GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SENATE BILL 810
RATIFIED BILL

AN ACT TO (1) REESTABLISH THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE; (1A) MODIFY APPOINTMENTS TO THE MINING AND ENERGY COMMISSION; (2A) MAKE VARIOUS TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURES ACT; (2B) MAKE CONFORMING CHANGES TO THE STATE PERSONNEL ACT; (3) EXTEND THE EFFECTIVE DATE FOR CHANGES TO FINAL DECISION-MAKING AUTHORITY IN CERTAIN CONTESTED CASES; (4) LIMIT THE PERIOD DURING WHICH RECORDS OF UNCLAIMED PROPERTY MUST BE MAINTAINED; (5A) DIRECT AGENCIES TO SUBMIT A REPORT ON NOTICE GIVEN BEFORE AUDITING OR EXAMINING A BUSINESS TO THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE; (5B) LIMIT STATE AGENCY IDENTITY THEFT REPORTING REQUIREMENTS; (5C) REQUIRE THE DEPARTMENT OF LABOR TO PROVIDE NOTICE PRIOR TO INSPECTIONS; (6) CLARIFY THAT THE DISCHARGE OF WASTE INTO WATERS OF THE STATE DOES NOT INCLUDE THE RELEASE OF AIR CONTAMINANTS INTO THE OUTDOOR ATMOSPHERE; (7) AUTHORIZE RATHER THAN REQUIRE THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES FOR THE TESTING OF WATER FROM NEW DRINKING WATER WELLS FOR CERTAIN VOLATILE ORGANIC COMPOUNDS; (7A) CLARIFY APPLICATION OF CERTAIN NUTRIENT RULES TO SMALL WASTEWATER DISCHARGES; (8) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO TRACK AND REPORT ON PERMIT PROCESSING TIMES; (9) DELAY THE EFFECTIVE DATE FOR COMPLIANCE WITH WADING POOL FENCING REQUIREMENTS FROM JULY 1, 2012, TO JANUARY 1, 2013; (10) DIRECT THE COMMISSION FOR PUBLIC HEALTH TO AMEND THE RULES GOVERNING THE DURATION OF PERMITS FOR SANITARY LANDFILLS AND THE PERIOD IN WHICH THOSE PERMITS ARE REVIEWED; (11) AMEND THE CRITERIA FOR DESIGNATION AS A PORT ENHANCEMENT ZONE; (12) EXEMPT CERTIFIED ROADSIDE FARM MARKETS FROM CERTAIN BUILDING CODE REQUIREMENTS; AND (13) ALLOW THE PERMITTING OF MOBILE FOOD UNITS THAT MEET THE SANITATION REQUIREMENTS OF A COMMISSARY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.3 of S.L. 2011-291 is repealed.

SECTION 1.1. If Senate Bill 820 becomes law, then, effective August 1, 2012, G.S. 143B-293.2(a), as enacted by Section 1(b) of Senate Bill 820, reads as rewritten:

"(a) Members Selection. – The North Carolina Mining and Energy Commission shall consist of 15 members appointed as follows:

(1) The Chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, or the Chair's designee, ex officio.
(2) The State Geologist, or the State Geologist's designee, ex officio.
(3) The Assistant Secretary of Energy for the Department of Commerce, ex officio.
(4) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of a nongovernmental conservation interest.

(5) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is an elected official of a municipal government located in the Triassic Basin of North Carolina.

(6) ~~One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.~~One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a representative of the mining industry.

(7) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who shall be a geologist with experience in oil and gas exploration and development.

(8) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of a nongovernmental conservation interest.

(9) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of a county board of commissioners of a county located in the Triassic Basin of North Carolina.

(10) ~~One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of the Commission for Public Health and knowledgeable in the principles of waste management.~~One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a representative of the mining industry.

(11) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who shall be an engineer with experience in oil and gas exploration and development.

(12) One appointed by the Governor who shall be a representative of a publicly traded natural gas company.

(13) One appointed by the Governor who shall be a licensed attorney with experience in legal matters associated with oil and gas exploration and development.

(14) ~~One appointed by the Governor who is a representative of the mining industry.~~One appointed by the Governor who is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

(15) ~~One appointed by the Governor who is a representative of the mining industry.~~One appointed by the Governor who is a member of the Commission for Public Health and knowledgeable in the principles of waste management."

