GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

SENATE BILL 802
RATIFIED BILL

AN ACT TO ADVANCE BUILDING RESILIENCY AND UTILITY EFFICIENCY IN NORTH CAROLINA BY AUTHORIZING A STATEWIDE PROGRAM TO UTILIZE ASSESSMENTS TO REPAY NONPUBLIC FINANCING OF COMMERCIAL BUILDING IMPROVEMENTS THAT WILL PROMOTE ECONOMIC DEVELOPMENT, REDUCE UTILITY BILL COSTS, AND HARDEN COMMERCIAL BUILDINGS AGAINST STORM AND FLOOD DAMAGE AND TO AMEND ARTICLE 8 OF CHAPTER 143 OF THE GENERAL STATUTES TO MODIFY THE REQUIREMENTS TO BE CERTIFIED AS A MINORITY BUSINESS OR HISTORICALLY UNDERUTILIZED BUSINESS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding a new Article to read:

"Article 10B.

"Commercial Property Assessed Capital Expenditure (C-PACE) Act.

"**§ 160A-239.11. Purpose; findings.**

This Article shall be known and may be cited as the "Commercial Property Assessed Capital Expenditure (C-PACE) Act." This Article authorizes the establishment of a statewide C-PACE Program that local governments may voluntarily join to allow willing owners of commercial, industrial, agricultural, nonprofit, and multifamily residential properties with five or more dwelling units to obtain low-cost, long-term financing for qualifying improvements, including energy efficiency, water conservation, renewable energy, and resilience projects, secured by an assessment and lien authorized by this Article. The State finds that a valid public purpose exists because the use of a C-PACE Program creates an additional financing mechanism for property owners to use private funds to finance improvements to their eligible property, thereby driving economic development by creating a diversity of jobs in the resilience and clean energy sectors of the economy. The assessment requires minimal upfront costs and provides a more accessible financial mechanism to fund improvements that will increase the tax value of the affected properties at minimal administrative cost to local governments. C-PACE improvements allow property owners to save on their utility bills because the improvements lead to energy or utility savings and will result in improved indoor air quality or increased resilience, which will increase the ability of communities and local governments to respond to natural disasters and improve public health.

"**§ 160A-239.12. Definitions.**

The following definitions apply in this Article:

(1) Capital provider. – A private entity, or the private entity's designee, successor, and assigns, that makes or funds qualifying improvements under this Article.

(2) Commercial property assessed capital expenditure program (C-PACE Program). – A program wherein a C-PACE assessment and C-PACE lien are voluntarily imposed by a local government on qualifying commercial property to pay for the costs of qualifying improvements.

(3) C-PACE assessment. – A voluntary assessment imposed on a commercial property by a local government under this Article pursuant to an assessment agreement for the total amount of the C-PACE financing. The voluntary C-PACE assessment shall not constitute a tax.

(4) C-PACE financing. – Direct financing between capital providers and property owners within the jurisdictional boundaries of a local government participating in the C-PACE Program to finance qualifying improvements.

(5) C-PACE lien. – A lien to secure the C-PACE assessment that remains on the qualifying property until paid in full.

(6) C-PACE toolkit. – A comprehensive set of documents developed by the statewide administrator in consultation with stakeholders and local governments and subject to approval by the program sponsor that describes the C-PACE Program guidelines, application approval criteria, and forms consistent with the administration of the program as provided for in this Article.

(7) Financing agreement. – The contract in which a property owner agrees to repay a capital provider for the C-PACE financing provided, including, but not limited to, any finance charges, fees, debt servicing, accrual of interest and penalties, and any terms relating to the treatment of prepayment and partial payment, and the billing, collection, and enforcement of the C-PACE financing.

(8) Local government. – Any county or city.

(9) Program sponsor. – The North Carolina Department of Commerce.

(10) Project application. – The application submitted to the statewide administrator by the property owner to demonstrate that a proposed project qualifies for C-PACE financing under this Article.

(11) Property owner. – The holder of title in fee simple to a qualifying commercial property.

(12) Publicly-owned land. – Property that is owned by a State or local governmental entity and that is subject to a leasehold.

