

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE DRS65082-Rifz-28 (03/19)

Short Title: Clean Energy and Economic Security Act. (Public)

Sponsors: Senators Rucho, Blake, and Walters (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO (1) ESTABLISH AN OIL AND GAS BOARD WITH JURISDICTION AND  
3 AUTHORITY OVER MATTERS RELATED TO OIL AND GAS EXPLORATION AND  
4 DEVELOPMENT IN THE STATE, INCLUDING THE USE OF HORIZONTAL  
5 DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE, AND DIRECT  
6 THE BOARD TO CREATE A MODERN REGULATORY PROGRAM FOR  
7 MANAGEMENT OF OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE  
8 STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC  
9 FRACTURING FOR THAT PURPOSE; (2) AUTHORIZE THE PROCESSES OF  
10 HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THE PURPOSE  
11 OF OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE AND  
12 PLACE A MORATORIUM ON PERMITTING RELATED TO THOSE PROCESSES  
13 UNTIL JULY 1, 2014; (3) ENACT VARIOUS OTHER PROVISIONS RELATED TO  
14 MANAGEMENT OF OIL AND GAS EXPLORATION ACTIVITIES, INCLUDING  
15 PROVISIONS RELATED TO LOCAL GOVERNMENT AUTHORITY OVER THESE  
16 ACTIVITIES; (4) ESTABLISH THE JOINT LEGISLATIVE COMMISSION ON  
17 ENERGY POLICY WITH LEGISLATIVE OVERSIGHT OF ALL MATTERS RELATED  
18 TO OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE, AND  
19 OTHER ENERGY-RELATED ISSUES; (5) DIRECT THE DEPARTMENT OF PUBLIC  
20 INSTRUCTION TO PURCHASE SCHOOL BUSES THAT OPERATE ON  
21 COMPRESSED NATURAL GAS (CNG); (6) DIRECT THE DEPARTMENT OF  
22 TRANSPORTATION TO PURCHASE NEW THREE-QUARTER TON PICKUP  
23 TRUCKS AND NEW ONE-HALF TON PICKUP TRUCKS THAT OPERATE ON  
24 COMPRESSED NATURAL GAS (CNG) OR COMPRESSED NATURAL GAS (CNG)  
25 AND GASOLINE; (7) CREATE AN INTERAGENCY TASK FORCE TO ESTABLISH  
26 PUBLIC-PRIVATE PARTNERSHIPS FOR THE CONSTRUCTION AND  
27 DEVELOPMENT OF COMPRESSED NATURAL GAS (CNG) FUELING  
28 INFRASTRUCTURE; (8) ESTABLISH CRITERIA FOR THE OPERATION OF  
29 ELECTRIC VEHICLE CHARGING STATIONS LOCATED AT STATE-OWNED REST  
30 STOPS ALONG THE HIGHWAYS; (9) ENSURE THE USE OF FUEL-EFFICIENT AND  
31 COST-EFFICIENT RETREAD TIRES ON STATE VEHICLES; AND (10) AMEND THE  
32 ENERGY JOBS ACT OF 2011 IF THE ENERGY JOBS ACT OF 2011 BECOMES LAW,  
33 AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION ENERGY  
34 ISSUES POLICY COMMITTEE.  
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**PART I. LEGISLATIVE FINDINGS AND INTENT**

Whereas, in S.L. 2011-276, the General Assembly directed the Department of Environment and Natural Resources and other entities to study the issue of oil and gas exploration in the State and the use of horizontal drilling and hydraulic fracturing for that purpose, including study of (i) oil and gas resources present in the Triassic Basins and in any other areas of the State; (ii) methods of exploration and extraction of oil and gas, including directional and horizontal drilling and hydraulic fracturing; (iii) potential environmental, economic, and social impacts arising from such activities, as well as impacts on infrastructure; and (iv) appropriate regulatory requirements for management of oil and gas exploration activities, with particular attention to regulation of horizontal drilling and hydraulic fracturing for that purpose; and

Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural Resources (DENR), in conjunction with the Department of Commerce, the Department of Justice, and the Rural Advancement Foundation (RAFI-USA), issued a draft report on oil and gas resources in March 2012; and

Whereas, DENR's draft report set forth a number of recommendations, including recommendations concerning all of the following:

- (1) Development of a modern oil and gas regulatory program, taking into consideration the processes involved in hydraulic fracturing and horizontal drilling technologies, and long-term prevention of physical or economic waste in developing oil and gas resources.
- (2) Collection of baseline data for areas near proposed drill sites concerning air quality and emissions, as well as groundwater and surface water resources and quality.
- (3) Requirements that oil and gas operators prepare and have approved water management plans that limit water withdrawals during times of low-flow conditions and droughts.
- (4) Enhancements to existing oil and gas well construction standards to address the additional pressures of horizontal drilling and hydraulic fracturing.
- (5) Development of setback requirements and identification of areas where oil and gas exploration and development activities should be prohibited.
- (6) Development of a State stormwater regulatory program for oil and gas drilling sites.
- (7) Development of specific standards for management of oil and gas wastes.
- (8) Requirements for disclosure of hydraulic fracturing chemicals and constituents to regulatory agencies and the public.
- (9) Prohibitions on use of certain chemicals or constituents in hydraulic fracturing fluids.
- (10) Improvements to data management capabilities and development of a coordinated electronic permitting program for oil and gas exploration and development activities.
- (11) Development of protocols to ensure that State agencies, local first responders, and industry are prepared to respond to a well blowout, chemical spill, or other emergency.
- (12) Appropriate distribution of revenues from any taxes or fees that may be imposed on oil and gas exploration and development activities to support a modern regulatory program for the management of all aspects of oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing in the State, and to support local governments impacted by the activities, including, but not limited to,

- 1 sufficient funding for improvements to and repair of roads subject to damage  
2 by truck traffic and heavy equipment from these activities.
- 3 (13) Clarifications needed to address local government regulatory authority over  
4 oil and gas exploration and development activities, and use of horizontal  
5 drilling and hydraulic fracturing for that purpose.
- 6 (14) Additional research required on impacts to local governments and local  
7 infrastructure, as well as potential economic impacts from oil and gas  
8 exploration and development activities.
- 9 (15) Development of provisions to address liability of the oil and gas industry for  
10 environmental contamination caused by exploration and development  
11 activities, particularly with regard to groundwater contamination.
- 12 (16) Establishment of a process that affords additional public participation in  
13 connection with development of a modern oil and gas regulatory program;  
14 and

15 Whereas, it is the intent of the General Assembly to move forward with  
16 development of a modern regulatory program for the management of oil and gas exploration  
17 and development in the State and the use of horizontal drilling and hydraulic fracturing for that  
18 purpose in an environmentally responsible manner; and

19 Whereas, it is also the intent of the General Assembly to incorporate the  
20 recommendations included in the draft study issued by DENR as outlined above; Now,  
21 therefore,

22  
23 The General Assembly of North Carolina enacts:

24  
25 **PART II. ESTABLISH OIL AND GAS BOARD**

26 **SECTION 1.(a)** Article 27 of Chapter 113 of the General Statutes is amended by  
27 adding a new Part to read:

28 "Part 4. Oil and Gas Board.

29 **"§ 113-430. Oil and Gas Board – creation; powers and duties.**

30 (a) There is hereby established the North Carolina Oil and Gas Board with the power  
31 and duty to adopt rules governing the management of oil and gas exploration and development  
32 activities in the State.

33 (b) The Board shall have jurisdiction and authority concurrent with that of the  
34 Department of Environment and Natural Resources established under G.S. 113-391 and over all  
35 persons and property necessary to administer and enforce effectively the provisions of this  
36 Article and all other laws relating to oil and gas exploration and development activities in the  
37 State.

38 (c) The Board shall have authority concurrent with that of the Department of  
39 Environment and Natural Resources established under G.S. 113-391, and it shall be the Board's  
40 duty to make such inquiries as it may think proper to determine whether or not waste over  
41 which it has jurisdiction exists or is imminent. In the exercise of such power the Board shall  
42 have the authority to collect data; to make investigations and inspections; to examine  
43 properties, leases, papers, books, and records; to examine, check, test and gauge oil, and gas  
44 wells, tanks, refineries, and means of transportation; to hold hearings; and to provide for the  
45 keeping of records and the making of reports; and to take such action as may be reasonably  
46 necessary to enforce this Article and rules adopted thereunder.

