

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1132*
House Committee Substitute Favorable 7/7/00

Short Title: Regulatory Flexibility Agreements.

(Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH A VOLUNTARY REGULATORY FLEXIBILITY
2 PROGRAM TO PROMOTE IMPROVED ENVIRONMENTAL COMPLIANCE
3 AND REGULATORY FLEXIBILITY AND TO PROHIBIT THE DEPARTMENT
4 OF ENVIRONMENT AND NATURAL RESOURCES FROM EXPANDING THE
5 SCOPE OF A RULE WITHOUT ADOPTING A TEMPORARY OR PERMANENT
6 RULE IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

7 The General Assembly of North Carolina enacts:

8 Section 1. Chapter 113A of the General Statutes is amended by adding a new
9 Article to read:

10 **"ARTICLE 17.**

11 **"REGULATORY FLEXIBILITY AGREEMENTS.**

12 **"§ 113A-241. Title.**

13 This Article may be cited as the 'Regulatory Flexibility Agreements Act of 2000'.

14 **"§ 113A-242. Purpose.**

15 The purpose of this Article is to create a voluntary program whereby persons who
16 engage in activities that result in the discharge or emission of pollutants or contaminants,
17 or who manage solid or hazardous waste, may enter into agreements with the Secretary
18 under which innovative measures not otherwise allowed under applicable environmental
19

1 requirements may be utilized to achieve overall results that are equal to or better than
2 those that would otherwise be achieved. At a minimum, a Regulatory Flexibility
3 Agreement shall provide for a level of environmental protection that equals the level of
4 protection required by environmental law and applicable environmental requirements.
5 Better overall results may include a higher level of environmental protection, the same
6 level of protection achieved in a more efficient or cost-effective manner, or ideally, a
7 higher level of environmental protection achieved in a more efficient or cost-effective
8 manner.

9 **"§ 113A-243. Definitions.**

10 (a) Unless otherwise required by the context and except as provided in this
11 section, the definitions set out in Article 9 of Chapter 130A of the General Statutes and in
12 Articles 21, 21A, and 21B of Chapter 143 of the General Statutes apply to this Article.

13 (b) As used in this Article:

14 (1) 'Ambient standard' means an air quality, groundwater quality, or surface
15 water quality standard adopted under environmental law for the
16 protection of the environment or public health generally, as
17 distinguished from a specific emissions or discharge standard or
18 limitation.

19 (2) 'Applicable environmental requirements' means those State
20 environmental rules and permits that govern the emission, discharge, or
21 management of pollutants, contaminants, or wastes, and that are
22 administered by the Department, a commission, or a regional or local
23 authority under any provision of environmental law.

24 (3) 'Department' means the Department of Environment and Natural
25 Resources and may include the commissions organized within the
26 Department and delegated local or regional programs as required by the
27 context.

28 (4) 'Environmental law' means Articles 1 and 9 of Chapter 130A of the
29 General Statutes, Articles 21, 21A, or 21B of Chapter 143 of the
30 General Statutes, and corresponding federal statutes.

31 (5) 'Facility' means a contiguous area, or two or more areas in close
32 proximity, that are under common ownership, management, or control
33 and at which any activity occurs that is regulated under any
34 environmental law. 'Facility' includes any personal property or fixtures
35 that are located at a facility or that are substantially related to the
36 operation of a facility.

37 (6) 'Multimedia' means the emission or discharge of pollutants,
38 contaminants, or wastes into two or more of the following: air,
39 groundwater, land, or surface water.

40 (7) 'Regulatory Flexibility Agreement' or 'RFA' means an agreement
41 between the Secretary or the Secretary's delegate and a person who
42 owns or operates a facility and who holds one or more permits
43 governing the discharge or emission of pollutants, contaminants, or

1 waste from the facility, or the management of waste at the facility. A
2 RFA authorizes the permit holder to implement innovative
3 environmental measures not otherwise allowed under applicable
4 environmental requirements for the purposes of, and in accordance with
5 the requirements of, this Article. A RFA is not a license as that term is
6 defined in G.S. 150B-2.

