~An~~ A local school administrative unit may enter into a contract for capital outlay expenditures, some portion or all of which is to be performed ~~and/or~~ paid in ensuing fiscal years, without the budget resolution including an appropriation for the entire obligation, ~~provided:~~ provided all of the following apply:

- a. The budget resolution includes an appropriation authorizing the current fiscal year's portion of the ~~obligation;~~ obligation.
- b. An unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current ~~fiscal year;~~ and year.
- c. Contracts for capital outlay expenditures are approved by a resolution adopted by the board of county commissioners, which resolution when adopted shall bind the board of county commissioners to appropriate sufficient funds in ensuing fiscal years to meet the amounts to be paid under the contract in those years.

(d) Payment. – A local school administrative unit may not pay a bill, invoice, salary, or other claim except by any of the following methods:

- (1) ~~a check~~ Check or draft on an official ~~depository;~~ depository.
- (2) ~~by a bank~~ Bank wire transfer from an official ~~depository;~~ or by a warrant depository.
- (3) Electronic payment or an electronic funds transfer originated by the local school administrative unit through an official depository.
- (4) Cash, if the local school administrative unit has adopted a policy authorizing the use of cash, and specifying the limits of the use of cash.
- (5) Warrant on the State Treasurer.

(d1) Except as provided in ~~this subsection~~ subsection (d) of this section, each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or signed by the chairman or some other member of the board pursuant to subsection (c) of this section. The certificate shall take substantially the following form:

"This disbursement has been approved as required by the School Budget and Fiscal Control Act.

(Signature of finance officer)"

No certificate is required on payroll checks or drafts or on State warrants.

(d2) An electronic payment or electronic funds transfer shall be subject to the preaudit process in accordance with this section and any rules adopted by the Local Government Commission. The rules so adopted shall address execution of electronic payment or electronic funds transfer and how to indicate that the finance officer has performed the preaudit process in accordance with this section. A finance officer shall be presumed in compliance with this section if the finance officer complies with the rules adopted by the Local Government Commission.

(e) Penalties. – If an officer or employee of a local school administrative unit incurs an obligation or pays out or causes to be paid out any funds in violation of this section, ~~he that officer or employee,~~ and the sureties on ~~his any~~ his any official bond for that officer or employee, are liable for any sums so committed or disbursed. If the finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, ~~he the~~ the finance officer and the sureties on ~~his any~~ his any official bond are liable for any sums illegally committed or disbursed thereby.

(f) The certifications required by subsections (a1) and (d1) of this section shall not apply to any of the following:

- (1) An obligation or a document related to the obligation has been approved by the Local Government Commission.
- (2) Payroll expenditures, including all benefits for employees of the local government.
- (3) Electronic payments, as specified in rules adopted by the Local Government Commission.

(g) As used in this section, the following terms shall have the following meanings:

- (1) Electronic funds transfer. – A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.
- (2) Electronic payment. – Payment by charge card, credit card, debit card, gas card, procurement card, or electronic funds transfer."

SECTION 6.(c) This section becomes effective October 1, 2015, and applies to expenditures incurred on or after that date.

VERIFICATION OF ESCHEATS REPORTS

SECTION 7.(a) G.S. 116B-72 is amended by adding a new subsection to read:

"(g) Any examination under this section may include the Treasurer utilizing any and all reliable external data, including electronic databases deemed relevant by the Treasurer."

SECTION 7.(b) This section is effective when this act becomes law and applies to any examination pending on or after that date.

LOCAL REGULATION OF BEEHIVES

SECTION 8. Article 55 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"§ 106-645. Limitations on local government regulation of hives.

(a) Notwithstanding Article 6 of Chapter 153A of the General Statutes, no county shall adopt or continue in effect any ordinance or resolution that prohibits any person or entity from owning or possessing five or fewer hives.

(b) Notwithstanding Article 8 of Chapter 160A of the General Statutes, a city may adopt an ordinance to regulate hives in accordance with this subsection. The city shall comply with all of the following:

- (1) Any ordinance shall permit up to five hives on a single parcel within the land use planning jurisdiction of the city.
- (2) Any ordinance shall require that the hive be placed at ground level or securely attached to an anchor or stand. If the hive is securely attached to an anchor or stand, the city may permit the anchor or stand to be permanently attached to a roof surface.
- (3) Any ordinance may include regulation of the placement of the hive on the parcel, including setbacks from the property line and from other hives.
- (4) Any ordinance may require removal of the hive if the owner no longer maintains the hive or if removal is necessary to protect the health, safety, and welfare of the public.

(c) For purposes of this section, the term "hive" has the same definition as in G.S. 106-635(15)."

LEASES OF PROPERTY BY LOCAL GOVERNMENTS FOR COMMUNICATION TOWERS

SECTION 9. G.S. 160A-272 reads as rewritten:

"§ 160A-272. Lease or rental of property.

(a) Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than 10 years (except as otherwise provided ~~herein~~ in subsection (b1) of this section) and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included.

(a1) Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon ~~40-30~~ 30 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

(b) No public notice as required by subsection (a1) of this section need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less.

(b1) Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property.

(c) ~~The~~Notwithstanding subsection (b1) of this section, the council may approve a lease without treating that lease as a sale of property for any of the following reasons:

- (1) ~~for~~For the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to 25 years without treating the lease as a sale of property and without giving notice by publication of the intended lease years.
- (2) For the siting and operation of a tower, as that term is defined in G.S. 146-29.2(a)(7), for communication purposes for a term up to 25 years."

LOCAL REVIEW OF PROTOTYPE FRANCHISE FOOD ESTABLISHMENTS

SECTION 10. G.S. 130A-248 is amended by adding a new subsection to read:

"(e1) Plans for a franchised or chain food establishment that have been reviewed and approved by the Department shall not require further review and approval under this section by any local health department. The local health department may suggest revisions to a reviewed and approved plan to the Department. The local health department shall not impose any of the suggestion revisions on the owner or operator without written approval from the Department."

NOTICE TO PROPERTY OWNERS PRIOR TO CONSTRUCTION

SECTION 12.(a) Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-457. Notice prior to construction.

(a) A county shall notify the property owners and adjacent property owners prior to commencement of any construction project by the county.

(b) Notice under this section shall be in writing at least 15 days prior to the commencement of construction, except in any of the following instances:

- (1) If the construction is a repair of an emergency nature, the notice may be given by any means, including verbally, that the county has for contacting the property owner within a reasonable time prior to, or after, commencement of the repair.
- (2) The property owner requests action of the county that requires construction activity.
- (3) The property owner consents to less than 15 days' notice.
- (4) Notice of the construction project is given in any open meeting of the county prior to the commencement of the construction project."

SECTION 12.(b) Article 21 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-499.4. Notice prior to construction.

(a) A city shall notify the property owners and adjacent property owners prior to commencement of any construction project by the city.

(b) Notice under this section shall be in writing at least 15 days prior to the commencement of construction, except in any of the following instances:

- (1) If the construction is a repair of an emergency nature, the notice may be given by any means, including verbally, that the city has for contacting the property owner within a reasonable time prior to, or after, commencement of the repair.
- (2) The property owner requests action of the city that requires construction activity.
- (3) The property owner consents to less than 15 days' notice.
- (4) Notice of the construction project is given in any open meeting of the city prior to the commencement of the construction project."

SECTION 12.(c) This section becomes effective October 1, 2015, and applies to construction commenced on or after that date.

RIPARIAN BUFFER REFORM

SECTION 13.1.(a) Subsection (e1) of G.S. 143-214.23 is repealed.

SECTION 13.1.(b) Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-214.23A. Limitations on local government riparian buffer requirements.

- (a) As used in this section:
- (1) "Local government ordinance" means any action by a local government carrying the effect of law approved before or after October 1, 2015, whether by ordinance, comprehensive plan, policy, resolution, or other measure.
 - (2) "Protection of water quality" means nutrient removal, pollutant removal, stream bank protection, or protection of an endangered species as required by federal law.
 - (3) "Riparian buffer area" means an area subject to a riparian buffer requirement.
 - (4) "Riparian buffer requirement" means a landward setback from surface waters.
- (b) Except as provided in this section, a local government may not enact, implement, or enforce a local government ordinance that establishes a riparian buffer requirement that exceeds riparian buffer requirements necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency.
- (c) Subsection (b) of this section shall not apply to any local government ordinance that establishes a riparian buffer requirement enacted prior to August 1, 1997, if (i) the ordinance included findings that the requirement was imposed for purposes that include the protection of aesthetics, fish and wildlife habitat, and recreational use by maintaining water temperature, healthy tree canopy and understory, and the protection of the natural shoreline through minimization of erosion and potential chemical pollution in addition to the protection of water quality and the prevention of excess nutrient runoff, and (ii) the ordinance would permit small or temporary structures within 50 feet of the water body and docks and piers within and along the edge of the water body under certain circumstances.
- (d) A local government may request from the Commission the authority to enact, implement, and enforce a local government ordinance that establishes a riparian buffer requirement for the protection of water quality that exceeds riparian buffer requirements for the protection of water quality necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency. To do so, a local government shall submit to the Commission an application requesting this authority that includes the local government ordinance, including the riparian buffer requirement for the protection of water quality, scientific studies of the local environmental and physical conditions that support the necessity of the riparian buffer requirement for the protection of water quality, and any other information requested by the Commission. Within 90 days after the Commission receives a complete application, the Commission shall review the application and notify the local government whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a local government ordinance that establishes a riparian buffer requirement for the protection of water quality unless the Commission finds that the scientific evidence presented by the local government supports the necessity of the riparian buffer requirement for the protection of water quality.
- (e) Cities and counties shall not treat the land within a riparian buffer area as if the land is the property of the State or any of its subdivisions unless the land or an interest therein has been acquired by the State or its subdivisions by a conveyance or by eminent domain. Land within a riparian buffer area in which neither the State nor its subdivisions holds any property interest may be used by the property owner to satisfy any other development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements.
- (f) When riparian buffer requirements are included within a lot, cities and counties shall require that the riparian buffer area be shown on the recorded plat. Nothing in this subsection shall be construed to require that the riparian buffer area be surveyed. When riparian buffer requirements are placed outside of lots in portions of a subdivision that are designated as common areas or open space and neither the State nor its subdivisions holds any property interest in that riparian buffer area, the local government shall attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations

and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements.

(g) The Commission may adopt rules to implement this section."

SECTION 13.1.(c) The definitions set out in G.S. 143-214.23A(a), as enacted by Section 13.1(b) of this act, shall apply to this section. Notwithstanding G.S. 143-214.23A(b), as enacted by Section 13.1(b) of this act, a local government ordinance that establishes a riparian buffer requirement for the protection of water quality that exceeds riparian buffer requirements necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency that is in effect on October 1, 2015, may remain in effect and enforceable until January 1, 2017. If the local government ordinance is authorized by the Environmental Management Commission pursuant to G.S. 143-214.23A(d), as enacted by Section 13.1(b) of this act, on or before January 1, 2017, the ordinance may continue to be in effect and enforceable. If the local government ordinance is not authorized by the Environmental Management Commission pursuant to G.S. 143-214.23A(d), as enacted by Section 13.1(b) of this act, on or before January 1, 2017, the ordinance shall no longer be in effect or enforceable.

SECTION 13.1.(d) This section becomes effective October 1, 2015.

SECTION 13.2.(a) The Environmental Management Commission, with the assistance of the Department of Environment and Natural Resources, shall examine ways to provide regulatory relief from the impacts of riparian buffer rules adopted to implement the State's Riparian Buffer Protection Program for parcels of land that were platted on or before the effective date of the applicable riparian buffer rule. The Commission shall specifically examine ways to fairly provide properties with relief where a change in use has occurred that would otherwise trigger the requirements of the riparian buffer rules. Such relief would be determined on a case-by-case basis and provide relief to successor owners. For purposes of this study, a change in use that would otherwise trigger the requirements of the riparian buffer rules shall not include either of the following circumstances:

- (1) Developing from a vacant condition to a use allowed by the current local regulations, unless the local regulations have been changed at the request of the property owner since the date the buffer rule was applied; the parcel was recorded prior to the effective date of the applicable buffer rule; and the allowable use is for any nonfarming or nonagricultural purpose.
- (2) The property configuration has not been altered except as a result of either an eminent domain action or a recombination involving not more than three parcels, all of which were recorded before the effective date of the applicable buffer rule.

The Commission may also consider and recommend other circumstances that should not constitute a change in use that would otherwise trigger the requirements of the riparian buffer rules. No later than April 1, 2016, the Commission shall report the results of its study, including any recommendations, to the Environmental Review Commission.

SECTION 13.2.(b) This section becomes effective October 1, 2015.

SECTION 13.3.(a) As used in this section, "coastal wetlands" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides, whether or not the tidewaters reach the marshland areas through natural or artificial watercourses, provided this shall not include hurricane or tropical storm tides.

SECTION 13.3.(b) For purposes of implementing 15A NCAC 02B .0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers) and 15A NCAC 02B .0259 (Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers), Zone 1 of a protective riparian buffer for coastal wetlands shall begin at the most landward limit of the normal high water level or the normal water level, as appropriate.

SECTION 13.3.(c) The Environmental Management Commission shall adopt temporary rules to amend its rules consistent with this section.

SECTION 13.3.(d) This section becomes effective October 1, 2015.

SECTION 13.4.(a) The Environmental Management Commission shall amend its rules for the protection of existing riparian buffers to provide for the case-by-case modification of the requirement for maintaining woody vegetation in the riparian buffer area upon a showing by a landowner that alternative measures will provide equal or greater water quality protection.

SECTION 13.4.(b) The Environmental Management Commission shall adopt temporary rules to amend its rules consistent with this section.

SECTION 13.4.(c) This section becomes effective October 1, 2015.

ZONING DENSITY CREDITS

SECTION 16. G.S. 160A-381(a) reads as rewritten:

"(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, the location and use of buildings, structures and land. The ordinance ~~may shall~~ provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11."

CLARIFY AUTHORITY OF COUNTIES AND CITIES TO EXPAND ON DEFINITION OF BEDROOM

SECTION 18.(a) G.S. 153A-346 reads as rewritten:

"§ 153A-346. **Conflict with other laws.**

(a) When regulations made under authority of this Part require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under authority of this Part govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by regulations made under authority of this Part, the provisions of the other statute or local ordinance or regulation govern.

(b) When adopting regulations under this Part, a county may not use a definition of dwelling unit, bedroom, or sleeping unit that is more expansive than any definition of the same in another statute or in a rule adopted by a State agency."

SECTION 18.(b) G.S. 160A-390 reads as rewritten:

"§ 160A-390. **Conflict with other laws.**

(a) When regulations made under authority of this Part require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, regulations made under authority of this Part shall govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this Part, the provisions of that statute or local ordinance or regulation shall govern.

(b) When adopting regulations under this Part, a city may not use a definition of dwelling unit, bedroom, or sleeping unit that is more expansive than any definition of the same in another statute or in a rule adopted by a State agency."

DEVELOPMENT AGREEMENTS

SECTION 19.(a) G.S. 153A-349.4 reads as rewritten:

"§ 153A-349.4. **Developed property ~~must contain certain number of acres; criteria; permissible durations of agreements.~~**

(a) A local government may enter into a development agreement with a developer for the development of property as provided in this Part, ~~provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application).~~ Part for developable property of any size, including property that is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development agreements shall be of a reasonable term specified in the agreement, provided they may not be for a term exceeding 20 years.

(b) ~~Notwithstanding the acreage requirements of subsection (a) of this section, a local government may enter into a development agreement with a developer for the development of property as provided in this Part for developable property of any size (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application), if the developable property that would be subject to the development agreement is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."~~

SECTION 19.(b) G.S. 160A-400.23 reads as rewritten:

"§ 160A-400.23. Developed property must contain certain number of acres; criteria; permissible durations of agreements.

(a) A local government may enter into a development agreement with a developer for the development of property as provided in this Part, ~~provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application).~~ Part for developable property of any size, including property that is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development agreements shall be of a reasonable term specified in the agreement, provided they may not be for a term exceeding 20 years.

(b) ~~Notwithstanding the acreage requirements of subsection (a) of this section, a local government may enter into a development agreement with a developer for the development of property as provided in this Part for developable property of any size (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application), if the developable property that would be subject to the development agreement is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."~~

SECTION 19.(c) G.S. 153A-349.3 reads as rewritten:

"§ 153A-349.3. Local governments authorized to enter into development agreements; approval of governing body required.

(a) A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a local government by ordinance.

(b) The development agreement may, by ordinance, be incorporated, in whole or in part, into any planning, zoning, or subdivision ordinance adopted by the local government."

SECTION 19.(d) G.S. 160A-400.22 reads as rewritten:

"§ 160A-400.22. Local governments authorized to enter into development agreements; approval of governing body required.

(a) A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a local government by ordinance.

(b) The development agreement may, by ordinance, be incorporated, in whole or in part, into any planning, zoning, or subdivision ordinance adopted by the local government."

SECTION 19.(e) This section becomes effective October 1, 2015, and applies to development agreements entered into on or after that date.

SECTION 20. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 21. Except as otherwise provided, this act is effective when it becomes law.
In the General Assembly read three times and ratified this the 21st day of September, 2015.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Paul Stam
Presiding Officer of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:30 p.m. this 23rd day of September, 2015

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2015-286
HOUSE BILL 765**

AN ACT TO PROVIDE FURTHER REGULATORY RELIEF TO THE CITIZENS OF NORTH CAROLINA BY PROVIDING FOR VARIOUS ADMINISTRATIVE REFORMS, BY ELIMINATING CERTAIN UNNECESSARY OR OUTDATED STATUTES AND REGULATIONS AND MODERNIZING OR SIMPLIFYING CUMBERSOME OR OUTDATED REGULATIONS, AND BY MAKING VARIOUS OTHER STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

PART I. ADMINISTRATIVE REFORMS

REPEAL OBSOLETE STATUTES

SECTION 1.1. The following statutes are repealed:

- (1) G.S. 14-197. Using profane or indecent language on public highways; counties exempt.
- (2) G.S. 14-401.8. Refusing to relinquish party telephone line in emergency; false statement of emergency.

BURDEN OF PROOF IN CERTAIN CONTESTED CASES

SECTION 1.2.(a) Article 3 of Chapter 150B of the General Statutes is amended by adding a new section to read:

"§ 150B-25.1. Burden of proof.

(a) Except as otherwise provided by law or by this section, the petitioner in a contested case has the burden of proving the facts alleged in the petition by a preponderance of the evidence.

(b) In a contested case involving the imposition of civil fines or penalties by a State agency for violation of the law, the burden of showing by clear and convincing evidence that the person who was fined actually committed the act for which the fine or penalty was imposed rests with the State agency.

(c) The burden of showing by a preponderance of the evidence that a career State employee subject to Chapter 126 of the General Statutes was discharged, suspended, or demoted for just cause rests with the agency employer."

SECTION 1.2.(b) The Joint Legislative Administrative Procedure Oversight Committee shall study whether there are other categories of contested cases in which the burden of proof should be placed with the agency.

SECTION 1.2.(c) This section is effective when this act becomes law and applies to contested cases commenced on or after that date.

LEGISLATIVE APPOINTMENTS

SECTION 1.3.(a) G.S. 120-121 is amended by adding two new subsections to read:

"(e) The following applies in any case where the Speaker of the House of Representatives or the President Pro Tempore of the Senate is directed by law to make a recommendation for an appointment by the General Assembly, and the legislator is also directed to make the recommendation in consultation with or upon the recommendation of a third party:

- (1) The recommendation or consultation is discretionary and is not binding upon the legislator.



- (2) The third party must submit the recommendation or consultation at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy.
- (3) Failure by the third party to submit the recommendation or consultation to the legislator within the time periods required under this subsection shall be deemed a waiver by the third party of the opportunity.

(f) The following applies in any case where the Speaker of the House of Representatives or the President Pro Tempore of the Senate is directed by law to make a recommendation for an appointment by the General Assembly, and the legislator is also directed to make the recommendation from nominees provided by a third party:

- (1) The third party must submit the nominees at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy.
- (2) Failure by the third party to submit the nomination to the legislator within the time periods required under this subsection shall be deemed a waiver by the third party of the opportunity."

SECTION 1.3.(b) Article 16 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-124. Appointments made by legislators.

(a) In any case where a legislator is called upon by law to appoint a member to a board or commission upon the recommendation of or in consultation with a third party, the recommendation or consultation is discretionary and is not binding upon the legislator. The third party must submit the recommendation or consultation at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy.

(b) In any case where a legislator is called upon by law to appoint a member to a board or commission from nominees provided by a third party, the third party must submit the nominees at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy. This subsection does not apply to nominations made under G.S. 120-99(a) or G.S. 120-100(b).

(c) Failure to submit the recommendation, consultation, or nomination within the time periods required under this section shall be deemed a waiver by the third party of the opportunity."

SECTION 1.3.(c) This section is effective when this act becomes law and applies to recommendations, consultations, and nominations made on or after that date.

OCCUPATIONAL LICENSING BOARD INVESTIGATORS AND INSPECTORS

SECTION 1.5. Chapter 93B of the General Statutes is amended by adding a new section to read:

"§ 93B-8.2. Prohibit licensees from serving as investigators.

No occupational licensing board shall contract with or employ a person licensed by the board to serve as an investigator or inspector if the licensee is actively practicing in the profession or occupation and is in competition with other members of the profession or occupation over which the board has jurisdiction. Nothing in this section shall prevent a board from (i) employing licensees who are not otherwise employed in the same profession or occupation as investigators or inspectors or for other purposes or (ii) contracting with licensees of the board to serve as expert witnesses or consultants in cases where special knowledge and experience is required, provided that the board limits the duties and authority of the expert witness or consultant to serving as an information resource to the board and board personnel."

NO FISCAL NOTE REQUIRED FOR LESS STRINGENT RULES

SECTION 1.6.(a) G.S. 150B-21.3A(d) reads as rewritten:

"(d) Timetable. – The Commission shall establish a schedule for the review and readoption of existing rules in accordance with this section on a decennial basis as follows:

- ...
- (2) With regard to the readoption of rules as required by sub-subdivision (c)(2)g. of this section, once the final determination report becomes effective, the Commission shall establish a date by which the agency must readopt the rules. The Commission shall consult with the agency and shall consider the agency's rule-making priorities in establishing the readoption date. The

agency may amend a rule as part of the readoption process. If a rule is readopted without substantive ~~change, change~~ or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4."

SECTION 1.6.(b) This section is effective when this act becomes law and applies to periodic review of existing rules occurring pursuant to G.S. 150B-21.3A on or after that date.

APO TO MAKE RECOMMENDATIONS ON OCCUPATIONAL LICENSING BOARD CHANGES

SECTION 1.7. Pursuant to G.S. 120-70.101(3a), the Joint Legislative Administrative Procedure Oversight Committee (APO) shall review the recommendations contained in the Joint Legislative Program Evaluation Oversight Committee's report, entitled "Occupational Licensing Agencies Should Not be Centralized, but Stronger Oversight is Needed," to determine the best way to accomplish the recommendations contained in the report and to improve oversight of occupational licensing boards. In conducting the review, APO shall consult with occupational licensing boards, licensees, associations representing licensees, the Department of Commerce, and other interested parties. The APO cochairs may establish subcommittees to assist with various parts of the review, including determining whether licensing authority should be continued for the 12 boards identified in the report. The APO shall propose legislation to the 2016 Regular Session of the 2015 General Assembly.

