

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

**SESSION LAW 2005-386  
HOUSE BILL 1096**

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES TO: (1) MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS; (2) MODIFY ENVIRONMENTAL REPORTING REQUIREMENTS; (3) CHANGE THE NAME OF THE WETLANDS RESTORATION PROGRAM TO THE ECOSYSTEM ENHANCEMENT PROGRAM AND TO CHANGE THE NAME OF THE WETLANDS RESTORATION FUND TO THE ECOSYSTEM RESTORATION FUND; (4) AUTHORIZE THE COMMISSION FOR HEALTH SERVICES TO MODIFY THE INSPECTION SCHEDULE FOR ESTABLISHMENTS THAT PREPARE OR SERVE FOOD OR DRINK TO THE PUBLIC; (5) AUTHORIZE THE USE OF FUNDS FROM THE SPECIAL ZOO FUND FOR MARKETING PURPOSES; (6) PROVIDE THAT MEMBERS OF THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE WHO ARE NOT REELECTED TO THE GENERAL ASSEMBLY MAY COMPLETE THEIR TERM OF SERVICE ON THE COMMISSION; (7) MAKE CLARIFYING AMENDMENTS TO THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973; (8) CHANGE THE NAME OF THE AIR QUALITY COMPLIANCE ADVISORY PANEL TO THE SMALL BUSINESS ENVIRONMENTAL ADVISORY PANEL; AND (9) PROVIDE EXEMPTIONS FROM WELL CONTRACTOR CERTIFICATION REQUIREMENTS FOR CERTAIN PERSONS AND CERTAIN ACTIVITIES.

The General Assembly of North Carolina enacts:

**PART I. TECHNICAL CORRECTIONS.**

**SECTION 1.1.** G.S. 90A-55 reads as rewritten:

**"§ 90A-55. State Board of Sanitarian Examiners; appointment and term of office.**

(a) Board Membership. – The Board shall consist of nine members: the Secretary of Environment and Natural Resources, or the Secretary's duly authorized representative, one public-spirited citizen, one environmental sanitation educator from an accredited college or university, one local health director, a representative of the Division of Environmental Health ~~Division~~ of the Department of Environment and Natural Resources, and four practicing sanitarians who qualify by education and experience for registration under this Article, three of whom will represent the Western,

Piedmont, and Eastern Regions of the State as described more specifically in the rules adopted by the Board.

(b) Term of Office. – Each member of the State Board of Sanitarian Examiners shall be appointed by the Governor for a term of four years. ~~Members of the Board serving on October 1, 1982, shall serve until the expiration of the terms for which they were appointed.~~ As the term of each current member expires, the Governor shall appoint a successor in accordance with the provisions of this section. If a vacancy occurs on the Board for any other reason than the expiration of a member's term, the Governor shall appoint a successor for the remainder of the unexpired term. No person shall serve as a member of the Board for more than two consecutive four-year terms.

(c) The Environmental Health ~~Section,~~ Section of the North Carolina Public Health Association, Inc., shall submit a recommended list of Board member candidates to the Governor for his consideration in appointments.

(d) The Governor may remove an appointee member for misconduct in office, incompetency, neglect of duty, or other sufficient cause."

**SECTION 1.2.** G.S. 102-1.1 reads as rewritten:

**"§ 102-1.1. Name and description in relation to 1983 North American Datum.**

From and after the date and time the North Carolina Geodetic Survey Section in the Division of Land Resources ~~Division~~ of the Department of Environment and Natural Resources receives from the National Geodetic Survey, official notice of a complete, published definition of the North American Datum of 1983 including the State plane coordinate constants applicable to North Carolina, the official survey base for North Carolina shall be a system of plane coordinates to be known as the "North Carolina Coordinate System of 1983," said system being defined as a Lambert conformal projection of the "Geodetic Reference System (GRS 80 Ellipsoid)" having a central meridian of 79°- 00' west from Greenwich and standard parallels of latitude of 34° – 20' and 36° – 10' north of the equator, along which parallels the scale shall be exact. All coordinates of the system are expressed in metres, the x coordinate being measured easterly along the grid and the y coordinate being measured northerly along the grid. The U.S. Survey Foot, 1 meter = 39.37 inches or 3.2808333333 feet, shall be used as a conversion factor. The origin of the coordinates is hereby established on the meridian 79° – 00' west from Greenwich at the intersection of the parallels 33° – 45' north latitude, such origin being given the coordinates x = 609,601.22 metres, y = 0 metres. The precise position of said system shall be as marked on the ground by triangulation or traverse stations or monuments established in conformity with the standards adopted by the National Geodetic Survey for first- and second-order work, whose geodetic positions have been rigidly adjusted on the North American Datum of 1983, and whose plane coordinates have been computed on the system defined. Whenever plane coordinates are used in the description or identification of surface area or location within this State, the coordinates shall be identified as "NAD 83", indicating North American Datum of 1983, or as "NAD 27", indicating North American Datum of 1927."