7 (8) 'Secretary' means the Secretary of Environment and Natural Resources.

8 (9) 'Single media' means the emission or discharge of pollutants,
9 contaminants, or wastes into no more than one of the following: air,
10 groundwater, land, or surface water.

11 (10) 'Stakeholder' means any person or group of persons of common interest
12 directly or indirectly affected in his or its person, property, or
13 employment by the operation of a facility that has applied for, or is
14 operating under, a Regulatory Flexibility Agreement. Potential
15 stakeholders include, but are not limited to: employees of the facility
16 and their representatives; persons who live or work near the facility;
17 community, civic, environmental advocacy, and other organizations;
18 trade and business associations; and agencies of the State and local
19 governments and their representative associations.

20 **"§ 113A-244. Authority to enter into a RFA; limitations.**

21 (a) The Secretary may enter into a RFA with any person who engages in the
22 discharge or emission of pollutants or contaminants, or the management of waste, and
23 who is regulated under environmental law. A RFA may modify only those applicable
24 environmental requirements that implement environmental law. Each RFA may apply
25 only to a single facility.

26 (b) A RFA may authorize the emission or discharge of a pollutant, contaminant, or
27 waste from a facility that exceeds a specific emissions or discharge standard or limitation
28 adopted under environmental law but may not authorize any act or practice that would
29 result in the violation of an ambient standard.

30 (c) The Secretary may delegate the authority to enter into a RFA to a Deputy
31 Secretary, Assistant Secretary, or division director of the Department. If a proposed RFA
32 affects programs in two or more divisions of the Department, the Secretary shall
33 designate a lead agency to negotiate the RFA.

34 (d) If a proposed RFA affects a program that is delegated to and administered by a
35 regional or local authority, the Secretary may not enter into the RFA unless the regional
36 or local authority approves the RFA. If a proposed RFA affects only a program that is
37 delegated to and administered by a regional or local authority, the Secretary may request
38 that the regional or local authority negotiate the RFA.

39 (e) The Secretary may not enter into a RFA without the approval of each
40 commission that is authorized to adopt rules governing a program that would be affected
41 by the RFA. The Secretary shall submit a proposed RFA to each commission that is
42 authorized to adopt rules governing a program that would be affected by the proposed
43 RFA. Each commission shall review the proposed RFA and may object to it within 90

1 days of the date the proposed RFA is submitted by the Secretary. If a commission does
2 not object to a proposed RFA within the 90-day review period, the commission is
3 presumed to have approved the proposed RFA. If a commission objects to a proposed
4 RFA, the commission shall provide a written statement of the objection and the reasons
5 for the objection to the Secretary.

6 (f) If the proposed RFA affects a program that is delegated, authorized, or
7 approved by the United States Environmental Protection Agency, the Secretary may not
8 enter into the RFA without the concurrence of the United States Environmental
9 Protection Agency. The Secretary may enter into an agreement with the United States
10 Environmental Protection Agency that provides for review and implementation of RFAs.

11 (g) This Article and any RFA entered into under this Article shall not be construed
12 to authorize a variance from a provision of the United States Code, the General Statutes,
13 or any local ordinance related to zoning or land-use planning.

14 **"§ 113A-245. Application for a RFA.**

15 A person may apply for approval of a RFA by submitting the following information to
16 the Secretary:

17 (1) The proposed RFA.

18 (2) A description of the proposed regulatory flexibility project that includes
19 a description of the facility and how its operation will be affected under
20 the RFA, whether operation of the facility under the RFA will achieve
21 overall results that are equal to or better than those required by
22 otherwise applicable environmental requirements and how this will be
23 accomplished, the nature of the anticipated results, and the method to
24 document compliance with the commitments made by the applicant in
25 the RFA.

26 (3) An explanation of why the applicant's goals under the proposed RFA
27 could not be achieved under applicable environmental requirements.

28 (4) All information necessary to determine that the proposed RFA satisfies
29 the criteria for approval of a RFA under G.S. 113A-248.