(13) Qualifying commercial property. – Privately owned commercial, industrial, or agricultural real property or privately owned residential real property consisting of five or more dwelling units. This term includes property owned by nonprofit, charitable, or religious organizations.

(14) Qualifying improvement. – A permanently affixed improvement to a building on a qualifying commercial property as part of the construction or renovation of the qualifying property and that includes one or more of the following approved by the program sponsor:

a. Energy efficiency measure. – An equipment, physical component, or program change implemented that results in less energy used to perform the same function and that meets or exceeds then-existing State and federal building codes and efficiency standards or conservation codes, including, but not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources.

b. Resiliency measure. – An equipment, physical component, or program change implemented that includes, but is not limited to, storm retrofits, flood mitigation, stormwater management, wind resistance, indoor air quality improvement, electric vehicle charging station, backup energy generators enrolled in an electric public utility demand response program, energy storage, and microgrids and other resilience projects.

c. Renewable energy measure. – A renewable energy resource as defined in G.S. 62-133.8.

d. Water conservation measure. – An equipment, physical component, or program change implemented to decrease water consumption or demand or to address safe drinking water.

(15) Statewide administrator. – The Economic Development Partnership of North Carolina.

"**§ 160A-239.13. Statewide C-PACE Program – authorization.**

(a) The State authorizes a statewide C-PACE Program in which any local government may participate.

(b) The program sponsor is hereby authorized under this Article to oversee the C-PACE Program.

"**§ 160A-239.14. Statewide C-PACE Program – administration.**

(a) In the administration of the C-PACE Program, the statewide administrator shall do the following:

(1) Prepare a C-PACE toolkit in consultation with stakeholders and local governments and subject to approval by the program sponsor prior to accepting applications for C-PACE financing, which shall include, at a minimum, all of the following:

a. A form of assessment agreement to be used between a local government and property owner specifying the terms of the C-PACE assessment.

b. A form of notice of C-PACE assessment that identifies the qualified commercial property subject to the C-PACE assessment and the property owner consenting to the C-PACE assessment.

c. A form of assignment of the C-PACE lien from the local government to the capital provider that cross-references the registry book and page number of the notice C-PACE assessment giving rise to the lien.

d. A form of consent to a C-PACE assessment by the holder of a mortgage, deed of trust, or other lien upon the qualifying commercial property.

e. A form of project application with checklist requirements and corresponding documentation that will be required by the statewide administrator to approve a project application.

(2) Impose fees to offset the actual and reasonable costs of administering the C-PACE Program, including:

a. An application fee not to exceed seven hundred fifty dollars ($750.00).

b. A processing fee assessed to the property owner whose application for C-PACE financing is approved, which shall be one percent (1%) of the total amount financed but shall not be more than twenty-five thousand dollars ($25,000).

(3) Establish the process for reviewing and evaluating applications, which shall, at a minimum, require the following to be provided or demonstrated:

a. For an existing building: (i) where renewable energy, energy efficiency, or water conservation measures are proposed, an energy analysis by a licensed engineering firm or engineer or another qualified professional listed in the C-PACE toolkit stating that the proposed qualifying improvements will result in more efficient use or conservation of energy that meets or exceeds then-existing State and federal building codes and efficiency standards or conservation codes, more efficient use or conservation of water, the reduction of

greenhouse gas emissions, or the addition of renewable sources of energy or water or (ii) where resilience measures are proposed, certification by a licensed engineer stating that the qualifying improvements will result in improved resilience.

b. For construction of a new building, certification by a licensed engineering firm or engineer stating that the proposed qualifying improvements will allow the proposed project to exceed the energy or water efficiency requirements of the current State building code, or in the case of a resiliency measure, achieve compliance with a national model resiliency standard.

c. For existing or new buildings, certification by a licensed engineering firm or engineer that all available electric public utility energy efficiency and demand response programs available to property owners and any tenants thereof have been evaluated prior to applying for C-PACE financing.

(4) Accept and approve project applications for C-PACE financing meeting the requirements of subdivision (3) of this subsection.