TECHNICAL CORRECTIONS

SECTION 1.8.(a) G.S. 20-116 reads as rewritten:

"§ 20-116. **Size of vehicles and loads.**

- ...
- (g) ...
- (3) A truck, trailer, or other ~~vehicle~~:
- a. ~~Licensed vehicle~~ licensed for 7,500 pounds or less gross vehicle weight and loaded with rock, gravel, stone, or any other similar substance that could fall, blow, leak, or sift, or licensed for any gross vehicle weight and loaded with sand; ~~orsand,~~
- b. ~~Licensed for 7,500 pounds or less gross vehicle weight and loaded with rock, gravel, stone, or any other similar substance that could fall, blow, leak, sift, or drop;~~
- shall not be driven or moved on any highway unless:
- a. The height of the load against all four walls does not extend above a horizontal line six inches below the top when loaded at the loading point;
- b. The load is securely covered by tarpaulin or some other suitable covering; or
- c. The vehicle is constructed to prevent any of its load from falling, dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

...."

SECTION 1.8.(b) If House Bill 44, 2015 Regular Session becomes law, then House Bill 44 is amended by adding a new section to read:

"**SECTION 3.1.(a)** G.S. 160A-381(c) reads as rewritten:

"(c) The regulations may also provide that the board of adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Conditions and safeguards imposed under this subsection shall not include requirements for which the city does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the city. When deciding special use permits or conditional use permits, the city council or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation

of the requisite majority. Every such decision of the city council or planning board shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities."

"SECTION 3.1.(b) G.S. 153A-340(c1) reads as rewritten:

"(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Conditions and safeguards imposed under this subsection shall not include requirements for which the county does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the county. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 160A-388."

SECTION 1.8.(c) If House Bill 44, 2015 Regular Session becomes law, then G.S. 153A-457 reads as rewritten:

"§ 153A-457. Notice prior to construction.

(a) A county shall notify the property owners and adjacent property owners prior to commencement of any construction project by the county.

(b) Notice under this section shall be in writing at least 15 days prior to the commencement of construction, except in any of the following instances:

- (1) If the construction is ~~a repair~~ of an emergency nature, the notice may be given by any means, including verbally, that the county has for contacting the property owner within a reasonable time prior to, or after, commencement of the repair-construction.
- (2) The property owner requests action of the county that requires construction activity.
- (3) The property owner consents to less than 15 days' notice.
- (4) Notice of the construction project is given in any open meeting of the county prior to the commencement of the construction project.

(c) For purposes of this section, "construction" shall mean the building, erection, or establishment of new buildings, facilities, and infrastructure and shall not include routine maintenance and repair."

SECTION 1.8.(d) If House Bill 44, 2015 Regular Session becomes law, then G.S. 160A-499.4 reads as rewritten:

"§ 160A-499.4. Notice prior to construction.

(a) A city shall notify the property owners and adjacent property owners prior to commencement of any construction project by the city.

(b) Notice under this section shall be in writing at least 15 days prior to the commencement of construction, except in any of the following instances:

- (1) If the construction is ~~a repair~~ of an emergency nature, the notice may be given by any means, including verbally, that the city has for contacting the property owner within a reasonable time prior to, or after, commencement of the repair-construction.
- (2) The property owner requests action of the city that requires construction activity.
- (3) The property owner consents to less than 15 days' notice.

(4) Notice of the construction project is given in any open meeting of the city prior to the commencement of the construction project.

(c) For purposes of this section, "construction" shall mean the building, erection, or establishment of new buildings, facilities, and infrastructure and shall not include routine maintenance and repair."

PART II. BUSINESS REGULATION

EXEMPT SMALL BUSINESS ENTITIES BUYING OR SELLING ENTITY-OWNED PROPERTY

SECTION 2.1. G.S. 93A-2(c)(1) reads as rewritten:

- "(c) The provisions of G.S. 93A-1 and G.S. 93A-2 do not apply to and do not include:
- (1) Any partnership, corporation, limited liability company, association, or other business entity that, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein. The exemption from licensure under this subsection shall extend to the following persons when those persons are engaged in acts or services for which the corporation, partnership, limited liability company, or other business entity would be exempt hereunder:
 - a. The officers and employees whose income is reported on IRS Form W-2 of an exempt corporation, the corporation.
 - b. The general partners and employees whose income is reported on IRS Form W-2 of an exempt partnership, and the managers partnership.
 - c. The managers, member-managers, and employees whose income is reported on IRS Form W-2 of an exempt limited liability company when said persons are engaged in acts or services for which the corporation, partnership, or limited liability company would be exempt hereunder company.
 - d. The natural person owners of an exempt closely held business entity. For purposes of this subdivision, a closely held business entity is a limited liability company or a corporation, neither having more than two legal owners, at least one of whom is a natural person.
 - e. The officers, managers, member-managers, and employees whose income is reported on IRS Form W-2 of a closely held business entity when acting as an agent for an exempt business entity if the closely held business entity is owned by a natural person either (i) owning fifty percent (50%) or more ownership interest in the closely held business entity and the exempt business entity or (ii) owning fifty percent (50%) or more of a closely held business entity that owns a fifty percent (50%) or more ownership interest in the exempt business entity. The closely held business entity acting as an agent under this sub-subdivision must file an annual written notice with the Secretary of State, including its legal name and physical address. The exemption authorized by this sub-subdivision is only effective if, immediately following the completion of the transaction for which the exemption is claimed, the closely held business entity has a net worth that equals or exceeds the value of the transaction.

When a person conducts a real estate transaction pursuant to an exemption under this subdivision, the person shall disclose, in writing, to all parties to the transaction (i) that the person is not licensed as a real estate broker or salesperson under Article 1 of this Chapter, (ii) the specific exemption under this subdivision that applies, and (iii) the legal name and physical address of the owner of the subject property and of the closely held business entity acting under sub-subdivision e. of this subdivision, if applicable. This disclosure may be included on the face of a lease or contract executed in compliance with an exemption under this subdivision."

MANUFACTURED HOME LICENSE/CRIMINAL HISTORY CHECK

SECTION 2.2. G.S. 143-143.10A reads as rewritten:

"§ 143-143.10A. Criminal history checks of applicants for licensure.

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

(1) Applicant. – A person applying for initial licensure as a manufactured home ~~manufacturer, dealer, salesperson, salesperson~~ or set-up contractor.

...

(b) All applicants for initial licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. Applicants shall obtain criminal record reports from one or more reporting services designated by the Board to provide criminal record reports. Each applicant is required to pay the designated service for the cost of the criminal record report. In the alternative, the Board may provide to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Public Safety. The Board shall keep all information obtained pursuant to this section confidential.

...."

AMEND DEFINITION OF "EMPLOYEE" UNDER THE WORKERS' COMPENSATION ACT TO EXCLUDE VOLUNTEERS AND OFFICERS OF CERTAIN NONPROFIT CORPORATIONS AND ASSOCIATIONS

SECTION 2.3. G.S. 97-2(2) reads as rewritten:

"§ 97-2. Definitions.

When used in this Article, unless the context otherwise requires:

...

(2) Employee. – The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are elected by the people. The term "employee" shall include members of the North Carolina National Guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also the employee's legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee, as herein defined, of a municipality, county, or of the State of

North Carolina, while engaged in the discharge of the employee's official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of their employer.

~~Every~~ Except as otherwise provided herein, every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation's specifically excluding such executive officer in such contract of insurance, and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University, and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term "employee" shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-1031(a) when performing duties in the course and scope of a State-approved mission pursuant to Subpart C of Part 5 of Article 13 of Chapter 143B of the General Statutes.

"Employee" shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

"Employee" shall not include any person elected or appointed and empowered as an executive officer, director, or committee member under the charter, articles, or bylaws of a nonprofit corporation subject to Chapter 47A, 47C, 47F, 55A, or 59B of the General Statutes, or any organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, who performs only voluntary service for the nonprofit corporation, provided that the person receives no remuneration for the voluntary service other than reasonable reimbursement for expenses incurred in connection with the voluntary service. When a nonprofit corporation as described herein employs one or more persons who do receive remuneration other than reasonable reimbursement for expenses, then any volunteer officers, directors, or committee members excluded from the definition of "employee" by operation of this paragraph shall be counted as employees for the sole purpose of determining the number of persons regularly employed in the same business or establishment pursuant to G.S. 97-2(1). Other than for the limited purpose of determining the number of persons regularly employed in the same business or establishment, such volunteer nonprofit officers, directors, or committee members shall not be "employees" under the Act. Nothing herein shall prohibit a nonprofit corporation as described herein from voluntarily electing to provide for workers' compensation benefits in the manner provided in G.S. 97-93 for volunteer officers, directors, or committee members excluded from the definition of

"employee" by operation of this paragraph. This paragraph shall not apply to any volunteer firefighter, volunteer member of an organized rescue squad, an authorized pickup firefighter when that individual is engaged in emergency fire suppression activities for the North Carolina Forest Service, a duly appointed and sworn member of an auxiliary police department organized pursuant to G.S. 160A-282, or a senior member of the State Civil Air Patrol functioning under Subpart C of Part 5 of Article 13 of Chapter 143B of the General Statutes, even if such person is elected or appointed and empowered as an executive officer, director, or committee member under the charter, articles, or bylaws of a nonprofit corporation as described herein.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article.

~~Employee~~—"Employee" shall include an authorized pickup firefighter of the North Carolina Forest Service of the Department of Agriculture and Consumer Services when that individual is engaged in emergency fire suppression activities for the North Carolina Forest Service. As used in this section, "authorized pickup firefighter" means an individual who has completed required fire suppression training as a wildland firefighter and who is available as needed by the North Carolina Forest Service for emergency fire suppression activities, including immediate dispatch to wildfires and standby for initial attack on fires during periods of high fire danger.

It shall be a rebuttable presumption that the term "employee" shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person."

PART III. STATE AND LOCAL GOVERNMENT REGULATION

REDUCE STATE AGENCY MOBILE DEVICE REPORTING FREQUENCY

SECTION 3.1. Subsection 6A.14(a) of S.L. 2011-145 reads as rewritten:

"SECTION 6A.14.(a) Every executive branch agency within State government shall develop a policy to limit the issuance and use of mobile electronic devices to the minimum required to carry out the agency's mission. By September 1, 2011, each agency shall provide a copy of its policy to the Chairs of the Appropriations Committee and the Appropriations Subcommittee on General Government of the House of Representatives, the Chairs of the Appropriations/Base Budget Committee and the Appropriations Committee on General Government and Information Technology of the Senate, the Chairs of the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management.

State-issued mobile electronic devices shall be used only for State business. Agencies shall limit the issuance of cell phones, smart phones, and any other mobile electronic devices to employees for whom access to a mobile electronic device is a critical requirement for job performance. The device issued and the plan selected shall be the minimum required to support the employees' work requirements. This shall include considering the use of pagers in lieu of a more sophisticated device. The requirement for each mobile electronic device issued shall be documented in a written justification that shall be maintained by the agency and reviewed annually. All State agency heads, in consultation with the Office of Information Technology Services and the Office of State Budget and Management, shall document and review all authorized cell phone, smart phone, and other mobile electronic communications device procurement, and related phone, data, Internet, and other usage plans for and by their

employees. Agencies shall conduct periodic audits of mobile device usage to ensure that State employees and contractors are complying with agency policies and State requirements for their use.

Beginning October 1, 2011, each agency shall report ~~quarterly~~ annually to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on General Government, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on General Government and Information Technology, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management on the following:

- (1) Any changes to agency policies on the use of mobile devices.
- (2) The number and types of new devices issued since the last report.
- (3) The total number of mobile devices issued by the agency.
- (4) The total cost of mobile devices issued by the agency.
- (5) The number of each type of mobile device issued, with the total cost for each type."

GOOD SAMARITAN EXPANSION

SECTION 3.3.(a) G.S. 14-56 reads as rewritten:

"§ 14-56. Breaking or entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft.

(a) If any person, with intent to commit any felony or larceny therein, breaks or enters any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind, containing any goods, wares, freight, or other thing of value, or, after having committed any felony or larceny therein, breaks out of any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind containing any goods, wares, freight, or other thing of value, that person is guilty of a Class I felony. It is prima facie evidence that a person entered in violation of this section if he is found unlawfully in such a railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft.

(b) It shall not be a violation of this section for any person to break or enter any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind to provide assistance to a person inside the railroad car, motor vehicle, trailer, aircraft, boat, or watercraft of any kind if one or more of the following circumstances exist:

- (1) The person acts in good faith to access the person inside the railroad car, motor vehicle, trailer, aircraft, boat, or watercraft of any kind in order to provide first aid or emergency health care treatment or because the person inside is, or is in imminent danger of becoming unconscious, ill, or injured.
- (2) It is reasonably apparent that the circumstances require prompt decisions and actions in medical, other health care, or other assistance for the person inside the railroad car, motor vehicle, trailer, aircraft, boat, or watercraft of any kind.
- (3) The necessity of immediate health care treatment or removal of the person from the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind is so reasonably apparent that any delay in the rendering of treatment or removal would seriously worsen the physical condition or endanger the life of the person."

SECTION 3.3.(b) This section becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SECTION 3.4.(a) Chapter 1 of the General Statutes is amended by adding a new Article to read:

"Article 43F.

"Immunity for Damage to Vehicle.

"§ 1-539.27. Immunity from civil liability for damage to railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft necessary for assistance.

Any person who enters or attempts to enter any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind shall not be liable in civil damages for any damage to the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind if one or more of the following circumstances exist:

- (1) The person acts in good faith to access a person inside the railroad car, motor vehicle, trailer, aircraft, boat, or watercraft of any kind in order to

- provide first aid or emergency health care treatment or because the person inside is, or is in imminent danger of becoming unconscious, ill, or injured.
- (2) It is reasonably apparent that the circumstances require prompt decisions and actions in medical care, other health care, or other assistance.
- (3) The necessity of immediate health care treatment or removal of the person from the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind is so reasonably apparent that any delay in the rendering of treatment or removal would seriously worsen the physical condition or endanger the life of the person.

This section shall not apply to any acts of gross negligence, wanton conduct, or intentional wrongdoing."

SECTION 3.4.(b) This section becomes effective December 1, 2015, and applies to causes of action arising on or after that date.

DIRECT DMV TO ISSUE SUITABLY REDUCED SIZE REGISTRATION PLATES FOR MOTORCYCLES AND PROPERTY HAULING TRAILERS ATTACHED TO MOTORCYCLES

SECTION 3.5.(a) G.S. 20-63(d) reads as rewritten:

"(d) Registration plates issued for a motor vehicle other than a motorcycle, trailer, or semitrailer shall be attached thereto, one in the front and the other in the rear: Provided, that when only one registration plate is issued for a motor vehicle other than a truck-tractor, said registration plate shall be attached to the rear of the motor vehicle. The registration plate issued for a truck-tractor shall be attached to the front thereof. Provided further, that when only one registration plate is issued for a motor vehicle and this motor vehicle is transporting a substance that may adhere to the plate so as to cover or discolor the plate or if the motor vehicle has a mechanical loading device that may damage the plate, the registration plate may be attached to the front of the motor vehicle.

Any motor vehicle of the age of 35 years or more from the date of manufacture may bear the license plates of the year of manufacture instead of the current registration plates, if the current registration plates are maintained within the vehicle and produced upon the request of any person.

The Division shall provide registered owners of motorcycles and property hauling motorcycle trailers attached to the rear of motorcycles with suitably reduced size registration plates-plates, approximately four by seven inches in size, that are issued on a multiyear basis in accordance with G.S. 20-88(c), or on an annual basis as otherwise provided in this Chapter."

SECTION 3.5.(b) This section becomes effective January 1, 2016.

STATUS FOR PROVIDERS OF MH/DD/SA SERVICES WHO ARE NATIONALLY ACCREDITED

SECTION 3.7. G.S. 122C-81 reads as rewritten:

"§ 122C-81. **National accreditation benchmarks.**

(a) As used in this section, the term:

- (1) "National accreditation" applies to accreditation by an entity approved by the Secretary that accredits mental health, developmental disabilities, and substance abuse services.
- (2) "Provider" applies to only those providers of services, including facilities, requiring national accreditation, which services are designated by the Secretary pursuant to subsection (b) of this section.

(b) The Secretary, through the Medicaid State Plan, Medicaid waiver, or rules adopted by the Secretary, shall designate the mental health, developmental disabilities, and substance abuse services that require national accreditation. In accordance with rules of the Commission, the Secretary may exempt a provider that is accredited under this section and in good standing with the national accrediting agency from undergoing any routine monitoring that is duplicative of the oversight by the national accrediting agency.

...

(e) The Commission may adopt rules establishing a procedure by which a provider that is accredited under this section and in good standing with the national accrediting agency may be exempt from undergoing any routine monitoring that is duplicative of the oversight by the national accrediting agency. Any provider shall continue to be subject to inspection by the

Secretary, provided the inspection is not duplicative of inspections required by the national accrediting agency. Rules adopted under this subsection may not waive any requirements that may be imposed under federal law."

CLARIFY THAT WHEN A NEW PERMIT OR TRANSITIONAL PERMIT IS ISSUED FOR AN ESTABLISHMENT, ANY PREVIOUS PERMIT FOR THAT SAME ESTABLISHMENT IN THAT LOCATION BECOMES VOID

SECTION 3.8. G.S. 130A-248(c) reads as rewritten:

"(c) If ownership of an establishment is transferred or the establishment is leased, the new owner or lessee shall apply for a new permit. The new owner or lessee may also apply for a transitional permit. A transitional permit may be issued upon the transfer of ownership or lease of an establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to the public health. Upon issuance of a new permit or a transitional permit for ~~at the same~~ establishment, any previously issued permit for an establishment in that location becomes void. This subsection does not prohibit issuing more than one owner or lessee a permit for the same location if (i) more than one establishment is operated in the same physical location and (ii) each establishment satisfies all of the rules and requirements of subsection (g) of this section. For purposes of this subsection, "transitional permit" shall mean a permit issued upon the transfer of ownership or lease of an existing food establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to the public health."

ENVIRONMENTAL REVIEW COMMISSION TO STUDY OPEN AND FAIR COMPETITION WITH RESPECT TO MATERIALS USED IN WASTEWATER, STORMWATER, AND OTHER WATER PROJECTS

SECTION 3.9. The Environmental Review Commission may study whether to require public entities to consider all acceptable piping materials before determining which piping material should be used in the constructing, developing, financing, maintaining, rebuilding, improving, repairing, procuring, or operating of a water, wastewater, or stormwater drainage project. The Environmental Review Commission shall report its findings and recommendations to the 2016 Regular Session of the 2015 General Assembly.

AMEND UNDERGROUND DAMAGE PREVENTION REVIEW BOARD, ENFORCEMENT, AND CIVIL PENALTIES

SECTION 3.12. G.S. 87-129 reads as rewritten:

"§ 87-129. Underground Damage Prevention Review Board; enforcement; civil penalties.

(a) ~~The Notification Center shall establish an~~ There is hereby established the Underground Damage Prevention Review Board to review reports of alleged violations of this Article. The members of the Board shall be appointed by the Governor. The Board shall consist of ~~the following members:~~ 15 members as follows:

- (1) A representative from the North Carolina Department of Transportation;
- (2) A representative from a facility contract locator;
- (3) A representative from the Notification Center;
- (4) A representative from an electric public utility;
- (5) A representative from the telecommunications industry;
- (6) A representative from a natural gas utility;
- (7) A representative from a hazardous liquid transmission pipeline company;
- (8) A representative recommended by the League of Municipalities;
- (9) A highway contractor licensed under G.S. 87-10(b)(2) who does not own or operate facilities;
- (10) A public utilities contractor licensed under G.S. 87-10(b)(3) who does not own or operate facilities;
- (11) A surveyor licensed under Chapter 89C of the General Statutes;
- (12) A representative from a rural water system;
- (13) A representative from an investor-owned water system;
- (14) A representative from an electric membership corporation; and
- (15) A representative from a cable company.

(a1) Each member of the Board shall be appointed for a term of four years. Members of the Board may serve no more than two consecutive terms. Vacancies in appointments made by

the Governor occurring prior to the expiration of a term shall be filled by appointment for the unexpired term.

(a2) No member of the Board may serve on a case where there would be a conflict of interest.

(a3) The Governor may remove any member at any time for cause.

(a4) Eight members of the Board shall constitute a quorum.

(a5) The Governor shall designate one member of the Board as chair.

(a6) The Board may adopt rules to implement this Article.

(b) The Notification Center shall transmit all reports of alleged violations of this Article to the Board, including any information received by the Notification Center regarding the report. The Board shall meet at least quarterly to review all reports filed pursuant to G.S. 87-120(e). The Board shall act as an arbitrator between the parties to the report. If, after reviewing the report and any accompanying information, the Board determines that a violation of this Article has occurred, the Board shall notify the violating party in writing of its determination and the recommended penalty. The violating party

(b1) The Board shall review all reports of alleged violations of this Article and accompanying information. If the Board determines that a person has violated any provision of this Article, the Board shall determine the appropriate action or penalty to impose for each such violation. Actions and penalties may include training, education, and a civil penalty not to exceed two thousand five hundred dollars (\$2,500). The Board shall notify each person who is determined to have violated this Article in writing of the Board's determination and the Board's recommended action or penalty. A person determined to be in violation of this Article may request a hearing before the Board, after which the Board may reverse or uphold its original finding. If the Board recommends a penalty, the Board shall notify the Utilities Commission of the recommended penalty, and the Utilities Commission shall issue an order imposing the penalty.

(c) A party-person determined by the Board under subsection (b)-(b1) of this section to have violated this Article may initiate-appeal the Board's determination by initiating an arbitration proceeding before the Utilities Commission-Commission within 30 days of the Board's determination. If the violating party elects to initiate an arbitration proceeding, the violating party shall pay a filing fee of two hundred fifty dollars (\$250.00) to the Utilities Commission, and the Utilities Commission shall open a docket regarding the report. The Utilities Commission shall direct the parties enter into an arbitration process. The parties shall be responsible for selecting and contracting with the arbitrator. Upon completion of the arbitration process, the Utilities Commission shall issue an order encompassing the outcome of the binding arbitration process, including a determination of fault, a penalty, and assessing the costs of arbitration to the non-prevailing party. Any party may

(c1) A person may timely appeal an order issued by the Utilities Commission pursuant to this section to the superior court division of the General Court of Justice in the county where the alleged violation of this Article occurred or in Wake County, for trial de novo. de novo within 30 days of entry of the Utilities Commission's order. The authority granted to the Utilities Commission within this section is limited to this section and does not grant the Utilities Commission any authority that they are not otherwise granted under Chapter 62 of the General Statutes.

(d) Any person who violates any provision of this Article shall be subject to a penalty as set forth in this subsection. The provisions of this Article do not affect any civil remedies for personal injury or property damage otherwise available to any person, except as otherwise specifically provided for in this Article. The penalty provisions of this Article are cumulative to and not in conflict with provisions of law with respect to civil remedies for personal injury or property damage. The clear proceeds of any civil penalty assessed under this section shall be used as provided in Section 7(a) of Article IX of the North Carolina Constitution. The penalties for a violation of this Article shall be as follows: In any arbitration proceeding before the Utilities Commission, any actions and penalties assessed against any person for violation of this Article shall include the actions and penalties set out in subsection (b1) of this section.

(1) If the violation was the result of negligence, the penalty shall be a requirement of training, a requirement of education, or both.

(2) If the violation was the result of gross negligence, the penalty shall be a civil penalty of one thousand dollars (\$1,000), a requirement of training, a requirement of education, or a combination of the three.