30 (5) A statement that identifies each permit that is required by environmental
31 law for the operation of the facility, states whether the applicant holds or
32 has applied for each of these permits, indicates the status of each permit
33 or permit application.

34 (6) A statement that identifies each applicable environmental requirement,
35 including any permit requirement, that would be modified or superseded
36 by the RFA and describes the manner in which each requirement would
37 be modified or superseded.

38 (7) An analysis of all anticipated environmental benefits and adverse
39 environmental impacts that may result if the proposed RFA is approved
40 and implemented.

41 (8) Any other information requested by the Secretary or Secretary's
42 delegate.

43 **"§ 113A-246. Public notice and comment.**

1 (a) At least 45 days prior to acting on an application to approve, significantly
2 modify, or renew a RFA, the Secretary shall require the applicant to provide public notice
3 of the proposed action by:

4 (1) Publication in a newspaper having general circulation in each county in
5 which the facility covered by the proposed RFA is located.

6 (2) Mail to each unit of local government having jurisdiction over any part
7 of the facility to which the RFA applies.

8 (3) Providing a copy of the application for the proposed RFA for public
9 inspection in at least one location selected by the Secretary.

10 (b) The notice shall:

11 (1) Provide a brief description of the proposed RFA and the action to be
12 taken.

13 (2) Identify the facility to which the proposed RFA applies.

14 (3) Summarize anticipated environmental benefits and adverse
15 environmental impacts.

16 (4) Identify the rules and permit requirements that will be modified or
17 superseded by the proposed RFA.

18 (5) Include a statement as to the public availability of the application for the
19 proposed RFA.

20 (6) State the time period and means for submitting written comment and for
21 requesting a public hearing on the proposed RFA.

22 (c) The Secretary may require that the notice of a proposed RFA be published in
23 additional newspapers and provided to additional persons. The Secretary may extend the
24 period for comment by up to 60 additional days.

25 (d) If the Secretary determines that significant public interest exists, or that the
26 public interest will be served, the Secretary shall require a public hearing to be held on
27 the proposed RFA. Notice of a public hearing shall be given, in the manner required by
28 this section for public notices, at least 30 days before the public hearing.

29 **"§ 113A-247. Stakeholder Involvement Plan.**

30 If the Secretary determines that significant public interest exists, or that the public
31 interest will be served, the Secretary shall require that the applicant for a RFA implement
32 and maintain a Stakeholder Involvement Plan. A Stakeholder Involvement Plan shall
33 provide for the identification and notification of stakeholders and stakeholder
34 participation, review, and comment during the development of a RFA.

35 **"§ 113A-248. Criteria for approval of a RFA.**

36 The Secretary may enter into a RFA only if the applicant demonstrates to the
37 Secretary or the Secretary's delegate that:

38 (1) The overall environmental protection will equal or exceed that which
39 would be required in the absence of the RFA.

40 (2) The facility to which the RFA applies has substantially complied with
41 federal and State laws, regulations, and rules for the protection of the
42 environment and the terms of any other RFA that applies to the facility

1 for at least the three-year period immediately prior to entry into the
2 RFA.

3 (3) The applicant is financially qualified to carry out the activities covered
4 by the RFA.

5 (4) The applicant holds all permits that are required by environmental laws
6 for the operation of the facility.

7 (5) For a RFA for a multimedia project or for a single media project that is
8 not intended to provide for a level of environmental protection that
9 substantially exceeds the level of protection required by environmental
10 law and applicable environmental requirements, the applicant has, or
11 will implement, an environmental management system for the facility at
12 the time the RFA becomes effective and will maintain the
13 environmental management system so long as the RFA is in force.

14 (6) The applicant implements a Stakeholder Involvement Plan as required
15 by the Secretary.

16 (7) Implementation of the RFA will not increase overall occupational health
17 or safety risks to employees at the facility.

18 (8) Implementation of the RFA will not result in an unjust or
19 disproportionate environmental impact on any socioeconomic or
20 demographic group.