**SECTION 1.3.** G.S. 105-277.7(a) reads as rewritten:

"(a) Creation and Membership. – The Use-Value Advisory Board is established under the supervision of the Agricultural Extension Service of North Carolina State

University. The Director of the Agricultural Extension Service of North Carolina State University shall serve as the chair of the Board. The Board shall consist of the following additional members, to serve ex officio:

- (1) A representative of the Department of Agriculture and Consumer Services, designated by the Commissioner of Agriculture.
- (2) A representative of the Division of Forest Resources~~Division~~ of the Department of Environment and Natural Resources, designated by the Director of that Division.
- (3) A representative of the Agricultural Extension Service at North Carolina Agricultural and Technical State University, designated by the Director of the Extension Service.
- (4) A representative of the North Carolina Farm ~~Bureau~~Bureau Federation, Inc., designated by the President of the Bureau.
- (5) A representative of the North Carolina Association of Assessing Officers, designated by the President of the Association.
- (6) The Director of the Property Tax Division of the North Carolina Department of Revenue or the Director's designee.
- (7) A representative of the North Carolina Association of County Commissioners, designated by the President of the Association.
- (8) A representative of the North Carolina Forestry Association, designated by the President of the Association."

**SECTION 1.4.** G.S. 105-296(j) reads as rewritten:

"(j) The assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Division of Forest Resources~~Division~~ of the Department of Environment and Natural Resources, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). The assessor must reinstate the property's present-use value classification when the owner submits the requested information unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner.

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination."

**SECTION 1.5.** G.S. 113-56.1 reads as rewritten:

**"§ 113-56.1. Overtime compensation for forest fire fighting.**

The Department shall, within funds appropriated to the Department, provide overtime compensation to the professional employees of the Division of Forest Resources~~Division~~ involved in fighting forest fires."

**SECTION 1.6.** G.S. 113-60.32(1) reads as rewritten:

"(1) 'Fire fighter' means an employee of the Division of Forest Resources~~Division~~ of the Department of Environment and Natural Resources who engages in fire suppression duties."

**SECTION 1.7.** G.S. 113-291.10(a)(4) reads as rewritten:

"(4) The Director of the Division of Soil and Water Conservation~~Division~~ of the Department of Environment and Natural Resources, or a designee;"

**SECTION 1.8.** G.S. 120-70.62 reads as rewritten:

**"§ 120-70.62. Powers and duties.**

The Commission shall have the following powers and duties:

....

(4) To evaluate actions of the Division of Marine Fisheries~~Division~~ of the Department of Environment and Natural Resources, the Wildlife Resources Commission of the Department of Environment and Natural Resources and of any other board, commission, department, or agency of the State or local government as such actions relate to the seafood and aquaculture industries;

...."

**SECTION 1.9.** G.S. 120-70.63 reads as rewritten:

**"§ 120-70.63. Additional powers.**

The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either ~~each~~chairman, cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission."

**SECTION 1.10.** Section 14 of S.L. 2004-163 reads as rewritten:

**"SECTION 14.** Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of Sections 1 through 13 of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate. The Revisor of Statutes shall set out the text of the Stormwater Management Rule, as defined in Section ~~4~~12 of this act, and the text of Section 6 of

the temporary rule adopted by the Environmental Management Commission on 10 October 2002 as notes to G.S. 143-214.7."

## **PART II. MODIFY REPORTING REQUIREMENTS.**

**SECTION 2.1.** G.S. 143-215.8C is repealed.

**SECTION 2.2.** G.S. 143-215.107C reads as rewritten:

**"§ 143-215.107C. State agency goals, plans, duties, and reports.**

...