- (3) ~~If the violation was the result of willful or wanton negligence or intentional conduct, the penalty shall be a civil penalty of two thousand five hundred dollars (\$2,500), a requirement of training, and a requirement of education."~~

CONFORM NORTH CAROLINA ALL-TERRAIN VEHICLE LAWS TO NATIONAL SAFETY AND DESIGN STANDARDS FOR YOUTH OPERATORS

SECTION 3.13.(a) G.S. 20-171.15 reads as rewritten:

"§ 20-171.15. Age restrictions.

(a) It is unlawful for any parent or legal guardian of a person less than eight years of age to knowingly permit that person to operate an all-terrain vehicle.

~~(b) It is unlawful for any parent or legal guardian of a person less than 12 years of age to knowingly permit that person to operate an all-terrain vehicle with an engine capacity of 70 cubic centimeter displacement or greater.~~

(c) It is unlawful for any parent or legal guardian of a person less than 16 years of age to knowingly permit that person to operate an all-terrain vehicle ~~with an engine capacity greater than 90 cubic centimeter displacement~~ in violation of the Age Restriction Warning Label affixed by the manufacturer as required by the applicable American National Standards Institute/Specialty Vehicle Institute of America (ANSI/SVIA) design standard.

(d) It is unlawful for any parent or legal guardian of a person less than 16 years of age to knowingly permit that person to operate an all-terrain vehicle unless the person is under the continuous visual supervision of a person 18 years of age or older while operating the all-terrain vehicle.

~~(e) Subsections (b) and Subsection (c) of this section do does not apply to any parent or legal guardian of a person born on or before August 15, 1997, who permits that person to operate an all-terrain vehicle and who establishes proof that the parent or legal guardian owned the all-terrain vehicle prior to August 15, 2005."~~

SECTION 3.13.(b) G.S. 20-171.17 reads as rewritten:

"§ 20-171.17. Prohibited acts by sellers.

No person shall knowingly sell or offer to sell an all-terrain vehicle:

- (1) For use by a person under the age of eight years.
- (2) ~~With an engine capacity of 70 cubic centimeter displacement or greater for use by a person less than 12 years of age.~~ In violation of the Age Restriction Warning Label affixed by the manufacturer as required by the applicable American National Standards Institute/Specialty Vehicle Institute of America (ANSI/SVIA) design standard for use by a person less than 16 years of age.
- (3) ~~With an engine capacity of greater than 90 cubic centimeter displacement for use by a person less than 16 years of age."~~

PART IV. ENVIRONMENTAL AND NATURAL RESOURCES REGULATION

ENVIRONMENTAL SELF-AUDIT PRIVILEGE AND LIMITED IMMUNITY

SECTION 4.1.(a) Chapter 8 of the General Statutes is amended by adding a new Part to read:

"Part 7D. Environmental Audit Privilege and Limited Immunity.

"§ 8-58.50. Purpose.

(a) In order to encourage owners and operators of facilities and persons conducting activities regulated under those portions of the General Statutes set forth in G.S. 8-58.52, or conducting activities regulated under other environmental laws, to conduct voluntary internal environmental audits of their compliance programs and management systems and to assess and improve compliance with statutes, an environmental audit privilege is recognized to protect the confidentiality of communications relating to voluntary internal environmental audits.

(b) Nothing in this Part shall be construed to protect owners and operators of facilities and regulated persons from a criminal investigation or prosecution carried out by any appropriate governmental entity.

(c) Any privilege granted by this Part shall apply only to those communications, oral or written, pertaining to and made in connection with the environmental audit and shall not apply to the facts relating to the violation itself.

"§ 8-58.51. Definitions.

The following definitions apply in this Part:

- (1) "Department" means the Department of Environment and Natural Resources.
- (2) "Enforcement agencies" means the Department, any other agency of the State, and units of local government responsible for enforcement of environmental laws.
- (3) "Environmental audit" means a voluntary, internal evaluation or review of one or more facilities or an activity at one or more facilities regulated under federal, State, regional, or local environmental law, or of compliance programs or management systems related to the facility or activity if designed to identify and prevent noncompliance and to improve compliance with these laws. For the purposes of this Part, an environmental audit does not include an environmental site assessment of a facility conducted solely in anticipation of the purchase, sale, or transfer of the business or facility. An environmental audit may be conducted by the owner or operator, the parent corporation of the owner or operator or by their officers or employees, or by independent contractors. An environmental audit must be a discrete activity with a specified beginning date and scheduled ending date reflecting the auditor's bona fide intended completion schedule.
- (4) "Environmental audit report" means a document marked or identified as such with a completion date existing either individually or as a compilation prepared in connection with an environmental audit. An environmental audit report may include field notes and records of observations, findings, opinions, suggestions, recommendations, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, and surveys, provided the supporting information is collected or developed for the primary purpose and in the course of an environmental audit. An environmental audit report, when completed, may include all of the following components:
 - a. An audit report prepared by an auditor, which may include the scope and date of the audit and the information gained in the audit, together with exhibits and appendices and may include conclusions, recommendations, exhibits, and appendices.
 - b. Memoranda and documents analyzing any portion of the audit report or issues relating to the implementation of an audit report.
 - c. An implementation plan that addresses correcting past noncompliance, improving current compliance, or preventing future noncompliance.
- (5) "Environmental laws" means all provisions of federal, State, and local laws, rules, and ordinances pertaining to environmental matters.

"§ 8-58.52. Applicability.

(a) This Part applies to activities regulated under environmental laws, including all of the following provisions of the General Statutes, and rules adopted thereunder:

- (1) Article 7 of Chapter 74.
- (2) Chapter 104E.
- (3) Article 25 of Chapter 113.
- (4) Articles 1, 4, and 7 of Chapter 113A.
- (5) Article 9 of Chapter 130A, except as provided in subsection (b) of this section.
- (6) Articles 21, 21A, and 21B of Chapter 143.
- (7) Part 1 of Article 7 of Chapter 143B.

(b) This Part shall not apply to activities regulated under the Coal Ash Management Act of 2014 under Part 2I of Article 9 of Chapter 130A of the General Statutes and rules promulgated pursuant to that Part.

"§ 8-58.53. Environmental audit report; privilege.

(a) An environmental audit report or any part of an environmental audit report is privileged and, therefore, immune from discovery and is not admissible as evidence in civil or administrative proceedings, except as provided in G.S. 8-58.54 and G.S. 8-58.56. Provided, however, all of the following documents are exempt from the privilege established by this Part:

- (1) Information obtained by observation of an enforcement agency.

- (2) Information obtained from a source independent of the environmental audit.
- (3) Documents, communication, data, reports, or other information required to be collected, maintained, otherwise made available, or reported to an enforcement agency or any other entity by environmental laws, permits, orders, consent agreements, or as otherwise provided by law.
- (4) Documents prepared either prior to the beginning of the environmental audit or subsequent to the completion date of the audit report and, in all cases, any documents prepared independent of the audit or audit report.
- (5) Documents prepared as a result of multiple or continuous self-auditing conducted in an effort to intentionally avoid liability for violations.
- (6) Information that is knowingly misrepresented or misstated or that is knowingly deleted or withheld from an environmental audit report, whether or not included in a subsequent environmental audit report.
- (7) Information in instances where the material shows evidence of noncompliance with environmental laws, permits, orders, consent agreements, and the owner or operator failed to either promptly take corrective action or eliminate any violation of law identified during the environmental audit within a reasonable period of time.

(b) If an environmental audit report or any part of an environmental audit report is subject to the privilege provided for in subsection (a) of this section, no person who conducted or participated in the audit or who significantly reviewed the audit report may be compelled to testify regarding the audit report or a privileged part of the audit report except as provided for in G.S. 8-58.53(d), 8-58.54, or 8-58.56.

(c) Nothing in this Part shall be construed to restrict a party in a proceeding before the Industrial Commission from obtaining or discovering any evidence necessary or appropriate for the proof of any issue pending in an action before the Commission, regardless of whether evidence is privileged pursuant to this Part. Further, nothing in this Part shall be construed to prevent the admissibility of evidence that is otherwise relevant and admissible in a proceeding before the Industrial Commission, regardless of whether the evidence is privileged pursuant to this Part. Provided, however, the Commission, upon motion made by a party to the proceeding, may issue appropriate protective orders preventing disclosure of information outside of the Commission's proceeding.

(d) Nothing in this Part shall be construed to circumvent the employee protection provisions provided by federal or State law.

(e) The privilege created by this Part does not apply to criminal investigations or proceedings. Where an audit report is obtained, reviewed, or used in a criminal proceeding, the privilege created by this Part shall continue to apply and is not waived in civil and administrative proceedings and is not discoverable or admissible in civil or administrative proceedings even if disclosed during a criminal proceeding.

"§ 8-58.54. Waiver of privilege.

(a) The privilege established under G.S. 8-58.53 does not apply to the extent that it is expressly waived in writing by the owner or operator of a facility at which an environmental audit was conducted and who prepared or caused to be prepared the audit report as a result of the audit.

(b) The audit report and information generated by the audit may be disclosed without waiving the privilege established under G.S. 8-58.53 to all of the following persons:

- (1) A person employed by the owner or operator or the parent corporation of the audited facility.
- (2) A legal representative of the owner or operator or parent corporation.
- (3) An independent contractor retained by the owner or operator or parent corporation to conduct an audit on or to address an issue or issues raised by the audit.

(c) Disclosure of an audit report or information generated by the audit under all of the following circumstances shall not constitute a waiver of the privilege established under G.S. 8-58.53:

- (1) Disclosure made under the terms of a confidentiality agreement between the owner or operator of the facility audited and a potential purchaser of the business or facility audited.

- (2) Disclosure made under the terms of a confidentiality agreement between governmental officials and the owner or operator of the facility audited.
- (3) Disclosure made under the terms of a confidentiality agreement between a customer, lending institution, or insurance company with an existing or proposed relationship with the facility.

"§ 8-58.55. Notification of audit.

In order to assert the privilege established under G.S. 8-58.53, the owner or operator of the facility conducting the environmental audit shall, upon inspection of the facility by an enforcement agency, or no later than 10 working days after completion of an agency's inspection, notify the enforcement agency of the existence of any audit relevant to the subject of the agency's inspection, as well as the beginning date and completion date of that audit. Any environmental audit report shall include a signed certification from the owner or operator of the facility that documents the date the audit began and the completion date of the audit.

"§ 8-58.56. Revocation of privilege in civil and administrative proceedings.

In a civil or administrative proceeding, an enforcement agency may seek by motion a declaratory ruling on the issue of whether an environmental audit report is privileged. The court shall revoke the privilege established under G.S. 8-58.53 for an audit report if the factors set forth in this section apply. In a civil proceeding, the court, after an in camera review, shall revoke the privilege established under G.S. 8-58.53 if the court determines that disclosure of the environmental audit report was sought after the effective date of this Part and either of the following apply:

- (1) The privilege is asserted for purposes of deception or evasion.
- (2) The material shows evidence of significant noncompliance with applicable environmental laws; the owner or operator of the facility has not promptly initiated and pursued with diligence appropriate action to achieve compliance with these environmental laws or has not made reasonable efforts to complete any necessary permit application; and, as a result, the owner or operator of the facility did not or will not achieve compliance with applicable environmental laws or did not or will not complete the necessary permit application within a reasonable period of time.

"§ 8-58.57. Privilege in criminal proceedings.

The privilege established under G.S. 8-58.53 is not applicable in any criminal proceeding.

"§ 8-58.58. Burden of proof.

A party asserting the privilege established under G.S. 8-58.53 has the burden of proving that (i) the materials claimed as privileged constitute an environmental audit report as defined by this Part, and (ii) compliance has been achieved or will be achieved within a reasonable period of time. A party seeking disclosure under G.S. 8-58.56 has the burden of proving the condition for disclosure set forth in that section.

"§ 8-58.59. Stipulations; declaratory rulings.

The parties to a proceeding may at any time stipulate to entry of an order directing that specific information contained in an environmental audit report is or is not subject to the privilege. In the absence of an ongoing proceeding, where the parties are not in agreement, an enforcement agency may seek a declaratory ruling from a court on the issue of whether the materials are privileged under G.S. 8-58.53 and whether the privilege, if existing, should be revoked pursuant to G.S. 8-58.56.

"§ 8-58.60. Construction of Part.

Nothing in this Part limits, waives, or abrogates any of the following:

- (1) The scope or nature of any statutory or common law privilege, including the work-product privilege or the attorney-client privilege.
- (2) Any existing ability or authority under State law to challenge privilege.
- (3) An enforcement agency's ability to obtain or use documents or information that the agency otherwise has the authority to obtain under State law adopted pursuant to federally delegated programs.

"§ 8-58.61. Voluntary disclosure; limited immunity from civil and administrative penalties and fines.

(a) An owner or operator of a facility is immune from imposition of civil and administrative penalties and fines for a violation of environmental laws voluntarily disclosed subject to the requirements and criteria set forth in this section. Provided, however, that waiver of penalties and fines shall not be granted until the applicable enforcement agency has certified

that the violation was corrected within a reasonable period of time. If compliance is not certified by the enforcement agency, the enforcement agency shall retain discretion to assess penalties and fines for the violation.

(b) If a person or entity makes a voluntary disclosure of a violation of environmental laws discovered through performance of an environmental audit, that person has the burden of proving (i) that the disclosure is voluntary by establishing the elements set forth in subsection (c) of this section and (ii) that the person is therefore entitled to immunity from any administrative or civil penalties associated with the issues disclosed. Nothing in this section may be construed to provide immunity from criminal penalties.

(c) For purposes of this section, disclosure is voluntary if all of the following criteria are met:

- (1) The disclosure is made within 14 days following a reasonable investigation of the violation's discovery through the environmental audit.
- (2) The disclosure is made to an enforcement agency having regulatory authority over the violation disclosed.
- (3) The person or entity making the disclosure initiates an action to resolve the violation identified in the disclosure in a diligent manner.
- (4) The person or entity making the disclosure cooperates with the applicable enforcement agency in connection with investigation of the issues identified in the disclosure.
- (5) The person or entity making the disclosure diligently pursues compliance and promptly corrects the noncompliance within a reasonable period of time.

(d) A disclosure is not voluntary for purposes of this section if any of the following factors apply:

- (1) Specific permit conditions require monitoring or sampling records and reports or assessment plans and management plans to be maintained or submitted to the enforcement agency pursuant to an established schedule.
- (2) Environmental laws or specific permit conditions require notification of releases to the environment.
- (3) The violation was committed intentionally, willfully, or through criminal negligence by the person or entity making the disclosure.
- (4) The violation was not corrected in a diligent manner.
- (5) The violation posed or poses a significant threat to public health, safety, and welfare; the environment; and natural resources.
- (6) The violation occurred within one year of a similar prior violation at the same facility, and immunity from civil and administrative penalties was granted by the applicable enforcement agency for the prior violation.
- (7) The violation has resulted in a substantial economic benefit to the owner or operator of the facility.
- (8) The violation is a violation of the specific terms of a judicial or administrative order.

(e) If a person meets the burden of proving that the disclosure is voluntary, the burden shifts to the enforcement agency to prove that the disclosure was not voluntary, based upon the factors set forth in this section. The person claiming immunity from civil or administrative penalties or fines under this section retains the ultimate burden of proving the violations were voluntarily disclosed.

(f) A voluntary disclosure made pursuant to this section is subject to disclosure pursuant to the Public Records Act in accordance with the provisions of Chapter 132 of the General Statutes.

"§ 8-58.62. Additional limitations on exercise of privilege or immunity.

An owner or operator of a facility who makes a voluntary disclosure of a violation of environmental laws discovered through performance of an environmental audit shall only be entitled to exercise of the privilege or immunity established by this Part once in a two-year period, not more than twice in a five-year period, and not more than three times in a 10-year period.

"§ 8-58.63. Preemption of local laws.

No local law, rule, ordinance, or permit condition may circumvent or limit the privilege established by this Part or the exercise of the privileges or the presumption and immunity established by this Part."

SECTION 4.1.(b) No later than 30 days after this bill becomes law, the Department of Environment and Natural Resources shall submit Part 7D of Chapter 8 of the General Statutes, Environmental Audit Privilege and Limited Immunity, as enacted by this section, to the United States Environmental Protection Agency and shall request the Agency's approval to implement the Part in concert with the State's legal authority to continue administering delegated, approved, or authorized federal environmental programs within the State.

SECTION 4.1.(c) No later than December 1, 2015, the Department shall report to the Environmental Review Commission on its activities conducted pursuant to subsection (b) of this section and shall report monthly thereafter until approval to implement Part 7D of Chapter 8 of the General Statutes, Environmental Audit Privilege and Limited Immunity, as enacted by this section, is received from the United States Environmental Protection Agency.

SECTION 4.1.(d) This section becomes effective upon the date approval to implement Part 7D of Chapter 8 of the General Statutes, Environmental Audit Privilege and Limited Immunity, as enacted by this section, is received from the United States Environmental Protection Agency.

STUDY COMPUTER EQUIPMENT, TELEVISION, AND ELECTRONICS RECYCLING PROGRAM

SECTION 4.2. The Department of Environment and Natural Resources shall, in consultation with the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the Consumer Electronics Association, the Retail Merchants Association, and representatives of the recycling and waste management industries, study North Carolina's recycling requirements for discarded computer equipment and televisions. In conducting this study, the Department shall consider (i) the changing waste stream, including the transition from televisions containing cathode ray tubes to flat screen televisions; (ii) the current status of North Carolina's recycling system, including cost and financing issues, and options that may be available to reduce costs and establish sufficient funding to cover necessary costs; (iii) opportunities for more efficient and effective recycling systems; and (iv) any other issue the Department deems relevant. The Department shall report its findings, including specific recommendations for legislative action, to the Environmental Review Commission on or before April 1, 2016.

PROHIBIT IMPLEMENTATION AND ENFORCEMENT OF FEDERAL STANDARDS FOR WOOD HEATERS

SECTION 4.3.(a) G.S. 143-215.107 reads as rewritten:

"§ 143-215.107. **Air quality standards and classifications.**

(a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

...
 (10) ~~To~~ Except as provided in subsection (h) of this section, to develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency.

...
 (h) With respect to any regulation adopted by the United States Environmental Protection Agency limiting emissions from wood heaters and adopted after May 1, 2014, neither the Commission nor the Department shall do any of the following:

- (1) Issue rules limiting emissions from wood heaters to implement the federal regulations described in this subsection.
- (2) Enforce against a manufacturer, distributor, or consumer the federal regulations described in this subsection."

SECTION 4.3.(b) G.S. 143-213 is amended by adding a new subdivision to read:

"(31) "Wood heater" means a fireplace, wood stove, pellet stove, wood-fired hydronic heater, wood-burning forced-air furnace, or masonry wood heater or other similar appliance designed for heating a residence or business or for heating water for use by a residence through the combustion of wood or products substantially composed of wood."

AMEND RISK-BASED REMEDIATION PROVISIONS

SECTION 4.7.(a) Part 8 of Article 9 of Chapter 130A of the General Statutes reads as rewritten:

"Part 8. Risk-Based Environmental Remediation of ~~Industrial~~ Sites.

"§ 130A-310.65. Definitions.

As used in this Part:

- (1) "Background standard" means the naturally occurring concentration of a substance in the absence of the release of a contaminant.
- (2) Repealed by Session Laws 2014-122, s. 11(i), effective September 20, 2014.
- (3) "Contaminant" means any substance regulated under any program listed in G.S. 130A-310.67(a).
- (3a) "Contaminated off-site property" or "off-site property" means property under separate ownership from the contaminated site that is contaminated as a result of a release or migration of contaminants at the contaminated site. This term includes publicly owned property, including rights-of-way for public streets, roads, or sidewalks.
- (4) ~~"Contaminated industrial site" site," "source site," or "site" means any real property that meets all of the following criteria:~~
 - a. ~~The property is contaminated is contaminated, and is the property from which the contamination originated, and may be subject to remediation under any of the programs or requirements set out in G.S. 130A-310.67(a).~~
 - b. ~~The property is or has been used primarily for manufacturing or other industrial activities for the production of a commercial product. This includes a property used primarily for the generation of electricity.~~
 - e. ~~No contaminant associated with activities at the property is located off of the property at the time the remedial action plan is submitted.~~
 - d. ~~No contaminant associated with activities at the property will migrate to any adjacent properties above unrestricted use standards for the contaminant.~~
- (5) "Contamination" means a contaminant released into an environmental medium that has resulted in or has the potential to result in an increase in the concentration of the contaminant in the environmental medium in excess of unrestricted use standards.
- (6) "Fund" means the ~~Inactive Hazardous Sites Cleanup~~ Risk-Based Remediation Fund established pursuant to ~~G.S. 130A-310.11~~ G.S. 130A-310.76.
- (7) "Institutional controls" means nonengineered measures used to prevent unsafe exposure to contamination, such as land-use restrictions.
- (8) "Registered environmental consultant" means an environmental consulting or engineering firm approved to implement and oversee voluntary remedial actions pursuant to Part 3 of Article 9 of Chapter 130A of the General Statutes and rules adopted to implement the Part.
- (9) "Remedial action plan" means a plan for eliminating or reducing contamination or exposure to contamination.
- (10) "Remediation" means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.
- (11) "Systemic toxicant" means any substance that may enter the body and have a harmful effect other than causing cancer.
- (12) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses; that are protective of public health, safety, and welfare and the environment; and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Commission or the Department.

"§ 130A-310.66. Purpose.

It is the purpose of this Part to authorize the Department to approve the remediation of contaminated ~~industrial~~ sites based on site-specific remediation standards in circumstances where site-specific remediation standards are adequate to protect public health, safety, and welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination.

"§ 130A-310.67. Applicability.

(a) This Part applies to contaminated ~~industrial~~ sites subject to remediation pursuant to any of the following programs or requirements:

- (1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9 of Chapter 130A of the General Statutes, including voluntary actions under G.S. 130A-310.9 of that act, and rules promulgated pursuant to those statutes.
- (2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended, and Article 9 of Chapter 130A of the General Statutes.
- (3) The solid waste management program administered pursuant to Article 9 of Chapter 130A of the General Statutes.
- (4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article 9 of Chapter 130A of the General Statutes.
- (5) The groundwater protection corrective action requirements adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes.
- (6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General ~~Statutes~~. Statutes, except with respect to those sites identified in subdivision (1a) of subsection (b) of this section.

(b) This Part shall not apply to contaminated ~~industrial~~ sites subject to remediation pursuant to any of the following programs or requirements:

- (1) The Leaking Petroleum Underground Storage Tank Cleanup program under Part 2A of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.
- (1a) Leaking petroleum aboveground storage tanks and other sources of petroleum releases governed by Part 7 of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that Part.
- (2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.
- (3) The pre-1983 landfill assessment and remediation program established under G.S. 130A-310.6(c) through (g).
- (4) The Coal Ash Management Act of 2014 under Part 2I of Article 9 of Chapter 130A of the General Statutes and rules promulgated pursuant to that Part.
- (5) Animal waste management systems permitted under Part 1 or Part 1A of Article 21 of Chapter 143 of the General Statutes.

(c) ~~This Part shall apply only to sites where a discharge, spill, or release of contamination has been reported to the Department prior to March 1, 2011.~~

"§ 130A-310.68. Remediation standards.