47 (d) In the exercise of its authority over oil and gas exploration and development  
48 activities, the Board shall have access to all data, records, and information related to such  
49 activities, including, but not limited to, seismic surveys, stratigraphic testing, geologic cores,  
50 proposed well bore trajectories, hydraulic fracturing fluid chemicals and constituents, drilling  
51 mud chemistry, and geophysical borehole logs. With the exception of information designated as

1 a trade secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade  
2 secret under G.S. 132-1.2, the Board shall make such information available to the public as  
3 provided by G.S. 132-11. The State Geologist shall serve as the custodian of all data,  
4 information, and records received pursuant to this subsection and shall ensure that (i) the  
5 information shall be maintained securely as provided in G.S. 132-7; and (ii) access to  
6 information designated as a trade secret, as defined in G.S. 66-152(3), and that is designated as  
7 confidential or as a trade secret under G.S. 132-1.2, is limited to only those members of the  
8 Board and State employees who have executed a confidentiality agreement with the owner of  
9 such information.

10 (e) The Board shall adopt rules for the management of oil and gas exploration and  
11 development in the State and the use of horizontal drilling and hydraulic fracturing for that  
12 purpose, including rules for all of the following purposes:

13 (1) To govern pre-drilling exploration activities, including seismic and other  
14 geophysical and stratigraphic surveys and testing, as well as drilling,  
15 operation, casing plugging, completion, and abandonment of wells; to  
16 prevent the pollution of water supplies by oil, gas, or other fluids used in oil  
17 and gas exploration and development, or to protect the quality of the water,  
18 air, soil, or any other environmental resource against injury or damage or  
19 impairment; and to require reasonable bond conditions deemed necessary by  
20 the Board in connection with oil and gas exploration and development  
21 activities. Such rules shall specifically regulate the processes of horizontal  
22 drilling and hydraulic fracturing for the purpose of oil and gas exploration,  
23 and shall, at a minimum, include standards or requirements related to the  
24 following:

- 25 a. Appropriate well construction and siting standards, including setback  
26 requirements.  
27 b. Limits on water use.  
28 c. Prohibitions on use of certain chemicals and constituents in hydraulic  
29 fracturing fluids.  
30 d. Management of wastes produced in connection with oil and gas  
31 exploration and development and use of horizontal drilling and  
32 hydraulic fracturing for that purpose.  
33 e. Stormwater control at sites.  
34 f. Installation of appropriate safety devices, and development of  
35 protocols for response to well blowouts, chemical spills, and other  
36 emergencies.  
37 g. Full disclosure of hydraulic fracturing chemicals and constituents.  
38 h. Proper well closure and site reclamation.  
39 i. Any other matter the Board deems necessary.

40 (2) To require surveys upon application of any owner who has reason to believe  
41 that a well has been unlawfully drilled by another into land of the owner  
42 without permission. In the event such surveys are required, the costs thereof  
43 shall be borne by the owner making the request.

44 (3) To require the making of reports showing the location of oil and gas wells  
45 and the filing of logs and drilling records.

46 (4) To prevent "blow-outs," "caving," and "seepage," as such terms are  
47 generally understood in the oil and gas industry.

48 (5) To prevent fires and other emergency events potentially resulting from oil  
49 and gas exploration and development activities.

- 1           (6)    To identify the ownership of all oil or gas wells, producing leases, refineries,  
2           tanks, plants, structures, and all storage and transportation equipment and  
3           facilities.
- 4           (7)    To regulate the "shooting," perforating, and chemical treatment of wells.
- 5           (8)    To regulate secondary recovery methods, including the introduction of gas,  
6           air, water, or other substances into producing formations.
- 7           (9)    To limit and prorate the production of oil or gas, or both, from any pool or  
8           field for the prevention of waste as defined in this Article and rules adopted  
9           thereunder.
- 10          (10)   To require, either generally or in or from particular areas, certificates of  
11          clearance or tenders in connection with the transportation of oil or gas.
- 12          (11)   To regulate the spacing of wells and to establish drilling units.
- 13          (12)   To prevent, so far as is practicable, reasonably avoidable drainage from each  
14          developed unit which is not equalized by counter-drainage.
- 15          (13)   To regulate and, if necessary in its judgment for the protection of unique  
16          environmental values, to prohibit the location of wells in the interest of  
17          protecting the quality of the water, air, soil, or any other environmental  
18          resource against injury, damage, or impairment.

19          (f)    The Oil and Gas Board shall submit quarterly written reports as to its operation,  
20          activities, programs, and progress to the Joint Legislative Commission on Energy Policy. The  
21          Oil and Gas Board shall supplement the written reports required by this subsection with  
22          additional written and oral reports as may be requested by the Joint Legislative Commission on  
23          Energy Policy. The Oil and Gas Board shall submit the written reports required by this  
24          subsection whether or not the General Assembly is in session at the time the report is due.

25          **§ 113-431. Oil and Gas Board – quasi-judicial powers; procedures.**

26          (a)    With respect to those matters within its jurisdiction, the Oil and Gas Board shall  
27          exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the  
28          General Statutes. This section and any rules adopted by the Oil and Gas Board shall govern  
29          such proceedings as follows:

- 30               (1)    Exceptions to recommended decisions in contested cases shall be filed with  
31               the Board within 30 days of the receipt by the Board of the official record  
32               from the Office of Administrative Hearings, unless additional time is  
33               allowed by the Chair of the Board.
- 34               (2)    Oral arguments by the parties may be allowed by the Chair of the Board  
35               upon request of the parties.
- 36               (3)    Deliberations of the Board shall be conducted in its public meeting unless  
37               the Board determines that consultation with its counsel should be held in a  
38               closed session pursuant to G.S. 143-318.11.

39          (b)    The final agency decision in contested cases that arise from civil penalty  
40          assessments made pursuant to this Article and rules adopted thereunder shall be made by the  
41          Board. In the evaluation of each violation, the Board shall recognize that harm to the natural  
42          resources of the State arising from the violation of standards or limitations established to  
43          protect those resources may be immediately observed through damaged resources or may be  
44          incremental or cumulative with no damage that can be immediately observed or documented.  
45          Penalties up to the maximum authorized may be based on any one or combination of the  
46          following factors:

- 47               (1)    The degree and extent of harm to the natural resources of the State, to the  
48               public health, or to private property resulting from the violation.
- 49               (2)    The duration and gravity of the violation.
- 50               (3)    The effect on ground or surface water quantity or quality or on air quality.
- 51               (4)    The cost of rectifying the damage.

1           (5)    The amount of money saved by noncompliance.

2           (6)    Whether the violation was committed willfully or intentionally.

3           (7)    The prior record of the violator in complying or failing to comply with  
4           programs over which the Oil and Gas Board has regulatory authority.

5           (8)    The cost to the State of the enforcement procedures.

6           (c)    The Chair shall appoint a Committee on Civil Penalty Remissions from the  
7           members of the Board. No member of the Board on Civil Penalty Remissions may hear or vote  
8           on any matter in which the member has an economic interest. The Committee on Civil Penalty  
9           Remissions shall make the final agency decision on remission requests. In determining whether  
10          a remission request will be approved, the Committee shall consider the recommendation of the  
11          Secretary or the Secretary's designee and all of the following factors:

12          (1)    Whether one or more of the civil penalty assessment factors in subsection (b)  
13          of this section were wrongly applied to the detriment of the petitioner.

14          (2)    Whether the violator promptly abated continuing environmental damage  
15          resulting from the violation.

16          (3)    Whether the violation was inadvertent or a result of an accident.

17          (4)    Whether the violator had been assessed civil penalties for any previous  
18          violations.

19          (5)    Whether payment of the civil penalty will prevent payment for the remaining  
20          necessary remedial actions.

21          (d)    The Committee on Civil Penalty Remissions may remit the entire amount of the  
22          penalty only when the violator has not been assessed civil penalties for previous violations and  
23          when payment of the civil penalty will prevent payment for the remaining necessary remedial  
24          actions.

25          (e)    If any civil penalty has not been paid within 30 days after the final agency decision  
26          or court order has been served on the violator, the Secretary or the Secretary's designee shall  
27          request the Attorney General to institute a civil action in the superior court of any county in  
28          which the violator resides or has his or its principal place of business to recover the amount of  
29          the assessment.

30          (f)    For purposes of this section, "Secretary" shall mean the Secretary of Environment  
31          and Natural Resources.

32          **"§ 113-432. Oil and Gas Board – members; selection; terms; vacancies; compensation;**  
33          **meetings; quorum; staff.**

34          (a)    Members; Selection. – The Oil and Gas Board shall consist of nine members  
35          appointed as follows:

36          (1)    One appointed by the Governor who shall be a licensed geologist with  
37          experience in oil and gas exploration and development.

38          (2)    One appointed by the Governor who shall be an employee or officer of an  
39          investor-owned natural gas company.

40          (3)    One appointed by the Governor who shall be a licensed attorney with  
41          experience in mineral leasing.

42          (4)    One appointed by the President Pro Tempore of the Senate who shall be an  
43          environmental scientist with experience in environmental restoration,  
44          remediation, and mitigation of contamination resulting from industrial  
45          activities.