(d) The Department of Administration, the Office of State Personnel, the Department of Transportation, and the Department of Environment and Natural Resources shall jointly develop and periodically update a plan to reduce vehicle miles traveled by State employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The plan shall consider the use of carpooling, vanpooling, public transportation, incentives, and other appropriate strategies. ~~The Office of State Personnel~~Department of Transportation shall report on the development and implementation of the plan to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

(e) The Department of Transportation, the Department of Commerce, and the Department of Environment and Natural Resources shall jointly develop and periodically update a plan to reduce vehicle miles traveled by private sector employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The plan shall consider the use of incentives for both private sector employees and ~~employers, employers to promote~~ carpooling, vanpooling, use of public transportation, and other appropriate strategies. The Department of Transportation shall report on the development and implementation of the plan to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

(f) The Office of State Personnel shall implement a policy that promotes telework/telecommuting for State employees as recommended by the report of the State Auditor entitled "Establishing a Formal Telework/Telecommuting Program for State Employees" and dated October 1997. It shall be the goal of the State to reduce State employee vehicle miles traveled in commuting by twenty percent (20%) without reducing total work hours or productivity. ~~The Office of State Personnel shall report on progress in implementing this section to the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000."~~

**SECTION 2.3.** The primary investigator or researcher for the Neuse River Modeling and Monitoring Project shall provide a final report summarizing the findings and outcomes of the Project to the Environmental Review Commission no later than 1 November 2005.

## **PART III. RENAME WETLANDS RESTORATION PROGRAM AS THE ECOSYSTEM ENHANCEMENT PROGRAM.**

**SECTION 3.1.** G.S. 143-214.8 reads as rewritten:

**"§ 143-214.8. ~~Wetlands Restoration~~Ecosystem Enhancement Program: established.**

The ~~Wetlands Restoration~~Ecosystem Enhancement Program is established within the Department of Environment and Natural Resources. The ~~Wetlands Restoration~~Ecosystem Enhancement Program shall be developed by the Department as a nonregulatory statewide ~~wetlands restoration~~ecosystem enhancement program for the acquisition, maintenance, restoration, enhancement, and creation of wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities. The ~~Wetlands Restoration~~Ecosystem Enhancement Program shall consist of the following components:

- (1) Restoration and perpetual maintenance of wetlands.
- (2) Development of restoration plans.
- (3) Landowner contact and land acquisition.
- (4) Evaluation of site plans and engineering studies.
- (5) Oversight of construction and monitoring of restoration sites.
- (6) Land ownership and management.
- (7) Mapping, site identification, and assessment of wetlands functions.
- (8) Oversight of private wetland mitigation banks to facilitate the components of the ~~Wetlands Restoration~~Ecosystem Enhancement Program."

**SECTION 3.2.** G.S. 143-214.9 reads as rewritten:

**"§ 143-214.9. ~~Wetlands Restoration~~Ecosystem Enhancement Program: purposes.**

The purposes of the program are as follows:

- (1) To restore wetlands functions and values across the State to replace critical functions lost through historic wetlands conversion and through current and future permitted impacts. It is not the policy of the State to destroy upland habitats unless it would further the purposes of the ~~Wetlands Restoration~~Ecosystem Enhancement Program.
- (2) To provide a consistent and simplified approach to address mitigation requirements associated with permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344.
- (3) To streamline the wetlands permitting process, minimize delays in permit decisions, and decrease the burden of permit applicants of planning and performing compensatory mitigation for wetlands losses.
- (4) To increase the ecological effectiveness of compensatory mitigation.
- (5) To achieve a net increase in wetland acres, functions, and values in each major river basin.
- (6) To foster a comprehensive approach to environmental protection."

**SECTION 3.3.** G.S. 143-214.10 reads as rewritten:

**"§ 143-214.10. ~~Wetlands Restoration~~Ecosystem Enhancement Program: development and implementation of basinwide restoration plans.**

Develop Basinwide Restoration Plans. – The Department shall develop basinwide plans for wetlands and riparian area restoration with the goal of protecting and enhancing water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities within each of the 17 major river basins in the State. ~~Beginning July 1, 1997, the~~ The Department shall develop and ~~begin implementing~~ implement a basinwide restoration plan for each of the 17 river basins in the State in accordance with the basinwide schedule currently established by the Division of Water Quality."

**SECTION 3.4.** G.S. 143-214.11 reads as rewritten:

"§ 143-214.11. ~~Wetlands—Restoration~~ Ecosystem Enhancement Program: compensatory mitigation.

