

2012 LEGISLATIVE SUMMARY

ENVIRONMENTAL AND NATURAL RESOURCES LAWS

I. AIR QUALITY

Air Toxics

House Bill 952: Air Toxics Reforms (S.L. 2012-91)

Sec. 1 (Duty to Adopt Plans)

Under the bill, an air emission source that has to meet federal standards for control of toxic air pollutants would be exempt from additional control requirements under the State air toxics rules unless DENR's Division of Air Quality makes a written finding that the source would pose an unacceptable threat to human health. The new exemption would apply to any air emission source that is subject to a requirement under either:

- USEPA rules that require sources of toxic air pollutants to control emissions of toxic air pollutants through the use of "maximum achievable control technologies" or "generally available control technologies"; *or*
- State permits that established case by case emission limits for toxic air pollutants under Section 112(j) of the Clean Air Act, which requires States to establish toxic emission standards when EPA fails to do so for a given industrial sector.

Based on a written finding, however, the Division of Air Quality could still require a source in one of those categories to also meet the requirements of the state air toxics program, which requires a demonstration that the facility's emissions will meet health-based standards at the property boundary. The bill does not change how state air toxics rules apply to sources that are not regulated under federal toxic air pollution standards.

Sec. 2 (EMC Amended Rules) mandates that the Environmental Management Commission (EMC) amend its rules so they are consistent with the provisions of section one of this act.

Sec. 3 (Toxic Air Pollutant Rules) orders the Division of Air Quality to review toxic air pollutant rules and implementations. They are to determine if regulatory reductions could be made while maintaining protections for public health and report their findings to the ERC no later than December 1, 2012.

Sec. 4 (Implementation Report) requires DENR's Division of Air Quality to report on the implementation of the act to the ERC no later than December 1 for the years 2012-2014. The report is to include an analysis of air toxic emissions changes and a summary of air quality impacts.

Motor Vehicle Inspections

House Bill 585: Vehicle Emissions Inspections (S.L. 2012-199)

Sec. 1 (Vehicles' Emissions Requirements) exempts vehicles from emissions inspections if:

1. The vehicle is within the three most recent model years; *and*

2. The vehicle has less than 70,000 miles on the odometer.

Note: Under existing law, the emissions inspection requirement only applies to vehicles manufactured in 1996 or later; pre-1996 models continue to be excluded from the emissions inspection program.

[Sec. 2 \(EPA Approval\)](#) instructs DENR to submit these inspection program changes to the US Environmental Protection Agency (EPA) as an amendment to the North Carolina State Implementation Plan under the federal Clean Air Act. If the EPA approves the amendment, the Secretary of DENR will certify the approval to the Reviser of Statutes including the appropriate session law number.

[Sec. 3 \(MILES Replacement\)](#) charges the Commission of Motor Vehicles to certify to the Reviser of Statutes when the Motor Vehicle Inspection and Law Enforcement System (MILES) is retired and its replacement system is operational. In that certification, the session law number of this act should be included.

[Sec. 4 \(Effective Date\)](#) makes the changes in Sec. 1 effective January 1 2014 *or* the month following EPA approval of an amendment to the SIP based on the legislation and certification by DMV that the software system currently used for motor vehicle inspections has been replaced (whichever is later).

[Senate Bill 229: Amend Environmental Laws \(S.L. 2012-300\)](#)

[Sec. 12](#) amends G.S. 20-183.2 to transfer authority to designate additional counties for the motor vehicle emissions inspection program from the EMC to the General Assembly.

TVA Settlement

[Senate Bill 229: Sec. 20: Amend Environmental Laws \(S.L. 2012-300\)](#)

This section provides that funds available to the Department of Agriculture and Consumer Services under the TVA settlement agreement must be used to award grants for environmental mitigation projects in Avery, Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Swain, Transylvania, Watauga and Yancey Counties.

II. COASTAL ISSUES

[House Bill 819: Coastal Management Policies \(S.L. 2012-202\)](#)

[Sec. 1 \(Definition of “Coastal Area”\)](#) identifies the North Carolina counties that make up the coastal area under the state’s Coastal Area Management Act. The listed counties are the same as those first identified in an executive order issued by Governor James Holshouser as the counties meeting the statutory definition of “coastal area” in G.S. 113-103(2).

[Sec. 2 \(Sea-Level Policy\)](#) puts conditions on development of state policy related to sea level rise:

- The Coastal Resources Commission (CRC) is identified as the only state agency authorized to define rates of sea level rise for regulatory purposes.
- The CRC cannot define rates of sea level rise for regulatory purposes before July 1, 2016

- Before adopting any rates of sea level rise for regulatory purposes, the CRC must issue a report including: an updated assessment of scientific literature on sea level change; a comparison of historical rates of sea level rise to predictive models; an analysis of the costs and benefits of adopting sea level rules and policies; and the possibility of developing different rates of sea level rise for ocean and estuarine shorelines.

The bill requires the CRC to accept public comment on the updated assessment of scientific literature on sea level rise in the spring of 2015 and to have a draft of the complete report available for public review and comment no later than December 31, 2015. The report will be presented to the Environmental Review Commission of the General Assembly by March 1, 2016.

