

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 71
House Committee Substitute Favorable 5/24/16
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Short Title: Comm'n Appointment Modifications.

(Public)

Sponsors:

Referred to:

February 12, 2015

A BILL TO BE ENTITLED

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

9
10 Whereas, the Coal Ash Management Act of 2014 required the owner of a coal
11 combustion residuals surface impoundment to sample and analyze the water quality of drinking
12 water supply wells in areas surrounding coal combustion residuals surface impoundments and, if
13 the sampling and water quality analysis indicated that water from a drinking water supply well
14 exceeded groundwater quality standards for constituents associated with the presence of the
15 impoundment, required the owner to replace the contaminated drinking water supply well with an
16 alternate supply of potable drinking water and an alternate supply of water that is safe for other
17 household uses; and

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23 Human Services, even after many of these advisories were subsequently withdrawn; and

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 The General Assembly of North Carolina enacts:

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

18 "(c1) Provision of Permanent Water Supply. – As soon as practicable, but no later than
19 October 1, 2017, the owner of a coal combustion residuals surface impoundment shall execute a
20 memorandum of agreement or other binding agreement with the Department of Environmental
21 Quality to establish permanent replacement water supplies for (i) each household with a drinking
22 water supply well for which sampling and water quality analysis indicates that the well exceeds
23 federal drinking water standards or groundwater quality standards for constituents associated with
24 the presence of the impoundment and (ii) each household with a drinking water supply well that is
25 located in an area in which contamination resulting from constituents associated with the presence
26 of a coal combustion residuals impoundment is expected to migrate, as demonstrated by
27 groundwater modeling, and hydrogeologic, geologic, and geotechnical investigations of the site,
28 conducted pursuant to subsections (c) and (d) of G.S. 130A-309.214. Preference shall be given to
29 permanent replacement water supplies by connection to public water supplies; however, if the
30 State Water Infrastructure Authority determines that connection to a public water supply to a
31 particular household would be cost-prohibitive, the State Water Infrastructure Authority shall
32 authorize provision of a permanent replacement water supply to that household through
33 installation of a filtration system. For households for which filtration systems are installed, the
34 impoundment owner shall be responsible for periodic required maintenance of the filtration
35 system. No later than September 1, 2017, an impoundment owner shall submit information on
36 permanent replacement water supplies proposed to be provided to each household to the State
37 Water Infrastructure Authority, including, at a minimum, the type of permanent water supply
38 proposed, the location of the household and its proximity to the nearest connection point to a
39 public water supply, and projected cost of the permanent water supply option proposed for the
40 household. Projects involving permanent replacement water supplies by connection to public
41 water supplies shall be deemed approved for this purpose. Nothing in this section shall be
42 construed to obviate the need for other federal, State, and local permits and approvals. The
43 Department of Environmental Quality shall expedite any State permits and approvals required for
44 such projects. For projects involving installation of a filtration system, the State Water
45 Infrastructure Authority shall evaluate information submitted by the impoundment owner to
46 determine whether connection to a public water supply is cost-prohibitive and render a decision to
47 approve or disapprove the plan, including written findings of fact, no later than December 1,
48 2017."

49 **SECTION 1.(b)** This section is effective when it becomes law. Requirements for
50 establishment of a permanent alternative water supply under subsection (a) of this section shall

1 apply only to households with drinking water supply wells in existence on the date this act
2 becomes effective.

3 **SECTION 1.1.(a)** G.S. 130A-309.214 reads as rewritten:

4 **"§ 130A-309.214. Closure of coal combustion residuals surface impoundments.**

5 ...

6 (g) Notwithstanding any other requirement for closure under this section or Part, no later
7 than December 1, 2016, an impoundment owner shall submit plans to the Department of
8 Environmental Quality to make at least 2.5 million tons of coal combustion residuals per year
9 available for beneficial use for addition to concrete. At least 50% of the coal combustion residuals
10 made available for beneficial use shall be removed from the current inventory of coal combustion
11 residuals. Facilities that are or have received coal combustion residuals from other sites will be the
12 sites from which the coal combustion residuals inventory will be used first. No later than June 1,
13 2018, an impoundment owner shall begin to supply such coal combustion residuals for beneficial
14 use in accordance with this subsection."

15 **SECTION 1.1.(b)** This section is effective when it becomes law.