...
 (b) Site-specific remediation standards shall be developed for each medium as provided in this subsection to achieve remediation that eliminates or reduces to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based upon the present or currently planned future use of the property comprising the site. Site-specific remediation standards shall be developed in accordance with all of the following:

- (1) Remediation methods and technologies that result in emissions of air pollutants shall comply with applicable air quality standards adopted by the Commission.
- (2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Commission.
- (3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated whether the receptors are located on or off the site where the source of contamination is located. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.
- (4) Permits for facilities located at sites covered by any of the programs or requirements set out in G.S. 130A-310.67(a) shall contain conditions to avoid exceedances of applicable groundwater standards adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to operation of the facility.
- (5) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.
- (6) Soil shall be remediated to unrestricted use standards on residential property with the following exceptions:
 - a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to contaminated soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.
 - b. If soil remediation is impracticable because of the presence of preexisting structures or impracticability of removal, all areas of the real property at which a person may come into contact with soil shall be remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.
- (7) The potential for human inhalation of contaminants from the outdoor air and other site-specific indoor air exposure pathways shall be considered, if applicable.
- (8) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.
- (9) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart from the one-in-1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9)(July 1, 2003 Edition). The cumulative excess lifetime cancer risk to an exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.
- (10) For systemic toxicants, site-specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effect during a lifetime or part of a lifetime. Site-specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases where two or more systemic toxicants affect the same organ or organ system.
- (11) The site-specific remediation standards for each medium shall be adequate to avoid foreseeable adverse effects to other media or the environment that are inconsistent with the risk-based approach under this Part.

...

"§ 130A-310.71. Review and approval of proposed remedial action plans.

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall do all of the following:

- (1) Determine whether site-specific remediation standards are appropriate for a particular contaminated site. In making this determination, the Department shall consider proximity of the contamination to water supply wells or other receptors; current and probable future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.
- (2) Determine whether the party conducting the remediation has adequately demonstrated through modeling or other scientific means acceptable to the Department that no contamination will migrate to ~~adjacent off-site~~ property at levels above unrestricted use ~~standards~~standards, except as may remain pursuant to a cleanup conducted pursuant to G.S. 130A-310.73A(a)(2).
- (3) Determine whether the proposed remedial action plan meets the requirements of G.S. 130A-310.69.
- (4) Determine whether the proposed remedial action plan meets the requirements of any other applicable remediation program except those pertaining to remediation standards.
- (5) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.
- (6) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated site at the conclusion of the contaminant-reduction phase of the remediation.
- (7) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.
- (8) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.
- (9) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment. In making this determination, the Department may consider, in lieu of land-use restrictions authorized under G.S. 130A-310.69, reliance on other State or local land-use controls. Any land-use controls implemented shall adequately protect public health, safety, and welfare and the environment and provide adequate notice to current and future property owners of any residual contamination and the land-use controls in place.
- (10) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan has the burden of demonstrating with reasonable assurance that contamination from the site will not migrate to ~~adjacent off-site~~ property above unrestricted use ~~levels~~levels, except as may remain pursuant to a cleanup conducted pursuant to G.S. 130A-310.73A(a)(2), and that the remedial action plan is protective of public health, safety, and welfare and the environment by virtue of its compliance with this Part. The demonstration shall (i) take into account actions proposed in the remedial action plan that will prevent contamination from migrating off the site; and (ii) use scientifically valid site-specific data.

(c) The Department may require a person who proposes a remedial action plan to supply any additional information necessary for the Department to approve or disapprove the plan.

(d) In making a determination on a proposed remedial action plan, the Department shall consider the information provided by the person who proposes the remedial action plan as well as information provided by local governments and adjoining landowners pursuant to G.S. 130A-310.70. The Department shall disapprove a proposed remedial action plan unless the

Department finds that the plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. If the Department disapproves a proposed remedial action plan, the person who submitted the plan may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or disapprove a proposed remedial action plan within 120 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved at the end of that time period.

(e) If, pursuant to subdivision (9) of subsection (a) of this section, reliance on other State or local land-use controls is approved by the Department in lieu of land-use restrictions, a "Notice of Residual Contamination" shall be prepared and filed in the chain of title of each contaminated site or contaminated off-site property where any contamination has or will in the future exceed unrestricted use standards. The Notice shall identify the type of contamination on the site or property and the land-use controls that address the contamination and may be filed by the person who proposes to remediate the site. Provided, however, the Department may only approve imposition of land-use controls on contaminated off-site property with the written consent of the owner of the property in conformance with G.S. 130A-310.73A(a)(2).

...
"§ 130A-310.73. Attainment of the remediation standards.

(a) Compliance with the approved remediation standards is attained for a site or portion of a site when a remedial action plan approved by the Department has been implemented and applicable soil, groundwater, surface water, and air emission standards have been attained. The remediation standards may be attained through a combination of remediation activities that can include treatment, removal, engineering, or institutional controls, except that the person conducting the remediation may not demonstrate attainment of ~~an unrestricted use a remediation standard or a background standard~~ through the use of institutional controls ~~alone~~ that result in an incompatible use of the property relative to surrounding land uses. When the remedial action plan has been fully implemented, the person conducting the remediation shall submit a final report to the Department, with notice to all local governments with taxing and land-use jurisdiction over the site, that demonstrates that the remedial action plan has been fully implemented, that any land-use restrictions have been certified on an annual basis, and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a determination that no further remediation beyond that specified in the approved remedial action plan is required.

(b) The person conducting the remediation has the burden of demonstrating that the remedial action plan has been fully implemented and that the remediation standards have been attained in compliance with the requirements of this Part. The Department may require a person who implements the remedial action plan to supply any additional information necessary for the Department to determine whether the remediation standards have been attained.

(c) The Department shall review the final report, and, upon determining that the person conducting the remediation has completed remediation to the approved remediation standard and met all the requirements of the approved remedial action plan, the Department shall issue a determination that no further remediation beyond that specified in the approved remedial action plan is required at the site. Once the Department has issued a no further action determination, the Department may require additional remedial action by the responsible party only upon finding any of the following:

- (1) Monitoring, testing, or analysis of the site subsequent to the issuance of the no further action determination indicates that the remediation standards and objectives were not achieved or are not being maintained.
- (2) One or more of the conditions, restrictions, or limitations imposed on the site as part of the remediation have been violated.
- (3) Site monitoring or operation and maintenance activities that are required as part of the remedial action plan or no further action determination for the site are not adequately funded or are not adequately implemented.
- (4) A contaminant or hazardous substance release is discovered at the site that was not the subject of the remedial investigation report or the remedial action plan.
- (5) A material change in the facts known to the Department at the time the written no further action determination was issued, or new facts, cause the

Department to find that further assessment or remediation is necessary to prevent a significant risk to human health and safety or to the environment.

- (6) The no further action determination was based on fraud, misrepresentation, or intentional nondisclosure of information by the person conducting the remediation, remediation, or that person's agents, contractors, or affiliates.
- (7) Installation or use of wells would induce the flow of contaminated groundwater off the ~~site~~-contaminated site, as defined in the remedial action plan.

(d) The Department shall issue a final decision on a request for a determination that remediation has been completed to approved standards and that no further remediation beyond that specified in the approved remedial action plan is required within 180 days after receipt of a complete final report. Failure of the Department to issue a final decision on a no further remediation determination within 180 days after receipt of a complete final report and request for a determination of no further remediation may be treated as a denial of the request for a no further remediation determination. The responsible person may seek review of a denial of a request for a release from further remediation as provided in Article 3 of Chapter 150B of the General Statutes.

"§ 130A-310.73A. Remediation of sites with off-site migration of contaminants.

(a) Contaminated sites at which contamination has migrated to off-site properties may be remediated pursuant to this Part consistent with the remediation standards set out in G.S. 130A-310.68 if either of the following occur:

- (1) The person who proposes to conduct the remediation pursuant to this Part remediates the contaminated off-site property to unrestricted use standards.
- (2) The person who proposes to conduct the remediation pursuant to this Part (i) provides the owner of the contaminated off-site property with a copy of this Part and the publication produced by the Department pursuant to subsection (b) of this section and (ii) obtains written consent from the owner of the contaminated off-site property for the person to remediate the contaminated off-site property using site-specific remediation standards pursuant to this Part; provided that the site-specific remediation standards shall not allow concentrations of contaminants on the off-site property to increase above the levels present on the date the written consent is obtained. Written consent from the owner of the off-site property shall be on a form prescribed by the Department and include an affirmation that the owner has received and read the publication and authorizes the person to remediate the owner's property using site-specific remediation standards pursuant to this Part.

(b) In order to inform owners of contaminated off-site property of the issues and liabilities associated with the contamination on their property, the Department, in consultation with the Consumer Protection Division of the North Carolina Department of Justice and the North Carolina Real Estate Commission, shall develop and make available a publication entitled "Contaminated Property: Issues and Liabilities" to provide information on the nature of risk-based remediation and how it differs from remediation to unrestricted use standards, potential health impacts that may arise from residual contamination, as well as identification of liabilities that arise from contaminated property and associated issues, including potential impacts to real estate transactions and real estate financing. The Department shall update the publication as necessary.

(c) If, after issuance of a no further action determination, the Department determines that additional remedial action is required for a contaminated off-site property pursuant to G.S. 130A-310.73(c), the responsible party shall be liable for the additional remediation deemed necessary.

(d) Nothing in this section shall be construed to preclude or impair any person from obtaining any and all other remedies allowed by law.

"§ 130A-310.74. Compliance with other laws.

Where a site is covered by an agreement under the Brownfields Property Reuse Act of 1997, as codified as Part 5 of Article 9 of Chapter 130A of the General Statutes, any work performed by the prospective developer pursuant to that agreement is not required to comply with this Part, but any work not covered by such agreement and performed at the site by another person not a party to that agreement may be performed pursuant to this Part.

"§ 130A-310.75. Use of registered environmental consultants.

The Department may approve the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this ~~Part~~Part based on the risk posed by the site and the availability of Department staff for oversight of remediation activities. If remediation under this Part is not undertaken voluntarily, the Department may not require the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part.

"§ 130A-310.76. Fees; permissible uses of fees.

(a) ~~A person who undertakes remediation of environmental contamination under site specific remediation standards as provided in G.S. 130A-310.68 shall pay a fee to the Fund in an amount equal to four thousand five hundred dollars (\$4,500) for each acre or portion of an acre of contamination, including any area that will become contaminated as a result of the release; however, no person shall be required to pay more than one hundred twenty five thousand dollars (\$125,000) to the Fund for any individual site, regardless of its size. This one time fee shall be payable at the time the person undertaking remediation submits the remedial action plan to the Department.~~The following fees, payable to the Risk-Based Remediation Fund established under G.S. 130A-310.76A, are applicable to activities under this Part:

- (1) Application fee. – A person who proposes to conduct remediation pursuant to this Part shall pay an application fee due at the time a proposed remedial action plan is submitted to the Department for approval. The application fee shall not exceed five thousand dollars (\$5,000) for each acre or portion of an acre of contamination, including any area that will become contaminated as a result of the release; however, no person shall be required to pay more than one hundred thousand dollars (\$100,000) in fees attributable to this subdivision to the Fund, with the total amount owed calculated by the Department after evaluation of the factors set forth in subsection (a1) of this section and any rules promulgated thereunder.
- (2) Oversight fee. – A person who has been approved by the Department to conduct a remedial action plan pursuant to this Part shall pay an oversight fee to the Department within 30 days of such approval or at such other time as the Department may authorize. The total ongoing oversight fees shall not exceed five hundred dollars (\$500.00) for each acre or portion of an acre of contamination, including any area that will become contaminated as a result of the release; however, no person shall be required to pay more than twenty-five thousand dollars (\$25,000) in fees attributable to this subdivision to the Fund, with the total amount owed calculated by the Department after evaluation of the factors set forth in subsection (a1) of this section and any rules promulgated thereunder.

(a1) The Department shall take all of the following factors into account prior to imposing a fee on a person pursuant to subsection (a) of this section and provide the person written documentation of the Department's findings with respect to each factor at the time the fee is imposed:

- (1) The size of the site subject to a proposed remedial action plan.
- (2) Whether groundwater contamination from the site has migrated, or is likely to migrate, to off-site properties.
- (3) The complexity of the work to be conducted at a site under a proposed remedial action plan.
- (4) The resources that the Department will need to evaluate and oversee the work to be conducted at a site under a proposed remedial action plan and the resources the Department will need to monitor a site after completion of remediation. If such work, or any portion thereof, is to be performed by a registered environmental consultant in accordance with the provisions of G.S. 130A-310.75, the Department shall take this into account accordingly in imposing a reduced fee.

(b) Funds collected pursuant to subsection (a) of this section may be used only for the following purposes:

- (1) To pay for administrative and operating expenses necessary to implement this ~~Part~~Part, including the full cost of the Department's activities associated

with any human health or ecological risk assessments, groundwater modeling, financial assurance matters, or community outreach.

- (2) To establish, administer, and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated pursuant to this Part.

(c) The Department shall report to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Fiscal Research Division on or before October 1 of each year on the amounts and sources of funds collected by year received pursuant to this Part, the amounts and sources of those funds paid into the Risk-Based Remediation Fund established under G.S. 130A-310.76A, the number of acres of contamination for which funds have been received pursuant to subsection (a) of this section, and a detailed annual accounting of how the funds collected pursuant to this Part have been utilized by the Department to advance the purposes of this Part.

(d) The Commission may adopt rules to implement the requirements of subsection (a1) of this section.

"§ 130A-310.76A. Risk-Based Remediation Fund.

There is established under the control and direction of the Department the Risk-Based Remediation Fund. This fund shall be a revolving fund consisting of fees collected pursuant to G.S. 130A-310.76 and other monies paid to it or recovered by or on behalf of the Department. The Risk-Based Remediation Fund shall be treated as a nonreverting special trust fund pursuant to G.S. 147-69.2 and G.S. 147-69.3, except that interest and other income received on the Fund balance shall be treated as set forth in G.S. 147-69.1(d).

...."

SECTION 4.7.(b) Article 21A of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 7. Risk-Based Remediation for Petroleum Releases from Aboveground Storage Tanks and Other Sources.

"§ 143-215.104AA. Standards for petroleum releases from aboveground storage tanks and other sources.

(a) Legislative Findings and Intent. –

(1) The General Assembly finds the following:

- a. Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics and allowing no action or no further action at sites that pose little risk to human health or the environment.
- b. A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.
- c. Risk-based corrective action has successfully been used to clean up contamination from petroleum underground storage tanks, as well as contamination at sites governed by other environmental programs.

(2) The General Assembly intends the following:

- a. To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases of petroleum from aboveground storage tanks and other sources. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based analysis to determine the appropriate cleanup levels and actions.
- b. That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.
- c. That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.
- d. That these rules, and decisions of the Commission and the Department in implementing these rules, facilitate the completion of more cleanups in a shorter period of time.

(b) The Commission shall adopt rules to establish a risk-based approach for the cleanup of discharges and releases of petroleum from aboveground storage tanks and other sources. At a minimum, the rules shall address all of the following:

- (1) The circumstances where site-specific information should be considered.
- (2) Criteria for determining acceptable cleanup levels.
- (3) The acceptable level or range of levels of risk to human health and the environment. Rules that use the distance between a source area of a confirmed discharge or release to a water supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk.
- (4) Remediation standards and processes.
- (5) Requirements for financial assurance, where the Commission deems it necessary.
- (6) Appropriate fees to be applied to persons who undertake remediation of environmental contamination under site-specific remediation pursuant to this Part to pay for administrative and operating expenses necessary to implement this Part and rules adopted to implement this Part.

(c) The Commission may require an owner, operator, or landowner to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge or release of petroleum from an aboveground storage tank or other source.

(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify an owner, operator, or landowner who provides the information required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment. If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that requires further cleanup, the Commission shall notify the owner, operator, or landowner who provides the information required by subsection (c) of this section of the cleanup method approved by the Commission. This section shall not be construed to prohibit an owner, operator, or landowner from selecting a cleanup method other than the cleanup method approved by the Commission so long as the Commission determines that the alternative cleanup method will address imminent threats to human health and the environment.

(e) Remediation of sites with off-site migration shall be subject to the following provisions:

- (1) Contaminated sites at which contamination has migrated to off-site properties may be remediated pursuant to this Part if either of the following occur:
 - a. The person who proposes to conduct the remediation pursuant to this Part remediates the contaminated off-site property to unrestricted use standards.
 - b. The person who proposes to conduct the remediation pursuant to this Part (i) provides the owner of the contaminated off-site property with a copy of this Part and the publication produced by the Department pursuant to subdivision (2) of this subsection and (ii) obtains written consent from the owner of the contaminated off-site property for the person to remediate the contaminated off-site property using site-specific remediation standards pursuant to this Part. Provided that the site-specific remediation standards shall not allow concentrations of contaminants on the off-site property to increase above the levels present on the date the written consent is obtained. Written consent from the owner of the off-site property shall be on a form prescribed by the Department and include an affirmation that the owner has received and read the publication and authorizes the person to remediate the owner's property using site-specific remediation standards pursuant to this Part.

- (2) In order to inform owners of contaminated off-site property of the issues and liabilities associated with the contamination on their property, the Department, in consultation with the Consumer Protection Division of the North Carolina Department of Justice and the North Carolina Real Estate Commission, shall develop and make available a publication entitled "Contaminated Property: Issues and Liabilities" to provide information on the nature of risk-based remediation and how it differs from remediation to unrestricted use standards, potential health impacts that may arise from residual contamination, as well as identification of liabilities that arise from contaminated property and associated issues, including potential impacts to real estate transactions and real estate financing. The Department shall update the publication as necessary.
- (3) If, after issuance of a no further action determination, the Department determines that additional remedial action is required for a contaminated off-site property, the responsible party shall be liable for the additional remediation deemed necessary.
- (4) Nothing in this subsection shall be construed to preclude or impair any person from obtaining any and all other remedies allowed by law.

(f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a determination by the Commission under subsection (d) of this section as to whether cleanup, further cleanup, or further action will be required. Notwithstanding any authority provided under this section to the Commission and the Department allowing use of a risk-based approach for the cleanup of discharges and releases of petroleum from aboveground storage tanks and other sources, a responsible party shall, at a minimum, do all of the following:

- (1) Perform initial abatement actions to (i) measure for the presence of a release where contamination is most likely to be present and to confirm the precise source of the release; (ii) determine the possible presence of free product and to begin free product removal immediately; (iii) continue to monitor and mitigate any additional fire, vapor, or explosion hazards posed by vapors or by free product; and (iv) submit a report summarizing these initial abatement actions within 20 days after a discharge or release. For purposes of this subdivision, the term "free product" means a non-aqueous phase liquid which may be present within the saturated zone or in surface water.
- (2) Remove, or in situ remediate, contaminated soil or free product that would act as a continuing source of contamination to groundwater. Actions conducted in conformance with this subdivision shall require approval by the Department.

(g) This section shall apply to discharges of petroleum from aboveground storage tanks and other sources not otherwise governed by the provisions of G.S. 143-215.94V."

SECTION 4.7.(c) G.S. 130A-310.8 is amended by adding a new subsection to read:

"§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.

...
 (i) If a site subject to the requirements of this section is remediated pursuant to the requirements of Part 8 of Article 9 of Chapter 130A of the General Statutes, a Notice of Residual Contamination may be prepared and filed in accordance with G.S. 130A-310.71(a)(9), in lieu of a Notice prepared and filed pursuant to this section."

SECTION 4.7.(d) G.S. 143-215.85A is amended by adding a new subsection to read:

"§ 143-215.85A. Recordation of oil or hazardous substance discharge sites.

...
 (g) If a site subject to the requirements of this section is remediated pursuant to the requirements of Part 8 of Article 9 of Chapter 130A of the General Statutes, a Notice of Residual Contamination may be prepared and filed in accordance with G.S. 130A-310.71(a)(9), in lieu of a Notice prepared and filed pursuant to this section."

SECTION 4.7.(e) G.S. 143B-279.10 is amended by adding a new subsection to read:

"§ 143B-279.10. Recordation of contaminated sites.

...
 (i) If a site subject to the requirements of this section is remediated pursuant to the requirements of Part 8 of Article 9 of Chapter 130A of the General Statutes, a Notice of Residual Contamination may be prepared and filed in accordance with G.S. 130A-310.71(a)(9), in lieu of a Notice prepared and filed pursuant to this section."

SECTION 4.7.(f) G.S. 130A-310.10(a)(8a) is repealed.

SECTION 4.8.(a) No later than March 1, 2016, the Department of Environment and Natural Resources shall do all of the following:

- (1) Develop internal processes to govern remediation of contaminated sites conducted under this Part that are consistent across all programs or requirements identified in subsection (a) of G.S. 130A-310.67.
- (2) Develop a coordinated program and processes for remediation of contaminated sites conducted under this Part that are subject to more than one program or requirement identified in subsection (a) of G.S. 130A-310.67.
- (3) Develop reforms to expand the role, and otherwise enhance the use of, registered environmental consultants approved to implement and oversee voluntary remedial actions pursuant to this Part.
- (4) Examine the criteria for development of site-specific remediation standards pursuant to this Part, specifically distances between water bodies and other receptors to plumes of contamination that originate from the source, to ensure that such standards are protective of public health, safety, and welfare; the environment; and natural resources.

SECTION 4.8.(b) No later than April 1, 2016, the Department shall report to the Environmental Review Commission on its activities conducted pursuant to subsection (a) of this section, together with any pertinent findings or recommendations, including any legislative proposals that it deems advisable.

SECTION 4.8A.(a) The Department of Environment and Natural Resources, in conjunction with the Department of Health and Human Services, shall study the State's groundwater standards under 15A NCAC 2L, or State Interim Allowable Maximum Contaminant Levels (IMAC), as applicable, as well as State health screening levels, for hexavalent chromium and vanadium relative to other southeastern states' standards for these contaminants and the federal maximum contaminant levels (MCLs) for these contaminants under the Safe Drinking Water Act, in order to identify appropriate standards to protect public health, safety, and welfare; the environment; and natural resources. The Department shall also evaluate background standards for these contaminants where they naturally occur in groundwater in the State.

SECTION 4.8A.(b) The Department shall submit an interim report no later than November 1, 2015, and a final report no later than April 1, 2016, to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services on its activities conducted pursuant to subsection (a) of this section, together with any pertinent findings or recommendations, including any legislative proposals that it deems advisable.

MODIFY EFFECTIVE DATE FOR LIFE-OF-SITE PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS AND MAKE OTHER TECHNICAL, CLARIFYING, AND CONFORMING CHANGES

SECTION 4.9.(a) Section 14.20(a) of S.L. 2015-241 reads as rewritten:

"SECTION 14.20.(a) G.S. 130A-294 reads as rewritten:
"§ 130A-294. Solid waste management program.

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

- ...
 (4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. Demolition debris from the decommissioning of manufacturing buildings, including electric

generating stations, that is disposed of on the same site as the decommissioned buildings, is exempt from the permit requirement of this section and rules adopted pursuant to this section and shall be governed by G.S. 130A-301.3. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

(a2) ~~Permits for sanitary landfills and transfer stations shall be issued for (i) a design and operation phase of five years or (ii) a design and operation phase of 10 years. A permit issued for a design and operation phase of 10 years shall be subject to a limited review within five years of the issuance date.~~ the life-of-site of the facility unless revoked as otherwise provided under this Article or upon the expiration of any local government franchise required for the facility pursuant to subsection (b1) of this section. For purposes of this section, "life-of-site" means the period from the initial receipt of solid waste at the facility until the Department approves final closure of the facility. Permits issued pursuant to this subsection shall take into account the duration of any permits previously issued for the facility and the remaining capacity at the facility.