46          (5)    One appointed by the President Pro Tempore of the Senate who shall be a  
47          licensed engineer with experience in oil and gas exploration and  
48          development.

49          (6)    One appointed by the President Pro Tempore of the Senate who shall be a  
50          private owner of land located in the Sanford subbasin of the Triassic basin of  
51          North Carolina.

1           (7) One appointed by the Speaker of the House of Representatives who shall, at  
2 the time of the initial appointment, be a member of a county board of  
3 commissioners of a county located in the Sanford subbasin of the Triassic  
4 basin of North Carolina.

5           (8) One appointed by the Speaker of the House of Representatives who shall, at  
6 the time of the initial appointment, be a representative of a municipal  
7 government of a municipality located in the Sanford subbasin of the Triassic  
8 basin of North Carolina.

9           (9) One appointed by the Speaker of the House of Representatives who shall be  
10 an economist with particular experience in or familiarity with energy  
11 markets.

12       (b) Terms. – The term of office of members of the Board is three years. A member may  
13 be reappointed to any number of successive three-year terms. Upon the expiration of a  
14 three-year term, a member shall continue to serve until a successor is appointed and duly  
15 qualified. The term of members appointed under subdivisions (1), (4), and (7) of subsection (a)  
16 of this section shall expire on June 30 of years evenly divisible by three. The terms of members  
17 appointed under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on  
18 June 30 of years that precede by one year those years that are evenly divisible by three. The  
19 terms of members appointed under subdivisions (3), (6), and (9) of subsection (a) of this  
20 section shall expire on June 30 of years that follow by one year those years that are evenly  
21 divisible by three.

22       (c) Vacancies; Removal From Office. –

23           (1) Any appointment by the Governor to fill a vacancy on the Board created by  
24 the resignation, dismissal, death, or disability of a member shall be for the  
25 balance of the unexpired term. The Governor shall have the power to remove  
26 any member of the Board from office for misfeasance, malfeasance, or  
27 nonfeasance in accordance with the provisions of G.S. 143B-13 of the  
28 Executive Organization Act of 1973.

29           (2) Members appointed by the President Pro Tempore of the Senate and the  
30 Speaker of the House of Representatives shall be made in accordance with  
31 G.S. 120-121, and vacancies in those appointments shall be filled in  
32 accordance with G.S. 120-122. In accordance with Section 10 of Article VI  
33 of the North Carolina Constitution, a member may continue to serve until a  
34 successor is duly appointed.

35       (d) Compensation. – The members of the Commission shall receive per diem and  
36 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

37       (e) Meetings. – The Board shall meet at least once in each quarter and may hold special  
38 meetings at any time and place within the State at the call of the Chair or upon the written  
39 request of at least five members.

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

42       (g) Staff. – All staff support required by the Board shall be supplied by the Division of  
43 Energy, Mineral, and Land Resources and the North Carolina Geological Survey.

44 **"§ 113-433. Oil and Gas Board – officers; organization; seal.**

45       (a) Election of Chair and Vice-Chair. – The Commission shall elect one of its members  
46 to serve as Chair, and one of its members to serve as Vice-Chair. The Chair and Vice-Chair  
47 shall serve one-year terms beginning August 1 and ending July 31 of the following year. The  
48 Chair and Vice-Chair may serve any number of terms, but not more than two terms  
49 consecutively.

50       (b) Responsibilities of Chair. – The Chair shall guide and coordinate the activities of the  
51 Board in fulfilling its duties as set out in this Article. The Chair shall report to and advise the

1 Governor and the Joint Legislative Commission on Energy Policy as provided in G.S. 113-430  
2 on the activities of the Board.

3 (c) Procedure and Organization. – The Board shall determine its organization and  
4 procedure in accordance with the provisions of this Article. The provisions of the most recent  
5 edition of Robert's Rules of Order shall govern any procedural matter for which no other  
6 provision has been made.

7 (d) Adoption of Seal. – The Board may adopt a common seal and may alter it as  
8 necessary."

9 **SECTION 1.(b)** Chapter 132 of the General Statutes is amended by adding a new  
10 section to read:

11 **"§ 132-11. Qualified exception for information pertaining to oil and gas exploration and**  
12 **development activities.**

13 (a) Except as provided in subsection (b) of this section, data, records, and other  
14 information related to oil and gas exploration and development activities obtained by the North  
15 Carolina Oil and Gas Board pursuant to G.S. 113-430 and the Department of Environment and  
16 Natural Resources pursuant to G.S. 113-391 shall be made available for public inspection and  
17 examination after a period of two years from the date the data, records, and other information  
18 were received by the Board.

19 (b) Information designated as a trade secret, as defined in G.S. 66-152(3), and that is  
20 designated as confidential or as a trade secret under G.S. 132-1.2 shall be maintained as such  
21 by the Board and the Department and shall not be made available to the public."

22 **SECTION 1.(c)** The Oil and Gas Board established under Section 1(a) of this act  
23 shall create a modern regulatory program for the management of all aspects of oil and gas  
24 exploration and development activities, including the processes of horizontal drilling and  
25 hydraulic fracturing in the State. The Board shall adopt rules governing these activities as  
26 quickly as practicable, but no later than December 31, 2013. The Board shall also consult and  
27 coordinate with the Department of Environment and Natural Resources, the Environmental  
28 Management Commission, and the Mining Commission to identify changes required to all  
29 existing rules and statutes governing these activities, including repeal or modification of the  
30 rules and statutes. The Board shall report to the Joint Legislative Commission on Energy Policy  
31 created under Section 8(a) of this act on the progress of development of a modern regulatory  
32 program, and any statutory and rule changes required, on or before May 1, 2013. From the  
33 effective date of this act, the Oil and Gas Board shall have concurrent authority and jurisdiction  
34 with the Department of Environment and Natural Resources to administer and enforce the  
35 provisions of Article 27 of Chapter 113 of the General Statutes and rules adopted thereunder in  
36 compliance with the provisions of this act.

37  
38 **PART III. STATUTORY AND RULE CHANGES TO AUTHORIZE HORIZONTAL**  
39 **DRILLING AND HYDRAULIC FRACTURING; MORATORIUM ESTABLISHED**

40 **SECTION 2.(a)** G.S. 113-389 reads as rewritten:

41 **"§ 113-389. Definitions.**

42 Unless the context otherwise requires, the words defined in this section shall have the  
43 following meaning when found in this law:

44 (1) "Board" shall mean the North Carolina Oil and Gas Board.

45 (1a) "Department" shall mean the "Department of Environment and Natural  
46 Resources," as created by this law.~~Resources."~~

47 (1b) "Division" shall mean the Division of Energy, Mineral, and Land Resources  
48 of the Department of Environment and Natural Resources.

49 ...

50 (3a) "Hydraulic fracturing fluid" shall mean the base fluid type utilized in a  
51 particular hydraulic fracturing treatment.



1           (3b) "Hydraulic fracturing treatment" shall mean stimulating a well by the  
2           application of hydraulic fracturing fluids and additives with force in order to  
3           create artificial fractures in the formation for the purpose of improving the  
4           capacity to produce hydrocarbons.

5           ...."

6           **SECTION 2.(b)** G.S. 113-391 reads as rewritten:

7           **"§ 113-391. Jurisdiction and authority; rules and orders.**

8           (a) The Department shall have jurisdiction and authority concurrent with that of the Oil  
9           and Gas Board established pursuant to G.S. 113-430~~ef and~~ over all persons and property  
10          necessary to administer and enforce effectively the provisions of this law and all other laws  
11          relating to the conservation of oil and gas.

12          (b) The Department shall have ~~the~~ authority concurrent with that of the Oil and Gas  
13          Board established pursuant to G.S. 113-430 and it shall be ~~its~~ the Department's duty to make  
14          such inquiries as it may think proper to determine whether or not waste over which it has  
15          jurisdiction exists or is imminent. In the exercise of such power the Department shall have the  
16          authority to collect data; to make investigations and inspections; to examine properties, leases,  
17          papers, books and records; to examine, check, test and gauge oil and gas wells, tanks,  
18          refineries, and means of transportation; to hold hearings; and to provide for the keeping of  
19          records and the making of reports; and to take such action as may be reasonably necessary to  
20          enforce this law.