21 **"§ 113A-249. Environmental management systems.**

22 (a) For purposes of this Article, an environmental management system is a
23 program for the planning, implementation, review, and improvement of the operation of a
24 facility subject to a RFA that is designed to ensure that the facility complies with the
25 specific performance standards set out in the RFA and the applicable environmental
26 requirements not modified by the RFA.

27 (b) Certification by an accredited third-party registrar that a facility meets the
28 standards established by the International Organization for Standardization as 'ISO
29 14001' presumptively satisfies the requirement that an applicant for a RFA implement an
30 environmental management system.

31 **"§ 113A-250. Standard terms and conditions of a RFA.**

32 Each RFA shall contain terms and conditions that provide for all of the following:

33 (1) A statement that describes the location and operation of the facility with
34 sufficient detail so as to clearly establish the area and activities that are
35 subject to the RFA.

36 (2) A statement that identifies the ownership and management structure of
37 the facility.

38 (3) A statement that operation of the facility under the RFA is intended to
39 achieve overall environmental results that either:

40 a. Equal the results that are required by otherwise applicable
41 environmental requirements.

42 b. Exceed the results that are required by otherwise applicable
43 environmental requirements.

- 1 c. Exceed the results that have been achieved by past operation of
2 the facility in compliance with otherwise applicable
3 environmental requirements.
- 4 (4) A statement that identifies each permit that is affected by the RFA and a
5 requirement that the owner or operator of the facility take all actions
6 required to maintain each permit in force.
- 7 (5) A statement that identifies each applicable environmental requirement,
8 including any permit requirements, that are modified or superseded by
9 the RFA and describes the manner in which each requirement is
10 modified or superseded.
- 11 (6) A description of how the operation of the facility will be modified by
12 the RFA.
- 13 (7) A detailed description of how the RFA will be implemented and an
14 implementation schedule.
- 15 (8) A statement of the specific performance standards that the owner or
16 operator of the facility agrees to meet under the RFA and of any
17 nonobligatory performance goals.
- 18 (9) A statement of any specific performance goals that the owner or
19 operator of the facility hopes to achieve under the RFA.
- 20 (10) A description of how compliance with this Article and the RFA,
21 including compliance with the specific performance standards set out in
22 the RFA and applicable environmental requirements not modified by the
23 RFA, will be monitored, documented, and reported. The RFA shall
24 require that the owner or operator of the facility prepare and submit to
25 the Department a comprehensive performance review at least annually.
- 26 (11) A requirement that the owner or operator implement and maintain an
27 environmental management system as required by G.S. 113A-248(5) so
28 long as the RFA is in force.
- 29 (12) If the Secretary requires a Stakeholder Involvement Plan, a requirement
30 that the owner or operator of the facility implement the Plan.
- 31 (13) A specific description of all incentives that are provided under the RFA.
- 32 (14) The term of the RFA and a notice that the RFA may be modified or
33 renewed only as provided in G.S. 113A-253.
- 34 (15) A notice that the RFA is subject to termination as provided in G.S.
35 113A-254.
- 36 (16) Additional terms, consistent with this Article, that may be required by
37 the Secretary or the Secretary's delegate.

38 **"§ 113A-251. Effect of an approved RFA.**

39 A RFA modifies applicable environmental requirements only to the extent that the
40 RFA specifically identifies an applicable environmental requirement and provides for a
41 specific modification of those requirements. To the extent that a RFA provides for a
42 specific modification of an applicable environmental requirement, that requirement is
43 superseded and the owner, operator, and every person who is responsible for any aspect

1 of the operation of a facility that is subject to the RFA is relieved of any obligation to
2 comply with the requirement. All provisions of environmental law and any applicable
3 environmental requirements that are not addressed by the RFA shall continue to apply to
4 the operation of the facility. The owner, operator, and every person who is responsible
5 for any aspect of the operation of a facility that is subject to a RFA shall comply with
6 environmental law, the terms of the RFA, and all applicable environmental requirements
7 that are not modified by the RFA. The terms of a RFA and applicable environmental
8 requirements that are not modified by the RFA may be enforced as provided in this
9 Article and environmental law.