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

17 **"§ 130A-309.202. Coal Ash Management Commission.**

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

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

- 23 ~~(1) One appointed by the General Assembly upon recommendation of the President~~
24 ~~Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the~~
25 ~~time of appointment be a resident of the State.~~
- 26 ~~(2) One appointed by the General Assembly upon recommendation of the President~~
27 ~~Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the~~
28 ~~time of appointment have special training or scientific expertise in waste~~
29 ~~management, including solid waste disposal, hauling, or beneficial use.~~
- 30 ~~(3) One appointed by the General Assembly upon recommendation of the President~~
31 ~~Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the~~
32 ~~time of appointment be a licensed physician or a person with experience in~~
33 ~~public health.~~
- 34 ~~(4) One appointed by the General Assembly upon recommendation of the Speaker~~
35 ~~of the House of Representatives in accordance with G.S. 120-121 who shall at~~
36 ~~the time of appointment be a member of a nongovernmental conservation~~
37 ~~interest.~~
- 38 ~~(5) One appointed by the General Assembly upon recommendation of the Speaker~~
39 ~~of the House of Representatives in accordance with G.S. 120-121 who shall at~~
40 ~~the time of appointment have special training or scientific expertise in waste~~
41 ~~management, including solid waste disposal, hauling, or beneficial use, or is a~~
42 ~~representative of or on the faculty of a State college or university that conducts~~
43 ~~coal ash research.~~
- 44 ~~(6) One appointed by the General Assembly upon recommendation of the Speaker~~
45 ~~of the House of Representatives in accordance with G.S. 120-121 who shall at~~
46 ~~the time of appointment be a representative of an electric membership~~
47 ~~corporation organized under Article 2 of Chapter 117 of the General Statutes~~
48 ~~and have a background in power supply resource planning and engineering.~~
- 49 ~~(7) One appointed by the Governor who shall at the time of appointment have~~
50 ~~experience in economic development.~~

1 (8) ~~One appointed by the Governor who shall at the time of appointment have~~
2 ~~expertise in determining and evaluating the costs associated with electricity~~
3 ~~generation and establishing the rates associated with electricity consumption.~~

4 (9) ~~One appointed by the Governor who shall at the time of appointment be a~~
5 ~~person with experience in science or engineering in the manufacturing sector.~~

6 (b1) Membership. – The Commission shall consist of seven members as follows:

7 (1) One appointed by the Governor subject to confirmation by the General
8 Assembly, who shall at the time of appointment have special training or
9 scientific expertise in waste management, including solid waste disposal,
10 hauling, or beneficial use.

11 (2) One appointed by the Governor subject to confirmation by the General
12 Assembly, who shall at the time of appointment be a licensed physician or a
13 person with experience in public health.

14 (3) One appointed by the Governor subject to confirmation by the General
15 Assembly, who shall at the time of appointment be a representative of an
16 electric membership corporation organized under Article 2 of Chapter 117 of
17 the General Statutes and have a background in power supply resource planning
18 and engineering.

19 (4) One appointed by the Governor subject to confirmation by the General
20 Assembly, who shall at the time of appointment have expertise in determining
21 and evaluating the costs associated with electricity generation and establishing
22 the rates associated with electricity consumption.

23 (5) One appointed by the Governor subject to confirmation by the General
24 Assembly, who shall at the time of appointment be a person with experience in
25 science or engineering in hydrology or geology.

26 (6) One appointed by the General Assembly upon recommendation of the Speaker
27 of the House of Representatives in accordance with G.S. 120-121, who is a
28 representative of a nongovernmental conservation interest.

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

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

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

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

48 (2) Appointments of a subsequent Chair, including appointments to fill a vacancy
49 of the Chair created by resignation, dismissal, death, or disability of the Chair,
50 no later than 30 days after the last day of the previous Chair's term. If an

1 appointment of a subsequent Chair is not made by that date, the Chair shall be
2 elected by a vote of the membership.