21          (b1) In the exercise of its authority over oil and gas exploration and development  
22          activities, the Department shall have access to all data, records, and information related to such  
23          activities, including, but not limited to, seismic surveys, stratigraphic testing, geologic cores,  
24          proposed well bore trajectories, hydraulic fracturing fluid chemicals and constituents, drilling  
25          mud chemistry, and geophysical borehole logs. With the exception of information designated as  
26          a trade secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade  
27          secret under G.S. 132-1.2, the Department shall make any information it receives available to  
28          the public pursuant to G.S. 132-11. The State Geologist shall serve as the custodian of all data,  
29          information, and records received by the Department pursuant to this subsection and shall  
30          ensure that (i) the information is maintained securely as provided in G.S. 132-7; and (ii) access  
31          to information designated as a trade secret, as defined in G.S. 66-152(3), and that is designated  
32          as confidential or as a trade secret under G.S. 132-1.2 is limited to only those staff of the  
33          Department who have executed a confidentiality agreement with the owner of such  
34          information.

35          (c) The Department may ~~make rules and issue~~ orders as may be necessary from time to  
36          time in the proper administration and enforcement of this ~~law,~~ law and rules adopted by the Oil  
37          and Gas Board pursuant to G.S. 113-430, including ~~rules or orders~~ for the following purposes:

38               (1) To require the drilling, operation, casing and plugging of wells ~~to be done in~~  
39               ~~such manner as to prevent the escape of oil or gas out of one stratum to~~  
40               ~~another; to prevent the intrusion of water into an oil or gas stratum from a~~  
41               ~~separate stratum; to prevent the pollution of freshwater supplies by oil, gas~~  
42               ~~or salt water, or to protect the quality of the water, air, soil or any other~~  
43               environmental resource against injury or damage or impairment; and to  
44               require reasonable bond ~~condition~~ conditions for the performance of the duty  
45               to plug each dry or abandoned well.

46               (2) To require ~~directional~~ surveys upon application of any owner who has  
47               reason to believe that a well ~~or wells of others has or have~~ has been  
48               unlawfully drilled by another into land of the owner without permission. ~~the~~  
49               ~~lands owned by him or held by him under lease.~~ In the event such surveys  
50               are required, the costs thereof shall be borne by the ~~owners~~ owner making  
51               the request.

- 1 (3) To require the making of reports showing the location of oil and gas wells,  
2 and the filing of logs and drilling records.
- 3 ~~(4) To prevent the drowning by water of any stratum or part thereof capable of~~  
4 ~~producing oil or gas in paying quantities, and to prevent the premature and~~  
5 ~~irregular encroachment of water which reduces, or tends to reduce, the total~~  
6 ~~ultimate recovery of oil or gas from any pool.~~
- 7 (5) To require the operation of wells with efficient gas-oil ratios, and to fix such  
8 ratios.
- 9 (6) To prevent "blow-outs," "caving" and "seepage" in the sense that conditions  
10 indicated by such terms are generally understood in the oil and gas business.
- 11 (7) To prevent fires.
- 12 (8) To identify the ownership of all oil or gas wells, producing leases, refineries,  
13 tanks, plants, structures and all storage and transportation equipment and  
14 facilities.
- 15 (9) To regulate the "shooting," perforating, and chemical treatment of wells.
- 16 (10) To regulate secondary recovery methods, including the introduction of gas,  
17 air, water or other substances into producing formations.
- 18 (11) To limit and prorate the production of oil or gas, or both, from any pool or  
19 field for the prevention of waste as herein defined.
- 20 (12) To require, either generally or in or from particular areas, certificates of  
21 clearance or tenders in connection with the transportation of oil or gas.
- 22 (13) To regulate the spacing of wells and to establish drilling units.
- 23 (14) To prevent, so far as is practicable, reasonably avoidable drainage from each  
24 developed unit which is not equalized by counter-drainage.
- 25 (15) To prevent where necessary the use of gas for the manufacture of carbon  
26 black.
- 27 (16) To regulate and, if necessary in its judgment for the protection of unique  
28 environmental values, to prohibit the location of wells in the interest of  
29 protecting the quality of the water, air, soil or any other environmental  
30 resource against injury, or damage or impairment."

31 **SECTION 2.(c)** G.S. 113-393 reads as rewritten:

32 **"§ 113-393. Development of lands as drilling unit by agreement or order of Department.**

33 (a) Integration of Interests and Shares in Drilling Unit. – When two or more separately  
34 owned tracts of land are embraced within an established drilling unit, the owners thereof may  
35 agree validly to integrate their interests and to develop their lands as a drilling unit. Where,  
36 however, such owners have not agreed to integrate their interests, the Department shall, for the  
37 prevention of waste or to avoid drilling of unnecessary wells, require such owners to do so and  
38 to develop their lands as a drilling unit. All orders requiring such integration shall be made after  
39 notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will  
40 afford to the owner of each tract the opportunity to recover or receive his just and equitable  
41 share of the oil and gas in the pool without unnecessary expense, and will prevent or minimize  
42 reasonably avoidable drainage from each developed unit which is not equalized by  
43 counter-drainage. The portion of the production allocated to the owner of each tract included in  
44 a drilling unit formed by an integration order shall, when produced, be considered as if it had  
45 been produced from such tract by a well drilled thereon.

46 In the event such integration is required, and provided also that after due notice to all the  
47 owners of tracts within such drilling unit of the creation of such drilling unit, and provided  
48 further that the Department has received no protest thereto, or request for hearing thereon,  
49 whether or not 10 days have elapsed after notice has been given of the creation of the drilling  
50 unit, the operator designated by the Department to develop and operate the integrated unit shall  
51 have the right to charge to each other interested owner the actual expenditures required for such

1 purpose not in excess of what are reasonable, including a reasonable charge for supervision,  
2 and the operator shall have the right to receive the first production from the well drilled by him  
3 thereon, which otherwise would be delivered or paid to the other parties jointly interested in the  
4 drilling of the well, so that the amount due by each of them for his shares of the expense of  
5 drilling, equipping, and operating the well may be paid to the operator of the well out of  
6 production; with the value of the production calculated at the market price in the field at the  
7 time such production is received by the operator or placed to his credit. After being reimbursed  
8 for the actual expenditures for drilling and equipping and operating expenses incurred during  
9 the drilling operations and until the operator is reimbursed, the operator shall thereafter pay to  
10 the owner of each tract within the pool his ratable share of the production calculated at the  
11 market price in the field at the time of such production less the reasonable expense of operating  
12 the well. In the event of any dispute relative to such costs, the Department shall determine the  
13 proper costs.

14 (b) When Each Owner May Drill. – Should the owners of separate tracts embraced  
15 within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on  
16 the unit, and should it be established that the Department is without authority to require  
17 integration as provided for in subsection (a) of this section, then, subject to all other applicable  
18 provisions of this law, the owner of each tract embraced within the drilling unit may drill on his  
19 tract, but the allowable production from each tract shall be such proportion of the allowable for  
20 the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

21 (c) Cooperative Development Not in Restraint of Trade. – Agreements made in the  
22 interests of conservation of oil or gas, or both, or for the prevention of waste, between and  
23 among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in  
24 any area that appears from geological or other data to be underlaid by a common accumulation  
25 of oil or gas, or both, or between and among such owners or operators, or both, and royalty  
26 owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out  
27 a plan for the cooperative development and operation thereof, when such agreements are  
28 approved by the Department, are hereby authorized and shall not be held or construed to violate  
29 any of the statutes of this State relating to trusts, monopolies, or contracts and combinations in  
30 restraining of trade.

31 (d) Variation from Vertical. – Whenever the Department fixes the location of any well  
32 or wells on the surface, the point at which the maximum penetration of such wells into the  
33 producing formation is reached shall not unreasonably vary from the vertical drawn from the  
34 center of the hole at the surface, provided, that the Department shall prescribe rules and orders  
35 governing the reasonableness of such variation. This subsection shall not apply to wells drilled  
36 for the purpose of exploration or development of natural gas through use of horizontal drilling  
37 in conjunction with hydraulic fracturing treatments."

38 **SECTION 2.(d)** G.S. 143-214.2 reads as rewritten:

39 **"§ 143-214.2. Prohibited discharges.**

40 (a) The discharge of any radiological, chemical or biological warfare agent or  
41 high-level radioactive waste to the waters of the State is prohibited.

42 (b) The discharge of any wastes to the subsurface or groundwaters of the State by  
43 means of wells is prohibited. This section shall not be construed to ~~prohibit~~ prohibit (i) the  
44 operation of closed-loop groundwater remediation systems in accordance with  
45 G.S. 143-215.1A. G.S. 143-215.1A or (ii) injection of hydraulic fracturing fluid for the  
46 exploration or development of natural gas resources.

47 (c) Unless permitted by a rule of the Commission, the discharge of wastes, including  
48 thermal discharges, to the open waters of the Atlantic Ocean over which the State has  
49 jurisdiction are prohibited."