10 **"§ 113A-252. Incentives.**

11 (a) In order to encourage the development of programs, projects, and activities that
12 will achieve overall environmental results that are better than those required by otherwise
13 applicable environmental requirements, including those under a RFA, the Secretary may
14 provide any of the following incentives:

- 15 (1) Formal, public recognition by the Governor or the Secretary.
- 16 (2) Modified requirements for renewal of environmental permits if, since
17 the last issuance of those permits, there have been no material changes
18 in equipment and operation at the facility; no violations of federal, State,
19 or local laws, regulations, or rules for the protection of the environment.
- 20 (3) Technical assistance with the development and implementation of a
21 pollution prevention program.
- 22 (4) Technical assistance with the development and implementation of
23 measures designed to improve compliance.
- 24 (5) Modification of reporting and monitoring requirements.
- 25 (6) Consolidation of applications for permits issued by the Department.
- 26 (7) Accelerated review and processing of permit applications.
- 27 (8) Increased self-monitoring, self-reporting, self-certification, or third-
28 party certification to demonstrate compliance with environmental laws
29 and permits.
- 30 (9) Ability to establish facility-wide caps on the emission or discharge of
31 pollutants, contaminants, or wastes into a single media.

32 (b) The Secretary may withdraw any or all incentives provided under this section
33 for any of the reasons set out in G.S. 113A-254 for termination of a RFA. The Secretary
34 may withdraw any or all incentives provided under subsection (a) of this section if the
35 Secretary finds that overall environmental results that are better than those required by
36 otherwise applicable environmental requirements have not been achieved. The Secretary
37 shall withdraw all incentives provided under this section if the Secretary finds that the
38 owner or operator of a facility has failed to comply with the RFA or upon the
39 termination, withdrawal, or expiration of the RFA.

40 **"§ 113A-253. Duration, renewal, and modification of a RFA.**

41 (a) A RFA shall remain in force for five years unless the Secretary and the owner
42 or operator agree to a shorter term or the RFA is terminated as provided in G.S. 113A-
43 254.

1 (b) Subject to the limitations of G.S. 113A-244 and the criteria set out in G.S.
2 113A-248, upon application by the owner or operator, the Secretary may renew or
3 modify a RFA. A RFA may be renewed for a term of five years unless the Secretary and
4 the owner or operator agree to a shorter term.

5 (c) Before deciding whether to renew or modify a RFA, the Secretary may require
6 the owner or operator of a facility to obtain an evaluation of the performance of the
7 facility under the RFA, including compliance with the specific performance standards set
8 out in the RFA and applicable environmental requirements not modified by the RFA, by
9 a third party acceptable to both the owner or operator and the Secretary.

10 **"§ 113A-254. Termination of a RFA.**

11 (a) The Secretary may terminate a RFA if the Secretary finds that the owner or
12 operator has failed to comply with any provision of environmental law, this Article, the
13 RFA, or any applicable environmental requirement not modified by the RFA. The
14 Secretary may allow the owner or operator a reasonable time, not to exceed 90 days after
15 the owner or operator discovers or receives written notice of the deficiency, in which to
16 correct the deficiency. The Secretary shall terminate the RFA if the owner or operator
17 fails to correct the deficiency within the time allowed.

18 (b) The Secretary shall terminate a RFA if the Secretary finds that the owner or
19 operator has failed to disclose a violation of this Article, the RFA, or any applicable
20 environmental requirement not modified by the RFA to the Department within 48 hours
21 of the time that the owner or operator discovers the violation. The Secretary shall
22 terminate a RFA if the Secretary finds that the owner or operator is not financially
23 qualified to carry out the activities covered by the RFA.

24 (c) A RFA automatically terminates if the owner or operator fails to keep in force
25 each permit that is required by environmental law for the operation of the facility.

26 (d) Notwithstanding any other provision of this section, the Secretary may
27 immediately terminate a RFA if the Secretary finds that the facility subject to the RFA
28 poses an imminent hazard to human health or the environment. If the Secretary finds that
29 a facility subject to the RFA poses an imminent hazard to human health or the
30 environment, the Secretary may take any action necessary to abate the imminent hazard
31 as provided in G.S. 130A-20. The provisions of G.S. 130A-20 apply to the abatement of
32 an imminent hazard that results from a violation of any provision of environmental law.