3 (d) Vacancies. – ~~Any appointment to fill a vacancy on the Commission created by the~~
4 ~~resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired~~
5 ~~term. The Governor may reappoint a gubernatorial appointee of the Commission to an additional~~
6 ~~term if, at the time of the reappointment, the member qualifies for membership on the Commission~~
7 ~~under subdivisions (7) through (9) of subsection (b) of this section. In case of death, incapacity,~~
8 ~~resignation, or vacancy for any other reason in the office of any member appointed by the~~
9 ~~Governor, prior to the expiration of the member's term of office, the name of the successor shall be~~
10 ~~submitted by the Governor within four weeks after the vacancy arises to the General Assembly for~~
11 ~~confirmation by the General Assembly. In case of death, incapacity, resignation, or vacancy for~~
12 ~~any other reason in the office of any member appointed~~ Appointments by the General Assembly
13 Assembly, shall be made in accordance with G.S. 120-121, and vacancies in those appointments
14 shall be filled in accordance with G.S. 120-122. If a vacancy arises or exists when the General
15 Assembly is not in session, and the appointment is deemed urgent by the Governor, the member
16 may be appointed by the Governor and serve on an interim basis pending confirmation or
17 appointment by the General Assembly, as applicable. An appointment to fill a vacancy shall be for
18 the unexpired balance of the term.

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

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

- 24 (1) To review and approve the classification of coal combustion residuals surface
25 impoundments required by G.S. 130A-309.213.
- 26 (2) To review and approve Coal Combustion Residuals Surface Impoundment
27 Closure Plans as provided in G.S. 130A-309.214.
- 28 (3) To review and make recommendations on the provisions of this Part and other
29 statutes and rules related to the management of coal combustion residuals.
- 30 (4) To undertake any additional studies as requested by the General Assembly.

31 (g) Reimbursement. – The members of the Commission shall receive per diem and
32 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

33 (h) Quorum. – ~~Five~~ Four members of the ~~Commission~~ Commission, at least three of whom
34 must be gubernatorial appointees, shall constitute a quorum for the transaction of business.

35 (i) Staff. – The Commission is authorized and empowered to employ staff as the
36 Commission may determine to be necessary for the proper discharge of the Commission's duties
37 and responsibilities. The Chair of the Commission shall organize and direct the work of the
38 Commission staff. The salaries and compensation of all such personnel shall be fixed in the
39 manner provided by law for fixing and regulating salaries and compensation by other State
40 agencies. The Chair, within allowed budgetary limits and as allowed by law, shall authorize and
41 approve travel, subsistence, and related expenses of such personnel incurred while traveling on
42 official business. All State agencies, including the constituent institutions of The University of
43 North Carolina, shall provide information and support to the Commission upon request.

44 (j) Repealed by Session Laws 2015-9, s. 1.1, effective April 27, 2015.

45 (k) Covered Persons; Conflicts of Interest; Disclosure. – All members of the Commission
46 are covered persons for the purposes of Chapter 138A of the General Statutes, the State
47 Government Ethics Act. As covered persons, members of the Commission shall comply with the
48 applicable requirements of the State Government Ethics Act, including mandatory training, the
49 public disclosure of economic interests, and ethical standards for covered persons. Members of the
50 Commission shall comply with the provisions of the State Government Ethics Act to avoid
51 conflicts of interest. The Governor may require additional disclosure of potential conflicts of

1 interest by members. The Governor may promulgate criteria regarding conflicts of interest and
2 disclosure thereof for determining the eligibility of persons under this subsection, giving due
3 regard to the requirements of federal legislation, and, for this purpose, may promulgate rules,
4 regulations, or guidelines in conformance with those established by any federal agency
5 interpreting and applying provisions of federal law.

6 (l) Meetings. – The Commission shall meet at least once every two months and may hold
7 special meetings at any time and place within the State at the call of the Chair or upon the written
8 request of at least five members.

9 (m) Reports. – The Commission shall submit quarterly written reports as to its operation,
10 activities, programs, and progress to the Environmental Review Commission. The Commission
11 shall supplement the written reports required by this subsection with additional written and oral
12 reports as may be requested by the Environmental Review Commission. The Commission shall
13 submit the written reports required by this subsection whether or not the General Assembly is in
14 session at the time the report is due.