50 **SECTION 3.(a)** With regard to wells that are drilled for the purpose of exploration  
51 or development of natural gas through use of horizontal drilling in conjunction with hydraulic

1 fracturing treatments, notwithstanding subsection (e) of 15A NCAC 05D .0107 (Drilling and  
2 Completion), from the effective date of this act, the Department of Environment and Natural  
3 Resources shall not prohibit the drilling of wells where the vertical deviation of the hole  
4 exceeds three degrees between the bottom of the hole and the top of hole.

5 **SECTION 3.(b)** With regard to wells that are drilled for the purpose of exploration  
6 or development of natural gas through use of hydraulic fracturing treatments, notwithstanding  
7 subsection (b) of 15A NCAC 02C 0209 (Classification of Injection Wells), from the effective  
8 date of this act, the Department of Environment and Natural Resources shall not prohibit the  
9 construction, use, or operation of oil or gas production and storage-related injection wells.

10 **SECTION 3.(c)** With regard to wells that are drilled for the purpose of exploration  
11 or development of natural gas through use of hydraulic fracturing treatments, notwithstanding  
12 subsection (b) of 15A NCAC 02C 0213 (Additional Criteria and Standards Applicable to Class  
13 5 Wells), from the effective date of this act, the Department of Environment and Natural  
14 Resources shall allow the use of hydraulic fracturing fluid for the exploration or development  
15 of natural gas resources, provided that such additives do not cause surrounding groundwaters to  
16 become nonpotable.

17 **SECTION 3.(d)** With regard to wells that are drilled for the purpose of exploration  
18 or development of natural gas through use of hydraulic fracturing treatments, notwithstanding  
19 subdivision (1) of subsection (e) of 15A NCAC 02C 0213 (Additional Criteria and Standards  
20 Applicable to Class 5 Wells), from the effective date of this act, the Department of  
21 Environment and Natural Resources shall not limit pressure at a well head to a maximum such  
22 that the pressure in the injection zone would not initiate new fractures or propagate existing  
23 fractures in the injection zone, initiate fractures in the confining zone, or cause the migration of  
24 injected or formation fluids outside the injection zone or area.

25 **SECTION 3.(e)** With regard to wells that are drilled for the purpose of exploration  
26 or development of natural gas through use of horizontal drilling and hydraulic fracturing  
27 treatments, the Department shall not enforce any rule that would have the effect of prohibiting  
28 such activities.

29 **SECTION 4.** There is hereby established a moratorium on the issuance of permits  
30 for oil and gas exploration and development activities using the processes of horizontal drilling  
31 and hydraulic fracturing in the State. The purpose of this moratorium is to allow the Oil and  
32 Gas Board established under Section 1(a) of this act to create a modern regulatory program to  
33 govern all aspects of such activities. No agency of the State, including the Department of  
34 Environment and Natural Resources, the Environmental Management Commission, the Mining  
35 Commission, or the Oil and Gas Board established under Section 1(a) of this act, shall issue a  
36 permit for oil or gas exploration or development activities using the processes of horizontal  
37 drilling and hydraulic fracturing for a period beginning from the effective date of this act and  
38 ending on July 1, 2014.

#### 39 **PART IV. MISCELLANEOUS PROVISIONS RELATED TO MANAGEMENT OF OIL** 40 **AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES**

41 **SECTION 5.** Article 27 of Chapter 113 of the General Statutes is amended by  
42 adding a new section to read:

##### 43 **§ 113-388A. Impact fee imposed on oil and gas exploration and development activities.**

44 **(a) A city or town in which oil and gas exploration and development activities are**  
45 **occurring may levy a one-time impact fee on operators of such sites that are located within the**  
46 **city's or town's jurisdiction only in accordance with this section. This fee shall not exceed thirty**  
47 **thousand dollars (\$30,000) for each oil or gas well drilled by the operator within the city's or**  
48 **town's jurisdiction.**

49 **(b) A county in which oil and gas exploration and development are occurring may levy**  
50 **a one-time impact fee on operators of such sites that are located within unincorporated areas of**  
51

1 the county only in accordance with this section. This fee shall not exceed thirty thousand  
2 dollars (\$30,000) for each oil or gas well drilled by the operator within the county's jurisdiction.

3 (c) The rate or rates of a fee imposed under authority of this section shall be in an  
4 amount calculated to compensate the city, town, or county, as applicable, for the additional  
5 costs incurred by it from having a site on which oil and gas exploration and development  
6 activities are occurring located in its jurisdiction to the extent to which compensation for such  
7 costs is not otherwise provided, which costs may include the loss of ad valorem property tax  
8 revenues from the property on which a facility is located, the cost of providing any additional  
9 emergency services, the cost of monitoring air, surface water, groundwater, and other  
10 environmental media to the extent other monitoring data is not available, the cost to improve or  
11 repair roads impacted by truck traffic and heavy equipment from the activities, and other costs  
12 associated with the activities and for which the city, town, or county is not otherwise  
13 compensated.

14 (d) Any person or firm on which a fee is imposed pursuant to this section may appeal  
15 the fee to the Oil and Gas Board established by G.S. 113-430 but shall pay the fee when due,  
16 subject to a refund when the appeal is resolved by the Board or in the courts."

17 **SECTION 6.** Article 27 of Chapter 113 of the General Statutes is amended by  
18 adding a new section to read:

19 **"§ 113-415A. Local ordinances prohibiting oil and gas exploration and development**  
20 **activities invalid; petition to preempt local ordinance.**

21 (a) It is the intent of the General Assembly to maintain a uniform system for the  
22 management of oil and gas exploration and development activities, and the use of horizontal  
23 drilling and hydraulic fracturing for that purpose, and to place limitations upon the exercise by  
24 all units of local government in North Carolina of the power to regulate the management of oil  
25 and gas exploration and development activities by means of special, local, or private acts or  
26 resolutions, ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding  
27 any authority granted to counties, municipalities, or other local authorities to adopt local  
28 ordinances, including, but not limited to, those imposing taxes, any fees except as authorized by  
29 G.S. 113-388A, or charges or regulating health, environment, or land use, any local ordinance  
30 that prohibits or has the effect of prohibiting oil and gas exploration and development activities  
31 that the Oil and Gas Board has preempted pursuant this section, shall be invalid to the extent  
32 necessary to effectuate the purposes of this Article. To this end, all provisions of special, local,  
33 or private acts or resolutions are repealed that do the following:

34 (1) Prohibit the siting of wells for oil and gas exploration and development  
35 within any county, city, or other political subdivision.

36 (2) Prohibit the use of horizontal drilling or hydraulic fracturing for the purpose  
37 of oil or gas exploration or development within any county, city, or other  
38 political subdivision.

39 (3) Place any restriction or condition not placed by this Article upon oil and gas  
40 exploration and development activities and use of horizontal drilling or  
41 hydraulic fracturing for that purpose within any county, city, or other  
42 political subdivision.

43 (4) In any manner are in conflict or inconsistent with the provisions of this  
44 Article.

45 (b) No special, local, or private act or resolution enacted or taking effect hereafter may  
46 be construed to modify, amend, or repeal any portion of this Article, unless it expressly  
47 provides for such by specific references to the appropriate section of this Article. Further to this  
48 end, all provisions of local ordinances, including those regulating land use, adopted by  
49 counties, municipalities, or other local authorities that prohibit or have the effect of prohibiting  
50 oil and gas exploration and development activities and use of horizontal drilling or hydraulic

1 fracturing for that purpose within the jurisdiction of a local government are invalidated to the  
2 extent preempted by the Board pursuant to this section.

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

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

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

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

24 (e) Any interested person may appear before the Oil and Gas Board at the hearing to  
25 offer testimony. In addition to testimony before the Board, any interested person may submit  
26 written evidence to the Board for the Board's consideration. At least 20 days shall be allowed  
27 for receipt of written comment following the hearing.

28 (f) A local zoning or land-use ordinance is presumed to be valid and enforceable to the  
29 extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that  
30 are generally applicable to development, including, but not limited to, setback, buffer, and  
31 stormwater requirements, unless the Oil and Gas Board makes a finding of fact to the contrary.  
32 The Board shall determine whether or to what extent to preempt local ordinances so as to allow  
33 for the establishment and operation of the facility no later than 60 days after conclusion of the  
34 hearing. The Board shall preempt a local ordinance only if the Board makes all of the following  
35 findings:

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

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

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

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

1 (g) If the Oil and Gas Board does not make all of the findings under subsection (f) of  
2 this section, the Board shall not preempt the challenged local ordinance. The Board's decision  
3 shall be in writing and shall identify the evidence submitted to the Board plus any additional  
4 evidence used in arriving at the decision.