(a) Definition. – For purposes of this section, the term "compensatory mitigation" means the restoration, creation, enhancement, or preservation of wetlands or other areas required as a condition of a section 404 permit issued by the United States Army Corps of Engineers.

(b) Department of Environment and Natural Resources to Coordinate Compensatory Mitigation. – All compensatory mitigation required by permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 shall be coordinated by the Department consistent with the basinwide plans for wetlands restoration and rules developed by the Environmental Management Commission. All compensatory wetlands mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans.

(c) Mitigation Emphasis on Replacing Ecological Function Within Same River Basin. – The emphasis of mitigation is on replacing functions within the same river basin unless it is demonstrated that restoration of other areas would be more beneficial to the overall purposes of the ~~Wetlands—Restoration~~ Ecosystem Enhancement Program.

(d) Compensatory Mitigation Options Available to Applicant. – An applicant may satisfy compensatory wetlands mitigation requirements by the following actions, if those actions are consistent with the basinwide restoration plans and also meet or exceed the requirements of the United ~~State~~ States Army Corps of Engineers:

- (1) Payment of a fee established by the Department into the ~~Wetlands~~ Ecosystem Restoration Fund established in G.S. 143-214.12.
- (2) Donation of land to the ~~Wetlands—Restoration~~ Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.
- (3) Participation in a private wetlands mitigation bank.
- (4) Preparing and implementing a wetlands restoration plan.

(e) Payment Schedule. – A standardized schedule of per-acre payment amounts shall be established by the Environmental Management Commission. The monetary payment shall be based on the ecological functions and values of wetlands permitted to be lost and on the cost of restoring or creating wetlands capable of performing the same or similar functions, including directly related costs of wetlands restoration planning, long-term monitoring, and maintenance of restored areas.

(f) Mitigation Banks. – State agencies and private mitigation banking companies shall demonstrate that adequate, dedicated financial surety exists to provide for the perpetual land management and hydrological maintenance of lands acquired by the State as mitigation banks, or proposed to the State as privately operated and permitted mitigation banks.

(g) Payment for Taxes. – A State agency acquiring land to restore, enhance, preserve, or create wetlands must also pay a sum in lieu of ad valorem taxes lost by the county in accordance with G.S. 146-22.3."

**SECTION 3.5.** G.S. 143-214.12 reads as rewritten:

**"§ 143-214.12. ~~Wetlands Restoration~~ Ecosystem Enhancement Program: ~~Wetlands Ecosystem~~ Restoration Fund.**

(a) ~~Wetlands—Ecosystem~~ Restoration Fund. – The ~~Wetlands—Ecosystem~~ Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The ~~Wetlands—Ecosystem~~ Restoration Fund shall provide a repository for monetary contributions and donations or dedications of interests in real property to promote projects for the restoration, enhancement, preservation, or creation of wetlands and riparian areas and for payments made in lieu of compensatory mitigation as described in subsection (b) of this section. No funds shall be expended from this Fund for any purpose other than those directly contributing to the acquisition, perpetual maintenance, enhancement, restoration, or creation of wetlands and riparian areas in accordance with the basinwide plan as described in G.S. 143-214.10. The cost of acquisition includes a payment in lieu of ad valorem taxes required under G.S. 146-22.3 when the Department is the State agency making the acquisition.

(a1) The Department may distribute funds from the ~~Wetlands—Ecosystem~~ Restoration Fund directly to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A recipient of funds under this subsection shall grant a conservation easement in the real property or interest in real property acquired with the funds to the Department in a form that is acceptable to the Department. The Department may convey real property or an interest in real property that has been acquired under the ~~Wetlands Restoration~~ Ecosystem Enhancement Program to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A grantee of real property or an interest in real property under this subsection shall grant a conservation easement in the real property or interest in real property to the Department in a form that is acceptable to the Department.

(b) Authorized Methods of Payment. – A person subject to a permit or authorization issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344, ~~1344~~ may contribute to the ~~Wetlands Restoration~~ Ecosystem Enhancement Program, ~~Program in order~~ to comply with conditions to, or terms of, the permit or authorization, ~~authorization~~ if participation in the ~~Wetlands Restoration~~ Ecosystem

Enhancement Program will meet the mitigation requirements of the United States Army Corps of Engineers. The Department shall, at the discretion of the applicant, accept payment into the ~~Wetlands~~-Ecosystem Restoration Fund in lieu of other compensatory mitigation requirements of any authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 if the contributions will meet the mitigation requirements of the United States Army Corps of Engineers. Payment may be made in the form of monetary contributions according to a fee schedule established by the Environmental Management Commission or in the form of donations of real property provided that the property is approved by the Department as a suitable site consistent with the basinwide wetlands restoration plan.