SECTION 2. G.S. 150B-18 reads as rewritten:

"**§ 150B-18. Scope and effect.**

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. An agency shall not seek to implement or enforce against any person a policy, guideline, or other ~~nonbinding~~ interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other ~~nonbinding~~interpretive statement has not been adopted as a rule in accordance with this Article."

SECTION 3. G.S. 150B-19.1 reads as rewritten:

"**§ 150B-19.1. Requirements for agencies in the rule-making process.**

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

(1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.

(2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.

(3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.

(4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.

(5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).

(6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its ~~Web site when the agency submits the notice of text for publication in accordance with G.S. 150B-21.2~~Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

(1) The text of a proposed rule.

(2) An explanation of the proposed rule and the reason for the proposed rule.

(3) The federal certification required by subsection (g) of this section.

(4) Instructions on how and where to submit oral or written comments on the proposed rule.

(5) Any fiscal note that has been prepared for the proposed rule.

~~The agency shall maintain the information in a searchable database and shall periodically update this online information to reflect changes in the proposed rule or the fiscal note prior to adoption.~~If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule ~~with the rule-making body, and the rule-making body must~~and approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

(1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.

(2) Post the certification on the agency Web site in accordance with subsection (c) of this section.

(3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Before an agency that is within the Governor's cabinet submits the proposed text of a permanent rule change for publication in the North Carolina Register, the agency must submit the text of the proposed rule change and an analysis of the proposed rule change to the Office

of State Budget and Management and obtain a certification from the Office that the agency adhered to the principles set forth in this section. Before an agency that is within the departments of the Council of State, other than the Governor, submits the proposed text of a permanent rule change for publication in the North Carolina Register, the agency must submit the text of the proposed rule change and an analysis of the proposed rule change to the Commission and obtain a certification from the Commission, or the Commission's designee, as described in G.S. 150B-21.1(b), that the agency adhered to the principles set forth in this section. The Office of State Budget and Management or the Commission, respectively, must respond to an agency's request for certification within 20 business days of receipt of the request."

SECTION 4. G.S. 150B-21.4(a) reads as rewritten:

"(a) State Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office of State Budget and Management and obtain certification from the Office that the funds that would be required by the proposed rule change are available. ~~The Office must also determine and certify that the agency adhered to the principles set forth in G.S. 150B-19.1.~~ The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change."

SECTION 5. G.S. 150B-23.2(b) reads as rewritten:

"(b) Time of Collection. – All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected by the Office of Administrative Hearings at the time of commencement of the contested case ~~(except in suits in forma pauperis).~~except as may be allowed by rule to permit or complete late payment or in suits in forma pauperis."

SECTION 6. G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a ~~party or a representative of the party~~ party, an attorney representing a party, or other representative of the party as may specifically be authorized by law, and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;
(2) Acted erroneously;
(3) Failed to use proper procedure;
(4) Acted arbitrarily or capriciously; or
(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article."

SECTION 7.1. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a

contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a ~~decision, by the agency in making a final decision,~~decision or by the court on judicial review."

SECTION 7.2. G.S. 150B-33(b) reads as rewritten:

"(b) An administrative law judge may:

…

(11) Order the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved in contested cases decided under this Article where the administrative law judge finds that the State agency named as respondent has substantially prejudiced the petitioner's rights and has acted arbitrarily or capriciously or under Chapter 126 where the administrative law judge finds discrimination, harassment, or orders reinstatement or back pay.

…."

SECTION 7.3. Section 55.2 of S.L. 2011-398 reads as rewritten:

"**SECTION 55.2.** If necessary to effectuate the purposes of this act, ~~The~~the Office of Administrative Hearings shall seek United States Environmental Protection Agency approval to become an agency responsible for administering programs under the federal Clean Water Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. On or before December 31, 2011, the Office of Administrative Hearings and the Department of Environment and Natural Resources shall jointly develop and submit any Memoranda of Agreement, delineations of programmatic responsibility, procedure for coordination, and other information that United States Environmental Protection Agency may require in order to effectuate ~~the~~any necessary approval process."