15 (n) ~~Administrative Location; Independence.~~Location. – The Commission shall be
16 administratively located in the Division of Emergency Management of the Department of Public
17 ~~Safety.~~Safety, the head of which is the Secretary of Public Safety, who, as provided in
18 G.S. 143B-602, has powers and duties as delegated to the Secretary by the Governor and conferred
19 on the Secretary by the Constitution and laws of this State.~~The Commission shall exercise all of~~
20 ~~its powers and duties independently and shall not be subject to the supervision, direction, or~~
21 ~~control of the Division or Department.~~

22 (o) Terms of Members. – Members of the Commission shall serve terms of ~~six~~four years,
23 beginning effective ~~July 1~~January 1 of the year of ~~appointment~~appointment, and terminate on
24 December 31 of the year of expiration. At the expiration of each member's term, the appointing
25 authority shall replace the member with a new member of like qualifications for a term of four
26 years. A member shall continue to serve until the member's successor is duly confirmed and
27 qualified but such holdover shall not affect the expiration date of such succeeding term. In order to
28 establish regularly overlapping terms, initial appointments shall be made effective June 1, 2016, or
29 as soon as feasible thereafter, and expire as follows:

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

31 a. Pursuant to subdivision (b1)(1) of this section shall expire December 31,
32 2020.

33 b. Pursuant to subdivision (b1)(2) of this section shall expire December 31,
34 2020.

35 c. Pursuant to subdivision (b1)(3) of this section shall expire December 31,
36 2020.

37 d. Pursuant to subdivision (b1)(4) of this section shall expire December 31,
38 2019.

39 e. Pursuant to subdivision (b1)(5) of this section shall expire December 31,
40 2019.

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

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

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

48 **"§ 130A-309.213. Prioritization of coal combustion residuals surface impoundments.**

49 (a) As soon as practicable, but no later than December 31, 2015, the Department shall
50 develop proposed classifications for all coal combustion residuals surface impoundments,
51 including active and retired sites, for the purpose of closure and remediation based on these sites'

1 risks to public health, safety, and welfare; the environment; and natural resources and shall
2 determine a schedule for closure and required remediation that is based on the degree of risk to
3 public health, safety, and welfare; the environment; and natural resources posed by the
4 impoundments and that gives priority to the closure and required remediation of impoundments
5 that pose the greatest risk. In assessing the risk, the Department shall evaluate information
6 received pursuant to G.S. 130A-309.211 and G.S. 130A-309.212 and any other information
7 deemed relevant and, at a minimum, consider all of the following:

- 8 (1) Any hazards to public health, safety, or welfare resulting from the
9 impoundment.
- 10 (2) The structural condition and hazard potential of the impoundment.
- 11 (3) The proximity of surface waters to the impoundment and whether any surface
12 waters are contaminated or threatened by contamination as a result of the
13 impoundment.
- 14 (4) Information concerning the horizontal and vertical extent of soil and
15 groundwater contamination for all contaminants confirmed to be present in
16 groundwater in exceedance of groundwater quality standards and all significant
17 factors affecting contaminant transport.
- 18 (5) The location and nature of all receptors and significant exposure pathways.
- 19 (6) The geological and hydrogeological features influencing the movement and
20 chemical and physical character of the contaminants.
- 21 (7) The amount and characteristics of coal combustion residuals in the
22 impoundment.
- 23 (8) Whether the impoundment is located within an area subject to a 100-year flood.
- 24 (9) Any other factor the Department deems relevant to establishment of risk.

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

- 31 (1) The Department shall make copies of the written declaration issued pursuant to
32 this subsection available for inspection as follows:
 - 33 a. A copy of the declaration shall be provided to the local health director.
 - 34 b. A copy of the declaration shall be provided to the public library located
35 in closest proximity to the site in the county or counties in which the site
36 is located.
 - 37 c. The Department shall post a copy of the declaration on the Department's
38 Web site.
 - 39 d. The Department shall place copies of the declaration in other locations
40 so as to assure the reasonable availability thereof to the public.
- 41 (2) The Department shall give notice of the written declaration issued pursuant to
42 this subsection as follows:
 - 43 a. A notice and summary of the declaration shall be published weekly for a
44 period of three consecutive weeks in a newspaper having general
45 circulation in the county or counties where the site is located.
 - 46 b. Notice of the written declaration shall be given by first-class mail to
47 persons who have requested such notice. Such notice shall include a
48 summary of the written declaration and state the locations where a copy
49 of the written declaration is available for inspection. The Department
50 shall maintain a mailing list of persons who request notice pursuant to
51 this section.