(c) Accounting of Payments. – The Department shall provide an itemized statement that accounts for each payment into the Fund. The statement shall include the expenses and activities financed by the payment."

**SECTION 3.6.** G.S. 143-214.13 reads as rewritten:

"§ **143-214.13. ~~Wetlands Restoration~~Ecosystem Enhancement Program: reporting requirement.**

(a) The Department of Environment and Natural Resources shall report each year by November 1 to the Environmental Review Commission regarding its progress in implementing the ~~Wetlands Restoration~~Ecosystem Enhancement Program and its use of the funds in the ~~Wetlands~~-Ecosystem Restoration Fund. The report shall document statewide wetlands losses and gains and compensatory mitigation performed under G.S. 143-214.8 through G.S. 143-214.12. The report shall also provide an accounting of receipts and disbursements of the ~~Wetlands~~-Ecosystem Restoration Fund, an analysis of the per-acre cost of wetlands restoration, and a cost comparison on a per-acre basis between the State's ~~Wetlands Restoration~~Ecosystem Enhancement Program and private mitigation banks. The Department shall also send a copy of its report to the Fiscal Research Division of the General Assembly.

(b) The Department shall maintain an inventory of all property that is held, managed, maintained, enhanced, restored, or used to create wetlands under the ~~Wetlands Restoration~~Ecosystem Enhancement Program. The inventory shall also list all conservation easements held by the Department. The inventory shall be included in the annual report required under subsection (a) of this section."

**SECTION 3.7.** G.S. 143-214.14(c) reads as rewritten:

"(c) Legislative Goals and Policies. – It is the goal of the General Assembly that, to the extent practicable, the State shall adopt water quality protection plans that are developed and implemented in cooperation and coordination with local governments and that the State shall adopt water quality protection requirements that are proportional to the relative contributions of pollution from all sources in terms of both the loading and proximity of those sources. Furthermore, it is the goal of the General Assembly to encourage and support State-local partnerships for improved water quality protection through the provision of technical and financial assistance available through the Clean Water Management Trust Fund, the ~~Wetlands~~ Ecosystem Enhancement Program, the Ecosystem Restoration Fund, water quality planning and project grant programs, the State's revolving loan and grant programs for water and wastewater facilities, other

funding sources, and future appropriations. The Commission shall implement these goals in accordance with the standards, procedures, and requirements set out in this section."

#### **PART IV. AMEND INSPECTION SCHEDULE FOR FOOD SERVICE ESTABLISHMENTS.**

**SECTION 4.1.** G.S. 130A-249 reads as rewritten:

**"§ 130A-249. Inspections; report and grade card.**

The Secretary may enter any establishment that is subject to the provisions of G.S. 130A-248 for the purpose of making inspections. The Secretary shall inspect each ~~restaurant at least quarterly, except that the quarterly inspection requirement shall not apply to temporary food establishments.~~ food service establishment at a frequency established by the Commission. In establishing a schedule for inspections, the Commission shall consider the risks to the population served by the establishment and the type of food or drink served by the establishment. The person responsible for the management or control of an establishment shall permit the Secretary to inspect every part of the establishment and shall render all aid and assistance necessary for the inspection. The Secretary shall leave a copy of the inspection form and a card or cards showing the grade of the establishment with the responsible person. The Secretary shall post the grade card in a conspicuous place as determined by the Secretary where it may be readily observed by the public upon entering the establishment or upon picking up food prepared inside but received and paid for outside the establishment through delivery windows or other delivery devices. If a single establishment has one or more outside delivery service stations and an internal delivery system, that establishment shall have a grade card posted where it may be readily visible upon entering the establishment and one posted where it may be readily visible in each delivery window or delivery device upon picking up the food outside the establishment. The grade card or cards shall not be removed by anyone, except by or upon the instruction of the Secretary."

**SECTION 4.2.** The Commission for Health Services shall adopt rules to implement the provisions of Section 4.1 of this act so that the rules become effective on or before 1 January 2007.