(5) Require any property owner applying for C-PACE financing to certify that the applicant:

a. Is the holder of title in fee simple to the qualifying commercial property and that title to the qualifying commercial property is not in dispute.

b. Is current on all mortgage payments and property taxes.

c. Is not insolvent or in bankruptcy proceedings.

(6) Upon execution by the local government of (i) a C-PACE assessment and (ii) a notice of assignment of C-PACE lien related to an approved project application, record such documents in the office of the register of deeds in the county in which the approved property is located. The statewide administrator may delegate recording duties to the property owner and the capital provider.

(7) Submit a report to the program sponsor annually.

(b) The provisions of Chapter 150B of the General Statutes shall not apply to the C-PACE toolkit or any actions of the program sponsor or statewide administrator in the administration of the program.

"**§ 160A-239.15. Local government participation.**

(a) A local government seeking to participate in the C-PACE Program shall adopt a resolution that includes all of the following:

(1) A grant of authorization for the C-PACE Program to operate within its jurisdictional boundaries and for the statewide administrator to provide the administrative services described in G.S. 160A-239.14.

(2) A statement that the local government intends to (i) authorize C-PACE financing, (ii) authorize the imposition of C-PACE assessments on qualifying commercial properties benefitting from qualifying improvements to secure repayment of C-PACE financing, (iii) assign the C-PACE lien to the capital provider providing C-PACE financing, and (iv) delegate billing, collection, and enforcement duties for the C-PACE assessment and C-PACE lien to capital providers.

(3) A statement that the amount of a C-PACE financing and related assessment repayment terms shall be pursuant to the related financing agreement.

(4) A statement identifying the local government department or employee that shall, upon receipt of an approved project application for C-PACE financing within its jurisdictional boundaries from the statewide administrator, execute

the documents included in G.S. 160A-239.14(a)(1)a., b., and c. on behalf of the local government.

(5) A statement that the local government shall be reimbursed by the statewide administrator for the actual and reasonable costs associated with the performance of the duties described in subdivision (4) of this subsection.

(6) A statement of the time and place for a public hearing on the proposed program.

(b) The governing body of the local government may, after conducting a public hearing on the proposed program, adopt a resolution providing that the local government is joining the C-PACE Program. If the local government seeking to participate in the C-PACE Program is a city, the resolution adopted pursuant to this subsection shall be effective only with the concurrence of the governing body of the county in which the city is located.

(c) Pursuant to G.S. 160A-239.17(4), no funds for repayment of the voluntary C-PACE assessment should be received by the participating local government. However, if any such funds are received by the participating local government, such funds shall be custodial funds as described in G.S. 159-13(a) for the benefit of the capital provider.

"**§ 160A-239.16. Immunity and foreclosure process.**

(a) Neither the State nor any participating local government, its officers, or employees shall be liable for any actions taken pursuant to this Article. A local government shall not be financially or legally liable or responsible for any assessment and lien imposed within its jurisdiction under the program.

(b) The capital provider shall be solely responsible for all billing, collection, and enforcement of the C-PACE assessment and C-PACE lien.

(c) Delinquent C-PACE assessment payments shall incur interest and penalties as specified in the financing agreement and shall accrue to the C-PACE lien.

(d) Enforcement of a delinquent C-PACE assessment payment by the capital provider shall be in the manner of the foreclosure of a deed of trust as provided in Article 2A of Chapter 45 of the General Statutes, except that C-PACE assessment payments not yet billed or due may not be accelerated or extinguished by foreclosure of the delinquent assessment payment or payments. Any outstanding or delinquent State, local, or federal taxes or liens at the time of the foreclosure proceeding shall be satisfied first, but the C-PACE lien shall be superior to all other liens on the property from the date on which the notice of the C-PACE assessment was recorded until the C-PACE assessment, interest, penalties, and charges accrued or accruing are paid.

"**§ 160A-239.17. C-PACE assessment and lien.**

The following shall apply to the C-PACE assessment and lien:

(1) The lien shall be inferior to all prior and subsequent State, local, and federal taxes or liens and superior to all other liens on the property from the date on which the notice of the C-PACE assessment is recorded until the C-PACE assessment, interest, penalties, and charges accrued or accruing are paid.