Sec. 3 (CRC Single-family Residence Permitting) creates a “grandfather” provision that allows a large single family home or duplex that was built on the oceanfront before August 1, 2009 to be rebuilt without meeting the most recent oceanfront setback for large structures. To receive a permit for reconstruction, the residence must be able to meet the minimum oceanfront setback (60’ landward of the first line of stable natural vegetation on the beach) and be located as far landward on the lot as practicable. A home rebuilt under this provision will be limited to its original footprint dimensions and total floor area. The grandfather provision responded to the Coastal Resources Commission’s 2009 amendment of the state’s oceanfront setback rules to require larger setbacks for homes that have more than 5,000 square feet in total floor area.

Sec. 4 (New Area of Environmental Concern) directs the CRC to study the feasibility of creating an Area of Environmental Concern (AEC) around the mouth of the Cape Fear River encompassing the Town of Caswell Beach and the Village of Bald Head Island. The study should consider conditions unique to the area and the potential for replacing the existing AECs with a single AEC that would cover all of the shorelines impacted by the Cape Fear River navigation channel. These findings should be reported along with any proposals to the Secretary of DENR, the Governor, the President Pro Tempore of the Senate, the Speaker of the House and the ERC before December 31, 2013.

Sec. 5 (Feasibility of Inlet Hazard Area Elimination) directs the CRC to study the feasibility of eliminating the existing Inlet Hazard AECs and incorporating those areas into the Ocean Erodible AEC. A report is due to the Secretary of DENR, the Governor, the President Pro Tempore, the Speaker and the ERC before January 31, 2015.

House Bill 953, Amend Environmental Laws 2 (S.L. 2012-201)

Sec. 2 codifies existing session law language that requires the CRC to report to the ERC annually by September 1 on the implementation of statute language allowing the permitting of terminal groins and accompanying beach fill projects.

III. MARINE FISHERIES

Senate Bill 821: Study and Amend Marine Fisheries Laws (S.L. 2012-190)

Sec.1 states the General Assembly’s intent to fund dredging for inlet maintenance through fees on those who benefit from use of ocean inlets. Section 1(b) requires a study of coastal fishing license fees as a potential source of funding. The bill directs the Executive Director of the

Wildlife Resources Commission (WRC), the Director the Division of Marine Fisheries, and the Deputy Secretary for Transit at NCDOT to evaluate fishing license fees, vessel fees, and other funding sources, including the gasoline tax, as possible sources of funding for inlet maintenance. The study was required to be submitted to the Legislative Research Commission's Committee on Marine Fisheries by September 1, 2012.

Sec. 2 directs the Executive Director of the WRC, the Commissioner of Agriculture, and the Director of DMF to study the organization of the State's fisheries management agencies in consultation with various user groups. The study is to consider whether these agencies might be reorganized to provide for more efficient, productive and enjoyable uses of the State's fisheries resources and report to the LRC Committee on Marine Fisheries by October 1, 2012.

Sec. 3 (Penalties for violations) amends G.S. 113-187. Sec. 3(a) makes fishing for menhaden or Atlantic thread herring by use of purse seine net between a mother ship and one or more runner boats in coastal waters a Class A1 misdemeanor. The new provision becomes effective January 1, 2013 and applies to offenses committed on or after that date. Sec. 3(b) repeals S.L. 2007-320 effective January 1, 2013; that law prohibits the same activity, but only applies in the waters off Brunswick County. This legislation codifies an earlier proclamation authorized by the Marine Fisheries Commission.

Sec. 4 (Marine Fisheries Commission Advisory Committees) changes the Marine Fisheries Commission advisory committees, by combining the Shellfish and Crustacean Advisory Committees into a single committee. It also replaces four regional advisory committees with two -- the Northern Regional Advisory Committee (covering the area from the Virginia line south to Hyde and Pamlico counties and counties to the west) and the Southern Regional Advisory Committee (Carteret County south to the S.C. line and counties to the west). The section also makes changes to the makeup of the Grants Committee of the Fishery Resource Grant Program. Terms for members previously serving on the Crustacean, Shellfish, and four regional advisory committees expired on June 30, 2012 and the new advisory committee structure became effective July 1, 2012.

Sec. 5 (Marine Fisheries Commission – powers and duties) defines a supermajority of the Marine Fisheries Commission as six members and requires a supermajority to override recommendations from the Division of Marine Fisheries in regard to measures needed to end overfishing or rebuild overfished stocks.

House Bill 953: Amend Environmental Laws 2 (S.L. 2012-201)

Sec. 1 directs the Secretary of Environment and Natural Resources to monitor the implementation of new Fishery Management Plans established by the Marine Fisheries Commission. The Secretary is then to report his/her findings to the Joint Legislative Commission (JLC) on Governmental Operations within 30 days of adopting new plans or substantially revising existing ones. The JLC on Governmental Operations shall review and give comments on each Fishery Management Plan within thirty days of receiving it.

Senate Bill 229: Amend Environmental Laws (S.L. 2012-300)

Sec. 16 has language that is identical to Sec. 4 of Senate Bill 821 with respect to changes in the MFC advisory committees.

Sec. 17 has language identical to Sec. 5 of Senate Bill 821 concerning the need for a super-majority of the Marine Fisheries Commission to override a DMF recommendation related to overfishing.

IV. ENERGY

Senate Bill 820: Clean Energy and Economic Security Act (S.L. 2012-143)

Sec. 1 (Mining and Energy Commission; rename the Division of Land Resources) reconstitutes the existing North Carolina Mining Commission as the North Carolina Mining and Energy Commission (MEC) and gives the new commission the power and duty to adopt rules for administering the Oil and Gas Conservation Act and for developing the State's oil, gas and mining resources. There are 15 members. Rules of the Commission are to be enforced by DENR. The Commission has the authority to regulate well spacing, establish drilling units, require wells to operate with efficient gas-oil ratios, limit the production of oil or gas to prevent waste, and require forced pooling. The Commission must submit quarterly reports to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission. DENR's Division of Land Resources (renamed the Division of Energy, Mineral and Land Resources) and the N.C. Geological Survey will provide staff support for the MEC. The MEC must establish a Committee on Mining, which will have exclusive authority for implementation of the Mining Act of 1971. The MEC's first report is due on or before January 1, 2013.