1 c. Notice of the written declaration shall be given by electronic mail to
2 persons who have requested such notice. Such notice shall include a
3 summary of the written declaration and state the locations where a copy
4 of the written declaration is available for inspection. The Department
5 shall maintain a mailing list of persons who request notice pursuant to
6 this section.

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

12 a. Publication as provided in subdivision (1) of this subsection, with first
13 publication to occur not less than 30 days prior to the scheduled date of
14 the hearing.

15 b. First-class mail to persons who have requested notice as provided in
16 subdivision (2) of this subsection.

17 c. Electronic mail to persons who have requested notice as provided in
18 subdivision (2) of this subsection.

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

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

1 additional review shall not constitute a final decision of the Commission for purposes of an appeal
2 under Article 3 of Chapter 150B of the General Statutes."

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

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

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

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

- 28 (1) Extend the period for receipt of public comment on the written declarations for
29 proposed classifications for all coal combustion residuals surface
30 impoundments until August 1, 2016, consider any comments, information, and
31 data received during this period, including memorandums of agreement or other
32 binding agreements to provide permanent replacement water supplies in
33 accordance with the requirements of G.S. 130A-309.211, as amended by
34 Section 2(a) of this act, to reduce risk to public health, safety, and welfare; and
35 incorporate any comments, information, and data necessary for issuance of a
36 classification that accurately reflects the level of risk posed by the coal
37 combustion residuals surface impoundment.
- 38 (2) No later than September 1, 2016, submit a proposed classification for review
39 and approval to the (i) Coal Ash Management Commission, as appointed
40 pursuant to G.S. 130A-309.202(b1), as enacted by Section 2(a) of this act, or
41 (ii) the Environmental Management Commission, if applicable, pursuant to
42 Section 2(d) of this act.

43 **SECTION 2.(g)** Up to five receipt-supported positions are created in the Division of
44 Emergency Management of the Department of Public Safety to carry out the duties in
45 G.S. 130A-309.202. There is appropriated a sum of up to four hundred thousand dollars
46 (\$400,000) to the Coal Ash Management Commission from the Coal Combustion Residuals
47 Management Fund cash balance on June 30, 2016, to fund said positions or for the purpose of
48 executing contractual arrangements for engineering or other consulting services the Commission
49 determines are necessary or advisable to render requisite information and expertise on coal ash
50 management issues or otherwise support the Commission's work. The positions shall be used to
51 provide assistance to the Coal Ash Management Commission established by G.S. 130A-309.202,

1 as enacted by Section 2(a) of this act. The Division of Emergency Management in the Department
2 of Public Safety shall consult with the Chair of the Commission in hiring the staff for the Coal
3 Ash Management Commission. The Division of Emergency Management in the Department of
4 Public Safety shall provide support to the Commission until the staff of the Commission is hired,
5 including the designation of an individual to serve as an interim executive director of the staff.
6 Provided, however, that if the Environmental Management Commission assumes all powers and
7 duties for review and approval of proposed classifications for all coal combustion residuals surface
8 impoundments and closure plans for all coal combustion residuals surface impoundments pursuant
9 to Section 2(d) of this act, then funds to be appropriated pursuant to this section shall instead be
10 appropriated to the Environmental Management Commission, which funds shall be used solely to
11 support the work of the Commission to review and approve proposed classifications and proposed
12 closure plans.

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

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

15 "**§ 143B-291. North Carolina Mining Commission – members; selection; removal;
16 compensation; quorum; services.**

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

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

20 (1) One member who is the chair of the North Carolina State University Minerals
21 Research Laboratory Advisory Committee.

22 (2) The State Geologist, ex officio and nonvoting.

23 (3) One member appointed by the Governor subject to confirmation by the General
24 Assembly, who is a representative of the mining industry.

25 (4) One member appointed by the Governor subject to confirmation by the General
26 Assembly, who is a representative of the mining industry.

27 (5) One member appointed by the ~~General Assembly upon recommendation of the
28 Speaker of the House of Representatives~~ Governor subject to confirmation by
29 the General Assembly who is a representative of the mining industry.

30 (6) One member appointed by the ~~General Assembly upon recommendation of the
31 President Pro Tempore of the Senate~~ Governor subject to confirmation by the
32 General Assembly who is a representative of the mining industry.