(2) The lien shall run with the land, and that portion of the C-PACE assessment that is not yet due may not be accelerated or eliminated by foreclosure of a property tax or other lien.

(3) The C-PACE lien may not be contested on the basis that the improvement is not a qualified improvement or for any procedural or substantive irregularities related to the financing.

(4) For C-PACE assessments for leaseholds, the C-PACE assessment may be levied on the leasehold or possessory interest, including on publicly-owned land, subject to the consent of the entity owning the property and shall be payable by the owner of the leasehold interest.

"**§ 160A-239.18. Financing.**

(a) The financing for assessments imposed under this Article may include, but is not limited to:

(1) The cost of materials and labor necessary for the installation or modification of a qualified improvement.
(2) Permit fees.
(3) Inspection fees.
(4) Financing fees.
(5) Application and administrative fees.
(6) Project development and engineering fees.
(7) Interest reserves.
(8) Capitalized interest, in an amount determined by the owner of the commercial property and the capital provider.
(9) Any other fees or costs incurred by the property owner incident to the installation, modification, or improvement on a specific or pro rata basis, as determined by the local government.

(b) The term of the C-PACE financing may not exceed the weighted average useful life of qualifying improvements.

(c) The total amount for financing of the qualifying improvement secured by the property shall not exceed thirty-five percent (35%) of the value of the property. The calculation of value used to determine the maximum amount of financing available for a particular property shall reflect the reasonable expected stabilized value of the property with the proposed qualifying improvements installed.

(d) The financing agreement between the capital provider and the property owner shall be negotiated by the parties, including all terms and conditions of repayment, including interest, penalties, and prepayment.

"**§ 160A-239.19. Lender consent.**

Prior to entering into an assessment agreement, the property owner must submit to the statewide administrator a written statement, executed by each holder of a mortgage, deed of trust, or other lien on the property securing indebtedness, indicating their consent to the C-PACE assessment and that the C-PACE assessment does not constitute an event of default under the terms of the mortgage, deed of trust, or other indebtedness secured by lien.

"**§ 160A-239.20. Prohibition on use of public funds.**

It is the intent of this Article that neither the State nor any local government shall use public funds to fund or repay any C-PACE assessment. Nothing in this Article shall be interpreted as authorizing a local government to pledge, offer, or encumber its full faith and credit, and no local government shall pledge, offer, or encumber its full faith and credit under this Article.

"**§ 160A-239.21. Purchases and contracts.**

The proposed arrangements for C-PACE financing may authorize the property owner to do any of the following:

(1) Directly purchase the related equipment and materials for the installation or modification of a qualifying improvement.
(2) Contract directly, including through lease, power purchase agreement, or other service contract, for the related equipment and materials used in the installation or modification of a qualifying improvement."

SECTION 2. G.S. 105-375(i) reads as rewritten:

"(i) Issuance of Execution. – At any time after three months and before two years from the indexing of the judgment as provided in subsection (b) of this section, execution shall be issued at the request of the tax collector in the same manner as executions are issued upon other judgments of the superior court, and the real property shall be sold by the sheriff in the same manner as other real property is sold under execution with the following exceptions:

(1) No debtor's exemption shall be allowed.

(2) At least 30 days prior to the day fixed for the sale, the sheriff shall send notice by registered or certified mail, return receipt requested, to the taxpayer at the taxpayer's last known address, in lieu of personal service, and to all lienholders of record. If within 10 days following the mailing of a notice, a return receipt has not been received by the sheriff indicating receipt of the notice, then the sheriff shall make additional efforts to locate and notify the taxpayer, if not yet notified, and all unnotified lienholders of record of the sale under execution in accordance with subdivision (4) of subsection (c) of this section.

(3) The sheriff shall add to the amount of the judgment as costs of the sale any postage expenses incurred by the tax collector and the sheriff in foreclosing under this section.