SECTION 8.1. Section 63 of S.L. 2011-398 reads as rewritten:

"**SECTION 63.** Sections 2 through 14 of this act become effective October 1, 2011, and apply to rules adopted on or after that date. Sections 15 through 55 of this act become effective January 1, 2012, and apply to contested cases commenced on or after that date. With regard to contested cases affected by Section 55.2 of this act, the provisions of Sections 15 through 27 of this act become effective when the United States Environmental Protection Agency approvals referenced in Section 55.2 have been issued or ~~June 15, 2012,~~October 1, 2012, whichever occurs first. With regard to contested cases affected by Section 55.1 of this act, the provisions of Sections 15 through 27 and Sections 32 and 33 of this act become effective when the waiver referenced in Section 55.1 has been granted or February 1, 2013, whichever occurs first. Unless otherwise provided elsewhere in this act, the remainder of this act is effective when it becomes law."

SECTION 8.2. G.S. 126-34 reads as rewritten:

"**§ 126-34. Grievance appeal for career State employees.**

Unless otherwise provided in this Chapter, any career State employee having a grievance arising out of or due to the employee's employment and who does not allege unlawful harassment or discrimination because of the employee's age, sex, race, color, national origin, religion, creed, handicapping condition as defined by G.S. 168A-3, or political affiliation shall first discuss the problem or grievance with the employee's supervisor and follow the grievance procedure established by the employee's department or agency. Any State employee having a grievance arising out of or due to the employee's employment who alleges unlawful harassment because of the employee's age, sex, race, color, national origin, religion, creed, or handicapping condition as defined by G.S. 168A-3 shall submit a written complaint to the employee's department or agency. The department or agency shall have 60 days within which to take appropriate remedial action. If the employee is not satisfied with the department or agency's response to the complaint, the employee shall have the right to appeal directly to the ~~State Personnel Commission.~~Office of Administrative Hearings."

SECTION 8.3. G.S. 126-34.1(e) reads as rewritten:

"(e) Any issue for which appeal to the ~~State Personnel Commission~~Office of Administrative Hearings through the filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been specifically authorized by this section shall not be grounds for a contested case under Chapter 126."

SECTION 8.4. G.S. 126-35(a) reads as rewritten:

"(a) No career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the department. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. The employee, if he is not satisfied with the final decision of the head of the department, or if he is unable, within a reasonable period of time, to obtain a final decision by the head of the department, may appeal to the ~~State Personnel Commission.~~Office of Administrative Hearings. Such appeal shall be filed not later than 30 days after receipt of notice of the department head's decision. The State Personnel Commission may adopt, subject to the approval of the Governor, rules that define just cause."

SECTION 8.5. G.S. 126-36 reads as rewritten:

"**§ 126-36. Appeal of unlawful State employment practice.**

(a) Any State employee or former State employee who has reason to believe that employment, promotion, training, or transfer was denied the employee or that demotion, layoff, transfer, or termination of employment was forced upon the employee in retaliation for opposition to alleged discrimination or because of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3 except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the ~~State Personnel Commission.~~Office of Administrative Hearings.

(b) Subject to the requirements of G.S. 126-34, any State employee or former State employee who has reason to believe that the employee has been subjected to any of the following shall have the right to appeal directly to the ~~State Personnel Commission:~~Office of Administrative Hearings:

(1) Harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo.

(2) Retaliation for opposition to harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo."

SECTION 8.6. G.S. 126-36.1 reads as rewritten:

"**§ 126-36.1. Appeal to ~~Personnel Commission~~Office of Administrative Hearings by applicant for employment.**

Any applicant for State employment who has reason to believe that employment was denied in violation of G.S. 126-16 shall have the right to appeal directly to the ~~State Personnel Commission.~~Office of Administrative Hearings."

SECTION 8.7. G.S. 126-36.2 reads as rewritten:

"**§ 126-36.2. Appeal to ~~Personnel Commission~~Office of Administrative Hearings by career State employee denied notice of vacancy or priority consideration.**

Any career State employee who has reason to believe that he was denied promotion due to the failure of the agency, department, or institution that had a job vacancy to:

(1) Post notice of the job vacancy pursuant to G.S. 126-7.1(a) or;

(2) Give him priority consideration pursuant to G.S. 126-7.1(c)

may appeal directly to the ~~State Personnel Commission.~~Office of Administrative Hearings."