33 (7) One member appointed by the General Assembly upon recommendation of the
34 Speaker of the House of Representatives in accordance with G.S. 120-121, who
35 is a ~~member of~~ representative of a nongovernmental conservation
36 interests.interest.

37 (8) One member appointed by the General Assembly upon recommendation of the
38 President Pro Tempore of the Senate in accordance with G.S. 120-121, who is a
39 ~~member of~~ representative of a nongovernmental conservation interests.interest.

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

50 (b) Terms. – The term of office of a member of the Commission is ~~six years~~ four years,
51 beginning effective January 1 of the year of appointment and terminating on December 31 of the

1 year of expiration. At the expiration of each member's term, the appointing authority shall replace
2 the member with a new member of like qualifications for a term of ~~six~~four years. ~~The term of the~~
3 ~~member appointed under subdivision (5) of subsection (a1) of this section shall expire on June 30~~
4 ~~of years that precede by one year those years that are evenly divisible by six. The term of members~~
5 ~~appointed under subdivisions (3) and (6) of subsection (a1) of this section shall expire on June 30~~
6 ~~of years that follow by one year those years that are evenly divisible by six. The term of members~~
7 ~~appointed under subdivisions (4) and (7) of subsection (a1) of this section shall expire on June 30~~
8 ~~of years that follow by three years those years that are evenly divisible by six. Upon the expiration~~
9 ~~of a six year term, a member may continue to serve until a successor is appointed and duly~~
10 ~~qualified as provided by G.S. 128-7.~~In order to establish regularly overlapping terms, initial
11 appointments shall be made effective June 1, 2016, or as soon as feasible thereafter, and expire as
12 follows:

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

- 14 a. Pursuant to subdivision (a1)(3) of this section shall expire December 31,
15 2020.
16 b. Pursuant to subdivision (a1)(4) of this section shall expire December 31,
17 2020.
18 c. Pursuant to subdivision (a1)(5) of this section shall expire December 31,
19 2019.
20 d. Pursuant to subdivision (a1)(6) of this section shall expire December 31,
21 2019.

22 (2) The initial appointment made by the General Assembly upon recommendation
23 of the Speaker of the House of Representatives pursuant to subdivision (a1)(7)
24 of this section shall expire December 31, 2018.

25 (3) The initial appointment made by the General Assembly upon recommendation
26 of the President Pro Tempore of the Senate pursuant to subdivision (a1)(8) of
27 this section shall expire December 31, 2018.

28 (c) Vacancies. – In case of death, incapacity, resignation, or vacancy for any other reason
29 in the office of any member appointed by the Governor, prior to the expiration of the member's
30 term of office, the name of the successor shall be submitted by the Governor within four weeks
31 after the vacancy arises to the General Assembly for confirmation by the General Assembly. In
32 case of death, incapacity, resignation, or vacancy for any other reason in the office of any member
33 appointed by the General Assembly, vacancies in those appointments shall be filled in accordance
34 with G.S. 120-122. If a vacancy arises or exists when the General Assembly is not in session, and
35 the appointment is deemed urgent by the Governor, the member may be appointed by the
36 Governor and serve on an interim basis pending confirmation or appointment by the General
37 Assembly, as applicable. An appointment to fill a vacancy shall be for the unexpired balance of
38 the term.

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

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

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

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

47 **SECTION 3.(b)** Notwithstanding the provisions of G.S. 143B-291(a2) and
48 G.S. 143B-291(b), as enacted and amended by Section 3(a) of this act, no later than 30 days after
49 the date this act becomes law, the Governor shall transmit to the presiding officers of the Senate
50 and the House of Representatives the names of the persons nominated by the Governor for
51 appointment to the Mining Commission pursuant to G.S. 143B-291(a1), as enacted by Section

1 3(a) of this act, for confirmation by the General Assembly by joint resolution. Upon failure of the
2 Governor to submit names as provided herein by December 1, 2016, the Lieutenant Governor
3 shall make such appointments, and if such appointments made by the Lieutenant Governor occur
4 when the General Assembly is not in session, the member may be appointed and serve on an
5 interim basis pending confirmation by the General Assembly.