(4) In any advertisement or posted notice of sale under execution, the sheriff may (and at the request of the governing body shall) combine the advertisements or notices for properties to be sold under executions against the properties of different taxpayers in favor of the same taxing unit or group of units; however, the property included in each judgment shall be separately described and the name of the taxpayer specified in connection with each property.

The purchaser at the execution sale acquires title to the property in fee simple free and clear of all claims, rights, interests, and liens except the liens of other taxes or special assessments not paid from the purchase price and not included in the ~~judgment~~ judgment, liens arising from C-PACE assessments authorized under Article 10B of Chapter 160A of the General Statutes, and conservation agreements, as defined in G.S. 121-35(1)."

SECTION 3. G.S. 105-374(k) reads as rewritten:

"(k) Judgment of Sale. – Any judgment in favor of the plaintiff or any defendant taxing unit in an action brought under this section shall order the sale of the real property or as much as may be necessary for the satisfaction of all of the following:

(1) Taxes adjudged to be liens in favor of the plaintiff, other than taxes the amount of which has not been definitely determined, together with penalties, interest, and costs.

(2) Taxes adjudged to be liens in favor of other taxing units, other than taxes the amount of which has not yet been definitely determined, if those taxes have been alleged in answers filed by the other taxing units, together with penalties, interest, and costs.

The judgment shall appoint a commissioner to conduct the sale and shall order that the property be sold in fee simple, free and clear of all interests, rights, claims, and liens whatever, except that the sale shall be subject to (i) taxes the amount of which cannot be definitely determined at the time of the judgment, (ii) taxes and special assessments of taxing units which are not parties to the action, ~~(iii)~~ (iii) C-PACE assessments authorized under Article 10B of Chapter 160A of the General Statutes, (iv) in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property, and ~~(iv)~~ (v) conservation agreements, as defined in G.S. 121-35(1).

In all cases in which no answer is filed within the time allowed by law, and in cases in which answers filed do not seek to prevent sale of the property, the clerk of the superior court may enter the judgment, subject to appeal as provided in G.S. 1-301.1."

SECTION 3.1. G.S. 105-376(b) reads as rewritten:

"(b) Payment of Purchase Price by Taxing Units; Status of Property Purchased by Taxing Units. – Any taxing unit that becomes the purchaser at a tax foreclosure sale may, in the discretion of its governing body, pay only that part of the purchase price that would not be distributed to it and other taxing units on account of taxes, penalties, interest, and such costs as accrued prior to the initiation of the foreclosure action under G.S. 105-374 or docketing of a judgment under G.S. 105-375. Thereafter, in such a case, the purchasing taxing unit shall hold the property for

the benefit of all taxing units that have an interest in the property as defined in this subsection (b). All net income from real property so acquired and the proceeds thereof, when resold, shall be first used to reimburse the purchasing unit for disbursements actually made by it in connection with the foreclosure action and the purchase of the property, and any balance remaining shall be distributed to the taxing units having an interest therein in proportion to their interests. The total interest of each taxing unit, including the purchasing unit, shall be determined by adding:

(1) The taxes of the unit, with penalties, interest, and costs (other than costs already reimbursed to the purchasing unit) to satisfy which the property was ordered sold;

(2) Other taxes of the unit, with penalties, interest, and costs which would have been paid in full from the purchase price had the purchase price been paid in full;

(3) Taxes of the unit, with penalties, interest, and costs to which the foreclosure sale was made subject; and

(4) The principal amount of all taxes which became liens on the property after purchase at the foreclosure sale or which would have become liens thereon but for the purchase, but no amount shall be included for taxes for years in which (on the day as of which property was to be listed for taxation) the property was being used by the purchasing unit for a public purpose.

If the amount of net income and proceeds of resale distributable exceeds the total interests of all taxing units defined in this subsection (b), the remainder shall be applied to any special benefit assessments to satisfy which the sale was ordered or to which the sale was made subject, and any balance remaining shall accrue to the purchasing unit.

When any real property that has been purchased as provided in this section is permanently dedicated to use for a public purpose, the purchasing unit shall make settlement with other taxing units having an interest in the property (as defined in this subsection) in such manner and in such amount as may be agreed upon by the governing bodies; and if no agreement can be reached, the amount to be paid shall be determined by a resident judge of the superior court in the district in which the property is situated.