SECTION 9. G.S. 116B-73(a) reads as rewritten:

"(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for ~~10 years~~ five years after the holder files the report, unless a shorter period is provided by rule of the Treasurer."

SECTION 10.1.(a) Each State agency, as defined in G.S. 150B-2(1a), shall submit a report of the audit, examination, and inspection functions performed by the agency and the

amount of notice, if any, that the agency is required, by law or rule, to provide to a business, nonprofit, or individual prior to conducting the audit, examination, or inspection. The agency shall submit the report to the Joint Legislative Administrative Procedure Oversight Committee, as reestablished by Section 1 of this act, no later than October 31, 2012.

SECTION 10.1.(b) Article 1 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-9.1. Notice of employer's rights during farm inspections.**

The Department of Labor shall, in consultation with farm organizations and the Department of Agriculture and Consumer Services, prepare a notice to be delivered to the employer, at the beginning of an inspection of any premises engaged in agricultural employment in this State. The notice shall advise the employer of any rights or recourse to which the employer and employees are entitled under State or federal law in connection with any inspection of the employer's premises or operation conducted by the Department of Labor. The Department shall deliver the notice to the employer at the beginning of an inspection of premises used for agricultural employment. For purposes of this section, the term "agricultural employment" shall have the same meaning as defined in G.S. 95-223(1)."

SECTION 10.1.(c) Section 10.1(b) of this act becomes effective August 1, 2012, and applies to all inspections of premises engaged in agricultural employment conducted by the Department of Labor on or after that date.

SECTION 10.2 G.S. 120-270 reads as rewritten:

"**§ 120-270. Report by State agencies to the General Assembly on ways to reduce incidence of identity theft.**

Agencies of the State shall evaluate ~~and report annually by January 1 to the General Assembly about~~the agency's efforts to reduce the dissemination of personal identifying information, as defined in G.S. 14-113.20(b). The evaluation shall include the review of public forms, the use of random personal identification numbers, restriction of access to personal identifying information, and reduction of use of personal identifying information when it is not necessary. Special attention shall be given to the use, collection, and dissemination of social security numbers. If the collection of a social security number is found to be unwarranted, the State agency shall immediately discontinue the collection of social security numbers for that purpose. Any agency that determines that an act of the General Assembly or other provision of law impedes the agency's ability to reduce the incidence of identity theft shall report such findings to the General Assembly by January 1 of the year following such a determination."

SECTION 10.3. G.S. 143B-431(e) reads as rewritten:

"(e) The Department of Commerce may establish a clearinghouse for State business license information and shall perform the following duties:

…

(5) Collaborate with the business license coordinator designated in State agencies in providing information on the licenses and regulatory requirements of the agency, and in coordinating conferences with applicants to clarify license and regulatory requirements.

…

f. Report, on ~~a quarterly~~an annual basis, to the Department on the number of licenses issued during the previous ~~quarter~~ fiscal year on a form prescribed by the Department."

SECTION 11. G.S. 143-213 reads as rewritten:

"**§ 143-213. Definitions.**

Unless the context otherwise requires, the following terms as used in this Article and Articles 21A and 21B of this Chapter are defined as follows:

…

(9) Whenever reference is made in this Article to "discharge" or the "discharge of waste," it shall be interpreted to include discharge, spillage, leakage, pumping, placement, emptying, or dumping into waters of the State, or into any unified sewer system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State. A reference to "discharge" or the "discharge of waste" shall not be interpreted to include "emission" as defined in subdivision (12) of this section.

…

(12) The term "emission" means a release into the outdoor atmosphere of air contaminants.

…."

SECTION 12.(a) Section 1 of S.L. 2008-198, S.L. 2009-124, and Section 10.10A of S.L. 2010-31 are repealed.

SECTION 12.(b) G.S. 87-97 reads as rewritten:

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

…

(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~~ 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.

…."

SECTION 12.1. Rules adopted by the Environmental Management Commission pursuant to S.L. 2009-216 and S.L. 2009-486 to implement nutrient management strategies for the B. Everett Jordan Reservoir and the Falls of the Neuse Reservoir watersheds shall not be interpreted to apply surface water quality standards set out in 15A NCAC 2B .0218(3)(e) through (3)(h) to waters designated in the nutrient management rules as WS-V except where: (i) the designation of WS-V is associated with a water supply intake used by an industry to supply drinking water for their employees; or (ii) standards set out in 15A NCAC 02B .0218(3)(e) through (3)(h) are violated at the upstream boundary of waters within those watersheds that are classified as WS-II, WS-III, or WS-IV. This section shall not be construed to alter the nutrient reduction requirements set out in 15A NCAC 2B .0262(5) or 15A NCAC 2B .0275(3).