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

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

8 "**§ 143B-293.2. North Carolina Oil and Gas Commission – members; selection; removal;
9 compensation; quorum; services.**

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

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

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

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

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

26 (4) One appointed by the ~~General Assembly upon recommendation of the President~~
27 ~~Pro Tempore of the Senate~~ Governor subject to confirmation by the General
28 Assembly who, at the time of initial appointment, is a member of a county
29 board of commissioners of a county located in a region of North Carolina that
30 has oil and gas potential. A person serving in this seat may complete a term on
31 the Commission even if the person is no longer serving as county commissioner
32 but may not be reappointed to a subsequent term.

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

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

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

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

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

47 (a2) Process for Appointments by the Governor. – The Governor shall transmit to the
48 presiding officers of the Senate and the House of Representatives, within four weeks of the
49 convening of the session of the General Assembly in the year for which the terms in question are
50 to expire, the names of the persons to be appointed by the Governor and submitted to the General
51 Assembly for confirmation by joint resolution. If an appointment is required pursuant to this

1 subsection when the General Assembly is not in session, the member may be appointed and serve
2 on an interim basis pending confirmation by the General Assembly. For the purpose of this
3 subsection, the General Assembly is not in session only (i) prior to convening of the regular
4 session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after sine
5 die adjournment of the regular session.

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

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

21 a. Pursuant to subdivision (a1)(1) of this section shall expire December 31,
22 2020.

23 b. Pursuant to subdivision (a1)(4) of this section shall expire December 31,
24 2020.

25 c. Pursuant to subdivision (a1)(7) of this section shall expire December 31,
26 2020.

27 d. Pursuant to subdivision (a1)(8) of this section shall expire December 31,
28 2019.

29 e. Pursuant to subdivision (a1)(9) of this section shall expire December 31,
30 2019.

31 (2) The initial appointments made by the General Assembly upon recommendation
32 of the Speaker of the House of Representatives:

33 a. Pursuant to subdivision (a1)(2) of this section shall expire December 31,
34 2018.

35 b. Pursuant to subdivision (a1)(3) of this section shall expire December 31,
36 2019.

37 (3) The initial appointments made by the General Assembly upon recommendation
38 of the President Pro Tempore of the Senate:

39 a. Pursuant to subdivision (a1)(5) of this section shall expire December 31,
40 2018.

41 b. Pursuant to subdivision (a1)(6) of this section shall expire December 31,
42 2019.

43 (c) ~~Vacancies; Removal from Office.~~ ~~Vacancies.~~ – In case of death, incapacity,
44 resignation, or vacancy for any other reason in the office of any member appointed by the
45 Governor, prior to the expiration of the member's term of office, the name of the successor shall be
46 submitted by the Governor within four weeks after the vacancy arises to the General Assembly for
47 confirmation by the General Assembly. In case of death, incapacity, resignation, or vacancy for
48 any other reason in the office of any member appointed by the General Assembly, vacancies in
49 those appointments shall be filled in accordance with G.S. 120-122. If a vacancy arises or exists
50 when the General Assembly is not in session, and the appointment is deemed urgent by the
51 Governor, the member may be appointed by the Governor and serve on an interim basis pending

1 confirmation or appointment by the General Assembly, as applicable. An appointment to fill a
2 vacancy shall be for the unexpired balance of the term.

3 (c1) Removal. –

4 (1) ~~Any appointment by the Governor to fill a vacancy on the Commission created by the~~
5 ~~resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired~~
6 ~~term.~~ The Governor shall have the power to remove any member of the Commission from office
7 for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13
8 of the Executive Organization Act of 1973.

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

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

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

18 (f) Staff. – All staff support required by the Commission shall be supplied by the Division
19 of Energy, Mineral, and Land Resources and the North Carolina Geological Survey.

20 (g) Committees. – In addition to the Committee on Civil Penalty Remissions required to be
21 established under G.S. 143B-293.6, the chair may establish other committees from members of the
22 Commission to address specific issues as appropriate. No member of a committee may hear or
23 vote on any matter in which the member has an economic interest. A majority of a committee shall
24 constitute a quorum for the transaction of business.

25 (h) Office May Be Held Concurrently With Others. – Membership on the Oil and Gas
26 Commission is hereby declared to be an office that may be held concurrently with other elective or
27 appointive offices in addition to the maximum number of offices permitted to be held by one
28 person under G.S. 128-1.1."

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

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

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

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

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