#### **PART V. AUTHORIZE THE USE OF FUNDS FROM THE SPECIAL ZOO FUND FOR MARKETING PURPOSES.**

**SECTION 5.** G.S. 143B-336.1 reads as rewritten:

**"§ 143B-336.1. Special Zoo Fund.**

A special continuing and nonreverting fund, to be called the Special Zoo Fund, is created. The North Carolina Zoological Park shall retain unbudgeted receipts at the end of each fiscal year, beginning June 30, 1989, and deposit these receipts into this Fund. This Fund shall be used for maintenance, repairs, and renovations of exhibits in existing habitat clusters and visitor services facilities, construction of visitor services facilities

and support facilities such as greenhouses and temporary animal holding areas, ~~and~~ for the replacement of tram equipment as required to maintain adequate service to the ~~public-public~~, and for marketing the Zoological Park. The Special Zoo Fund may also be used to match private funds ~~which-that~~ are raised for these purposes. Funds may be expended for these purposes by the Department of Environment and Natural Resources on the advice of the North Carolina Zoological Park Council and with the approval of the Office of State Budget and Management. The Department of Environment and Natural Resources shall provide an annual report to the Office of State Budget and Management and to the Fiscal Research Division of the Legislative Services Office on the use of fees collected pursuant to this section."

**PART VI. PROVIDE THAT MEMBERS OF THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE WHO ARE NOT REELECTED TO THE GENERAL ASSEMBLY MAY COMPLETE THEIR TERM OF SERVICE ON THE COMMISSION.**

**SECTION 6.** G.S. 120-70.61 reads as rewritten:

**"§ 120-70.61. Membership; ~~cochairmen;~~ cochairs; vacancies; quorum.**

(a) The Joint Legislative Commission on Seafood and Aquaculture shall consist of 15 members: four Senators appointed by the President Pro Tempore of the Senate; four Representatives appointed by the Speaker of the House of Representatives; four members appointed by the Governor; and three members appointed by the Commissioner of Agriculture. The members shall serve at the pleasure of their appointing officer.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as ~~cochairman~~ cochair, and the Speaker of the House of Representatives shall designate one Representative to serve as ~~cochairman~~ cochair.

(c) Except as otherwise provided in this section, a member of the Commission shall continue to serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the General Assembly who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from office on the Commission. Any vacancy that occurs—Vacancies occurring on the Commission shall be filled in the same manner as ~~initial appointments~~ the original appointment.

(d) A quorum of the Commission shall consist of eight members."

**PART VII. AMENDMENTS TO SEDIMENTATION POLLUTION CONTROL ACT OF 1973.**

**SECTION 7.1.** G.S. 113A-54.1(a) reads as rewritten:

**"§ 113A-54.1. Approval of erosion control plans.**

(a) A draft erosion and sedimentation control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity. The Commission shall approve, approve with modifications, or disapprove a draft erosion and sedimentation control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion and sedimentation control plan or a revised erosion and sedimentation control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion and sedimentation control plans approved under this Article.

(b) If, following commencement of a land-disturbing activity pursuant to an approved erosion and sedimentation control plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require any revision of the plan that is necessary to comply with this Article. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan.

(c) The Commission shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Director of the Division of Land Resources may disapprove an erosion and sedimentation control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(d) In the event that an erosion and sedimentation control plan is disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in writing the specific reasons that the plan was disapproved. The applicant may appeal the Director's disapproval of the plan to the Commission. For purposes of this subsection and subsection (c) of this section, an applicant's record may be considered for only the two years prior to the application date."

**SECTION 7.2.** G.S. 113A-57 reads as rewritten:

**"§ 113A-57. Mandatory standards for land-disturbing activity.**

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

- (1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
- (2) The angle for graded slopes and fills shall be no greater than the angle ~~which~~ that can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within 15 working days or 30 calendar days of completion of any phase of grading, whichever period is shorter, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.
- (3) Whenever land-disturbing activity that will disturb more than one acre is undertaken on a ~~tract-tract, comprising more than one acre, if more than one acre is uncovered,~~ the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain

erosion after completion of construction or development within a time period to be specified by rule of the Commission.