Nothing in this section shall be construed as requiring the purchasing unit to secure the approval of other interested taxing units before reselling the property or as requiring the purchasing unit to pay other interested taxing units in full if the net income and resale price are insufficient to make such payments.

Any taxing unit purchasing property at a foreclosure sale may, in the discretion of its governing body, instead of following the foregoing provisions of this section, make full payment of the purchase price, and thereafter it shall hold the property as sole owner in the same manner as it holds other real property, subject only to taxes and special assessments, with penalties, interest, and costs, and liens arising from C-PACE assessments under Article 10B of Chapter 160A of the General Statutes, to which the sale was made subject."

SECTION 4. G.S. 143-128.2(g) reads as rewritten:

"(g) As used in this section:

(1) The term "minority business" means either of the following:

…

b. An Employee Stock Ownership Plan company in which at least fifty-one percent (51%) of the ~~stock is owned by one or more~~ plan participants are minority persons or socially and economically disadvantaged individuals.

…."

SECTION 5. G.S. 143-128.4(a) reads as rewritten:

"(a) As used in this Chapter, the term "historically underutilized business" means either of the following:

…

(2) An Employee Stock Ownership Plan company in which at least fifty-one percent (51%) of the ~~stock is owned by one or more persons who~~ plan participants are members of at least one of the groups set forth in subsection (b) of this section. An ESOP company applying for certification as a historically underutilized business shall provide an attestation that it meets the requirements of this subdivision together with such documentation supporting the attestation as may be required by the Secretary."

MODERNIZE WASTEWATER PERMITTING TO SUPPORT ENVIRONMENTALLY SOUND ECONOMIC DEVELOPMENT

SECTION 5.1.(a) The General Assembly finds all of the following:

(1) Residents of the State should be assured enjoyment of, and access to, proven and reasonable methods of treating and disposing of wastewater that embrace new technologies.

(2) As the State continues to grow and attract businesses, it is critical that wastewater treatment and disposal facilities are provided for those businesses; and adequate and affordable housing that is proximate to those businesses must be available to assure the success of those businesses.

(3) Residents of the State should be assured treatment in an equitable manner to their counterparts within other states comprising the United States Environmental Protection Agency's (USEPA) Region 4 where permits are authorized and issued for the discharge of treated wastewater from municipalities, businesses, and developments to, for example, receiving waters "in which natural flow is intermittent, or under certain circumstances non-existent" (Alabama Admin. Code r. 335-6-10-.09).

(4) The discharge of treated wastewater to low flow or zero flow receiving waters is of low risk to the environment, protects and improves water quality, and provides the most prudent use of ratepayer funds.

(5) For all these reasons, it is necessary to establish methodologies and rules for the discharge of treated domestic wastewaters with low risk following site specific criteria to surface waters of the State, including wetlands, perennial streams, and unnamed tributaries of named and classified streams and intermittent streams or drainage courses where the 7Q10 flow or 30Q2 flow of the receiving waters is estimated to be low flow or zero flow, as determined by the United States Geological Survey (USGS).

(6) This act preserves and maintains the authority of the Department of Environmental Quality (Department) for appropriate review, including opportunities for public comment, and requires the Department and the Environmental Management Commission (Commission) to seek necessary approvals from USEPA to adopt temporary and permanent rules to authorize discharges of wastewater to such receiving waters.

SECTION 5.1.(b) G.S. 143-215.1(c8) is repealed.

SECTION 5.1.(c) Section 12.9 of S.L. 2023-134 is repealed.