SECTION 13.(a) Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.17. Tracking and report on permit processing times.**

The Department of Environment and Natural Resources shall track the time required to process all permit applications in the One-Stop for Certain Environmental Permits Programs established by G.S. 143B-279.12 and the Express Permit and Certification Reviews established by G.S. 143B-279.13 that are received by the Department. The processing time tracked shall include (i) the total processing time from when an initial permit application is received to issuance or denial of the permit and (ii) the processing time from when a complete permit application is received to issuance or denial of the permit. No later than March 1 of each year, the Department shall report to the Fiscal Research Division of the General Assembly and the Environmental Review Commission on the permit processing times required to be tracked pursuant to this section."

SECTION 13.(b) The Department of Environment and Natural Resources shall inventory all permits, licenses, and approvals issued by the Department. The Department shall provide a list of all permits, licenses, and approvals to the Environmental Review Commission

no later than January 15, 2013, and shall recommend which of the permits, licenses, and approvals that are not subject to a reporting requirement on permit processing times should be subject to that requirement.

SECTION 14.(a) Section 3(b) of S.L. 2011-39 reads as rewritten:

"**SECTION 3.(b)** Wading Pool Fence Compliance. – From the effective date of this act through ~~July 1, 2012,~~January 1, 2013, the Department of Environment and Natural Resources shall not require owners and operators of public swimming pools to comply with 15A NCAC 18A .2531(a)(7)."

SECTION 14.(b) This section becomes effective July 1, 2012.

SECTION 15.1. No later than July 1, 2013, the Commission for Public Health shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct a five-year phase of landfill development and apply to amend the permit to construct subsequent five-year phases of landfill development; or (ii) apply for a permit to construct a 10-year phase of landfill development and apply to amend the permit to construct subsequent 10-year phases of landfill development, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of each amendment for subsequent phases of development. No later than July 1, 2013, the Commission shall also adopt rules to allow applicants for permits for transfer stations the option to (i) apply for a permit with a five-year duration to construct and operate a transfer station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer station, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of any amendment to the permit. In developing these rules, the Department of Environment and Natural Resources shall examine the current fee schedule for permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and formulate recommendations for adjustments to the current fee schedule sufficient to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance permits with a duration of up to 10 years for transfer stations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before December 1, 2012. The rules required by this section shall not become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as necessary to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance of permits with a duration of up to 10 years to construct and operate transfer stations.

SECTION 15.2.(a) G.S. 143B-437.013(a) reads as rewritten:

"(a) Port Enhancement Zone Defined. – A port enhancement zone is an area that meets all of the following conditions:

(1) It is comprised of part or all of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census.

(2) All of the area is located within 25 miles of a State port and is capable of being used to enhance port operations.

(3) Every census tract and census block group that comprises the area has at least eleven percent (11%) of households with incomes of fifteen thousand dollars ($15,000) or less."

SECTION 15.2.(b) This section is effective for taxable years beginning on or after January 1, 2013.

SECTION 16.1. G.S. 143-138(b4) reads as rewritten:

"(b4) Building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, or (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses. For the purposes of this subsection:

…

(3) A "farm building" shall include any structure used for the display and sale of produce, no more than 1,000 square feet in size, open to the public for no more than 180 days per year, and certified by the Department of Agriculture and Consumer Services as a Certified Roadside Farm Market."

SECTION 16.2. G.S. 130A-248(c1) reads as rewritten:

"(c1) The Commission shall adopt rules governing the sanitation of pushcarts and mobile food units. A permitted restaurant or commissary shall serve as a base of operations for a ~~pushcart or mobile food unit.~~pushcart. A mobile food unit shall meet all of the sanitation

requirements of a permitted commissary or shall have a permitted restaurant or commissary that serves as its base of operation."

SECTION 17. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

_____
Beverly E. Perdue
Governor

Approved _____.m. this _____ day of _____, 2012