33 (e) The owner or operator of a facility subject to a RFA may terminate the RFA by
34 giving notice to the Secretary at least 30 days prior to the termination.

35 (f) Effective upon termination of a RFA, any incentives provided by the State in
36 connection with the RFA shall be withdrawn.

37 (g) Upon termination of a RFA, all applicable environmental requirements apply
38 to the facility. Unless the RFA was terminated for failure to keep a required permit in
39 force, the owner or operator may continue to operate the facility to the extent that the
40 owner or operator is able to do so in compliance with environmental law. The
41 Department shall provide expedited review of any application for a permit or permit
42 modification for a facility for which a RFA is terminated.

43 **"§ 113A-255. Enforcement.**

1 (a) A violation of a term or condition of a RFA is subject to administrative, civil,
2 and criminal penalties and remedies to the same extent, and the terms and conditions of a
3 RFA may be enforced in the same manner, as the otherwise applicable environmental
4 requirements that are modified or superseded by the RFA.

5 (b) No person shall be subject to any administrative, civil, or criminal penalty,
6 including injunctive relief, as a result of any failure to meet a performance goal set out in
7 a RFA pursuant to G.S. 113A-250(9).

8 (c) Nothing in this Article shall limit the authority of the Attorney General, a
9 district attorney, the Secretary, any agency head, regulatory commission, or regional or
10 local authority to initiate an administrative, civil, or criminal action against a person for a
11 violation of any applicable environmental requirement, except to the extent that the
12 requirement was modified pursuant to this Article at the time the violation occurred.
13 Nothing in this Article shall limit the authority of the Attorney General, a district
14 attorney, the Secretary, any agency head, regulatory commission, or regional or local
15 authority to initiate an administrative, civil, or criminal action against a person for a
16 violation of any federal, State, or local environmental law.

17 **"§ 113A-256. Judicial review.**

18 (a) A decision to approve, disapprove, modify, renew, terminate, or withdraw
19 from a RFA is at the sole discretion of the Secretary. A decision to approve, disapprove,
20 modify, renew, terminate, or withdraw from a RFA, and any decision to provide or
21 withdraw any incentive, does not create a right, duty, or privilege within the meaning of
22 G.S. 150B-2(2) and is not subject to review in an administrative hearing under Article 3
23 of Chapter 150B of the General Statutes. A decision by the Secretary or the Secretary's
24 delegate to approve, disapprove, modify, renew, terminate, or withdraw from a RFA, and
25 any decision to provide or withdraw any incentive, is a final agency decision and is
26 subject to judicial review as provided in Article 4 of Chapter 150B of the General
27 Statutes.

28 (b) A person seeking judicial review pursuant to this section shall be deemed to
29 have exhausted all administrative remedies available by statute or rule. To obtain judicial
30 review under this section, the person seeking review must file a petition in the Superior
31 Court of Wake County, the county where the person resides, any county where any owner
32 or operator resides or has his, her, or its principal place of business, or any county in
33 which any portion of the facility is located. A person seeking review under this section
34 must file the petition within 30 days after the decision of the Secretary or the Secretary's
35 delegate is served on the owner or operator of the facility subject to the RFA.

36 **"§ 113A-257. Adoption of rules.**

37 The Secretary, the Department, any commission that is authorized to adopt rules
38 governing a program that would be affected by the RFA, and any regional or local
39 authority that administers a program that would be affected by a RFA may adopt rules to
40 implement this Article.

41 **"§ 113A-258. Reports.**

42 (a) On or before 1 September of each year, the Secretary shall prepare and submit
43 to the Environmental Review Commission a report on the implementation of this Article

1 during the previous fiscal year. The report shall evaluate the extent to which the purposes
2 of this Article are being achieved. The report shall also evaluate whether any additional
3 environmental regulatory programs should be included within the scope of this Article.
4 The report may include any recommendations to improve the effectiveness of this
5 Article, including additional incentives.