SECTION 5.1.(d) No later than August 1, 2024, the Department of Environmental Quality (Department) and the Environmental Management Commission (Commission) shall develop and submit to the United States Environmental Protection Agency for USEPA's approval draft rules that establish methodologies and permitting requirements for the discharge of treated domestic wastewaters with low risk following site-specific criteria to surface waters of the State, including wetlands, perennial streams, and unnamed tributaries of named and classified streams and intermittent streams or drainage courses where the 7Q10 flow or 30Q2 flow of the receiving

water is estimated to be low flow or zero flow, or under certain conditions non-existent, as determined by the United States Geological Survey (USGS). Within 20 days of the date USEPA approves the draft rules submitted pursuant to this subsection, the Commission shall initiate the process for temporary and permanent rules pursuant to Chapter 150B of the General Statutes. The draft rules submitted to USEPA for approval shall include all of the following:

(1) Defined terms. –

a. "Treated domestic wastewater" shall mean sewage and wastewater comprised of waste and wastewater from household, commercial or light industrial operations (e.g., homes, restaurants, car washes, laundromats servicing only domestic laundry) excluding any industrial process wastewater regulated by USEPA under the Categorical Pretreatment Standards.

b. "Low-risk discharges" means discharges of 2 million gallons per day or less of treated domestic wastewater when the dissolved oxygen content (DO) of the effluent is significantly higher (1.5 mg/l or greater) than the DO of the receiving water during low flow periods and the biological oxygen demand content (BOD) of the effluent is significantly lower (1.5 mg/l or more) than the DO of the effluent.

c. "Sag" means a reduction in the existing DO in the background surface receiving water to which treated wastewater will be discharged. Sag is typically related to nutrient elements within treated wastewater, which may promote the growth of oxygen-consuming micro-organisms, increasing the BOD, which at elevated levels may reduce DO in the background surface water body.

(2) Criteria for permitting. –

a. Applicants shall be required to demonstrate, through an analysis comparing the limits of the NPDES permit to the characteristics of the receiving water, that a proposed discharge meets criteria for a low-risk discharge as defined in this subsection. When a discharge is determined to be low-risk, the applicant shall demonstrate using simple modeling of the applicant's choosing, provided that the model chosen is utilized elsewhere in USEPA Region 4, such as the Streeter-Phelps model used in the State of Alabama, to show that the Sag, if any, in the DO of the receiving water will not exceed 0.1mg/l.

b. Discharges to low flow or zero flow receiving waters shall be subject to the following conditions:

1. The receiving waters fall within any of the following categories:

I. The 7Q10 or 32Q2 flow statistics are estimated to be zero by the USGS.

II. The drainage area of the discharge point is less than 5 square miles as specified by the USGS on-line tools or other methodology that meets the standard of care for such work.

III. The 7Q10 flow is estimated to be less than 1 cubic foot per second by the USGS.

2. The proposed flow for any wastewater discharge shall be the lesser of the following:

I. No more than one-tenth of the flow generated by the one-year, 24-hour storm event given the drainage area and calculated using the rational method. The rational

method shall be used to calculate the peak runoff for the one-year, 24-hour precipitation event in cubic feet per second. The peak runoff shall then be divided by 10 and multiplied by 646,272 to convert the result to gallons per day of allowable discharge at the point studied.

II. Two million gallons per day.

3. All discharges shall be directed to buffer systems that utilize low-energy methodologies to function as a buffer between the discharge and the receiving waters. Buffer systems shall consist of one of the following:
   I. High-rate infiltration basins that may include engineered materials to achieve high rates of infiltration, which engineered materials shall have an ASTM gradation of a fine to coarse grain sand, and angular to maintain structural integrity of the slope.
   II. Constructed free-surface wetlands having a hydraulic residence time of 14 days.
   III. Other suitable technologies that provide a physical or hydraulic residence time buffer, or both, between the discharge and the receiving waters.
4. Discharge to areas that are 50 feet upland of the receiving waters or wetlands at a non-erosive velocity equal to or less than 2 feet per second through an appropriately designed energy dissipater, or other applicable designs, that meet the standard of practice for professional engineers for such devices.
5. Utilize more than one outfall to the receiving stream so that no one outfall exceeds 1 cubic foot per second based on the average daily flow of the discharge. Discharges from buffer systems shall be allowed to be placed at increments along a stream or receiving waters at no less than 50 linear feet.
6. No discharge shall be permitted to classified shellfish waters (SA), tidal waters (SC), water supply waters (WS), or outstanding resource waters (ORW). Discharges to unnamed tributaries of classified shellfish waters, however, shall be authorized in compliance with requirements of this section and only when a low-risk situation is present. Discharges to nutrient sensitive waters (NSW) may require additional modeling and allocation of flow and will be at the discretion of the Department.
7. The following effluent limits shall generally apply except where (i) the applicant and Department agree to more stringent limits or (ii) complex modeling conducted pursuant to sub-sub-subdivision 8. of this sub-subdivision demonstrates that Sag in the DO content of the receiving water of 0.1 mg/l or less will occur and water quality standards are protected:
   I. Biological oxygen demand (BOD_5) shall not exceed 5.0 mg/l monthly average.
   II. NH_3, 0.5 mg/l monthly average, 1.0 mg/l daily maximum.