Sec. 2 (Establish Regulatory Program for Oil and Gas Exploration and Development) directs the Mining and Energy Commission, in conjunction with the Environmental Management Commission (EMC) and the Commission for Public Health, to establish a modern regulatory program for the management of oil and gas exploration and development. The MEC must adopt rules on a broad range of subjects, including: pre-drilling exploration activities; drilling, operation, casing, plugging, completion and abandonment of wells; and regulation of hydraulic fracturing treatments. The EMC is directed to adopt rules for stormwater management on oil and gas sites and toxic air emissions from oil and gas exploration and development activities, including emissions from associated truck traffic. The legislation also directs the Department of Labor to develop rules for health and safety standards for oil and gas workers. All rules must be adopted by October 1, 2014. This section also requires the MEC to complete three studies; a detailed description of the studies can be found on page 15 of this summary.

Other provisions in Section 2 give the MEC and DENR access to all data related to oil and gas exploration and development activities, including hydraulic fracturing fluid chemicals and constituents and drilling mud chemistry; makes the information that DENR receives public with the exception of information that would be protected as a trade secret under the Public Records Act; and increases penalties for violations of the Oil and Gas Conservation Act from \$1,000 per day to \$25,000 per day.

Sec. 3 (Authorize Horizontal Drilling and Hydraulic Fracturing) amends G.S. 113-393 to allow horizontal drilling for purposes of hydraulic fracturing. It also authorizes hydraulic fracturing by providing that existing EMC rules prohibiting discharge of wastes to the subsurface or groundwater of the state using wells do not apply to the injection of hydraulic fracturing fluid for exploration or development of natural gas resources. Although the bill removes these legal barriers to hydraulic fracturing, it prohibits hydraulic fracturing without a permit from DENR and prohibits DENR from issuing permits for horizontal drilling and hydraulic fracturing until the General Assembly takes legislative action to specifically allow permit issuance.

Sec. 4 (Landowner and Public Protections) includes a number of protections for landowners who either lease their land for oil and gas activities or live near land where oil and gas activities occur. This section requires oil and gas developers and operators to provide written notice to surface owners at least 14 days before entering properties that they do not own, both for activities that disturb the land surface and for those that do not. Those who enter land on behalf of an oil and gas developer or operator are also required to carry identification to identify themselves and their employer.

This section also establishes presumptive liability for water contamination, meaning that an oil or gas developer is presumed to be responsible for contamination of all water supplies within 5,000 feet of a wellhead. Compensation is required for damages to water supplies, personal property, and livestock, crops or timber. If a water supply is contaminated due to oil and gas activities, the operator must provide a replacement water supply. Oil and gas operators must indemnify and hold harmless surface owners against claims related to the operator's activities. Leases for oil or gas rights must provide a royalty payment of at least 12.5% of the proceeds from the sale of oil and gas produced. Bonus payments must be paid within 60 days of the execution of a lease. This section gives lessors a three-day grace period to cancel the lease. **[Note that that a provision in House Bill 953 extends the grace period to 7 days.]** This section requires oil or gas operators to minimize intrusion on surface lands. Any lease must include a clause requiring the oil or gas operator to conduct pre-drilling tests of all water supplies within 5,000 feet of a wellhead that is part of the oil or gas operator's activities. A surface owner may ask DENR to conduct the sampling and have the operator reimburse DENR for costs.

Section 4 also requires DENR to establish a registry of landmen (people engaged in acquiring or managing oil or gas interests or negotiating for leases on behalf of oil and gas companies). The Consumer Protection Division of the North Carolina Department of Justice must develop a publication to provide landowners information on oil and gas leases.

Sec. 5 (Real Estate Disclosures) requires the North Carolina Real Estate Commission to develop and require the use of a standard disclosure statement for real estate transactions to provide notice that oil and gas rights were severed from the property by a previous owner or the current seller of the property.

Sec. 6 (Energy Policy Oversight Commission) creates the Joint Legislative Commission on Energy Policy, consisting of five members of the Senate and five members of the House of Representatives, to monitor and evaluate the Mining and Energy Commission, the Energy Policy Council, the Energy Division of the Department of Commerce, the Utilities Commission, and any other board, commission, department or agency with jurisdiction over energy policy in the State. The Joint Legislative Commission on Energy Policy will also review existing and proposed statutes and rules affecting energy policy and monitor changes in federal law and case law affecting energy policy.

Senate Bill 810: Regulatory Reform Act of 2012 (S.L. 2012-187)

Sec. 1.1 changes the membership of the Mining and Energy Commission as it was originally set out in Senate Bill 820 (S.L. 2012-143) so that the Governor appoints a member of the Environmental Management Commission and a member of the Commission for Public Health and the Speaker and President Pro Temp each appoint one member of the mining industry.

House Bill 953: Amend Environmental Laws 2 (S.L. 2012-201)

Sections 12(a), 12(b) and 12(c) extends the reporting date for the three studies required under S.L. 2012-187 to October 1, 2013. **Sec. 12(d)** extends the cooling off period (right of rescission) on the sale of oil and gas rights from three days to seven days.