(a3) As used in this section, the following definitions apply:

(1) "New permit" means any of the following:

- a. An application for a permit for a solid waste management facility that has not been previously permitted by the Department. The term includes one site suitability review, the initial permit to construct, and one permit to operate.
- b. An application that proposes to expand the permitted activity of the waste management facility through an increase of ten percent (10%) or more in (i) the population of the geographic area to be served by the sanitary landfill; (ii) the quantity of solid waste to be disposed of in the sanitary landfill; or (iii) the geographic area to be served by the sanitary landfill.
- c. An application that includes a proposed expansion to the boundary of a waste disposal unit within a permitted solid waste management facility.
- d. An application that includes a proposed change in the categories of solid waste to be disposed of in the sanitary landfill.
- e. An application for a permit to be issued pursuant to G.S. 130A-294(a2), which is issued for a duration of less than a facility's life-of-site based upon permits previously issued to a facility.

(2) "Permit amendment" means any of the following:

- a. An application for the five-year renewal of a permit for a permitted solid waste management facility or for a permit review of a permitted solid waste management facility. This sub-subdivision shall not apply to sanitary landfills or transfer stations.
- b. Any application that proposes a change in ownership or corporate structure of a permitted solid waste management facility.

(3) "Permit modification" means any of the following:

- a. An application for any change to the plans approved in a permit for a solid waste management facility that does not constitute a "permit amendment" or a "new permit."
- b. An application for a five-year limited review of a 10-year permit, including review of the operations plan, closure plan, post-closure plan, financial assurance cost estimates, environmental monitoring plans, and any other applicable plans for the facility.

(b) The Commission shall adopt and the Department shall enforce rules to implement a comprehensive statewide solid waste management program. The rules shall be consistent with applicable State and federal law; and shall be designed to protect the public health, safety, and welfare; preserve the environment; and provide for the greatest possible conservation of cultural and natural resources. Rules for the establishment, location, operation, maintenance, use, discontinuance, recordation, post-closure care of solid waste management facilities also shall be based upon recognized public health practices and procedures, including applicable epidemiological research and studies; hydrogeological research and studies; sanitary engineering research and studies; and current technological development in equipment and methods. The rules shall not apply to the management of solid waste that is generated by an individual or individual family or household unit on the individual's property and is disposed of on the individual's property.

(b1) (1) For purposes of this subsection and subdivision (4) of subsection (a) of this section, a "substantial amendment" means either:

- a. An increase of ten percent (10%) or more in:
 - 1. The population of the geographic area to be served by the sanitary landfill;
 - 2. The quantity of solid waste to be disposed of in the sanitary landfill; or
 - 3. The geographic area to be served by the sanitary landfill.
- b. A change in the categories of solid waste to be disposed of in the sanitary landfill or any other change to the application for a permit or to the permit for a sanitary landfill that the Commission or the Department determines to be substantial.

(2) A person who intends to apply for a new permit, ~~the renewal of a permit, or a substantial amendment to a permit~~ for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government may adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319. A franchise granted for a sanitary landfill shall be granted for the life-of-site of the landfill and shall include all of the following:

- a. A statement of the population to be served, including a description of the geographic area.
- b. A description of the volume and characteristics of the waste stream.
- c. A projection of the useful life of the sanitary landfill.
- d. Repealed by Session Laws 2013-409, s. 8, effective August 23, 2013.
- e. The procedures to be followed for governmental oversight and regulation of the fees and rates to be charged by facilities subject to the franchise for waste generated in the jurisdiction of the franchising entity.
- f. A facility plan for the sanitary landfill that shall include the boundaries of the proposed facility, proposed development of the facility ~~site in five-year operational phases, site,~~ the boundaries of all waste disposal units, final elevations and capacity of all waste disposal units, the amount of waste to be received per day in tons, the total waste disposal capacity of the sanitary landfill in tons, a description of environmental controls, and a description of any other waste management activities to be conducted at the facility. In addition, the facility plan shall show the proposed location of soil borrow areas, leachate facilities, and all other facilities and infrastructure, including ingress and egress to the facility.

- ...
- (4) An applicant for a new ~~permit, the renewal of a permit, or a substantial amendment to a permit~~ for a sanitary landfill shall request each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the proposed sanitary landfill, or the existing sanitary landfill as it would be operated under the ~~renewed or substantially amended~~ permit, would be consistent with the applicable ordinances. The request to the local government shall be accompanied by a copy of the permit application and shall be delivered to the clerk of the local government personally or by certified mail. In order to serve as a basis for a determination that an application for a new ~~permit, the renewal of a permit, or a substantial amendment to a permit~~ for a sanitary landfill is consistent with a zoning, subdivision, or land-use planning ordinance, an ordinance or zoning classification applicable to the real property designated in the permit application shall have been in effect not less than 90 days prior to the date the request for a determination of consistency is delivered to the clerk of the local government. The determination shall be verified or supported by affidavit signed by the chief administrative officer, the chief administrative officer's designee, clerk, or other official designated by the local government to make the determination and, if the local government states that the sanitary landfill as it would be operated under the ~~new, renewed, or substantially amended~~ new permit is inconsistent with a franchise, zoning, subdivision, or land-use planning ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of the determination shall be provided to the applicant when the determination is submitted to the Department. The Department shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant; provided that if a local government fails to submit a determination to the Department as provided by this subsection within 15 days after receipt of the request, the Department shall proceed to consider the permit application without regard to a franchise, local zoning, subdivision, and land-use planning ordinances. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the sanitary landfill as it would be operated under the ~~new, renewed, or substantially amended~~ new permit is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Department shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the sanitary landfill under the permit, comply with all lawfully adopted local ordinances cited in the determination that apply to the sanitary landfill. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.
- (5) As used in this subdivision, "coal-fired generating unit" and "investor-owned public utility" have the same meaning as in G.S. 143-215.107D(a). Notwithstanding subdivisions (a)(4), (b1)(3), or (b1)(4) of this section, no franchise shall be required for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D.

...."

SECTION 4.9.(b) Section 14.20(a) of S.L. 2015-241 reads as rewritten:

"SECTION 14.20.(c) G.S. 130A-295.8 reads as rewritten:

"§ 130A-295.8. Fees applicable to permits for solid waste management facilities.

(a) The Solid Waste Management Account is established as a nonreverting account within the Department. All fees collected under this section shall be credited to the Account and shall be used to support the solid waste management program established pursuant to G.S. 130A-294.

(b) As used in this section:

(1) ~~"Major permit modification" means an application for any change to the approved engineering plans for a sanitary landfill or transfer station permitted for a 10 year design capacity that does not constitute a "permit amendment," "new permit," or "permit modification."~~

(1a) ~~"New permit" means any of the following:~~

a. ~~An application for a permit for a solid waste management facility that has not been previously permitted by the Department. The term includes one site suitability review, the initial permit to construct, and one permit to operate the constructed portion of a phase included in the permit to construct.~~

b. ~~An application that proposes to expand the boundary of a permitted waste management facility for the purpose of expanding the permitted activity.~~

c. ~~An application that includes a proposed expansion to the boundary of a waste disposal unit within a permitted solid waste management facility.~~

d. ~~An application for a substantial amendment to a solid waste permit, as defined in G.S. 130A-294.~~

(2) ~~"Permit amendment" means any of the following:~~

a. ~~An application for a permit to construct and one permit to operate for the second and subsequent phases of landfill development described in the approved facility plan for a permitted solid waste management facility.~~

b. ~~An application for the five year renewal of a permit for a permitted solid waste management facility or for a permit review of a permitted solid waste management facility.~~

c. ~~Any application that proposes a change in ownership or corporate structure of a permitted solid waste management facility.~~

(3) ~~"Permit modification" means any of the following:~~

a. ~~An application for any change to the plans approved in a permit for a solid waste management facility that does not constitute a "permit amendment" or a "new permit".~~

b. ~~A second or subsequent permit to operate for a constructed portion of a phase included in the permit to construct.~~

c. ~~An application for a five year limited review of a 10 year permit, including review of the operations plan, closure plan, post-closure plan, financial assurance cost estimates, environmental monitoring plans, and any other applicable plans for the facility.~~

(c) ~~An applicant for a permit shall pay an application fee upon submission of an application according to the following schedule:~~

(1) ~~Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, New Permit (Five Year) — \$25,000.~~

(1a) ~~Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, New Permit (Ten Year) — \$38,500.~~

(2) ~~Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, Amendment (Five Year) — \$15,000.~~

(2a) ~~Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, Amendment (Ten Year) — \$28,500.~~

(3) ~~Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, Modification (Five Year) — \$1,500.~~

- (3a) ~~Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, Major Modification (Ten Year) — \$7,500.~~
- (4) ~~Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, New Permit (Five Year) — \$50,000.~~
- (4a) ~~Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, New Permit (Ten Year) — \$77,000.~~
- (5) ~~Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, Amendment (Five Year) — \$30,000.~~
- (5a) ~~Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, Amendment (Ten Year) — \$57,000.~~
- (6) ~~Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, Modification (Five Year) — \$3,000.~~
- (6a) ~~Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, Major Modification (Ten Year) — \$15,000.~~
- (7) ~~Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, New Permit (Five Year) — \$15,000.~~
- (7a) ~~Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, New Permit (Ten Year) — \$22,500.~~
- (8) ~~Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, Amendment (Five Year) — \$9,000.~~
- (8a) ~~Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, Amendment (Ten Year) — \$16,500.~~
- (9) ~~Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, Modification (Five Year) — \$1,500.~~
- (9a) ~~Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, Major Modification (Ten Year) — \$4,500.~~
- (10) ~~Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, New Permit (Five Year) — \$30,000.~~
- (10a) ~~Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, New Permit (Ten Year) — \$46,000.~~
- (11) ~~Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, Amendment (Five Year) — \$18,500.~~
- (11a) ~~Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, Amendment (Ten Year) — \$34,500.~~
- (12) ~~Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, Modification (Five Year) — \$2,500.~~
- (12a) ~~Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, Major Modification (Ten Year) — \$9,250.~~
- (13) ~~Industrial Landfill accepting less than 100,000 tons/year of solid waste, New Permit (Five Year) — \$15,000.~~
- (13a) ~~Industrial Landfill accepting less than 100,000 tons/year of solid waste, New Permit (Ten Year) — \$22,500.~~
- (14) ~~Industrial Landfill accepting less than 100,000 tons/year of solid waste, Amendment (Five Year) — \$9,000.~~
- (14a) ~~Industrial Landfill accepting less than 100,000 tons/year of solid waste, Amendment (Ten Year) — \$16,500.~~
- (15) ~~Industrial Landfill accepting less than 100,000 tons/year of solid waste, Modification (Five Year) — \$1,500.~~
- (15a) ~~Industrial Landfill accepting less than 100,000 tons/year of solid waste, Major Modification (Ten Year) — \$4,500.~~
- (16) ~~Industrial Landfill accepting 100,000 tons/year or more of solid waste, New Permit (Five Year) — \$30,000.~~
- (16a) ~~Industrial Landfill accepting 100,000 tons/year or more of solid waste, New Permit (Ten Year) — \$46,000.~~
- (17) ~~Industrial Landfill accepting 100,000 tons/year or more of solid waste, Amendment (Five Year) — \$18,500.~~
- (17a) ~~Industrial Landfill accepting 100,000 tons/year or more of solid waste, Amendment (Ten Year) — \$34,500.~~

- (18) ~~Industrial Landfill accepting 100,000 tons/year or more of solid waste, Modification (Five Year) — \$2,500.~~
- (18a) ~~Industrial Landfill accepting 100,000 tons/year or more of solid waste, Major Modification (Ten Year) — \$9,250.~~
- (19) ~~Tire Monofill, New Permit — \$1,750.~~
- (19a) ~~Tire Monofill, New Permit (Ten Year) — \$2,500.~~
- (20) ~~Tire Monofill, Amendment — \$1,250.~~
- (20A) ~~Tire Monofill, Amendment (Ten Year) — \$2,000.~~
- (21) ~~Tire Monofill, Modification — \$500.~~
- (21A) ~~Tire Monofill, Major Modification — \$625.~~
- (22) ~~Treatment and Processing, New Permit — \$1,750.~~
- (23) ~~Treatment and Processing, Amendment — \$1,250.~~
- (24) ~~Treatment and Processing, Modification — \$500.~~
- (25) ~~Transfer Station, New Permit (Five Year) — \$5,000.~~
- (25a) ~~Transfer Station, New Permit (Ten Year) — \$7,500.~~
- (26) ~~Transfer Station, Amendment (Five Year) — \$3,000.~~
- (26a) ~~Transfer Station, Amendment (Ten Year) — \$5,500.~~
- (27) ~~Transfer Station, Modification (Five Year) — \$500.~~
- (27a) ~~Transfer Station, Major Modification (Ten Year) — \$1,500.~~
- (28) ~~Incinerator, New Permit — \$1,750.~~
- (29) ~~Incinerator, Amendment — \$1,250.~~
- (30) ~~Incinerator, Modification — \$500.~~
- (31) ~~Large Compost Facility, New Permit — \$1,750.~~
- (32) ~~Large Compost Facility, Amendment — \$1,250.~~
- (33) ~~Large Compost Facility, Modification — \$500.~~
- (34) ~~Land Clearing and Inert, New Permit — \$1,000.~~
- (35) ~~Land Clearing and Inert, Amendment — \$500.~~
- (36) ~~Land Clearing and Inert, Modification — \$250.~~

(d) ~~A permitted solid waste management facility shall pay an annual permit fee on or before 1 August of each year according to the following schedule:~~

- (1) ~~Municipal Solid Waste Landfill — \$3,500.~~
- (2) ~~Post-Closure Municipal Solid Waste Landfill — \$1,000.~~
- (3) ~~Construction and Demolition Landfill — \$2,750.~~
- (4) ~~Post-Closure Construction and Demolition Landfill — \$500.~~
- (5) ~~Industrial Landfill — \$2,750.~~
- (6) ~~Post-Closure Industrial Landfill — \$500.~~
- (7) ~~Transfer Station — \$750.~~
- (8) ~~Treatment and Processing Facility — \$500.~~
- (9) ~~Tire Monofill — \$500.~~
- (10) ~~Incinerator — \$500.~~
- (11) ~~Large Compost Facility — \$500.~~
- (12) ~~Land Clearing and Inert Debris Landfill — \$500.~~

(d1) A permitted solid waste management facility shall pay an annual permit fee on or before August 1 of each year according to the following schedule:

- (1) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste — \$6,125.
- (2) Municipal Solid Waste Landfill accepting 100,000 tons/year or more but less than 250,000 tons/year of solid waste — \$7,000.
- (3) Municipal Solid Waste Landfill accepting 250,000 tons/year or more of solid waste — \$8,750.
- (4) Post-Closure Municipal Solid Waste Landfill — \$1,000.
- (5) Construction and Demolition Landfill accepting less than 25,000 tons/year of solid waste — \$4,813.
- (6) Construction and Demolition Landfill accepting 25,000 tons/year or more of solid waste — \$5,500.
- (7) Post-Closure Construction and Demolition Landfill — \$500.
- (8) Industrial Landfill accepting less than 100,000 tons/year of solid waste — \$5,500.

- (9) Industrial Landfill accepting 100,000 tons/year or more of solid waste – \$6,875.
- (10) Post-Closure Industrial Landfill – \$500.
- (11) Transfer Station accepting less than 25,000 tons/year of solid waste – \$1,500.
- (12) Transfer Station accepting 25,000 tons/year or more of solid waste – \$1,875.
- (13) Treatment and Processing Facility – \$500.
- (14) Tire Monofill – \$1,000.
- (15) Incinerator – \$500.
- (16) Large Compost Facility – \$500.
- (17) Land Clearing and Inert Debris Landfill – \$500.

(d2) Upon submission of an application for a new permit, an applicant shall pay an application fee in the amount of ten percent (10%) of the annual permit fee imposed for that type of solid waste management facility as identified in subdivisions (1) through (17) of subsection (d1) of this section.

...."

SECTION 4.9.(c) Section 14.20(d) of S.L. 2015-241 reads as rewritten:

"**SECTION 14.20.(d)** G.S. 130A-295.3 reads as rewritten:

"**§ 130A-295.3. Environmental compliance review requirements for applicants and permit holders.**

...

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

...."

SECTION 4.9.(d) Section 14.20(f) of S.L. 2015-241 reads as rewritten:

"**SECTION 14.20.(f)** This section becomes effective October 1, 2015. G.S. 130A-294(b1)(2), as amended by subsection (a) of this section, applies to franchise agreements executed on or after October 1, 2015. The remainder of G.S. 130A-294, as amended by subsection (a) of this section, and G.S. 130A-295.8, as amended by subsection (c) of this section, apply to (i) existing sanitary landfills and transfer stations, with a valid permit issued before the date this act becomes effective, on July 1, 2016, at which point a permittee may choose to apply for a life-of-site permit pursuant to G.S. 130A-294(a2), as amended by Section 14.20(b) of this act, or may choose to apply for a life-of-site permit for the facility when ~~that~~ the facility's permit is next subject to renewal after July 1, 2016, (ii) new sanitary landfills and transfer stations, for applications submitted on or after July 1, 2016, and (iii) applications for sanitary landfills or transfer stations submitted before July 1, 2015, and pending on the date this act becomes law shall be evaluated by the Department based on the applicable laws that were in effect on July 1, 2015, and the Department shall not delay in processing such permit applications in consideration of changes made by this act, but such landfills and transfer stations shall be eligible for issuance of life-of-site permits pursuant to G.S. 130A-294(a2), as amended by Section 14.20(b) of this act, on July 1, 2016, at which point a permittee may choose to apply for a life-of-site permit pursuant to G.S. 130A-294(a2), as amended by Section 14.20(b) of this act, or may choose to apply for a life-of-site permit for the facility when ~~that~~ the facility's permit is next subject to renewal after July 1, 2016."

AMEND THE DEFINITION FOR "PROSPECTIVE DEVELOPER" UNDER THE LAW GOVERNING BROWNFIELDS REDEVELOPMENT

SECTION 4.10.(a) G.S. 130A-310.31(b)(10) reads as rewritten:

"§ 130A-310.31. Definitions.

(a) Unless a different meaning is required by the context or unless a different meaning is set out in subsection (b) of this section, the definitions in G.S. 130A-2 and G.S. 130A-310 apply throughout this Part.

(b) Unless a different meaning is required by the context:

- ...
- (10) "Prospective developer" means any person with a bona fide, demonstrable desire to ~~either buy or sell a brownfields property for the purpose of developing or redeveloping that~~ develop or redevelop a brownfields property and who did not cause or contribute to the contamination at the brownfields property."

SECTION 4.10.(b) This section becomes effective December 1, 2015, and applies to Notices of Intent to Redevelop a Brownfields Property filed on or after that date.

ELIMINATE OUTDATED FEES RELATED TO SOLID WASTE MATTERS

SECTION 4.11.(a) G.S. 105-102.6 is repealed.

SECTION 4.11.(b) G.S. 130A-309.17(d) and (i) are repealed.

DELETE OR REPEAL VARIOUS ENVIRONMENTAL AND NATURAL RESOURCES REPORTING REQUIREMENTS

SECTION 4.12.(a) G.S. 113-175.6 is repealed.

SECTION 4.12.(b) G.S. 113-182.1(e) reads as rewritten:

"§ 113-182.1. Fishery Management Plans.

...

(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. ~~The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Governmental Operations on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year.~~ The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Governmental Operations within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Governmental Operations shall review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Governmental Operations may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary."

SECTION 4.12.(c) G.S. 143B-279.15 is repealed.

SECTION 4.12.(d) G.S. 143B-289.44(d) is repealed.

SECTION 4.12.(e) G.S. 159I-29 is repealed.

SECTION 4.12.(f) Section 2.3 of S.L. 2007-485 is repealed.

ON-SITE WASTEWATER AMENDMENTS AND CLARIFICATIONS

SECTION 4.14.(a) G.S. 130A-334 reads as rewritten:

"§ 130A-334. Definitions.

The following definitions shall apply throughout this Article:

- (1) "Accepted wastewater system" has the same meaning as in G.S. 130A-343.
- (1a) "Approved agency for special inspection" means an individual, corporation, company, association, or partnership that is objective, competent, and independent from the contractor who is responsible for the work that is inspected. The agency shall disclose possible conflicts of interest in a manner such that objectivity can be confirmed.
- (1b) "Approved special inspector" means a person who demonstrates competence to the satisfaction of the professional engineer who designed the wastewater

- system for the inspection of the construction or operation subject to special inspection.
- ~~(4)~~(1c) "Construction" means any work at the site of placement done for the purpose of preparing a residence, place of business or place of public assembly for initial occupancy, or subsequent additions or modifications which increase sewage flow.
- (1d) "Construction observation" means the visual observation of the construction and installation of the wastewater system for general conformance with the construction documents prepared by the professional engineer who designed the wastewater system. Construction observation that is conducted by the professional engineer who designed the wastewater system does not include or waive the requirement to conduct special inspections.
- (1e) "Conventional wastewater system" has the same meaning as in G.S. 130A-343.
- ~~(1a)~~(1f) "Department" means the Department of Health and Human Services.
- (1g) "Engineered option permit" means an on-site wastewater system that is permitted pursuant to the rules adopted by the Commission in accordance with this Article, meets the criteria established by G.S. 130A-336.1, and is designed by a professional engineer who is licensed under Chapter 89C of the General Statutes who has expertise in the design of on-site wastewater systems.
- ~~(1b)~~(1h) "Ground absorption system" means a system of tanks, treatment units, nitrification fields, and appurtenances for wastewater collection, treatment, and subsurface disposal.
- (2) Repealed by Session Laws 1985, c. 462, s. 18.
- (2a) "Industrial process wastewater" means any water-carried waste resulting from any process of industry, manufacture, trade, or business.
- (2b) "Licensed geologist" means a person who is licensed as a geologist under the provisions of Chapter 89E of the General Statutes.
- (2c) "Licensed soil scientist" has the same meaning as in G.S. 89F-3.
- (3) "Location" means the initial placement for occupancy of a residence, place of business or place of public assembly.
- (3a) "Maintenance" means normal or routine maintenance including replacement of broken pipes, cleaning, or adjustment to an existing wastewater system.
- (4), (5) Repealed by Session Laws 1985, c. 462, s. 18.
- (6) "Place of business" means a store, warehouse, manufacturing establishment, place of amusement or recreation, service station, office building or any other place where people work.
- (7) "Place of public assembly" means a fairground, auditorium, stadium, church, campground, theater or any other place where people assemble.
- (7a) "Plat" means a property survey prepared by a registered land surveyor, drawn to a scale of one inch equals no more than 60 feet, that includes: the specific location of the proposed facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters. "Plat" also means, for subdivision lots approved by the local planning authority if a local planning authority exists at the time of application for a permit under this Article, a copy of the subdivision plat that has been recorded with the county register of deeds and is accompanied by a site plan that is drawn to scale.
- (7b) "Pretreatment" means any biological, chemical, or physical process or system for improving wastewater quality and reducing wastewater constituents prior to final treatment and disposal in a subsurface wastewater system and includes, but is not limited to aeration, clarification, digestion, disinfection, filtration, separation, and settling.
- (7c) "Professional engineer" has the same meaning as in G.S. 89C-3.
- (8) "Public or community wastewater system" means a single system of wastewater collection, treatment and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality or a public utility.