- (4) No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract ~~if more than one acre is to be uncovered~~ unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for ~~such~~the activity is filed with the agency having ~~jurisdiction~~jurisdiction and approved by the agency. An erosion and sedimentation control plan may be filed less than 30 days prior to initiation of a land-disturbing activity if the plan is submitted under an approved express permit program, and the land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The agency having jurisdiction shall forward to the Director of the Division of Water Quality a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract."

**SECTION 7.3.** G.S. 113A-65.1(h) reads as rewritten:

"(h) The Attorney General shall file a cause of action to abate the violations which resulted in the issuance of a stop-work order within two business days of the service of the stop-work order. The cause of action shall include a motion for an ex parte temporary restraining order to abate the violation and to effect necessary remedial measures. The resident superior court judge, or any judge assigned to hear the motion for the temporary restraining order, shall hear and determine the motion within two days of the filing of the complaint. The clerk of superior court shall accept complaints filed pursuant to this section without the payment of filing fees. Filing fees shall be paid to the clerk of superior court within 30 days of the filing of the complaint."

**PART VIII. RENAME AIR QUALITY COMPLIANCE ADVISORY PANEL.**

**SECTION 8.1.** G.S. 143-215.3A(b) reads as rewritten:

"(b) The Title V Account is established as a nonreverting account within the Department. Revenue in the Account shall be used for developing and implementing a permit program that meets the requirements of Title V. The Title V Account shall consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A. Fees collected under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and indirect costs required to develop and administer the Title V permit program, and fees collected under G.S. 143-215.106A shall be used only for the eligible expenses of the Title V program. Expenses of the ~~Air Quality Compliance~~Small Business Environmental Advisory Panel, the ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services provided by the Attorney General, and contracts with consultants and program expenses listed in section 502(b)(3)(A) of Title V shall be included among Title V program expenses."

**SECTION 8.2.** Part 15 of Article 7 of Chapter 143B of the General Statutes reads as rewritten:

"Part 15. ~~Air Quality Control.~~Small Business Environmental Advisory Panel.

**"§ 143B-317. ~~Air Quality Compliance~~Small Business Environmental Advisory Panel – creation; powers and duties.**

There is hereby created the ~~Air Quality Compliance~~Small Business Environmental Advisory Panel of the Department of Environment and Natural Resources. The ~~Air Quality Compliance~~Small Business Environmental Advisory Panel shall have the following functions and duties:

- (1) To render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement.
- (2) To make periodic reports to the Administrator of the United States Environmental Protection Agency concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act, 44 U.S.C. §§ 3501 et. seq.; the Regulatory Flexibility Act, 5 U.S.C. §§ 601 et seq.; and the Equal Access to Justice Act, 5 U.S.C. §§ 504 et seq.
- (3) To review information for small business stationary sources to assure such information is understandable by the layperson.

**"§ 143B-318. ~~Air Quality Compliance~~Small Business Environmental Advisory Panel – members; ~~chairman;~~chair; selection; removal; compensation; quorum; services.**

(a) The ~~Air Quality Compliance~~Small Business Environmental Advisory Panel ~~of the Department of Environment and Natural Resources~~ shall consist of two members who are not owners or representatives of owners of small business stationary sources, appointed by the Governor to represent the general public; two members appointed one each by the Speaker and the minority leader of the House of Representatives, and who are owners, or who represent owners, of small business stationary sources; two members appointed one each by the President Pro Tempore and the minority leader of the Senate, who are owners, or who represent owners, of small business stationary sources; and one member appointed by the Secretary of Environment and Natural Resources.

(b) The Governor shall designate one member of the Panel to serve as ~~chairman~~ chair at ~~his pleasure.~~the pleasure of the Governor.

(c) Members shall serve staggered terms of four years. In order to achieve staggered terms, the Speaker and the minority leader of the House of Representatives shall initially appoint members for terms of two years, the President Pro Tempore and the minority leader of the Senate shall initially appoint members for terms of three years. At the end of the respective terms of office of the initial members, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Panel created by the

resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member of the Panel from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-16.

(e) The members of the Panel shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) A majority of the Panel shall constitute a quorum for the transaction of their business.

(g) The Secretary of Environment and Natural Resources shall designate an office within the Department of Environment and Natural Resources to serve as ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program established by the Department pursuant to section 507 of Title V of the 1990 amendments to the federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2645, 42 U.S.C. § 7661f(a)(3)). The Small Business Stationary Source Technical and Environmental Compliance Assistance Program shall serve as the secretariat for the development and dissemination of reports and advisory opinions issued by the Panel. The Panel and the ombudsman shall exercise their powers consistent with G.S. 143B-14(b).