V. WASTE

Solid Waste

House Bill 953: Amend Environmental Laws 2 (S.L. 2012-200)

Sec. 3 (Disposal Waivers for Cities and Counties) adds oyster shell to the list of materials banned from landfill disposal that counties or cities may request a waiver for based on economic hardship. The bill also allows the holder of an on-premises malt beverage, wine or mixed drink license to request a waiver of the prohibition against license holders disposing of beverage containers in a landfill.

Senate Bill 229: Amend Environmental Laws (S.L. 2012-200)

Sec. 14 requires a scrap tire collector to verify that a scrap tire processor has access to a facility permitted to receive scrap tires before contracting with the processor.

Sec. 15 modifies the process for allowing a septage management firm to put a new pumper truck in service. The new language allows a firm to put the truck in service before having the truck inspected by DENR, but requires the firm to make the truck available for inspection within 10 days after it is put in service.

Senate Bill 810: Regulatory Reform Act (S.L. 2012-187)

Sec. 15.1 (Sanitary Landfill Applications) requires the Commission for Public Health to adopt rules by July 1, 2013 to allow sanitary landfill applicants the option to:

1. Apply for a permit to construct a five-year phase landfill development and apply for subsequent five-year phases
2. Apply for a permit to construct a ten-year phase landfill development and apply for subsequent ten-year phases with reviews at the five-year marks.
3. Apply for a permit to construct and operate a transfer station
4. Apply for a permit with ten-year duration to construction a transfer station with review at the five-year mark.

The bill also directs DENR to review fees for landfill permit applications and make recommendations for fee changes necessary to reflect the additional demands of reviewing a permit for a 10-year landfill phase or a ten-year transfer station. These recommendations are due to the ERC by December 1, 2012.

Underground Petroleum Storage Tanks

Senate Bill 229: Amend Environmental Laws (S.L. 2012-200)

Sec. 13 amends G.S. 143-215.94B to allow DENR to use funds from the Commercial UST Trust Fund to prevent releases from commercial tanks that have not yet leaked, but present an imminent hazard. The bill also amends G.S. 143-215.94D (b2) to allow use of the Noncommercial UST Fund only to address noncommercial tanks that present an imminent hazard. (Previously, the statute had directed that the Noncommercial Fund should be the source of funding to address imminent hazards presented by both commercial and noncommercial USTs.)

VI. WATER QUALITY

Buffers

Senate Bill 229: Amend Environmental Laws (S.L. 2012-200)

Sec. 8(a) prohibits a local government from treating land within a riparian buffer on private property as if the land is the property of the State or one of its subdivisions unless an interest in the land has been acquired by the State or local government.

Sec. 8(b) allows some encroachment on protected riparian buffers in the Neuse and Tar-Pamlico river basins if necessary to allow development of a single family residence and necessary infrastructure such as a septic system. The provision only applies to lots of two acres or less in size that were platted before August 1, 2000 (the effective date of the buffer rules) and includes conditions intended to minimize impacts to the buffer. Note that this provision expands the scope of a similar provision enacted last year in S.L. 2011-394. The 2011 provision only applied to lots in the coastal area of the Neuse and Tar Pamlico river basins. S.L. 2012-200 extends the grandfather provision to similar lots throughout the Neuse and Tar Pamlico river basins.

Mitigation

House Bill 953: Amend Environmental Laws 2 (S.L. 2012-201)

Sec. 5 codifies 2011 legislative language establishing priorities for the use of different mitigation procurement methods by the Ecosystem Enhancement Program, giving first priority to full delivery/bank credit purchase. The new provisions on mitigation procurement replace Sections 1.2 and 1.3 of Session Law 2011-343, which are repealed in this bill.

NPDES Permitting

Senate Bill 229: Amend Environmental Laws (S.L. 2012-200)

Sec. 5 sets criteria for water quality permitting of compost facilities. Under the amended law, a Type I compost facility (yard and garden waste, silvicultural waste, and untreated wood) will only be required to meet state stormwater requirements and federal stormwater requirements for municipal separate storm sewer systems. The state's water quality permitting program cannot require a Type I compost facility to have an NPDES permit for process wastewater.

Sec. 9 amends 143-215.1 to remove that requirement that NPDES permitted facilities must be in compliance with a nutrient management strategy within 5 years after the receiving waters have been classified as NSW. As amended, the statute will direct the Environmental Management Commission (EMC) to set a schedule for compliance at the time of classification. The bill also extended the review schedule for river basin plans from 5 years to 10 years.

Senate Bill 810: Regulatory Reform Act (S.L. 2012-187)

Sec. 11 amends G.S. 143-213 to redefine "discharge" and "discharge of waste" to exclude an "emission" as defined in that same statute as "a release into the outdoor atmosphere of air contaminants".

Sec. 12.1 clarifies the water quality standards to be applied to NPDES permit holders in areas designated as WS-V under the Jordan Lake and Falls Lake nutrient strategies.

Stormwater

House Bill 953: Amend Environmental Laws 2 (S.L. 2012-201)

Sec. 11 changes the timeline for local government implementation of new development stormwater control requirements under the Jordan Lake nutrient strategy. Under the bill, implementation would have to begin by *August 10, 2014*, within three months following EMC approval of a local program, or upon DWQ's first renewal of the local governments' NPDES stormwater permit – whichever comes later. The effect of the change is to allow local governments to delay implementation of the new development stormwater standards for an additional two years.