- (9) "Relocation" means the displacement of a residence or place of business from one site to another.
- (9a) "Repair" means the extension, alteration, replacement, or relocation of existing components of a wastewater system.
- (10) "Residence" means a private home, dwelling unit in a multiple family structure, hotel, motel, summer camp, labor work camp, manufactured home, institution or any other place where people reside.
- (10a) "Secretary" means the Secretary of ~~Environment and Natural Resources~~ Health and Human Services.
- (11) Repealed by Session Laws 1992, c. 944, s. 3.
- (12) "Septic tank system" means a subsurface wastewater system consisting of a settling tank and a subsurface disposal field.
- (13) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (13a) "Site plan" means a drawing not necessarily drawn to scale that shows the existing and proposed property lines with dimensions, the location of the facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters.
- (13b) "Special inspection" means a required inspection of the materials, installation, fabrication, erection, or placement of components and systems that require special expertise to ensure compliance with referenced standards and the construction documents prepared by the professional engineer.
- (14) "Wastewater" means any sewage or industrial process wastewater discharged, transmitted, or collected from a residence, place of business, place of public assembly, or other places into a wastewater system.
- (15) "Wastewater system" means a system of wastewater collection, treatment, and disposal in single or multiple components, including a ground absorption system, privy, septic tank system, public or community wastewater system, wastewater reuse or recycle system, mechanical or biological wastewater treatment system, any other similar system, and any chemical toilet used only for human waste. A wastewater system located on multiple adjoining lots or tracts of land under common ownership or control shall be considered a single system for purposes of permitting under this Article."

SECTION 4.14.(b) G.S. 130A-335 reads as rewritten:

"§ 130A-335. Wastewater collection, treatment and disposal; rules.

(a) A person owning or controlling a residence, place of business or a place of public assembly shall provide an approved wastewater system. Except as may be allowed under another provision of law, all wastewater from water-using fixtures and appliances connected to a water supply source shall discharge to the approved wastewater system. A wastewater system may include components for collection, treatment and disposal of wastewater.

(a1) Any proposed site for a residence, place of business, or a place of public assembly located in an area that is not served by an approved wastewater system for which a new wastewater system is proposed or repair is necessary for compliance may be evaluated for soil conditions and site features by a licensed soil scientist or licensed geologist. For purposes of this subsection, "site features" include topography and landscape position; soil characteristics (morphology); soil wetness; soil depth; restrictive horizons; available space; and other applicable factors that involve accepted public health principles.

(b) All wastewater systems shall either (i) be regulated by the Department under rules adopted by the Commission or (ii) conform with the engineered option permit criteria set forth in G.S. 130A-336.1 and under rules adopted by the Commission except for the following wastewater systems that shall be regulated by the Department under rules adopted by the Environmental Management Commission:

- (1) Wastewater collection, treatment, and disposal systems designed to discharge effluent to the land surface or surface waters.
- (2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

- (3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.
- (4) Gray water systems as defined in G.S. 143-350.
- (c) A wastewater system subject to approval under rules of the Commission shall be reviewed and approved under rules of a local board of health in the following circumstances:
 - (1) The local board of health, on its own motion, has requested the Department to review its proposed rules concerning wastewater systems; and
 - (2) The local board of health has adopted by reference the wastewater system rules adopted by the Commission, with any more stringent modifications or additions deemed necessary by the local board of health to protect the public health; and
 - (3) The Department has found that the rules of the local board of health concerning wastewater collection, treatment and disposal systems are at least as stringent as rules adopted by the Commission and are sufficient and necessary to safeguard the public health.

(c1) The rules adopted by the Commission for wastewater systems approved under the engineered option permit criteria pursuant to G.S. 130A-336.1 shall be, at a minimum, as stringent as the rules for wastewater systems established by the Commission.

(d) The Department may, upon its own motion, upon the request of a local board of health or upon the request of a citizen of an affected county, review its findings under subsection (c) of this section.

The Department shall review its findings under subsection (c) of this section upon modification by the Commission of the rules applicable to wastewater systems. The Department may deny, suspend, or revoke the approval of local board of health wastewater system rules upon a finding that the local wastewater rules are not as stringent as rules adopted by the Commission, are not sufficient and necessary to safeguard the public health, or are not being enforced. Suspension and revocation of approval shall be in accordance with G.S. 130A-23.

(d1) The Department or owner of a wastewater system may file a written complaint with the North Carolina Board of Examiners for Engineers and Surveyors in accordance with rules and procedures adopted by the Board pursuant to Chapter 89C of the General Statutes citing failure of a professional engineer to adhere to the rules adopted by the Commission pursuant to this Article. The Department or owner of a wastewater system may file a written complaint with the North Carolina Board of Licensed Soil Scientists in accordance with rules and procedures adopted by the Board pursuant to Chapter 89F of the General Statutes citing failure of a licensed soil scientist to adhere to the rules adopted by the Commission pursuant to this Article. The Department or owner of a wastewater system may file a written complaint with the North Carolina Board for Licensing of Geologists in accordance with rules and procedures adopted by the Board pursuant to Chapter 89E of the General Statutes citing failure of a licensed geologist to adhere to the rules adopted by the Commission pursuant to this Article. The Department or owner of a wastewater system may file a written complaint with the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board in accordance with rules and procedures adopted by the Board pursuant to Article 5 of Chapter 90A of the General Statutes citing failure of a contractor to adhere to the rules adopted by the Commission pursuant to this Article.

...."

SECTION 4.14.(c) Article 11 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-336.1. Alternative process for wastewater system approvals.

(a) Engineered Option Permit Authorized. – A professional engineer licensed under Chapter 89C of the General Statutes may, at the direction of the owner of a proposed wastewater system who wishes to utilize the engineered option permit, prepare signed and sealed drawings, specifications, plans, and reports for the design, construction, operation, and maintenance of the wastewater system in accordance with this section and rules adopted thereunder.

(b) Notice of Intent to Construct. – Prior to commencing or assisting in the construction, siting, or relocation of a wastewater system, the owner of a proposed wastewater system who wishes to utilize the engineered option permit, or a professional engineer authorized as the legal representative of the owner, shall submit to the local health department

with jurisdiction over the location of the proposed wastewater system a notice of intent to construct a wastewater system utilizing the engineered permit option. The Department shall develop a common form for use as the notice of intent to construct that includes all of the following:

- (1) The owner's name, address, e-mail address, and telephone number.
- (2) The professional engineer's name, license number, address, e-mail address, and telephone number.
- (3) For the professional engineer, the licensed soil scientist, the licensed geologist, and any on-site wastewater contractors, proof of errors and omissions insurance coverage or other appropriate liability insurance.
- (4) A description of the facility the proposed site is to serve and any factors that would affect the wastewater load.
- (5) The type of proposed wastewater system and its location.
- (6) The design wastewater flow and characteristics.
- (7) Any proposed landscape, site, drainage, or soil modifications.
- (8) A soil evaluation that is conducted and signed and sealed by a either a licensed soil scientist or licensed geologist.
- (9) A plat, as defined in G.S. 130A-334(7a).

(c) Completeness Review for Notice of Intent to Construct. – The local health department shall determine whether a notice of intent to construct, as required pursuant subsection (b) of this section, is complete within 15 business days after the local health department receives the notice of intent to construct. A determination of completeness means that the notice of intent to construct includes all of the required components. If the local health department determines that the notice of intent to construct is incomplete, the department shall notify the owner or the professional engineer of the components needed to complete the notice. The owner or professional engineer may submit additional information to the department to cure the deficiencies in the notice. The local health department shall make a final determination as to whether the notice of intent to construct is complete within 10 business days after the department receives the additional information from the owner or professional engineer. If the department fails to act within any time period set out in this subsection, the owner or professional engineer may treat the failure to act as a determination of completeness.

(d) Submission of Notice of Intent to Construct to Department for Certain Systems. – Prior to commencing in the construction, siting, or relocation of a wastewater system designed (i) for the collection, treatment, and disposal of industrial process wastewater or (ii) to treat greater than 3,000 gallons per day, the owner of a proposed wastewater system who wishes to utilize the engineered option permit, or a professional engineer authorized as the legal representative of the owner, shall provide to the Department a duplicate copy of the notice of intent to construct submitted to the local health department required pursuant to subsection (b) of this section.

(e) Site Design, Construction, and Activities. –

- (1) The professional engineer designing the proposed wastewater system shall use recognized principles and practices of engineering and applicable rules of the Commission in the calculations and design of the wastewater system. The investigations and findings of the professional engineer shall include, at a minimum, the information required in rules adopted by the Commission pursuant to G.S. 130A-335(e). The professional engineer may, at the engineer's discretion, employ pretreatment technologies not yet approved in this State.
- (2) Notwithstanding G.S. 130A-335(a1), the owner of the proposed wastewater system shall employ either a licensed soil scientist or a geologist, licensed pursuant to Chapter 89E of the General Statutes and who has applicable professional experience, to evaluate soil conditions and site features.
- (3) The professional engineer designing the proposed wastewater system:
 - a. Shall be responsible for the engineer's scope of work, including all aspects of the design and any drawings, specifications, plans, or reports that are signed and sealed by the professional engineer.
 - b. Shall prepare a signed and sealed statement of special inspections that includes the following items:

1. The materials, systems, components, and work subject to special inspection or testing.
 2. The type and extent of each special inspection and each test.
 3. The frequency of each type of special inspection. For purposes of this sub-sub-subdivision, frequency of special inspections shall be required on either a continuous or periodic basis. Continuous special inspections mean the full-time observation of work requiring special inspection by an approved special inspector who is present in the area where the work is performed. Periodic special inspections mean the part-time or intermittent observation of work requiring a special inspection by an approved special inspector who is present in the area where the work is or has been performed and at the completion of the work.
- c. May assist the owner of the proposed wastewater system with the selection of an on-site wastewater system contractor certified pursuant to Article 5 of Chapter 90A of the General Statutes.
- (4) An on-site wastewater system contractor, licensed pursuant to Article 5 of Chapter 90A of the General Statutes, who is employed by the owner of the wastewater system, shall:
- a. Be responsible for all aspects of the construction and installation of the wastewater system or components of the wastewater system, including adherence to the design, specifications, and any special inspections that are prepared, signed, and sealed by the professional engineer in accordance with all the applicable provisions of this section.
 - b. Submit a signed and dated statement of responsibility to the owner of the wastewater system, prior to the commencement of work, that contains acknowledgement and awareness of the requirements in the professional engineer's statement of special inspections.
- (5) Where the professional engineer's designs, plans, and specifications call for the installation of a conventional wastewater system, such designs, plans, and specifications shall allow for the installation of an accepted system in lieu of a conventional system in accordance with the accepted system approval.
- (6) In addition to the requirements of this section, the owner, the professional engineer designing the proposed wastewater system, and any on-site wastewater system contractors employed to construct or install the wastewater system shall comply with applicable federal, State, and local laws, regulations, rules, and ordinances.
- (f) No Public Liability. – The Department, the Department's authorized agents, or local health departments shall have no liability for wastewater systems designed, constructed, and installed pursuant to a engineered option permit.
- (g) Inspections, Construction Observations, and Reports. –
- (1) Site visits. – The local health department may, at any time, conduct a site visit of the wastewater system.
 - (2) Construction observations. – The professional engineer who designed the wastewater system shall make periodic visits to the site, at intervals appropriate to the stage of construction, to observe the progress and quality of the construction and to determine, generally, if the construction is proceeding in accordance with the engineer's plans and specifications.
 - (3) Special inspections. – The owner of the proposed wastewater system shall employ one or more approved special inspectors to conduct special inspections during the construction of the wastewater system. The professional engineer who designed the wastewater system, or the engineer's personnel, may function as an approved agency to conduct special inspections required by this subdivision. The professional engineer's personnel shall only operate as an approved agency for special inspections if the personnel can demonstrate competence and relevant experience or

training. For purposes of this subdivision, experience or training shall be considered relevant when the documented experience or training is related in complexity to the same type of special inspection activities for projects of similar complexity and material qualities.

- (4) Inspection reports. – Approved special inspectors shall maintain and furnish all inspection records to the professional engineer who designed the wastewater system. The records shall indicate whether the work inspected was completed in conformance with the engineer's design and specifications. Any discrepancies identified between the completed work and the engineer's design shall be brought to the immediate attention of the on-site wastewater system contractor for correction. If discrepancies are not corrected, they shall be brought to the attention of the professional engineer who designed the wastewater system prior to completion of work. A final inspection report documenting the required special inspections and the correction of any identified discrepancies shall be provided to the professional engineer and the owner of the wastewater system for review at the post-construction conference required pursuant to subsection (j) of this section.

(h) Local Authority. – This section shall not relieve the owner or operator of a wastewater system from complying with any and all modifications or additions to rules adopted by a local health department to protect public health pursuant to G.S. 130A-335(c) that are required at the time the owner or operator submits the notice of intent to construct pursuant to G.S. 130A-336.1(b). The local health department shall notify the owner or operator of the wastewater system of any issues of compliance related to such modifications or additions.

(i) Operations and Management. –

- (1) The professional engineer designing the wastewater system shall establish a written operations and management program based on the size and complexity of the wastewater system and shall provide the program to the owner.
- (2) The owner shall enter into a contract with a water pollution control system operator certified pursuant to Part 1 of Article 3 of Chapter 90A of the General Statutes and who is selected from the list of certified operators maintained by the Division of Water Resources in the Department of Environment and Natural Resources for operation and maintenance of the wastewater system in accordance with rules adopted by the Commission.
- (3) The owner of the wastewater system shall be responsible for the continued adherence to the operations and management program established by the professional engineer pursuant to subdivision (1) of this subsection.

(j) Post-Construction Conference. – The professional engineer designing the wastewater system shall hold a post-construction conference with the owner of the wastewater system; the licensed soil scientist or licensed geologist who performed the soils evaluation for the wastewater system; the on-site wastewater system contractor, certified pursuant to Article 5 of Chapter 90A of the General Statutes, who installed the wastewater system; the certified operator of the wastewater system, if any; and representatives from the local health department and, as applicable, the Department. The post-construction conference shall include start-up of the wastewater system and any required verification of system design or system components.

(k) Required Documentation. –

- (1) At the completion of the post-construction conference conducted pursuant to subsection (j) of this section, the professional engineer who designed the wastewater system shall deliver to the owner signed, sealed, and dated copies of the engineer's report, which, for purposes of this subsection, shall include the following:
- a. The evaluation of soil conditions and site features as prepared by either the licensed soil scientist or licensed geologist.
- b. The drawings, specifications, plans, and reports of the wastewater system, including the statement of special inspections required pursuant to G.S. 130A-336.1(e)(3); the on-site wastewater system contractor's signed statement of responsibility required pursuant to G.S. 130A-336.1(e)(4); records of all special inspections; and the

- final inspection report documenting the correction of any identified discrepancies required pursuant to subsection (g) of this section.
- c. The operator's management program manual that includes a copy of the contract with the certified water pollution control system operator required pursuant to subsection (i) of this section.
 - d. Any reports and findings related to the design and installation of the wastewater system.
- (2) Upon reviewing the professional engineer's report, the owner of the wastewater system shall sign and notarize the report as having been received.
- (l) Reporting Requirements. –
- (1) The owner of the wastewater system shall submit the following to the local health department:
 - a. A copy of the professional engineer's report required pursuant to G.S. 130A-336.1(k)(1).
 - b. A copy of the operations and management program.
 - c. The fee required pursuant to subsection (n) of this section.
 - d. A notarized letter that documents the owner's acceptance of the system from the professional engineer.
 - (2) The owner of any wastewater system that is subject to subsection (d) of this section shall deliver to the Department copies of the engineer's report, as described G.S. 130A-336.1(k)(1).
- (m) Authorization to Operate. – Within 15 business days of receipt of the documents and fees required pursuant to G.S. 130A-336.1(l)(1), the local health department shall issue the owner a letter of confirmation that states the documents and information contained therein have been received and that the wastewater system may operate in accordance with rules adopted by the Commission.
- (n) Fees. – The local health department may assess a fee for the engineered option permit of up to thirty percent (30%) of the cumulative total of the fees the department has established to obtain an improvement permit, an authorization to construct, and an operations permit for wastewater systems under its jurisdiction. The fee shall only be used by the department in support of its work pursuant to this section to conduct site inspections; support the department's staff participation at post-construction conference meetings; and archive the engineered permit with the county register of deeds or other recordation of the wastewater system as required.
- (o) Change in System Ownership. – A wastewater system authorized pursuant to this section shall not be affected by change in ownership of the site for the wastewater system, provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility.
- (p) Remedies. – Notwithstanding any other provision of this section or any other provision of law, owners; operators; professional engineers who utilize the engineered option permit, who prepare drawings, specifications, plans, and reports; licensed soil scientists; licensed geologists; and on-site wastewater system contractors employed for the construction or installation of the wastewater system shall be subject to the provisions and remedies provided to the Department and local health departments pursuant to Article 1 of this Chapter.
- (q) Rule Making. – The Commission shall adopt rules to implement the provisions of this section.
- (r) Reports. – The Department shall report to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services on or before January 1, 2017, and annually thereafter, on the implementation and effectiveness of this section. For the report due on or before January 1, 2017, the Department shall specifically study (i) whether the engineered option permit resulted in a reduction in the length of time improvement permits or authorizations to construct are pending; (ii) whether the engineered option permit resulted in increased system failures or other adverse impacts; (iii) if the engineered option permit resulted in new or increased environmental or public health impacts; (iv) an amount of errors and omissions insurance or other liability sufficient for covering professional engineers, licensed soil scientists, licensed geologists, and contractors who employ the engineered option permit; and (v) the fees charged by local health departments to administer the engineered option permit pursuant to subsection (n) of this section. The

Department may include recommendations, including any legislative proposals, in its reports to the Commission and Committee."

SECTION 4.14.(d) G.S. 130A-338 reads as rewritten:

"§ 130A-338. Authorization for wastewater system construction required before other permits to be issued.

Where construction, location or relocation is proposed to be done upon a residence, place of business or place of public assembly, no permit required for electrical, plumbing, heating, air conditioning or other construction, location or relocation activity under any provision of general or special law shall be issued until an authorization for wastewater system construction has been issued under ~~G.S. 130A-336~~ G.S. 130A-336, or authorization has been obtained under ~~G.S. 130A-337(e)~~ G.S. 130A-337(c), or a decision on the completeness of the notice of intent to construct is made by the local health department pursuant to G.S. 130A-336.1(c)."

SECTION 4.14.(e) G.S. 130A-339 reads as rewritten:

"§ 130A-339. Limitation on electrical service.

No person shall allow permanent electrical service to a residence, place of business or place of public assembly upon construction, location or relocation until the official electrical inspector with jurisdiction as provided in G.S. 143-143.2 certifies to the electrical supplier that the required improvement permit authorization for wastewater system construction and an operation permit or authorization under G.S. 130A-337(c) or the letter of confirmation authorizing wastewater system operation under G.S. 130A-336.1(m) has been obtained. Temporary electrical service necessary for constructing a residence, place of business or place of public assembly can be provided upon compliance with G.S. 130A-338."

SECTION 4.14.(f) The Commission for Public Health, in consultation with the Department of Health and Human Services, local health departments, and stakeholders representing the wastewater system industry, shall study the minimum on-site wastewater system inspection frequency established pursuant to Table V(a) in 15A NCAC 18A .1961 to evaluate the feasibility and desirability of eliminating duplicative inspections of on-site wastewater systems. In the conduct of its study, the Commission shall consider (i) the compliance history of wastewater systems, including whether operators' reports and laboratory reports are in compliance with Article 11 of Chapter 130A of the General Statutes and the rules adopted pursuant to that Article; (ii) alternative inspection frequencies, including the use of remote Web-based monitoring for alarm and compliance notification; (iii) whether the required verification visit conducted by local health departments shows a statistically significant justification for duplicative costs to the owner of the wastewater system; (iv) methods for notifications of changes to and expirations of operations contracts; and (v) methods for local health departments to provide certified operator management for sites that are not under contract with a water pollution control system operator certified pursuant to Part 1 of Article 3 of Chapter 90A of the General Statutes. The Commission shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services on or before March 1, 2016.

SECTION 4.14.(g) G.S. 130A-336 reads as rewritten:

"§ 130A-336. Improvement permit and authorization for wastewater system construction required.

(a) Any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system shall be evaluated by either (i) the local health department in accordance with rules adopted pursuant to this Article or (ii) by a professional engineer, licensed soil scientist, or licensed geologist acting within the engineer's, soil scientist's, or geologist's scope of work, as applicable, and pursuant to the conditions of the engineered option permit in G.S. 130A-336.1. An improvement permit ~~shall be issued in compliance with the rules adopted pursuant to this Article.~~ An improvement permit issued by a local health department shall include:

- (1) For permits that are valid without expiration, a ~~plat~~ plat, or, for permits that are valid for five years, a site plan.
- (2) A description of the facility the proposed site is to serve.
- (3) The proposed wastewater system and its location.
- (4) The design wastewater flow and characteristics.
- (5) The conditions for any site modifications.
- (6) Any other information required by the rules of the Commission.

~~The~~ Neither the improvement permit nor the authorization for wastewater system construction shall ~~not~~ be affected by change ~~in~~ of ownership of the site for the wastewater system provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility. No person shall commence or assist in the construction, location, or relocation of a residence, place of business, or place of public assembly in an area not served by an approved wastewater system unless an improvement permit and an authorization for wastewater system construction are obtained from the local health ~~department~~ ~~department~~ unless that person is acting in accordance with the conditions and criteria of an engineered option permit pursuant to G.S. 130A-336.1. This requirement shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale.

(b) The local health department shall issue an authorization for wastewater system construction authorizing work to proceed and the installation or repair of a wastewater system when it has determined after a field investigation that the system can be installed and operated in compliance with this Article and rules adopted pursuant to this Article. This authorization for wastewater system construction shall be valid for a period equal to the period of validity of the improvement permit and may be issued at the same time the improvement permit is issued. No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the Department or the local health ~~department~~ ~~department~~ unless that person is acting in accordance with the conditions and criteria of an engineered option permit pursuant to G.S. 130A-336.1. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department and the local health department may impose conditions on the issuance of an improvement permit and an authorization for wastewater system construction.

(c) Unless the Commission otherwise provides by rule, plans, and specifications for all wastewater systems designed for the collection, treatment, and disposal of industrial process wastewater shall be reviewed and approved by the Department prior to the issuance of an authorization for wastewater system construction by the local health department.

(d) If a local health department repeatedly fails to issue or deny improvement permits for conventional or accepted septic tank systems within 60 days of days, or within 90 days for provisional or innovative systems, after receiving completed applications for the permits, then the Department of ~~Environment and Natural Resources~~ Health and Human Services may withhold public health funding from that local health department."

SECTION 4.14.(h) The Commission for Public Health, in consultation with the Department of Health and Human Services, local health departments, stakeholders who represent the wastewater system industry, and other interested parties shall study the period of validity for improvement permits and authorizations for wastewater system construction and evaluate the costs and benefits of a range of periods of validity. In the conduct of this study, the Commission shall also evaluate the feasibility and desirability of conducting an abbreviated review and possible extension of a permit or authorization that is due to expire at a lower cost to the applicant. The Commission shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services on or before April 1, 2016.

SECTION 4.14.(i) Any improvement permit or authorization for wastewater system construction that is in effect on the effective date of this act which is scheduled to expire on or before July 1, 2016, shall remain in effect until July 1, 2016.

SECTION 4.14.(j) G.S. 130A-342 reads as rewritten:

"§ 130A-342. Residential wastewater treatment systems.

(a) Individual residential wastewater treatment systems that are approved and listed in accordance with the standards adopted by the National Sanitation Foundation, Inc. for Class I residential wastewater treatment systems, as set out in Standard 40 of the National Sanitation Foundation, Inc., (as approved 13 January 2001) as amended, shall be permitted under rules adopted by the Commission. The Commission may establish standards in addition to those set by the National Sanitation Foundation, Inc.