5 (h) The decision of the Oil and Gas Board shall be final unless a party to the action files  
6 a written appeal under Article 4 of Chapter 150B of the General Statutes, as modified by  
7 G.S. 7A-29 and this section, within 30 days of the date of the decision. The record on appeal  
8 shall consist of all materials and information submitted to or considered by the Board, the  
9 Board's written decision, a complete transcript of the hearing, all written material presented to  
10 the Board regarding the location of the oil and gas exploration and development activities, the  
11 specific findings required by subsection (f) of this section, and any minority positions on the  
12 specific findings required by subsection (f) of this section. The scope of judicial review shall be  
13 that the court may affirm the decision of the Board, or may remand the matter for further  
14 proceedings, or may reverse or modify the decision if the substantial rights of the parties may  
15 have been prejudiced because the Board's findings, inferences, conclusions, or decisions are  
16 any of the following:

17 (1) In violation of constitutional provisions.

18 (2) In excess of the statutory authority or jurisdiction of the Board.

19 (3) Made upon unlawful procedure.

20 (4) Affected by other error of law.

21 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or  
22 G.S. 150B-30 in view of the entire record as submitted.

23 (6) Arbitrary or capricious.

24 (i) If the court reverses or modifies the decision of the Oil and Gas Board, the judge  
25 shall set out in writing, which writing shall become part of the record, the reasons for the  
26 reversal or modification.

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

29 **SECTION 7.(a)** The Division of Land Resources of the Department of  
30 Environment and Natural Resources is hereby renamed the Division of Energy, Mineral, and  
31 Land Resources.

32 **SECTION 7.(b)** The Revisor of Statutes shall make the conforming statutory  
33 changes necessary to reflect the changes made under subsection (a) of this section. The  
34 Codifier of Rules shall make the conforming rule changes necessary to reflect the changes  
35 made under subsection (a) of this section.

## 37 **PART V. CREATE ENERGY POLICY OVERSIGHT COMMISSION**

38 **SECTION 8.(a)** Chapter 120 of the General Statutes is amended by adding a new  
39 Article to read:

40 "Article 33.

41 "Joint Legislative Commission on Energy Policy.

### 42 **"§ 120-285. Creation and membership of Joint Legislative Commission on Energy Policy.**

43 (a) The Joint Legislative Commission on Energy Policy is established.

44 (b) The Commission shall consist of 10 members as follows:

45 (1) Five members of the Senate appointed by the President Pro Tempore of the  
46 Senate, at least one of whom is a member of the minority party.

47 (2) Five members of the House of Representatives appointed by the Speaker of  
48 the House of Representatives, at least one of whom is a member of the  
49 minority party.

50 (c) Terms on the Commission are for two years and begin on the convening of the  
51 General Assembly in each odd-numbered year. Members may complete a term of service on

1 the Commission even if they do not seek reelection or are not reelected to the General  
2 Assembly, but resignation or removal from service in the General Assembly constitutes  
3 resignation or removal from service on the Commission. A member continues to serve until the  
4 member's successor is appointed.

5 **"§ 120-286. Purpose and powers and duties of Commission.**

6 (a) The Joint Legislative Commission on Energy Policy shall exercise legislative  
7 oversight over energy policy in the State. In the exercise of this oversight, the Commission may  
8 do any of the following:

9 (1) Monitor and evaluate the programs, policies, and actions of the Oil and Gas  
10 Board established pursuant to G.S. 113-430, the Energy Policy Council  
11 established pursuant to G.S. 113B-2, the Energy Division in the Department  
12 of Commerce, the Utilities Commission and Public Staff established  
13 pursuant to Chapter 62 of the General Statutes, and of any other board,  
14 commission, department, or agency of the State or local government with  
15 jurisdiction over energy policy in the State.

16 (2) Review and evaluate existing and proposed State statutes and rules affecting  
17 energy policy and determine whether any modification of these statutes or  
18 rules is in the public interest.

19 (3) Monitor changes in federal law and court decisions affecting energy policy.

20 (4) Monitor and evaluate energy-related industries in the State and study  
21 measures to promote these industries.

22 (5) Study any other matters related to energy policy that the Commission  
23 considers necessary to fulfill its mandate.

24 (b) The Commission may make reports and recommendations, including proposed  
25 legislation, to the General Assembly from time to time as to any matter relating to its oversight  
26 and the powers and duties set out in this section.

27 **"§ 120-287. Organization of Commission.**

28 (a) The President Pro Tempore of the Senate and the Speaker of the House of  
29 Representatives shall each designate a cochair of the Joint Legislative Commission on Energy  
30 Policy. The Commission may meet at any time upon the call of either cochair, whether or not  
31 the General Assembly is in session.

32 (b) A quorum of the Commission is six members.

33 (c) While in the discharge of its official duties, the Commission has the powers of a  
34 joint committee under G.S. 120-19 and G.S. 120-19.1 through 120-19.4. The Commission may  
35 contract for consultants or hire employees in accordance with G.S. 120-32.02.

36 (d) From funds available to the General Assembly, the Legislative Services  
37 Commission shall allocate monies to fund the Joint Legislative Commission on Energy Policy.  
38 Members of the Commission receive subsistence and travel expenses as provided in  
39 G.S. 120-3.1. The Legislative Services Commission, through the Legislative Services Officer,  
40 shall assign professional staff to assist the Commission in its work. Upon the direction of the  
41 Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of  
42 Representatives shall assign clerical staff to the Commission. The expenses for clerical  
43 employees shall be borne by the Commission."

44 **SECTION 8.(b)** Notwithstanding G.S. 120-285(c), as enacted by Section 8(a) of  
45 this act, the President Pro Tempore of the Senate and the Speaker of the House of  
46 Representatives may appoint members to the Joint Legislative Commission on Energy Policy to  
47 terms that begin prior to the convening of the 2013 General Assembly. The terms of members  
48 appointed pursuant to this section shall end upon the convening of the 2013 General Assembly.  
49 Members appointed pursuant to this section who are otherwise qualified to serve on the  
50 Commission may be reappointed to the Commission upon the convening of the 2013 General  
51 Assembly.



1  
2 **PART VI. DIRECT THE DEPARTMENT OF PUBLIC INSTRUCTION TO**  
3 **PURCHASE SCHOOL BUSES THAT OPERATE ON COMPRESSED NATURAL GAS**  
4 **(CNG)**

5 **SECTION 9.(a)** Notwithstanding any other provision of law and with funds  
6 available, beginning July 1, 2013, the Department of Public Instruction shall purchase only  
7 passenger school buses (Types A and B) and transit-style school buses (Type D) that operate on  
8 compressed natural gas (CNG) to replace school buses due to the age, mileage, condition,  
9 unique circumstances, or other condition necessitating replacement of a school bus.

10 **SECTION 9.(b)** Notwithstanding any other provision of law and with funds  
11 available, beginning July 1, 2015, the Department of Public Instruction shall purchase only  
12 passenger school buses (Types A and B), transit-style school buses (Type D), and  
13 conventional-style school buses (Type C) that operate on compressed natural gas (CNG) to  
14 replace school buses due to the age, mileage, condition, unique circumstances, or other  
15 condition necessitating replacement of a school bus.

16 **SECTION 9.(c)** No later than December 1, 2012, the Department of Public  
17 Instruction, in consultation with local school administrative units, shall develop a plan for the  
18 deployment of compressed natural gas (CNG)-fueled buses purchased in accordance with  
19 subsections (a) and (b) of this section to local school administrative units based on the  
20 following considerations:

- 21 (1) The availability of centralized fueling infrastructure.
- 22 (2) The ability of a local school administrative unit to operate and maintain  
23 compressed natural gas (CNG)-fueled buses.
- 24 (3) The characteristics of a local school administrative unit such as the  
25 geographic size, the density of the student population, and the number and  
26 average length of bus routes.
- 27 (4) Any other criteria the Department of Public Instruction deems necessary and  
28 applicable to implement this section.

29 **SECTION 9.(d)** This section shall not apply to noninstructional activity school  
30 buses purchased by a local school administrative unit with local or community funds.

31 **SECTION 9.(e)** Beginning January 1, 2013, and annually thereafter, the  
32 Department of Public Instruction shall report to the Joint Legislative Commission on Energy  
33 Policy, the Joint Legislative Education Oversight Committee, the House Appropriation  
34 Subcommittee on Education, and the Senate Appropriations Subcommittee on  
35 Education/Higher Education on the implementation of this section.

36  
37 **PART VII. DIRECT THE DEPARTMENT OF TRANSPORTATION TO PURCHASE**  
38 **NEW THREE-QUARTER TON PICKUP TRUCKS AND NEW ONE-HALF TON**  
39 **PICKUP TRUCKS THAT OPERATE ON COMPRESSED NATURAL GAS (CNG) OR**  
40 **COMPRESSED NATURAL GAS (CNG) AND GASOLINE**

41 **SECTION 10.(a)** Notwithstanding any other provision of law and with funds  
42 available, beginning July 1, 2013, fifty percent (50%) of the new three-quarter ton pickup  
43 trucks purchased by the Department of Transportation shall be manufactured by an original  
44 equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty  
45 and be capable of operating on compressed natural gas (CNG) or compressed natural gas  
46 (CNG) and gasoline.