6 (b) The Secretary shall periodically evaluate applicable environmental
7 requirements that are modified by RFAs that have been successfully implemented to
8 determine whether and to what extent those modifications could be extended and whether
9 any applicable environmental requirement should be revised. Based on this evaluation,
10 the Secretary may request the appropriate regulatory commission to initiate rule making
11 or may recommend proposed legislation to the Environmental Review Commission.

12 (c) The Secretary shall keep accurate records of the costs incurred by the
13 Department to implement this Article. On or before 1 January and 1 July of each year,
14 the Secretary shall report to the Environmental Review Commission as to the number of
15 RFAs that have been submitted for review and the costs incurred by the Department to
16 review and act on each RFA. The Environmental Review Commission shall evaluate
17 these reports and, if appropriate, propose legislation to establish a reasonable fee to cover
18 the costs incurred by the Department to implement this Article.

19 (d) The Environmental Review Commission shall periodically evaluate the
20 implementation of this Article to determine whether the definition of environmental law
21 set out in G.S. 113A-243 should be amended to include additional environmental
22 regulatory programs within the scope of this Article."

23 Section 2. The Secretary of Environment and Natural Resources shall seek to
24 enter into an agreement with the United States Environmental Protection Agency
25 (USEPA) that provides for review and implementation of Regulatory Flexibility
26 Agreements (RFA), as provided in G.S. 113A-244(f), as enacted by Section 1 of this act.
27 The Secretary shall seek to reach an agreement with USEPA that provides that USEPA
28 will review and comment on each proposed RFA within 90 days after the Secretary
29 submits the proposed RFA. No later than 1 November 2000, the Secretary shall report on
30 progress in reaching an agreement with USEPA governing review and comment on
31 proposed RFAs to the Environmental Review Commission.

32 Section 3. The Secretary of Environment and Natural Resources shall make
33 the first report required by G.S. 113A-258(a), as enacted by Section 1 of this act, on or
34 before 1 September 2001. The Secretary of Environment and Natural Resources shall
35 make the first report required by G.S. 113A-258(c), as enacted by Section 1 of this act, on
36 or before 1 January 2001.

37 Section 4. This act constitutes a recent act of the General Assembly within the
38 meaning of G.S. 150B-21.1. The Secretary of Environment and Natural Resources, the
39 Department of Environment and Natural Resources, the Environmental Management
40 Commission, the Commission for Health Services, and any regional or local authority
41 that administers a program that would be affected by Section 1 of this act may adopt
42 temporary and permanent rules to implement this act. Notwithstanding G.S. 150B-
43 21.1(a)(2) and 26 NCAC 2C.0102(11), this section shall continue in effect until all rules

1 necessary to implement this act have become effective as either temporary rules or
2 permanent rules. However, this act shall not be construed to require the adoption of
3 temporary or permanent rules.

4 Section 5. In enacting this act, it is the intent of the General Assembly to
5 authorize a pilot program. The Secretary of Environment and Natural Resources may
6 enter into no more than 10 Regulatory Flexibility Agreements between the effective date
7 of this act and 1 July 2002. Notwithstanding G.S. 113A-253, as enacted by Section 1 of
8 this act, a Regulatory Flexibility Agreement may not be renewed.

9 Section 6. This act shall not be construed to obligate the General Assembly to
10 appropriate funds to implement the provisions of this act. The Department of
11 Environment and Natural Resources is authorized to implement the provisions of this act
12 using funds otherwise appropriated or available to the Department.

13 Section 7. The Department of Environment and Natural Resources shall not
14 implement a new rule or implement any part of an existing rule outside the areas for
15 which the rule was originally approved without adopting a temporary or permanent rule
16 pursuant to Article 2A of Chapter 150B of the General Statutes.

17 Section 8. Section 7 of this act becomes effective when this act becomes law.
18 All other sections of this act become effective 1 October 2000. Sections 1 through 6 of
19 this act expire on 30 June 2007 or when all Regulatory Flexibility Agreements expire,
20 whichever first occurs.