(b) A permitted system with a design flow of less than 1,500 gallons per day shall be operated and maintained by a certified wastewater treatment facility operator by a person who is a Subsurface Water Pollution Control System Operator as certified by the Water Pollution Control System Operators Certification Commission and authorized by the manufacturer of the

individual residential wastewater treatment system. The Commission may, in addition to the requirement for a certified Subsurface Water Pollution Control System Operator, establish additional standards for wastewater systems with a design flow of 1,500 gallons or greater per day.

(c) Each county, in which one or more residential wastewater treatment systems permitted pursuant to this section are in use, shall document the performance of each system and report the results to the Department annually."

SECTION 4.14.(k) This section is effective when this act becomes law. The Commission for Public Health shall adopt temporary rules pursuant to Sections 4.14(a) through 4.14(e), Section 4.14(g), and Section 4.14(j) of this act no later than June 1, 2016, and shall adopt permanent rules pursuant to Sections 4.14(a) through 4.14(e), Section 4.14(g), and Section 4.14(j) of this act no later than January 1, 2017. No person shall utilize the engineered permit option authorized pursuant to G.S. 130A-336.1, as enacted by Section 4.14(c) of this act, however, until such time as the rules adopted by the Commission pursuant to Section 4.14(c) of this act become effective.

CLARIFY CERTIFICATION REQUIREMENTS FOR PLUMBING CONTRACTORS WHO INSTALL OR REPAIR GREASE TRAPS

SECTION 4.14A. G.S. 90A-72 reads as rewritten:

"§ 90A-72. Certification required; applicability.

(a) Certification Required. – No person shall construct, install, or repair or offer to construct, install, or repair an on-site wastewater system permitted under Article 11 of Chapter 130A of the General Statutes without being certified as a contractor at the required level of certification for the specified system. No person shall conduct an inspection or offer to conduct an inspection of an on-site wastewater system as permitted under Article 11 of Chapter 130A of the General Statutes without being certified in accordance with the provisions of this Article.

(b) Applicability. – This Article does not apply to the following:

- (1) A person who is employed by a certified contractor or inspector in connection with the construction, installation, repair, or inspection of an on-site wastewater system performed under the direct and personal supervision of the certified contractor or inspector in charge.
- (2) A person who constructs, installs, or repairs an on-site wastewater system described as a single septic tank with a gravity-fed gravel trench dispersal media when located on land owned by that person and that is intended solely for use by that person and members of that person's immediate family who reside in the same dwelling.
- (3) A person licensed under Article 1 of Chapter 87 of the General Statutes who constructs or installs an on-site wastewater system ancillary to the building being constructed or who provides corrective services and labor for an on-site wastewater system ancillary to the building being constructed.
- (4) A person who is certified by the Water Pollution Control System Operators Certification Commission and contracted to provide necessary operation and maintenance on the permitted on-site wastewater system.
- (5) A person permitted under Article 21 of Chapter 143 of the General Statutes who is constructing a water pollution control facility necessary to comply with the terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit.
- (6) A person licensed under Article 1 of Chapter 87 of the General Statutes as a licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.
- (7) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes, so long as the plumber is not performing plumbing work that includes the installation or repair of a septic tank or similar depository, such as a treatment or pretreatment tank or system, or ~~lines~~–lines, tanks, or appurtenances downstream from the point where the house or building sewer lines from the plumbing system meet the septic tank or similar depository. This subdivision shall not be construed to require a plumbing contractor to become certified as a contractor pursuant to this section to install or repair a

grease trap, interceptor, or separator upstream from a septic tank or similar depository that complies with the requirements of the local health department.

- (8) A person employed by the Department, a local health department, or a local health district, when conducting a regulatory inspection of an on-site wastewater system for purposes of determining compliance."

AMEND APPROVAL OF ON-SITE WASTEWATER SYSTEMS

SECTION 4.15.(a) G.S. 130A-343 reads as rewritten:

"§ 130A-343. Approval of on-site subsurface wastewater systems.

(a) Definitions. – As used in this section:

- (1) "Accepted wastewater dispersal system" means any subsurface wastewater dispersal system, other than a conventional wastewater system, ~~or any technology, device, or component of a wastewater system~~ that: (i) has been previously approved as an innovative wastewater dispersal system by the Department; (ii) has been in general use in this State as an innovative wastewater dispersal system for more than five years; and (iii) has been approved by the Commission for general use or use in one or more specific applications. An accepted wastewater dispersal system may be approved for use in applications for which a conventional wastewater system is unsuitable. The Commission may impose any design, operation, maintenance, monitoring, and management requirements on the use of an accepted wastewater dispersal system that it determines to be appropriate.
- (2) "~~Controlled demonstration~~Provisional wastewater system" means any wastewater system or any technology, device, or component of a wastewater system that, on the basis of (i) research acceptable research, is approved by to the Department or (ii) approval of the wastewater system by a nationally recognized certification body for a period that exceeds one year for research, testing, or trial use under actual field conditions in this State pursuant to a protocol that has been approved by the Department.
- (3) "Conventional wastewater system", "conventional sewage system", or "conventional septic tank system" means a subsurface wastewater system that consists of a traditional septic or settling tank and a gravity-fed subsurface ~~disposal~~dispersal field that uses washed natural stone or gravel or crushed stone of approved size and grade and piping to distribute effluent to soil in one or more nitrification trenches and that does not include any other appurtenance.
- (4) "~~Experimental wastewater system~~" means ~~any wastewater system or any technology, device, or component of a wastewater system that is approved by the Department for research, testing, or limited trial use under actual field conditions in this State pursuant to a protocol that has been approved by the Department.~~
- (5) "Innovative wastewater system" means any wastewater system, other than a conventional wastewater system or a provisional wastewater system, or any technology, device, or component of a wastewater system that: (i) has been demonstrated to perform in a manner equal or superior to a conventional wastewater system; (ii) is constructed of materials whose physical and chemical properties provide the strength, durability, and chemical resistance to allow the system to withstand loads and conditions as required by rules adopted by the Commission; and (iii) has been approved by the Department for general use or for one or more specific applications. An innovative wastewater system may be approved for use in applications for which a conventional wastewater system is unsuitable. The Department may impose any design, operation, maintenance, monitoring, and management requirements on the use of an innovative wastewater system that it determines to be appropriate. A wastewater system approved by a nationally recognized certification body and in compliance with the ongoing verification program of such body may submit a sampling protocol for innovative system approval that reduces the data sets required for such

approval by fifty percent (50%). Such an application shall include all of the data associated with the nationally recognized certification body's verification of the system's performance.

- (6) "Nationally recognized certification body" means a third-party certification body for wastewater systems or system components that is accredited by an entity widely recognized in the United States such as the American National Standards Institute, the Standards Council of Canada, or the International Accreditation Service, Inc.

(b) Adoption of Rules Governing Approvals. – The Commission shall adopt rules for the approval and permitting of experimental, controlled demonstration, innovative, conventional, provisional, and accepted wastewater systems. The rules shall address the criteria to be considered prior to issuing a permit an approval for a system, requirements for preliminary design plans and specifications that must be submitted, methodology to be used, standards for monitoring and evaluating the system, research evaluation of the system, the plan of work for monitoring system performance and maintenance, and any additional matters the Commission deems appropriate. determines are necessary for verification of the performance of a wastewater system or system component.

(c) Approved Systems. Procedure for Modifications or Revocations. – The Department may modify, suspend, or revoke the approval of a wastewater system if the Department determines that the approval is based on false, incomplete, or misleading information or if the Department finds that modification, suspension, or revocation is necessary to protect public health, safety, or welfare. The Department shall provide a listing of all approved experimental, controlled demonstration, innovative, provisional, and accepted wastewater systems to the local health departments annually, and more frequently, when the Department makes a final agency decision related to the approval of a wastewater system or the Commission adopts rules related to the notify the local health departments within 30 days of any modification or revocation of an approval of a wastewater system. system or system component.

(d) Evaluation Protocols. – The Department shall approve one or more nationally recognized protocols for the evaluation of on-site subsurface wastewater systems. Any protocol approved by the Department shall specify a minimum number of sites that must be evaluated and the duration of the evaluation period. At the request of a manufacturer of a wastewater system, the Department may approve an alternative protocol for use in the evaluation of the performance of the manufacturer's wastewater system. A protocol for the evaluation of an on-site subsurface a wastewater system approved by the Department pursuant to this section is a scientific standard within the meaning of G.S. 150B-2(8a)h.

(e) Experimental Systems. – A manufacturer of a wastewater system that is intended for on-site subsurface use may apply to the Department to have the system evaluated as an experimental wastewater system as provided in this subsection. The manufacturer shall submit a proposal for evaluation of the system to the Department. The proposal for evaluation shall include the design of the system, a description of any laboratory or field research or testing that will be used to evaluate the system, a description of the research or testing protocol, and the credentials of the independent laboratory, consultant, or other entity that will be conducting the research or testing on the system. The proposal may include an evaluation of research and testing conducted in other states to the extent that the research and testing involves soil types, climate, hydrology, and other relevant conditions that are comparable to conditions in this State and if the research or testing was conducted pursuant to a protocol acceptable to the Department. The manufacturer shall enter into a contract for an evaluation of the performance of the experimental wastewater system with an independent laboratory, consultant, or other entity that has expertise in the evaluation of wastewater systems and that is approved by the Department. The manufacturer may install up to 50 experimental systems pursuant to a protocol approved by the Department on sites that are suitable for a conventional wastewater system and that have a repair area of sufficient size to allow installation of a conventional wastewater system, an approved innovative wastewater system, or an accepted wastewater system if the experimental wastewater system fails to perform properly.

(f) Controlled Demonstration Provisional Systems. – A manufacturer of a wastewater system intended for on-site subsurface use may apply to the Department to have the system evaluated as a controlled demonstration wastewater system as provided in this subsection. provisionally approved for use in this State. Any wastewater system approved based on its

approval by a nationally recognized certification body must be designed and installed in a manner consistent with the system evaluated and approved by the nationally recognized certification body. The manufacturer shall submit a proposal for evaluation of the system to the Department. The proposal shall contain procedures for obtaining specified information necessary to achieve innovative status upon completion of the provisional status. The proposal for evaluation shall include the design of the system, a description of any laboratory or field research or testing that will be used to evaluate the system, a description of the research or testing protocol, and the credentials of the independent laboratory, consultant, or other entity that will be conducting the research or testing on the system. ~~If the system was evaluated as an experimental system under subsection (e) of this section, the proposal shall include the results of the evaluation.~~ The proposal may include an evaluation of research and testing conducted in other states to the extent that the research and testing involves soil types, climate, hydrology, and other relevant conditions that are comparable to conditions in this State and if the research or testing was conducted pursuant to a protocol acceptable to the Department. The manufacturer shall enter into a contract for an evaluation of the performance of the controlled demonstration wastewater system with an independent laboratory, consultant, or other entity that has expertise in the evaluation of wastewater systems and that is approved by the Department. The manufacturer may install up to 200 ~~controlled demonstration~~ provisional wastewater systems pursuant to a protocol approved by the Department on sites that are suitable for a conventional wastewater system and that have a repair area of sufficient size to allow installation of a conventional wastewater system, an approved innovative wastewater system, or an accepted wastewater system if the ~~controlled demonstration~~ provisional wastewater system fails to perform properly. If the ~~controlled demonstration~~ provisional wastewater system is intended for use on sites that are not ~~suitable, or that are provisionally suitable,~~ suitable for a conventional wastewater system, the Department may approve the installation of the ~~controlled demonstration~~ provisional wastewater system if the Department determines that the manufacturer can provide an acceptable alternative method for collection, treatment, and ~~disposal~~ dispersal of the wastewater. The Department shall approve applications for provisional systems based on approval by a nationally recognized certification body within 90 days of receipt of a complete application. A manufacturer that chooses to remove its product from the nationally recognized standard during the provisional approval may continue its application in this State pursuant to requirements and procedures established by the Department.

(g) Innovative Systems. – ~~A manufacturer of a wastewater system for on-site subsurface use that has been evaluated as an experimental wastewater system as provided in subsection (e) of this section or that has been evaluated as a controlled demonstration wastewater system as provided in subsection (f) of this section may apply to the Department to have the system approved as an innovative wastewater system as provided in this subsection. may apply for and be considered for innovative system status by the Department in one of the following ways:~~

- (1) If the wastewater system has been approved as a provisional wastewater system pursuant to subsection (f) of this section, the manufacturer may apply to have the system approved as an innovative wastewater system based on successful completion of the evaluation protocols established pursuant to subsection (d) of this section.
- (2) ~~A manufacturer of a~~ If the wastewater system for on-site subsurface use that has not been evaluated or approved as an experimental a provisional wastewater system or as a controlled demonstration wastewater system pursuant to subsection (f) of this section, the manufacturer may also apply to the Department to have the system approved as an innovative wastewater system on the basis of comparable research and testing conducted in other states. The manufacturer shall provide the Department with the data and findings of all evaluations of the performance of the system that have been conducted in any state by or on behalf of the manufacturer. The manufacturer shall also provide the Department with a summary of the data and findings of all other evaluations of the performance of the system that are known to the manufacturer.
- (3) If the wastewater system has not been evaluated or approved as a provisional system pursuant to subsection (f) of this section, but has been evaluated under protocol established by a nationally recognized certification body for

at least two consecutive years, has been found to perform acceptably based on the criteria of the protocol, and is designed and will be installed in a manner consistent with the system evaluated and approved by the nationally recognized certification body, the manufacturer may apply to have the system approved as an innovative wastewater system.

Within 30 days of receipt of the initial application, the Department shall either (i) notify the manufacturer of any items necessary to complete the application or (ii) notify the manufacturer that its application is complete. The Department shall publish a notice that the manufacturer has submitted an application under this subsection in the North Carolina Register and may provide additional notice to the public via the Internet or by other means. The Department shall receive public comment on the application for at least 30 days after the date the notice is published in the North Carolina Register. In making a determination under this subsection, the Department shall consider the data, findings, and recommendations submitted by the manufacturer and all public comment. The Department may also consider any other information that the Department determines to be relevant. The Department shall determine: (i) whether the system performs in a manner equal or superior to a conventional wastewater system; system, in terms of structural integrity, treatment, and hydraulic performance; (ii) whether the system is constructed of materials whose physical and chemical properties provide the strength, durability, and chemical resistance to allow the system to withstand loads and conditions as required by rules adopted by the Commission; (iii) the circumstances in which use of the system is appropriate; and (iv) any conditions and limitations related to the use of the system. The Department shall make the determinations required by this subsection and approve or deny the application within ~~180~~ 90 days after the Department receives a complete application from a manufacturer. If the Department fails to act on the application within ~~180 days,~~ 90 days of the notice of receipt of the complete application, the manufacturer may treat the application as denied and challenge the denial by filing a contested case as provided in Article 3 of Chapter 150B of the General Statutes. If the Department approves an innovative wastewater system, the Department shall notify the manufacturer of the approval and specify the circumstances in which use of the system is appropriate and any conditions and limitations related to the use of the system.

(g1) Approval of Functionally Equivalent Trench Systems as Innovative Systems. – A manufacturer of a wastewater trench system may petition the Commission to have the wastewater trench system approved as an innovative wastewater system as provided in this subsection.

- (1) The Commission shall approve a wastewater trench system as an innovative wastewater system if it finds that there is clear, convincing, and cogent evidence that the wastewater trench system is functionally equivalent to a wastewater trench system that is approved as an accepted wastewater system. A wastewater trench system shall be considered functionally equivalent to an accepted wastewater trench system if the performance characteristics of the wastewater trench system satisfy all of the following requirements:
 - a. The physical properties and chemical durability of the materials from which the wastewater trench system is constructed are equal to or superior to the physical properties and chemical durability of the materials from which the accepted wastewater trench system is constructed.
 - b. The permeable sidewall area and bottom infiltrative area of the wastewater trench system are equal to or greater than the permeable sidewall area and bottom infiltrative area of the accepted wastewater trench system at a field-installed size.
 - c. The wastewater trench system utilizes a similar method and manner of function for the conveyance and application of effluent as the accepted wastewater trench system.
 - d. The structural integrity of the wastewater trench system is equal to or superior to the structural integrity of the accepted wastewater trench system.
 - e. The wastewater trench system shall provide a field installed system storage volume equal to or greater than the field installed system storage volume of the accepted wastewater trench system.

- (2) As part of its petition, the manufacturer shall provide to the Commission all of the following information:
 - a. Specifications of the wastewater trench system.
 - b. Data necessary to demonstrate that the wastewater trench system is functionally equivalent to a wastewater trench system that is approved as an accepted wastewater system.
 - c. A certified statement from an independent, third-party professional engineer or testing laboratory that, based on verified documentation, the wastewater trench system is functionally equivalent to an accepted wastewater system.
- (3) Approval of a wastewater trench system as an innovative wastewater system shall not be conditioned on the manufacturer of the wastewater trench system having operational systems installed in the State.
- (4) The Commission shall authorize the use of a wastewater trench system as an innovative wastewater system in the same applications as the accepted wastewater trench system.
- (5) The Commission shall not include conditions and limitations in the approval of a wastewater trench system as an innovative wastewater system that are not included in the approval of the accepted wastewater trench system.

(h) Accepted Wastewater Dispersal Systems. – A manufacturer of an innovative wastewater dispersal system that has been in general use in this State for ~~more than a minimum~~ of five years may petition the Commission to have the system designated as an accepted wastewater system as provided in this subsection. The manufacturer shall provide the Commission with the data and findings of all prior evaluations of the performance of the ~~system~~ system in this State and other states referenced in the petition, including disclosure of any conditions found to result in unacceptable structural integrity, treatment, or hydraulic performance. In addition, the manufacturer shall provide the Commission with information sufficient to enable the Commission to fully evaluate the performance of the system in this State for at least the five-year period immediately preceding the petition. The Commission shall designate a wastewater system as an accepted wastewater system only if it finds that there is clear, convincing, and cogent evidence (i) to confirm the findings made by the Department at the time the Department approved the system as an innovative wastewater system and (ii) that the system performs in a manner that is equal or superior to a conventional wastewater system under actual field conditions in this State. The Commission shall specify the circumstances in which use of the system is appropriate and any conditions and limitations related to the use of the system.

(i) ~~Miscellaneous Provisions.—Nonproprietary Wastewater Systems.—~~

- (1) ~~In evaluating applications for approval under this section, the Department may consult with persons who have special training and experience related to on-site subsurface wastewater systems and may form a technical advisory committee for this purpose. However, the Department is responsible for making timely and appropriate determinations under this section.~~
- (2) ~~The Department may initiate a review of a nonproprietary wastewater system and approve the system for on-site subsurface use as an experimental wastewater system, a controlled demonstration wastewater system, as a provisional wastewater system or an innovative wastewater system without having received an application from a manufacturer. The Department may recommend that the Commission designate a nonproprietary wastewater system as an accepted wastewater system without having received a petition from a manufacturer.~~

(j) ~~Warranty Required in Certain Circumstances.—The Department shall not approve a reduction of the total nitrification trench length for an innovative wastewater system or accepted wastewater system handling untreated septic tank effluent of more than twenty five percent (25%) as compared to the total nitrification trench length required for a 36 inch wide conventional wastewater system unless the manufacturer of the innovative wastewater system or accepted wastewater system provides a performance warranty for the nitrification trench system to each owner or purchaser of the system for a warranty period of at least five years from the date on which the wastewater system is placed in operation. The warranty shall provide that the manufacturer shall provide all material and labor that may be necessary to~~

~~provide a fully functional wastewater system. The Commission shall establish minimum terms and conditions for the warranty required by this subsection. This subsection shall not be construed to require that a manufacturer warrant a wastewater system that is not properly sized to meet the design load required for a particular use, that is improperly installed, or that is improperly operated and maintained.~~

(j1) Clarification With Respect to Certain Dispersal Media. – In considering the application by a manufacturer of a wastewater system utilizing expanded polystyrene synthetic aggregate particles as a septic effluent dispersal medium for approval of the system under this section, neither the Commission nor the Department may condition, delay, or deny the approval based on the particle or bulk density of the expanded polystyrene material. With respect to approvals already issued by the Department or Commission that include conditions or requirements related to the particle or bulk density of expanded polystyrene material, the Commission or Department, as applicable, shall promptly reissue all such approvals with the conditions and requirements relating to the density of expanded polystyrene material permanently deleted while leaving all other terms and conditions of the approval intact.

(k) Fees. – The Department shall collect the following fees under this section:

(1)	Review of an alternative protocol under subsection (d) of this section	\$1,000.00
(2)	Review of an experimental system	\$3,000.00
(3)	Review of a controlled demonstration <u>provisional</u> system	\$3,000.00
(4)	Review of an innovative system	\$3,000.00
(5)	Review of an accepted system	\$3,000.00
(6)	Review of a residential wastewater treatment system pursuant to G.S. 130A-342	\$1,500.00
(7)	Review of a component or device <u>required</u> of a system	\$ 100.00
(8)	Modification to approved <u>accepted, provisional, or</u> innovative system	\$1,000.00

(l) On-Site Wastewater System Account. – The On-Site Wastewater System Account is established as a nonreverting account within the Department. Fees collected pursuant to this section shall be placed in the On-Site Wastewater System Account and shall be applied only to the costs of implementing this section."

SECTION 4.15.(b) The Commission for Public Health shall review and amend its rules to implement Section 4.15(a) of this act.

SECTION 4.15.(c) Beginning January 1, 2016, and every quarter thereafter until all rules required pursuant to Sections 4.14 and 4.15 of this act are adopted or amended, the Commission for Public Health shall submit written reports as to its progress on adopting or amending rules as required by Sections 4.14 and 4.15 of this act to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services. The Commission shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services. The Commission shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

SECTION 4.15.(d) The Commission for Public Health, in consultation with the Department of Health and Human Services, local health departments, and stakeholders representing the wastewater system industry, shall study the costs and benefits of requiring treatment standards greater than those listed by nationally recognized standards, including the recorded advantage of such higher treatment standards for the protection of the public health and the environment. The Commission shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services on or before March 1, 2016.

CONTESTED CASES FOR AIR PERMITS

SECTION 4.17.(a) G.S. 143-215.108 reads as rewritten:

"§ 143-215.108. Control of sources of air pollution; permits required.

...
(e) A permit ~~applicant, permittee, or third party~~ applicant or permittee who is dissatisfied with a decision of the Commission on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission

notifies the applicant or permittee of its decision. If the permit ~~applicant, permittee, or third party~~ applicant or permittee does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review. The filing of a petition under this subsection will stay the Commission's decision until resolution of the contested case.

(e1) A person other than a permit applicant or permittee who is a person aggrieved by the Commission's decision on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission provides notice of its decision on a permit application, as provided in G.S. 150B-23(f), or by posting the decision on a publicly available Web site. The filing of a petition under this subsection does not stay the Commission's decision except as ordered by the administrative law judge under G.S. 150B-33(b).

...."

SECTION 4.17.(b) The Department of Environment and Natural Resources shall study whether the amendments to G.S. 143-215.108, as enacted by Section 4.17(a) of this act, should be expanded into other programs administered by the Department. The Department shall specifically consider whether these changes should be made to the water and solid waste permitting programs. No later than March 1, 2016, the Department shall report the results of this study, including any recommendations, to the Environmental Review Commission.