47 **SECTION 10.(b)** Notwithstanding any other provision of law and with funds  
48 available, beginning July 1, 2015, one hundred percent (100%) of the new three-quarter ton  
49 pickup trucks purchased by the Department of Transportation shall be manufactured by an  
50 original equipment manufacturer or a qualified vehicle manufacturer offering a full factory

1 warranty and be capable of operating on compressed natural gas (CNG) or compressed natural  
2 gas (CNG) and gasoline.

3 **SECTION 10.(c)** Notwithstanding any other provision of law and with funds  
4 available, beginning July 1, 2014, fifty percent (50%) of the new one-half ton pickup trucks  
5 purchased by the Department of Transportation shall be manufactured by an original equipment  
6 manufacturer or a qualified vehicle manufacturer offering a full factory warranty and be  
7 capable of operating on compressed natural gas (CNG) or compressed natural gas (CNG) and  
8 gasoline.

9 **SECTION 10.(d)** Notwithstanding any other provision of law and with funds  
10 available, beginning July 1, 2016, one hundred percent (100%) of the new one-half ton pickup  
11 trucks purchased by the Department of Transportation shall be manufactured by an original  
12 equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty  
13 and be capable of operating on compressed natural gas (CNG) or compressed natural gas  
14 (CNG) and gasoline.

15 **SECTION 10.(e)** Notwithstanding any other provision of law and with funds  
16 available, the Department of Transportation shall ensure that at least fifty percent (50%) of the  
17 fuel used annually by the Department's three-quarter ton pickup trucks and one-half ton pickup  
18 trucks that are capable of operating on both compressed natural gas (CNG) and gasoline shall  
19 be compressed natural gas (CNG).

20 **SECTION 10.(f)** Beginning January 1, 2014, and annually thereafter, the  
21 Department of Transportation shall report to the Joint Legislative Commission on Energy  
22 Policy, the Joint Legislative Transportation Oversight Committee, the House Appropriations  
23 Subcommittee on Transportation, and the Senate Appropriations Subcommittee on Department  
24 of Transportation on the implementation of this section.

25  
26 **PART VIII. CREATE AN INTERAGENCY TASK FORCE TO ESTABLISH**  
27 **PUBLIC-PRIVATE PARTNERSHIPS FOR THE CONSTRUCTION AND**  
28 **DEVELOPMENT OF COMPRESSED NATURAL GAS (CNG) FUELING**  
29 **INFRASTRUCTURE**

30 **SECTION 11.(a)** The Department of Public Instruction, the Department of  
31 Transportation, the Department of Commerce, and the Department of Administration, in  
32 consultation with other agencies as applicable, shall create an interagency task force  
33 responsible for establishing public-private partnerships with the compressed natural gas (CNG)  
34 industry to develop compressed natural gas (CNG) fueling infrastructure to support the  
35 operation of the vehicles purchased pursuant to Sections 9 and 10 of this act. The task force,  
36 together with private industry, shall evaluate the feasibility and efficacy of the construction and  
37 operation of centralized public-private fueling stations and any other fueling options that may  
38 be necessary to support the operation of each Department's compressed natural gas (CNG)  
39 vehicles.

40 **SECTION 11.(b)** Beginning January 1, 2013, and annually thereafter, the task  
41 force shall report to the Joint Legislative Commission on Energy Policy, the Joint Legislative  
42 Transportation Oversight Committee, the Joint Legislative Education Oversight Committee, the  
43 House Appropriations Subcommittee on Transportation, the Senate Appropriations  
44 Subcommittee on Department of Transportation, the House Appropriation Subcommittee on  
45 Education, the Senate Appropriations Subcommittee on Education/Higher Education, the  
46 House Appropriations Subcommittee on General Government, and the Senate Appropriations  
47 Subcommittee on General Government and Information Technology on the implementation of  
48 this section.

1 **PART IX. ESTABLISH CRITERIA FOR THE OPERATION OF ELECTRIC**  
2 **VEHICLE CHARGING STATIONS LOCATED AT STATE-OWNED REST STOPS**  
3 **ALONG THE HIGHWAYS**

4 **SECTION 12.(a)** The Department of Transportation may operate an electric  
5 vehicle charging station at State-owned rest stops along the highways only if all of the  
6 following conditions are met:

- 7 (1) The electric vehicle charging station is accessible by the public.
- 8 (2) The Department has developed a mechanism to charge the user of the  
9 electric vehicle charging station a fee in order to recover the cost of  
10 electricity consumed, the cost of processing the user fee, and a proportionate  
11 cost of the operation and maintenance of the electric vehicle charging  
12 station.

13 **SECTION 12.(b)** If the cost of the electricity consumed at the electric vehicle  
14 charging stations cannot be calculated as provided by subsection (a) of this section, the  
15 Department shall develop an alternative mechanism, other than electricity metering, to recover  
16 the cost of the electricity consumed at the vehicle charging station.

17 **SECTION 12.(c)** The Department may consult with other State agencies and  
18 industry representatives in order to develop the mechanisms for cost recovery required pursuant  
19 to subsection (a) of this section.

20 **SECTION 12.(d)** Beginning January 1, 2013, and annually thereafter, the  
21 Department of Transportation shall report to the Joint Legislative Commission on Energy  
22 Policy, the Joint Legislative Transportation Oversight Committee, the House Appropriations  
23 Subcommittee on Transportation, and the Senate Appropriations Subcommittee on Department  
24 of Transportation on the implementation of this section.

25  
26 **PART X. ENSURE THE USE OF FUEL-EFFICIENT AND COST-EFFICIENT**  
27 **RETREAD TIRES ON STATE VEHICLES**

28 **SECTION 13.(a)** G.S. 115C-249.1 reads as rewritten:

29 **"§ 115C-249.1. Purchase of tires for school buses; repair or refurbishment of tires for**  
30 **school buses.**

31 (a) Definitions. – The following terms apply in this section:

- 32 (1) Critical tire information. – Tire brand name, tire line name, tire identification  
33 numbers, load and pressure markings, tire size designation, service  
34 descriptions such as load and speed ratings, and other information and  
35 specifications placed on the original tire sidewall by the original tire  
36 manufacturer.
- 37 (2) School bus. – A vehicle as defined in G.S. 20-4.01(27)d3. and  
38 G.S. 20-4.01(27)d4. that is owned, rented, or leased by a local board of  
39 education.

40 (b) Forensic Tire Standards. – In order to preserve critical tire information, a local  
41 board of education shall procure and install for school buses only tires that possess the original,  
42 unaltered, and uncovered tire sidewall. Furthermore, a local board of education shall not  
43 execute a contract for the repair or refurbishment of tires for school buses that provides for the  
44 removal, covering, or other alteration in any manner of the critical tire information contained  
45 on the original tire sidewall.

46 (b1) Retread Rubber Formulation Specifications. – Contracts for school bus tires  
47 executed on or after July 1, 2012, shall not include any specification for retread rubber  
48 formulations.

49 (b2) Use of Pre-Cure Fuel-Efficient Rated Retread Tires. – Contracts for school bus tires  
50 executed on or after July 1, 2012, shall include specifications requiring pre-cure fuel-efficient  
51 rated retreaded tires, as certified by the retread rubber manufacturer.

1 (c) Tire Purchase and Contract Standards Applicability. – All contracts for the  
2 purchase, repair, or refurbishment of tires for school buses, or contracts for the purchase of  
3 products or services related to the repair or refurbishment of tires for school buses, executed on  
4 or ~~after the date this section becomes effective~~ July 1, 2011, shall comply with the provisions of  
5 this section.

6 (d) Exemption. – Notwithstanding the provisions of this section, a local board of  
7 education that owns or has a legally binding contract in place for the future purchase of tires  
8 having altered or covered sidewalls prior to ~~the date that this section becomes effective~~ July 1,  
9 2011, shall perform its existing contractual obligations related thereto and may continue to use  
10 those tires on school buses for the useful life of the retreaded tire."

11 **SECTION 13.(b)** G.S. 143-63.2 reads as rewritten:

12 **"§ 143-63.2. Purchase of tires for State vehicles; repair or refurbishment of tires for State**  
13 **vehicles.**

14 (a) Definitions. – The following terms apply in this section:

15 (1) Critical tire information. – Tire brand name, tire line name, tire identification  
16 numbers, load and pressure markings, tire size designation, service  
17 descriptions such as load and speed ratings, and other information and  
18 specifications placed on the original tire sidewall by the original tire  
19 manufacturer.