Senate Bill 229: Amend Environmental Laws (S.L. 2012-200)

Sec. 6 prohibits DWQ from requiring the use of stormwater retention ponds or other stormwater control devices that promote standing water at public airports that support

commercial or general aviation traffic. Allows existing stormwater ponds within 5 statute miles of an airport to be replaced by alternative stormwater control measures identified in DWQ's Best Management Practices Manual or by a BMP that provides equal or better stormwater control.

[Sec. 9](#) is identical in language to Sec. 11 of House Bill 953 and changes the timeline for local government implementation of new development stormwater control requirements under the Jordan Lake nutrient strategy.

Water Supply Watershed Standards

[Senate Bill 229, Amend Environmental Laws \(S.L. 2012-200\)](#)

[Sec. 7](#) provides that a local government implementing a water supply watershed program shall allow an applicant to average development density on up to two noncontiguous properties for purposes of meeting water supply watershed development standards. There are a number of specific conditions on use of this flexibility, including a requirement that both properties must be located in the same water supply watershed and areas within the water supply critical area cannot exceed density limitations for that classification.

VII. WATER SUPPLY

Drinking Water

[Senate Bill 229: Amend Environmental Laws \(S.L. 2012-200\)](#)

[Sec. 10](#) amends the definition of "Community water system" so that it only applies to a system that serves "at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents". The addition of the underlined language means that systems serving campgrounds and other facilities that provide temporary services connections will no longer be regulated as community water systems; those systems will be regulated as non-community water systems, requiring less monitoring. The change makes the state definition of "community water system" consistent with the federal definition under the Safe Drinking Water Act.

[Sec. 11](#) authorizes DHHS to grant a variance from minimum horizontal separation distances from existing private drinking water wells under certain conditions. Only wells constructed on or before July 1, 2008 would be eligible for a variance and a number of other conditions apply.

[Senate Bill 810: Regulatory Reform Act of 2012 \(S.L. 2012-187\)](#)

[Sec. 12](#) amends G.S. 97-97 concerning the permitting, inspection, and testing of new private drinking water wells. When the General Assembly enacted G.S. 97-97 in 2007, the law only required testing for bacteria, pH, nitrates, nitrites and a number of metals. Each year since 2007, the General Assembly has enacted a session law addressing well testing for volatile organic compounds (VOCs). Since each piece of legislation was different (or extended the effective date for previous legislation), none of the earlier provisions actually went into effect.

The 2012 session law repeals all of the previous acts addressing testing for VOCs and substitutes more general language authorizing the Commission for Public Health to require *by rule* that wells be tested for parameters beyond those listed in the 2007 legislation - including VOCs - based on a specific finding that additional testing is necessary to protect public health. In developing the rules, the Commission is directed to consider information about known contamination, nearby land uses (current and historic) and visual inspection of wells.

VIII. MISCELLANEOUS

Coastal Habitat Plan Reporting

[House Bill 953: Amend Environmental Laws 2 \(S.L. 2012-201\)](#)

[Section 6](#) makes a technical change that requires the Secretary of DENR to report completion or substantial revision of each draft Coastal Habitat Protection plan within thirty days of completion to the JLC on Governmental Operations and the ERC. The JLC and the ERC are to review and provide comments to the Secretary within 30 days of draft submission.

North Carolina Sustainable Communities Task Force/Grant Fund

[House Bill 953: Amend Environmental Laws 2 \(S.L. 2012-201\)](#) [Section 7](#) changes the general statute number that defines metro regions to GS 143B-344.38(c). [Section 8](#) changes the reporting committee for the Sustainable Communities Task Force from House Commerce, Small Business, and Entrepreneurship Committee to the House Committee on Commerce and Job Development in GS 143B-344.38 and GS 143B-344.38.37

Galax and Venus Flytrap

[Senate Bill 229: Amend Environmental Laws \(S.L. 2012-200\)](#) [Section 18](#) increases the protection for Galax and the Venus Flytrap by expanding the list of prohibited actions related to those plants.

Legislative Appointments

[House Bill 1234 \(S.L. 2012-141\)](#)

[Sec.1](#) (Speaker's Recommendations)

The following is a list of the Speaker's recommendations listed by section number. Terms are already in effect unless otherwise noted; term expiration dates are included:

- Clean Water Management Trust Fund Board of Trustees: Charles Vines and Kevin Markham, terms expiring June 30, 2016
- Environmental Management Commission: Benne Hutson, term expiring June 30, 2014
- Mining and Energy Commission: Charles Holbrook (category 7), for a term expiring June 30, 2014; Raymond Covington (category 4) and William McNeely III (category 6) for terms expiring June 30, 2015; Charles Taylor (category 5) for a term expiring June 30, 2016.

- NC On-Site Wastewater Contractors and Inspectors Certification Board: Diana Rashash, term expiring July 2, 2015
- NC Parks and Recreation Authority: Paul Herbert and Edward Wood, terms expiring July 1, 2015
- Rules Review Commission: Jeanet Doran and Anna Baird, terms expiring June 30, 2014

Sec. 2 (President Pro Tempore's Recommendations)

- NC Mining and Energy Commission: Ivan Gilmore (category 10), term expiring June 30, 2014; James Womack (category 9), term expiring June 30, 2015; Vikram Rao (category 11) and George Howard (category 8), terms expiring June 30, 2016
- NC Parks and Recreation Authority: Westing Bordeaux and Cynthia Tart, terms expiring July 1, 2015
- Well Contractors' Certification Commission: Daniel Ortiz, term expiring June 30, 2015

ADMINISTRATIVE LAW

Senate Bill 810: Regulatory Reform Act (S.L. 2012-187)¹

Section 1 reestablishes the Joint Legislative Administrative Procedure Oversight Committee.