(h) All clerical and other services required by the Panel shall be supplied by the Secretary of Environment and Natural Resources.

**"§ 143B-319. ~~Air Quality Compliance~~Small Business Environmental Advisory Panel – meetings.**

The Panel shall meet at least semiannually and may hold special meetings at any time and place at the call of the ~~chairman~~chair or upon the written request of at least three members."

## **PART IX. AMEND WELL CONTRACTOR CERTIFICATION REQUIREMENTS AND USES OF FUNDS IN THE WELL CONSTRUCTION FUND.**

**SECTION 9.** G.S. 87-98.4 reads as rewritten:

**"§ 87-98.4. Well contractor certification required; ~~applicability~~exemptions.**

(a) Certification Required. – No ~~well contractor~~person shall ~~perform or offer to perform~~perform, manage, or supervise any well contractor activity without being certified under this Article. A person who is not a certified well contractor or who is not employed by a certified well contractor shall not offer to perform any well contractor activity unless the person utilizes a certified well contractor to perform the well contractor activity and, prior to the performance of the well contractor activity, the person discloses to the landowner in writing the name of the certified well contractor who will perform the well contractor activity, the certification number of the well contractor, and the name of the company that employs the certified well contractor. ~~The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater;~~

~~evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities.~~

(b) ~~Applicability.~~ Exempt persons and activities. – This Article does not apply to ~~a person who meets any of the following descriptions:~~ any of the following persons or activities:

- (1) ~~Is~~ A person who is employed by, or performs labor or services for, a certified well contractor in connection with well contractor activity performed under the personal supervision of the certified well contractor.
- (2) ~~Constructs.~~ A person who constructs, repairs, or abandons a well that is located on land owned or leased by that person.
- (3) A person who is employed by a government agency and who performs well contractor activity solely within the scope of the person's government employment.
- (4) A person who is licensed as a professional engineer under Chapter 89C of the General Statutes, a geologist under Chapter 89E of the General Statutes, or a soil scientist under Chapter 89F of the General Statutes who uses a hand auger to collect soil or water samples or to measure water levels. This exemption does not include the construction of a monitoring well.
- (5) Construction, repair, or abandonment of a well used for a temporary dewatering activity that is associated with, and necessary to complete construction of, a utility distribution or collection system, a building or other structure, or a transportation system, if all of the following conditions are met:
  - a. The dewatering well is constructed solely for the purpose of removing water from or lowering the water table in the immediate area of the construction activity.
  - b. The dewatering well is located within 25 feet of the excavation and is not greater than 25 feet deeper than the excavation.
  - c. The dewatering well is abandoned in accordance with rules governing the abandonment of wells adopted by the Environmental Management Commission pursuant to G.S. 87-87 within 30 days of installation of the well or within 10 days of completion of the project, whichever is later.
- (6) Construction, repair, or abandonment of a well used for a temporary dewatering activity that is associated with the construction of a borrow pit if the dewatering activity is located within 15 feet of the proposed perimeter of the borrow pit.
- (7) Exploratory drilling for mining-related investigations.
- (8) Installation of a water level observation well on property for which a mining permit has been issued under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.

- (9) Drilling of a blast hole.
- (10) Installation of a cathodic protection anode.
- (11) Installation of a wetland monitoring gauge at a depth of eight feet or less for the purpose of monitoring fluctuations in the water table.
- (12) Installation of a caisson, piling, or structural pier.

(c) Additional Exemptions. – In addition to the exemptions set out in subsection (b) of this section, the Commission may exempt by rule a geophysical activity, construction activity, or other well contractor activity from the requirements of this Article if the Commission finds that the activity has a negligible impact on the environment; public health, safety, and welfare; and the groundwater resources of the State."

**PART X. EFFECTIVE DATE.**

**SECTION 10.** Section 2.1 of this act becomes effective 1 December 2005. Section 4.1 of this act becomes effective 1 January 2007. Part VII of this act becomes effective 1 January 2006. The remaining sections of this act become effective when this act becomes law.

In the General Assembly read three times and ratified this the 23<sup>rd</sup> day of August, 2005.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 3:25 p.m. this 13<sup>th</sup> day of September, 2005