20 (2) State vehicle. – Any vehicle owned, rented, or leased by the State, or an  
21 institution, department, or agency of the State, that is driven on a public road  
22 consistently at speeds greater than 30 miles per hour.

23 (b) Forensic Tire Standards. – In order to preserve critical tire information, the  
24 Secretary of Administration and any institution, department, or agency of the State shall only  
25 procure and install tires for State vehicles that possess the original, unaltered, and uncovered  
26 tire sidewall. Furthermore, neither the Secretary of Administration nor any institution,  
27 department, or agency of the State shall execute a contract for the repair or refurbishment of  
28 tires for State vehicles that provides for the removal, covering, or other alteration in any  
29 manner of the critical tire information contained on the original tire sidewall.

30 (c) Tire Purchase and Contract Standards Applicability. – All contracts for the  
31 purchase, repair, or refurbishment of tires for State vehicles, or contracts for the purchase of  
32 products or services related to the repair or refurbishment of tires for State vehicles, executed  
33 on or after ~~the date this section becomes effective~~ July 1, 2011, shall comply with the provisions  
34 of this section.

35 (d) Exemption. – Notwithstanding the provisions of this section, the State or any  
36 institution, department, or agency of the State that owns or has a legally binding contract in  
37 place for the future purchase of tires having altered or covered sidewalls prior to ~~the date that~~  
38 ~~this section becomes effective~~ July 1, 2011, shall perform its existing contractual obligations  
39 related thereto and may continue to use those tires on State vehicles for the useful life of the  
40 retreaded tire."

41 **SECTION 13.(c)** The Division of Purchase and Contract shall not extend its  
42 current contract for retreading of tires beyond the 90-day time period allowed under the  
43 contract.

44  
45 **PART XI. AMEND THE ENERGY JOBS ACT OF 2011 IF THE ENERGY JOBS ACT**  
46 **OF 2011 BECOMES LAW**

47 **SECTION 14.(a)** If Senate Bill 709 of the 2011 Regular Session becomes law,  
48 Sections 2(a), 2(b), and 2(c) of Senate Bill 709 reads as rewritten:

49 **"SECTION 2.(a)** Development of ~~Governors'~~ Regional Interstate Offshore Energy Policy  
50 Compact. – The Governor ~~is directed to commence~~ shall lay the groundwork for development of  
51 a regional energy ~~compact~~ strategy by working with the governors of South Carolina and

1 Virginia ~~in order~~ to develop recommendations for creation and implementation of a unified  
2 regional strategy for the exploration, development, and production of all commercially viable  
3 federal and state offshore energy resources within the three-state region. The Governor shall  
4 develop recommendations for the General Assembly to consider for the development of a  
5 statutory regional compact, and these recommendations shall reflect the collective agreement of  
6 all three governors in the three-state region in order to provide common language for  
7 consideration by each state's General Assembly. During the development of these compact  
8 recommendations, the Governor is authorized to work directly with each of the three states'  
9 General Assemblies, Congressional delegations, the United States Department of the Interior,  
10 the United States Environmental Protection Agency, and other appropriate federal agencies on  
11 behalf of the State of North Carolina to develop appropriate strategies to be considered in the  
12 development of the three-state compact for increasing domestic energy exploration,  
13 development, and production within each state in the three-state region and their adjacent state  
14 and federal waters. The compact negotiations and recommendations shall address at least all of  
15 the following:

- 16 (1) Ensure a timely review and consideration of permits and proposals at both  
17 the state and federal level for both state and federal waters adjacent to each  
18 state in the three-state region for seismic and other marine geophysical  
19 exploration to identify and quantify natural gas and related hydrocarbon  
20 resources along the continental margin.
- 21 (2) Amend the Five Year Leasing Plan of the United States Department of the  
22 Interior to include leasing federal waters adjacent to the State and the  
23 three-state region for the exploration, quantification, and development of  
24 natural gas and related hydrocarbon energy resources.
- 25 (3) Advocate proactively with each state's Congressional delegation and  
26 appropriate federal agencies to ensure direct sharing of royalties and  
27 revenues related to energy leasing, exploration, development, and production  
28 of all offshore energy resources in federal waters adjacent to the State and  
29 the three-state region.
- 30 (4) Request the United States Department of the Interior to reinstate the federal  
31 Offshore Policy Committee with new members and new alternate members  
32 to be nominated by the governor of the state represented on the Offshore  
33 Policy Committee and appointed by the Secretary of the Interior, six of  
34 whom are to be one member and one alternate member from each of North  
35 Carolina, Virginia, and South Carolina.

36 **"SECTION 2.(b)** No later than three months after the effective date of this act, and at least  
37 every three months thereafter, the Governor shall report to the General Assembly on the  
38 progress of the Governor and others in complying with the requirements under this section, to  
39 include providing copies of correspondence and other relevant materials to or from the Office  
40 of the Governor when the correspondence or materials pertain to the subject under this section  
41 or to any requirement under this section. The Governor shall report ~~her~~ the Governor's final  
42 recommendations for the three-state energy compact regional energy strategy to the Joint  
43 Regulatory Reform Committee no later than May 1, 2012. President Pro Tempore of the Senate  
44 and the Speaker of the House of Representatives no later than December 31, 2012.

45 **"SECTION 2.(c)** In addition to the provisions in Sections 2(a) and 2(b) of this act, the  
46 Governor is strongly encouraged to join the Governors of Alaska, Texas, Louisiana,  
47 Mississippi, and Virginia and any others who may sign on to the Outer Continental Shelf  
48 Governors Coalition announced on May 3, 2011, to promote a constructive dialogue among the  
49 coastal state governors and the federal government on offshore energy issues important to the  
50 future of North Carolina and the United States."

1           **SECTION 14.(b)** If Senate Bill 709 of the 2011 Regular Session becomes law,  
2 Sections 3(a) and 3(b) of Senate Bill 709 are repealed.

3           **SECTION 14.(c)** If Senate Bill 709 of the 2011 Regular Session becomes law,  
4 G.S. 113B-3, as amended by Senate Bill 709, reads as rewritten:

5 **"§ 113B-3. Composition of Council; appointments; terms of members; qualifications.**

6       (a) The Energy Jobs Council shall consist of 12 members to be appointed as follows:

7           (1) Repealed.

8           (2) Repealed.

9           (2a) The Secretary of Commerce.

10          (3) Eleven public members who are citizens of the State of North Carolina and  
11 who are appointed in accordance with subsection (c) of this section.

12       (b) Appointments to the Energy Jobs Council shall be made by ~~October 1,~~  
13 2011, September 1, 2012, and the appointed members shall serve four-year terms.  
14 Appointments made by the President Pro Tempore of the Senate and the Speaker of the House  
15 of Representatives shall be allowed when the General Assembly is not in session.

16       (c) The public members of the Energy Jobs Council shall have the qualifications and  
17 shall be appointed as follows:

18           (1) One member shall be a representative of an investor-owned electric public  
19 utility, to be appointed by the Governor.

20           (2) One member shall be a geologist experienced in ~~offshore~~ natural gas and  
21 associated hydrocarbon exploration, development, and production, to be  
22 appointed by the Governor.

23           (3) One member shall be a representative of an investor-owned natural gas  
24 public utility, to be appointed by the President Pro Tempore of the Senate.

25           (4) One member shall be an energy economist or a person with experience in the  
26 financing or business development or an energy-related business, to be  
27 appointed by the President Pro Tempore of the Senate.

28           (5) One member shall be a geologist with experience in hydrocarbon resource  
29 evaluation and geophysical data acquisition, to be appointed by the President  
30 Pro Tempore of the Senate.

31           (6) One member shall be an industrial energy consumer, to be appointed by the  
32 Speaker of the House of Representatives.

33           (7) One member shall be knowledgeable of alternative and renewable sources of  
34 energy, other than wind energy, to be appointed by the Speaker of the House  
35 of Representatives.

36           (8) One member who has experience in trucking, rail, or shipping transportation,  
37 to be appointed by the Speaker of the House of Representatives.

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

39           (10) One member shall be a representative with experience in wind energy, to be  
40 appointed by the Governor.

41           (11) One member shall be a representative with experience in environmental  
42 management, appointed by the Speaker of the House of Representatives.

43           (12) One member shall be ~~involved with the biofuels industry,~~ experienced in  
44 energy policy, to be appointed by the President Pro Tempore of the Senate."  
45

## 46 **PART XII. EFFECTIVE DATE**

47       **SECTION 15.** This act is effective when it becomes law. Initial appointments to  
48 the Oil and Gas Board pursuant to G.S. 113-432, as enacted by Section 1(a) of this act, shall be  
49 made no later than August 1, 2012. The Oil and Gas Board shall submit the first report due  
50 under G.S. 113-430(e), as enacted by Section 2(a) of this act, on or before January 1, 2013.