Section 3 makes several changes to the rulemaking process:

- Amends G.S. 150B-19.1(c) to eliminate an earlier requirement that agencies maintain rulemaking information in a searchable database. New language also requires that an agency post on its website any proposed changes to a draft rule or fiscal note that has already gone out to public notice as soon as practicable.
- Amends G.S. 150B-19.1(h) to require all Cabinet agencies to submit proposed rules to the Office of State Budget and Management (OSBM) before publication of a rulemaking notice for certification that the rules meet the rulemaking principles set out in G.S. 150B-19.1. Council of State agencies must follow the same procedure except that review of rules adopted by those agencies for consistency with G.S. 150B-19.1 will be done by the Rules Review Commission (RRC). Both OSBM and the RRC are required to respond to an agency's request for certification within 20 business days.

Section 5 amends G.S. 150B-23.2(b) to allow the Office of Administrative Hearings (OAH) by rule to allow late payment of filing fees for petitions in OAH.

Section 6 amends G.S. 150B-23(a) to clarify that a contested case petition in OAH may only be signed by "the party, an attorney representing the party or another representative of the party

¹ This summary does not include sections of the bill that only made technical, non-substantive changes to statute language.

as may specifically be authorized by law". (This replaces broader language allowing signature by the party "or a representative of the party".)

[Section 7](#) amends G.S. 150B-33(b) to allow an administrative law judge to order a state agency to pay the opposing party's attorney's fees and witness fees in a contested case if the ALJ finds that the agency has substantially prejudiced the petitioner's rights and acted arbitrarily and capriciously. Previously, petitioners in a contested case did not have the ability to recover attorney's fees for an administrative hearing unless it involved a personnel case in which the ALJ found discrimination, harassment or ordered reinstatement or back pay. In addition to broadening the types of cases in which attorneys fees can be awarded, the generally used to award attorneys fees in a court proceeding.

[Section 7.3](#) amends Section 55.2 of S.L. 2011-398 to only require OAH to seek EPA approval to become the agency responsible for administering programs under the Clean Water Act, Clean Air Act and Resource Conservation and Recovery Act if that is necessary to implement state law giving OAH the authority to make final decisions in contested cases involving those programs.

[Section 8.1](#) pushes out the effective date for transfer of final decision authority to OAH for contested cases involving programs under the Clean Air Act, Clean Water Act and Resource Conservation and Recovery Act until EPA approval is granted or until October 1, 2012, whichever comes first. (It also extends the time for transfer of final decision authority with respect to certain contested cases involving federal health programs implemented by DHHS to allow for issuance of a waiver that would allow OAH to take on that authority.)

[Section 10.1\(a\)](#) requires each state agency to report on the audit, examination and inspection functions performed by the agency and the amount of notice, if any, that the agency is required to provide. The report is due to the Joint Legislative Administrative Procedure Oversight Committee by October 31, 2012.

STUDIES AND REPORTS

General

[Senate Bill 810: Regulatory Reform Act \(S.L. 2012-187\)](#)

[Sec. 10](#) requires each state agency to report on the audit, examination and inspection functions performed by the agency and the amount of notice, if any, that the agency is required to provide before conducting any type of audit, examination or inspection. The report is due to the Joint Legislative Administrative Procedure Oversight Committee by October 31, 2012.

[Section 10.2](#) requires agencies to report to the General Assembly on ways to reduce identity theft. Any agency that determines that an act of the legislature inhibits their ability to protect against identity theft should report those findings to the GA by January 1 of the following year.

[Section 13\(a\)](#) requires all DENR programs to begin tracking the total time required to process permit applications in the One Stop and Express permit programs. The tracking must include total time from application receipt to permit decision (including time spent waiting for information required to make the application complete). Also requires DENR to inventory all permits and approvals issued by the Department and report back to the ERC by January 15, 2013.

Senate Bill 841: Effective Utilization of PED (S.L. 2012-80)

This bill requires the Program Evaluation Division (PED) of the General Assembly to prepare an impact statement for each proposed PED study. The impact statement is to outline the number of personnel, hours, and the estimated cost of each study. Based on its current work-plan, PED will indicate if it has adequate resources to undertake the study/evaluation. If PED is unable to take on the study, it should indicate a reasonable start time in the future. A legislator sponsoring legislation to require a new PED study must to send a copy of the bill or resolution and a request for an impact statement to the Program Evaluation Division.

Division of Air Quality

House Bill 952: Air Toxics Reforms (S.L. 2012-91)

Section 3 directs the Division of Air Quality to review toxic air pollutant rules and implementation of the rules to determine if additional changes can be made to the state air toxics program that would reduce the regulatory burden while maintaining protections for public health. DAQ is to report its findings to the ERC no later than December 1, 2012.

Section 4 requires DENR's Division of Air Quality to report on implementation of the changes made to the air toxics program in S.L. 2012-91 to the ERC no later than December 1 for the years 2012-2014. The report is to include an analysis of air toxic emissions changes and a summary of air quality impacts.