AMEND ISOLATED WETLANDS LAW

SECTION 4.18.(a) For the purposes of implementing Section .1300 of Subchapter 2H of Chapter 2 of Title 15A of the North Carolina Administrative Code (Discharges to Isolated Wetlands and Isolated Waters), the isolated wetlands provisions of Section .1300 shall apply only to Basin Wetlands and Bogs and no other wetland types as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 that are not jurisdictional wetlands under the federal Clean Water Act. The isolated wetlands provisions of Section .1300 shall not apply to an isolated man-made ditch or pond constructed for stormwater management purposes or any other man-made isolated pond.

SECTION 4.18.(b) The Environmental Management Commission may adopt rules to amend Section .1300 of Subchapter 2H of Chapter 2 of Title 15A of the North Carolina Administrative Code consistent with subsection (a) of this section.

SECTION 4.18.(c) Section 54 of S.L. 2014-120 reads as rewritten:

"SECTION 54.(a) Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to Section 54(c) of this act, the Commission and the Department of Environment and Natural Resources shall implement 15A NCAC 02H .1305 (Review of Applications) as provided in Section 54(b) of this act.

"SECTION 54.(b) Notwithstanding 15A NCAC 02H .1305 (Review of Applications), all of the following shall apply to the implementation of 15A NCAC 02H .1305:

- (1) The amount of impacts of isolated wetlands under 15A NCAC 02H .1305(d)(2) shall be less than or equal to one acre of isolated wetlands east of I-95 for the entire project and less than or equal to 1/3 acre of isolated wetlands west of I-95 for the entire project.
- (2) Mitigation requirements for impacts to isolated wetlands shall only apply to the amount of impact that exceeds the threshold set out in subdivision (1) of this section. The mitigation ratio for impacts of greater than one acre exceeding the threshold for the entire project under 15A NCAC 02H .1305(g)(6) shall be 1:1 and may be located on the same parcel.
- (3) ~~For purposes of Section 54(b) of this section, "isolated wetlands" means a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October, 2010, that are not jurisdictional wetlands under the federal Clean Water Act. An "isolated wetland" does not include an isolated man-made ditch or pond constructed for stormwater management purposes or any other man-made isolated pond.~~
- (4) Impacts to isolated wetlands shall not be combined with the project impacts to 404 jurisdictional wetlands or streams for the purpose of determining when impact thresholds that trigger a mitigation requirement are met.

"SECTION 54.(c) The Environmental Management Commission shall adopt rules to amend 15A NCAC 02H .1300 through 15A NCAC 02H .1305 consistent with Section 54(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this subsection shall be substantively identical to the provisions of Section 54(b) of this act. Rules adopted pursuant to this subsection are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this subsection shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

"SECTION 54.(d) The Department of Environment and Natural Resources shall study (i) how the term "isolated wetland" has been previously defined in State law and whether the term should be clarified in order to provide greater certainty in identifying isolated wetlands; (ii) the surface area thresholds for the regulation of mountain bog isolated wetlands, including whether mountain bog isolated wetlands should have surface area regulatory thresholds different from other types of isolated wetlands; and (iii) whether impacts to isolated wetlands should be combined with the project impacts to jurisdictional wetlands or streams for the purpose of determining when impact thresholds that trigger a mitigation requirement are met. The Department shall report its findings and recommendations to the Environmental Review Commission on or before November 1, 2014.

"SECTION 54.(e) This section is effective when it becomes law. Section 54(b) of this act expires on the date that rules adopted pursuant to Section 54(c) of this act become effective."

SECTION 4.18.(d) No later than March 1, 2016, the Environmental Management Commission shall amend 15A NCAC 02H .1305 (Review of Applications) to establish a coastal region, piedmont region, and mountain region for purposes of regulating impacts to isolated wetlands. The amount of impacts of isolated wetlands under 15A NCAC 02H .1305(d)(2) shall be the following:

- (1) Less than or equal to one acre of isolated wetlands for the entire project in the coastal region.
- (2) Less than or equal to one-half acre of isolated wetlands for the entire project for the piedmont region.
- (3) Less than or equal to one-third acre of isolated wetlands for the entire project for the mountain region.

In no event shall the regulatory requirements for impacts to isolated wetlands be more stringent than required under current law. When the rules required by this section become effective, subdivision (1) of Section 54(b) of S.L. 2014-120 is repealed.

STUDY COASTAL WATER QUALITY AND COASTAL STORMWATER REQUIREMENTS

SECTION 4.19. The Department of Environment and Natural Resources shall evaluate the water quality of surface waters in the Coastal Counties and the impact of stormwater on this water quality. The Department shall study and determine the maximum allowable built-upon area for the low density state stormwater option as directly related to the length of grassed swale treatment length; therefore providing data for a property to achieve increased built-upon area above current limits by providing a longer length of grassed swale through which the stormwater must pass. If it is determined that increases in the percentage of built-upon area can be allowed in this way without detriment to the water quality, the Department shall submit recommendations to the General Assembly for the levels of increases in built-upon area that can be supported with corresponding increases in the length of grassed swale through which the stormwater shall pass. No later than April 1, 2016, the Department shall report the results of its study, including recommendations, to the Environmental Review Commission.

AMEND STORMWATER MANAGEMENT LAW

SECTION 4.20.(a) Section 3 of S.L. 2013-82 reads as rewritten:

"SECTION 3. The Environmental Management Commission shall adopt rules implementing Section 2 of this act no later than ~~July 1, 2016~~ November 1, 2016."

SECTION 4.20.(b) G.S. 143-214.7, as amended by S.L. 2015-149, reads as rewritten:

"§ 143-214.7. Stormwater runoff rules and programs.

...

(b2) For purposes of implementing stormwater programs, "built-upon area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a slatted deck; the water area of a swimming pool; a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; or a trail as defined in G.S. 113A-85 that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour). For State stormwater programs and local stormwater programs approved pursuant to subsection (d) of this section, all of the following shall apply:

- (1) The volume, velocity, and discharge rates of water associated with the one-year, 24-hour storm and the difference in stormwater runoff from the predevelopment and postdevelopment conditions for the one-year, 24-hour storm shall be calculated using any acceptable engineering hydrologic and hydraulic methods.
- (2) Development may occur within the area that would otherwise be required to be placed within a vegetative buffer required by the Commission pursuant to G.S. 143-214.1 and G.S. 143-214.7 to protect classified shellfish waters, outstanding resource waters, and high-quality waters provided the stormwater runoff from the development is collected and treated from the entire impervious area and discharged so that it passes through the vegetative buffer and is managed so that it otherwise complies with all applicable State and federal stormwater management requirements.
- (3) The requirements that apply to development activities within one-half mile of and draining to Class SA waters or within one-half mile of Class SA waters and draining to unnamed freshwater tributaries shall not apply to development activities and associated stormwater discharges that do not occur within one-half mile of and draining to Class SA waters or are not within one-half mile of Class SA waters and draining to unnamed freshwater tributaries.

...
 (d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal ~~or exceed~~ those of the model program adopted by the Commission pursuant to this section.
"

SECTION 4.20.(c) No later than March 1, 2016, a State agency or local government that implements a stormwater management program approved pursuant to subsection (d) of G.S. 143-214.7 shall submit its current stormwater management program or a revised stormwater management program to the Environmental Management Commission. No later than December 1, 2016, the Environmental Management Commission shall review and act on each of the submitted stormwater management programs in accordance with subsection (d) of G.S. 143-214.7, as amended by this section.

SECTION 4.20.(d) The Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, shall review the current status of State statutes, session laws, rules, and guidance documents related to the management of stormwater in the State. The Commission shall specifically examine whether State statutes, session laws, rules, and guidance documents related to the management of stormwater in the State should be recodified or reorganized in order to clarify State law for the management of stormwater. The Commission shall submit legislative recommendations, if any, to the 2016 Regular Session of the 2015 General Assembly.

SECTION 4.20A. Section 46 of S.L. 2014-120 reads as rewritten:

"SECTION 46.(a) Notwithstanding the requirements of Article 21 of Chapter 143 of the General Statutes and rules adopted pursuant to that Article, the addition of a cluster box unit to a single-family or duplex development permitted by a local government shall not require a modification to any stormwater permit for that development. This section shall only apply to single-family or duplex developments in which individual curbside mailboxes are replaced with

cluster box units whereupon the associated built-upon area supporting the cluster box units shall be considered incidental and shall not be required in the calculation of built-upon area for the development for stormwater permitting purposes.

"SECTION 46.(b) This section is effective when this act becomes law and expires on December 31, ~~2015~~, 2017, or when regulations on cluster box design and placement by the United States Postal Service become effective and those regulations are adopted by local governments, whichever is earlier."

STUDY EXEMPTING LINEAR UTILITY PROJECTS FROM CERTAIN ENVIRONMENTAL REGULATIONS

SECTION 4.21. The Department of Environment and Natural Resources shall study whether and to what extent activities related to the construction, maintenance, and removal of linear utility projects should be exempt from certain environmental regulations. For purposes of this section, "linear utility project" means an electric power line, water line, sewage line, stormwater drainage line, telephone line, cable television line, data transmission line, communications-related line, or natural gas pipeline. For purposes of this section, "environmental regulation" means a regulation established or implemented by any of the following:

- (1) The Department of Environment and Natural Resources created pursuant to G.S. 143B-279.1.
- (2) The Environmental Management Commission created pursuant to G.S. 143B-282.
- (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
- (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
- (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
- (6) The Commission for Public Health created pursuant to G.S. 130A-29.
- (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.
- (8) The North Carolina Mining and Energy Commission created pursuant to G.S. 143B-293.1.
- (9) The North Carolina Oil and Gas Commission created pursuant to G.S. 143B-293.1.

No later than March 1, 2016, the Department shall report the results of this study, including any recommendations, to the Environmental Review Commission.

REPEAL DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES IDLING RULES

SECTION 4.24. The Secretary of Environment and Natural Resources shall repeal 15A NCAC 02D .1010 (Heavy-Duty Vehicle Idling Restrictions) on or before March 1, 2016. Until the effective date of the repeal of the rule required pursuant to this section, the Secretary, the Department of Environment and Natural Resources, the Environmental Management Commission, or any other political subdivision of the State shall not implement or enforce 15A NCAC 02D .1010 (Heavy-Duty Vehicle Idling Restrictions).

AMBIENT AIR MONITORING

SECTION 4.25.(a) The Department of Environment and Natural Resources shall review its ambient air monitoring network and, in the next annual monitoring network plan submitted to the United States Environmental Protection Agency, shall request the removal of any ambient air monitors that are not required by applicable federal laws and regulations and that the Department has determined are not necessary to protect public health, safety, and welfare; the environment; and natural resources.

SECTION 4.25.(b) No later than September 1, 2016, the Department of Environment and Natural Resources shall discontinue all ambient air monitors not required by applicable federal laws and regulations if approval from the United States Environmental Protection Agency is not required for the discontinuance and the Department has determined that the monitors are not necessary to protect public health, safety, and welfare; the environment; and natural resources.

SECTION 4.25.(c) Nothing in this section is intended to prevent the Department from installing temporary ambient air monitors as part of an investigation of a suspected

violation of air quality rules, standards, or limitations or in response to an emergency situation causing an imminent danger to human health and safety.

SECTION 4.25.(d) The Division of Air Quality, Department of Environment and Natural Resources, shall report to the Environmental Review Commission no later than November 1, 2016, on the status of the ambient air monitoring network and the Division's implementation of the requirements of this section.

DIVISION OF AIR QUALITY NOTICE REQUIREMENTS

SECTION 4.27. G.S. 143-215.110 reads as rewritten:

"§ 143-215.110. Special orders.

(a) Issuance. – The Commission is hereby empowered, after the effective date of standards and classifications adopted pursuant to G.S. 143-215.107, to issue (and from time to time to modify or revoke) a special order or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the air within the area for which standards have been established. Such an order or instrument may direct such person to take or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the air, subject to the provisions of subsection (a1) of this section regarding proposed orders, and such consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission issued pursuant to hearing.

(a1) Public Notice and Review of Consent Orders.

- (1) The Commission shall give notice of a proposed consent order to the proper State, interstate, and federal agencies, to interested persons, and to the public. The Commission may also provide any other data it considers appropriate to those notified. The Commission shall prescribe the form and content of the notice. The notice shall be given at least ~~45-30~~ days prior to any final action regarding the consent order. Public notice shall be given by publication of the notice ~~one time in a newspaper having general circulation within the county in which the pollution originates~~ for 30 days on the regulatory agency Web site.
- (2) Any person who desires a public meeting on any proposed consent order may request one in writing to the Commission within 30 days following date of the notice of the proposed consent order. The Commission shall consider all such requests for meetings. If the Commission determines that there is significant public interest in holding a meeting, the Commission shall schedule a meeting and shall give notice of such meeting at least 30 days in advance to all persons to whom notice of the proposed consent order was given and to any other person requesting notice. At least 30 days prior to the date of meeting, the Commission shall also have a copy of the notice of the meeting published ~~at least one time in a newspaper having general circulation within the county in which the pollution originates~~ for 30 days on the regulatory agency Web site. The Commission shall prescribe the form and content of notices under this subsection.

...."

PROHIBIT THE REQUIREMENT OF MITIGATION FOR IMPACTS TO INTERMITTENT STREAMS

SECTION 4.31.(a) Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-214.7C. Prohibit the requirement of mitigation for impacts to intermittent streams.

Except as required by federal law, the Department of Environment and Natural Resources shall not require mitigation for impacts to an intermittent stream. For purposes of this section, "intermittent stream" means a well-defined channel that has all of the following characteristics:

- (1) It contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table.

- (2) The flow of water in the intermittent stream may be heavily supplemented by stormwater runoff.
- (3) It often lacks the biological and hydrological characteristics commonly associated with the conveyance of water."

SECTION 4.31.(b) The Department of Environment and Natural Resources and the Environmental Management Commission shall amend their rules so that the rules are consistent with the provisions of G.S. 143-214.7C, as enacted by subsection (a) of this section.

PIGEON HUNTING

SECTION 4.32(a) G.S. 14-360(c) reads as rewritten:

"(c) As used in this section, the words "torture", "torment", and "cruelly" include or refer to any act, omission, or neglect causing or permitting unjustifiable pain, suffering, or death. As used in this section, the word "intentionally" refers to an act committed knowingly and without justifiable excuse, while the word "maliciously" means an act committed intentionally and with malice or bad motive. As used in this section, the term "animal" includes every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings. However, this section shall not apply to the following activities:

- (1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this section shall apply to those birds other than pigeons exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to G.S. 113-129(15a).
- (2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.
- (2a) Lawful activities conducted for the primary purpose of providing food for human or animal consumption.
- (3) Activities conducted for lawful veterinary purposes.
- (4) The lawful destruction of any animal for the purposes of protecting the public, other animals, property, or the public health.
- (5) The physical alteration of livestock or poultry for the purpose of conforming with breed or show standards."

SECTION 4.32.(b) G.S. 19A-1.1 reads as rewritten:

"§ 19A-1.1. Exemptions.

This Article shall not apply to the following:

- (1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this Article applies to those birds other than pigeons exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to G.S. 113-129(15a).

...."

WILDLIFE RESOURCES COMMISSION STUDIES

SECTION 4.33.(a) The Wildlife Resources Commission shall review the methods and criteria by which it adds, removes, or changes the status of animals on the State protected animal list as defined in G.S. 113-331 and compare these to federal regulations and the methods and criteria of other states in the region. The Commission shall also review the policies by which the State addresses introduced species and make recommendations for improving these policies, including impacts associated with hybridization that occurs among federally listed, State-listed, and nonlisted animals.

SECTION 4.33.(b) The Wildlife Resources Commission shall report its findings and recommendations to the Environmental Review Commission by March 1, 2016.

SECTION 4.34.(a) The Wildlife Resources Commission shall establish a coyote management plan to address the impacts of coyotes in this State and the threats that coyotes pose to citizens, industries, and populations of native wildlife species within the State.

SECTION 4.34.(b) The Wildlife Resources Commission shall report its findings and recommendations, including any proposed legislation to address overpopulation of coyotes, to the Environmental Review Commission by March 1, 2016.

SECTION 4.35.(a) The Wildlife Resources Commission shall establish a pilot coyote management assistance program in Mitchell County. In implementing the program, the Commission shall document and assess private property damage associated with coyotes;

evaluate effectiveness of different coyote control methodologies, including lethal removal; and evaluate potential for a scalable statewide coyote assistance program.

SECTION 4.35.(b) The Wildlife Resources Commission shall submit an interim report on the progress of the pilot program to the Environmental Review Commission by March 1, 2016. The Wildlife Resources Commission shall submit a final report on the results of the pilot program, including any proposed legislation, to the Environmental Review Commission by January 1, 2017.

ANIMAL WELFARE HOTLINE AND COURT FEE TO SUPPORT THE INVESTIGATION OF ANIMAL CRUELTY VIOLATIONS

SECTION 4.36.(a) Article 1 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"§ 114-8.7. Reports of animal cruelty and animal welfare violations.

(a) The Attorney General shall establish a hotline to receive reports of allegations of animal cruelty or violations of the Animal Welfare Act, Article 3 of Chapter 19A of the General Statutes, against animals under private ownership, by means including telephone, electronic mail, and Internet Web site. The Attorney General shall periodically publicize the hotline telephone number, electronic mail address, Internet Web site address, and any other means by which the Attorney General may receive reports of allegations of animal cruelty or violations of the Animal Welfare Act. Any individual who makes a report under this section shall disclose his or her name and telephone number and any other information the Attorney General may require.

(b) When the Attorney General receives allegations involving activity that the Attorney General determines may involve cruelty to animals under private ownership in violation of Article 47 of Chapter 14 of the General Statutes, the allegations shall be referred to the appropriate local animal control authority for the unit or units of local government within which the violations are alleged to have occurred. When the Attorney General receives allegations involving activity that the Attorney General determines may involve violations of the Animal Welfare Act, the allegations shall be referred to the Department of Agriculture and Consumer Services. The Attorney General shall record the total number of reports received on the hotline and the number of reports received against any individual on the hotline.

(c) Notwithstanding other provisions of law, the Department of Justice is authorized to spend any federal, State, local, or private funds available for this purpose to administer the provisions of this section.

(d) Notwithstanding G.S. 147-33.72C and related provisions of law, in order to expedite the timely implementation of technology systems to record and manage public allegations and complaints received pursuant to this section, the Department of Justice is exempted from external agency project approval standards."

SECTION 4.36.(b) This section becomes effective March 1, 2016.

STUDY FLOOD ELEVATIONS AND BUILDING HEIGHT REQUIREMENTS

SECTION 4.38. The Department of Insurance, the Department of Public Safety, and the Building Code Council shall jointly study how flood elevations and building heights for structures are established and measured in the coastal region of the State. The Departments and the Council shall specifically consider how flood elevations and coastal building height requirements affect flood insurance rates and how height calculation methods might be made more consistent and uniform in order to provide flood insurance rate relief. In conducting this study, the Departments and the Council shall engage a broad group of stakeholders, including property owners, local governments, representatives of the surveying industry, and representatives of the development industry. No later than March 1, 2016, the Departments and the Council shall jointly submit the results of their study, including any legislative recommendations, to the 2015 General Assembly.

ALLOW ALTERNATE DISPOSAL OF BIODEGRADABLE AGRICULTURAL PLASTICS

SECTION 4.39.(a) G.S. 106-950 reads as rewritten:
"§ 106-950. Exempt fires; no permit fees.

(a) This Article shall not apply to any fires started, or caused to be started, within 100 feet of an occupied dwelling house if such fire shall be confined (i) within an enclosure from

which burning material may not escape or (ii) within a protected area upon which a watch is being maintained and which is provided with adequate fire protection equipment.

(a1) Except in cases where the Commissioner has prohibited all open burning during periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to Article 21B of Chapter 143 of the General Statutes, this Article shall not apply to, and no air quality permit shall be required for, the burning of polyethylene agricultural plastic used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, when all of the following conditions apply:

- (1) The burning does not violate any State or federal ambient air quality standards.
- (2) The burning is conducted between an hour after sunrise and an hour before sunset.
- (3) The fire is set back at least 250 feet from any paved public roadway and at least 500 feet from any dwelling, group of dwellings, commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.
- (4) The burning is conducted in a manner such that it does not constitute a public nuisance.
- (5) The burning is conducted by any of the following means:
 - a. By professionally manufactured equipment solely for the purpose of plastic mulch burning or incineration and approved by the Commissioner.
 - b. By a fire that is enclosed in a noncombustible container.
 - c. By a fire that is restricted to a pile no greater than eight feet in diameter built upon ground cleared of all combustible material.

(b) No charge shall be made for the granting of any permit required by this Article."

SECTION 4.39.(b) The Department of Agriculture and Consumer Services may adopt rules to implement the provisions of this section.

SECTION 4.39.(c) This section becomes effective January 1, 2015.

PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 5.1. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 5.2. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of September, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 8:45 a.m. this 22nd day of October, 2015

	State Standards	Orange County Standards
Size of buffer	<p>50 feet in width, each side of the stream, broken down as follows:</p> <ol style="list-style-type: none"> 1. Zone 1: Inner 30 ft. edge of property directly adjacent to an identified stream. 2. Zone 2: Outer 20 ft. of stream buffer. <p>Per change in State law (SL 2015-246) Zone 2 can be eliminated and additional development within this area is allowed (i.e. single-family residential development) so long as it can be demonstrated there will be no adverse impacts.</p>	<p>Orange County enforces the 50 foot State buffer (Section 6.13 of UDO).</p> <p>For water features located within Watershed Protection Overlay Districts, or for streams shown as a water feature in the County Soil Survey outside of these districts, the County requires additional buffer area based on slope of property adjacent to a water feature. The additional buffer is determined in Section 6.13.3 of the UDO as follows:</p> <ol style="list-style-type: none"> 1. Slope less the 7 ½% - additional 15 feet of buffer (65 ft. of required stream buffer); 2. Slope greater the 7 ½% - an additional 30 feet of buffer (80 ft. of required stream buffer); 3. Water features located within the University Lake Protected and Critical Watershed Overlay Districts can have stream buffers ranging in size from 100 to 250 ft. based on slope and adjacent ground cover.
Where stream buffer is measured from	Center of stream/water body	Edge of stream/water feature bank
What is required to have a buffer	Perennial and Intermittent streams	Perennial and Intermittent streams ; Special Flood Hazard Area Overlay District ; lakes/ponds ; marshes/swamps/wetlands ; and natural drainage ditches (i.e. non-ephemeral water bodies)
Allowed uses in stream buffer	<ul style="list-style-type: none"> • Exempt uses (i.e. wastewater wells, fences, driveway crossing disturbing less than 25 ft., etc.), • Uses allowed by right (i.e. maintenance, utilities, community wells, etc.), • Uses allowed with buffer mitigation (i.e. more than 150 ft. of linear disturbance for a road/driveway, mining activities, water dependent structures, etc.) <p>A definitive list can be viewed using the following link:</p> <p>http://portal.ncdenr.org/c/document_library/get_file?p_l_id=38446&folderId=209710&name=DLFE-15305.pdf.</p>	<p>Detailed in Section 6.13.6 of UDO the County establishes:</p> <ul style="list-style-type: none"> • Uses allowed by right (i.e. maintenance, utilities community wells, driveway crossings disturbing less than 25 ft., etc.) • Uses allowed with buffer mitigation (i.e. more than 150 ft. of linear disturbance, water dependent structures, etc.) <p>The County chose not to adopt 'exempt uses' and made them allowed by right. The rationale was we did not want to establish the precedent there were land use activities 'exempt' from the County's overall policy with respect to stream buffer protection.</p>