III. Total nitrogen shall not exceed 4.0 mg/l monthly average.
IV. Total phosphorus, 1.0 mg/l monthly average, 2.0 mg/l daily maximum.
V. Fecal coliforms, 14 colonies/100ml or less.
VI Dissolved oxygen, 7.0 mg/l or greater.
VII. Total suspended solids, 5.0 mg/l monthly average, 8mg/l daily maximum.
VIII. Nitrate, 1.0 mg/l monthly average, 2.0 mg/l daily maximum.

8. If an applicant proposes less stringent effluent limits than those set forth in sub-sub-subdivision 7. of this sub-subdivision, the applicant shall conduct more complex modeling using any model accepted elsewhere in USEPA Region 4 that the applicant elects to use to confirm that a Sag in the DO content of the receiving water of 0.1 mg/l or less will occur and water quality standards are protected.
9. The Department shall not require an applicant to obtain mapping data from the USGS as part of an application. In lieu, an engineer of record licensed in the State of North Carolina may prepare required mapping utilizing either USGS maps or other maps approved by the Department.
10. Within 30 days of the filing of an application for a wastewater discharge subject to this section, the Department shall (i) determine whether or not the application is complete and notify the applicant accordingly and (ii) if the Department determines an application is incomplete, specify all such deficiencies in the notice to the applicant. The applicant may file an amended application or supplemental information to cure the deficiencies identified by the Department for the Department's review. If the Department fails to issue a notice as to whether or not the application is complete within the requisite 30-day period, the application shall be deemed complete. Within 180 days of the filing of a completed application, the Commission shall either grant or deny the permit. If the Commission fails to act in the requisite time frame, ten percent (10%) of the application fee shall be returned to the applicant for each working day beyond the 180-day period.

SECTION 5.1.(e) No later than September 1, 2024, the Department in conjunction with the North Carolina Collaboratory at the University of North Carolina at Chapel Hill (Collaboratory) shall convene a Wastewater General Permit Working Group (Working Group) consisting of Department and Collaboratory staff and a maximum of five consulting experts appointed by the Director of the Collaboratory in the fields of environmental regulation, wastewater regulation, water quality regulation, and wastewater treatment regulation, to develop the draft rules for the implementation of a Wastewater Treatment and Discharge General Permit process for the State. The Working Group shall report its findings to the Environmental Review Commission no later than March 15, 2025. Following consideration by the Environmental Review Commission, and after making any changes required by the Environmental Review Commission, the Department shall develop and submit proposed rules to USEPA for its approval. Within 20 days of the date USEPA approves the draft rules submitted pursuant to this subsection,

the Commission shall initiate the process for temporary and permanent rules pursuant to Chapter 150B of the General Statutes.

SECTION 5.1.(f) Beginning September 1, 2024, and quarterly thereafter until such times as permanent rules as required by subsections (d) and (e) of this section have become effective, the Department and the Environmental Management Commission shall report on their activities to implement subsections (d) and (e) of this section to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Senate Appropriations Committee on Agriculture, Natural and Economic Resources, and the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources of the General Assembly.

SECTION 5.1.(g) This section is effective when it becomes law.

SECTION 6. This act becomes effective July 1, 2024.

In the General Assembly read three times and ratified this the 28th day of June, 2024.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

_____

Roy Cooper
Governor

Approved _____.m. this _____ day of _____, 2024