Attractions (Aquariums, Parks, Museum, Zoo)

Senate Bill 813: DCR/DENR Study State Attraction Savings (S.L. 2012-93)

Section 2 requires DENR to do several studies related to State parks: 1. study site proximity and span of control to identify parks that could adopt coordinated management structure; 2. consider daily visitation data as a basis for recommending potential changes in daily or seasonal park closure; 3. validate the number of visitors per car used as the basis for visitor counts in state parks every five years (first report due October 1, 2013). **Section 2** also directs DENR to study ways to address operations costs at the zoo and aquariums, including expansion of admissions fees, an increase in fees, the elimination of discounts, the adoption of corporate sponsorship and the transfer of operation to nonprofit support groups, municipalities or other appropriate entities. Except for the report on validation of visitors per car, reports are due to the House and Senate Appropriations Subcommittees on Natural and Economic Resources no later than December 15, 2012.

Coastal Management/Coastal Resources Commission

House Bill 819: Coastal Management Policies (S.L. 2012-202)

Section 2(c) requires the CRC's Science Panel to complete its five-year update of the "North Carolina Sea Level Rise Assessment Report" no later than March 31, 2015. The bill identifies specific issues to be discussed in the assessment. The CRC is directed to issue a report including: an updated assessment of scientific literature on sea level change; a comparison of historical rates of sea level rise to predictive models; an analysis of the costs and benefits of adopting sea

level rules and policies; and the possibility of developing different rates of sea level rise for ocean and estuarine shorelines. A draft of the CRC report -- including the Science Panel's five-year assessment -- should be presented to the general public no later than December 31, 2015 preceding submittal to the ERC no later than March 1, 2016.

Sec. 4 requires the CRC to study the feasibility of creating a new Area of Environmental Concern (AEC) for lands adjacent to the mouth of the Cape Fear River. Report of any findings, including proposed actions, shall be provided to the Secretary of Environment and Natural Resources, the Governor, the President Pro Tem of the Senate, the Speaker of the House of Representatives and the Environmental Review Commission by December 31, 2013.

Sec. 5 requires the CRC to study the feasibility of eliminating the Inlet Hazard Areas of Environmental Concern and incorporating inlet areas into the Ocean Erodible AEC (which currently covers ocean shorelines other than those adjacent to an inlet).

Mining and Energy Commission/DENR

Senate Bill 820: Clean Energy and Economic Security Act (S.L. 2012-142)

This section requires the Mining and Energy Commission to complete three studies:

1. A study in conjunction with NCDOT and the North Carolina League of Municipalities (NCLM), to look at appropriate levels of funding and potential sources of funding to cover the cost of administering an oil and gas regulatory program and to address the impacts of oil and gas development on local governments and public infrastructure.
2. A study in conjunction with NCLM and the N.C. Association of County Commissioners, focused on the appropriate scope of local government authority to regulate oil and gas exploration and development.
3. A study, with assistance from the Consumer Protection Section of the Department of Justice, of the practice of forced pooling of drilling interests.

(Note: Senate Bill 820 made all of these reports due by January 1, 2013, but that date was adjusted to October 1, 2013 in House Bill 953.)

Division of Environmental Assistance and Outreach

Senate Bill 229: Amend Environmental Laws (S.L. 2012-200)

Section 3 directs DENR to study the potential for degradable plastic products to contaminate recycled plastic feedstocks and report to the ERC by January 1, 2013.

Division of Marine Fisheries

Senate Bill 821: Study and Amend Marine Fisheries Laws (S.L. 2012-190)

Section 1 (Funding for Dredging and Inlet Maintenance) directs the Executive Director the Wildlife Resources Commission, the Director the Division of Marine Fisheries, and the Deputy Secretary for Transit at DOT to study the potential for funding maintenance of navigation channels through fees paid by users of the navigation channel.

The bill lists specific information to be included in the report:

Licenses

- ID all types of fishing license
- ID fees associated with these licenses
- ID the analogous licenses and fees in states with similar fisheries profiles
- Recommend several levels of increase in fees and calculate potential revenue
- ID limitations set out in state and federal law on the use of license fees for purposes not related to marine fisheries management

Vessels

- ID all requirements for numbering and titling vessels
- Determine if separating vessels for coastal fishing and vessels for inland fishing is possible
- ID fees associated with numbering and titling vessels
- ID the analogous vessel numbering and titling requirements and fees in states with similar boating profiles
- Recommend several levels of increase in fees associated with numbering and titling and calculate potential revenue
- ID limitations set out in state and federal law on the use of related fees

Furthermore, the Director and Executive Director should examine all other funding sources including the gas tax. 1(c) requests that this study be submitted to the LRC Committee on Marine Fisheries by September 1, 2012.

Senate Bill 821: Study and Amend Marine Fisheries Laws (S.L. 2012-190)

Section 2 directs the Executive Director of the Wildlife Resources Commission, the Commissioner of Agriculture, and the Director of DENR's Division of Marine Fisheries to consult on whether these agencies might be reorganized to provide for more efficient, productive, and enjoyable uses of the State's fisheries resources. The bill requires a report from the study to be sent to the LRC Committee on Marine Fisheries by October 1, 2012.

Waste Management

Senate Bill 810: Regulatory Reform Act (S.L. 2012-147)

Section 15.1 directs DENR to examine permit fee schedules for solid waste landfill and transfer station construction/expansion and make recommendations for changes needed because of modification of the terms of the permits. These recommendations with the report are due to the ERC by December 1, 2012.

Water Quality

Senate Bill 229: Amend Environmental Laws (S.L. 2012-200)

Sec. 1 requires a report on integration of stormwater capture and reuse into stormwater control programs be sent to the ERC by October 1 of each year.

Water Supply

Senate Bill 229: Amend Environmental Laws (S.L. 2012-200)

Sec. 2 directs DENR to study possible reallocation of water supply in Kerr Lake from hydropower storage to water supply storage. The study must identify the projected future water supply needs that could be met by reallocation of the water supply and identify any potential impacts of a water supply reallocation. DENR may, in consultation with the State of Virginia, develop a Roanoke River Basin Water Supply plan that takes into consideration the water needs in both the Virginia and North Carolina parts of the basin; recommend an agreement between the two states and the US Army Corps of Engineers to provide guidance for allocation and reallocation of Kerr Reservoir water supply; and review of any other relevant issues on the subject. In conducting the study, DENR is required to consult with the Virginia Department of Environmental Quality, the U.S. Army Corps of Engineers and any local government that receives an allocation of water from Kerr Lake. This report is due to the ERC by June 1, 2014.

BUDGET²

Senate Bill 187: Modifications 2012 Budget (S.L. 2012-145)

Section 1.2 (Exemptions from Management Flexibility Reductions) amends S.L. 2012-142 to provide that unless specifically directed in that act or in S.L. 2011-145, additional appropriations for FY 2012-2012 to State agencies may not be used to offset management flexibility adjustments required by S.L. 2012-142 or S.L. 2011-145.

Section 4.1 (Money Reallocation) requires transfer of \$282,412 from DENR to DHHS to support Division of Environmental Health operations at DENR regional offices. This is a technical change implementing 2011 legislation that moved the Division of Environmental Health from DENR to DHHS.

Section 4.2 (Position Transfers) requires the transfer of 8.75 full-time equivalents from DENR to Dept. of Agriculture and Consumer Services (DACS) for the restoration of Division of Soil and Water Conservation employees at DENR regional offices. This is a technical change implementing 2011 legislation that moved the Division of Soil and Water Conservation from DENR to DACS.

Section 4.3 (Soil and Water Conservation Clarifications) Of the funds appropriated for the Conservation Reserve Enhancement Program, the recurring sum of two hundred seventy-five thousand dollars (\$275,000) designated for the Roanoke and Pasquotank River basins and for the implementation of amended Conservation Reserve Enhancement Program agreements in the Neuse, Tar-Pamlico, Chowan, and Jordan Lake basins may be used for operation and implementation of the Conservation Reserve Enhancement Program in any of the State's river basins eligible for the Conservation Reserve Enhancement Program. This section also amends G.S. 139-4 (Powers and Duties of Soil and Water Conservation Commission) to clarify that the

² This section summarizes special provisions in the budget. Overall, the budget required state departments, including DENR, to use management flexibility to reduce expenditures of appropriated funds by approximately 2% over the reductions already required in the 2011 budget bill. The budget also, however, specifically eliminated four positions in the Division of Land Quality's sediment program, which represented a 10% cut in sedimentation staff.

Commission's power to adopt best management practices relates to water quality and water efficiency programs implemented by the Department of Agriculture and Consumer Services.

[Section 4.4 \(Clarify Use of Funds from Natural Heritage Trust Fund\)](#) amends G.S. 113-77.9(c) to clarify that expenditures from the Fund (not to exceed \$325,000) to pay for support staff in the Office of Conservation Planning and Community Affairs in DENR may be used for purposes in addition to those specifically outlined in this section.

[Section 6A.1 \(Capital Appropriations/General Fund\)](#) allocates \$5,000,000 to DENR for Water Resources Development Projects.

[Section 6B.1 \(Special Annual Leave Bonus\)](#) gives 5 additional days of annual leave on a one-time basis to everyone who, as of July 1, 2012, is a full-time permanent employee of the state and eligible to earn annual leave. The additional leave was credited on July 1, 2012. These days must be accounted for separately from bonus leave provided under earlier acts of the General Assembly and must be used by June 30, 2013. Employees are not entitled to be paid for the leave in a lump sum upon termination of employment unless the employee is moving directly into state-supported retirement. Part-time permanent employees will receive a pro rata amount of the 5 days.

[House Bill 14: Use R&R Funds for 2011-12 Medicaid Costs \(S.L. 2012-57\)](#)

[Section 1](#) allows the use of up to \$94,000,000 from the state's Repairs and Renovations (R & R) Reserve Account to ensure adequate funding for the Medicaid budget for FY 2011-12. By transfer to the State Controller, the funds can be used only to pay Medicaid providers for expenses incurred through the end of FY 2011-12. Excess funds, if any, will be transferred back to the R&R Account for reallocation to state agencies. By October 1, 2012, Office of State Budget and Management and Department of Health and Human Service will report to the Senate and House Appropriations Committees and the JLC on Governmental Operations on use of these funds.

[House Bill 320: Water Resources Flexibility \(S.L. 2012-166\)](#)

[Section 1 \(Flexibility for Certain Water Resources Projects\)](#) allows the New Hanover Board of County Commissioners money flexibility to allocate water resource project funds between the Carolina Beach Renourishment and the Kure Beach Renourishment projects.

[Senate Bill 444: Non-appropriated Capital Projects \(S.L. 2012-164\)](#)

[Section 8 \(Non-General Fund Capital Improvement Authorizations\)](#) lists state departments receiving money for capital projects from receipts or other non-General Fund sources. DENR's list includes the Sound Side Dock & Education Gazebo at Roanoke Island Aquarium (\$350,000) and the NC Zoo Solar Pointe Restrooms (\$400,000).