

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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HOUSE BILL 1064

Short Title: Shale Gas/Develop Reg. Prgm./Leg. Oversight. (Public)

Sponsors: Representatives Gillespie and Stone (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Environment.

May 23, 2012

A BILL TO BE ENTITLED

1
2 AN ACT TO (1) EXTEND THE STUDY OF OIL AND GAS EXPLORATION IN THE
3 STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC
4 FRACTURING FOR THAT PURPOSE; (2) TO DIRECT THE DEPARTMENT OF
5 ENVIRONMENT AND NATURAL RESOURCES TO FORMULATE SPECIFIC
6 LEGISLATIVE RECOMMENDATIONS FOR REGULATION OF THE USE OF
7 HORIZONTAL DRILLING AND HYDRAULIC FRACTURING; (3) REQUIRE
8 ENHANCED CONSUMER AND LANDOWNER PROTECTIONS IN CONNECTION
9 WITH LEASES EXECUTED FOR THE EXPLORATION AND EXTRACTION OF OIL
10 OR GAS; (4) ESTABLISH THE JOINT LEGISLATIVE COMMISSION ON ENERGY
11 POLICY WITH LEGISLATIVE OVERSIGHT OF ALL MATTERS RELATED TO OIL
12 AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE AND OTHER
13 ENERGY-RELATED ISSUES; AND (5) APPROPRIATE FUNDS FOR ADDITIONAL
14 STAFFING REQUIRED.

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16 **PART I. DEVELOPMENT OF REGULATORY PROGRAM**

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18 Whereas, in S.L. 2011-276, the General Assembly directed the Department of
19 Environment and Natural Resources and other entities to study the issue of oil and gas
20 exploration in the State and the use of horizontal drilling and hydraulic fracturing for that
21 purpose, including study of (i) oil and gas resources present in the Triassic Basins and in any
22 other areas of the State; (ii) methods of exploration and extraction of oil and gas, including
23 directional and horizontal drilling and hydraulic fracturing; (iii) potential environmental,
24 economic, and social impacts arising from such activities, as well as impacts on infrastructure;
25 and (iv) appropriate regulatory requirements for management of oil and gas exploration
26 activities with particular attention to regulation of horizontal drilling and hydraulic fracturing
27 for that purpose; and

28 Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural
29 Resources (DENR), in conjunction with the Department of Commerce, the Department of
30 Justice, and the Rural Advancement Foundation International (RAFI-USA), issued a draft
31 report on oil and gas resources in March 2012; and

32 Whereas, that draft report states "[a]fter reviewing other studies and experiences in
33 oil and gas-producing states, DENR believes that hydraulic fracturing can be done safely as
34 long as the right protections are in place. It will be important to have those measures in place
35 before issuing permits for hydraulic fracturing in North Carolina's shale formations."; and



1 Whereas, that draft report states "[a] number of states have experienced problems
2 associated with natural gas exploration and development because the appropriate measures
3 were not in place from the beginning—forcing both the state and the industry to react after
4 damage had already been done."; and

5 Whereas, that draft report states "[a] complete oil and gas permitting program will
6 require more detailed standards than it is possible to provide in this report and those standards
7 should be based on conditions in North Carolina. Conditions in the Triassic Basins of North
8 Carolina are not identical to those found in Pennsylvania or other gas-producing states."; and

9 Whereas, the draft report states "[a] comprehensive oil and gas regulatory program
10 requires such a broad range of standards—many of them technical—that DENR cannot make
11 specific recommendations on a full set of regulatory standards without further study."; and

12 Whereas, the draft report states "[t]he development of specific standards for gas
13 production and hydraulic fracturing (such as siting criteria, waste management guidelines and
14 well construction standards) will require a more detailed discussion of standards appropriate for
15 North Carolina conditions."; Now, therefore,

16 The General Assembly of North Carolina enacts:

17 **SECTION 1.(a)** The Department of Environment and Natural Resources, and other
18 entities as specifically designated below, shall continue the study required by S.L. 2011-276
19 concerning the issue of oil and gas exploration in the State and the use of horizontal drilling
20 and hydraulic fracturing for that purpose. Specifically, the Department shall gather any
21 additional information and data necessary to formulate detailed standards and regulatory
22 requirements for management of natural gas exploration and development activities using
23 horizontal drilling and hydraulic fracturing that are appropriate to address the particular
24 conditions existing in North Carolina. At a minimum, the Department shall formulate specific
25 recommendations and submit draft legislation on all of the following:

- 26 (1) Development of a modern oil and gas regulatory program, taking into
27 consideration the processes involved in hydraulic fracturing and horizontal
28 drilling technologies, and long-term prevention of physical or economic
29 waste in developing oil and gas resources in the State. These
30 recommendations shall include necessary updates and enhancements to
31 existing oil and gas regulations, including, but not limited to, requirements
32 pertaining to:
- 33 a. Collection of baseline data, including groundwater, surface water,
34 and air quality in areas where oil and gas exploration and
35 development activities are proposed.
 - 36 b. State stormwater regulatory controls for oil and gas drilling sites.
 - 37 c. Water use associated with the process of hydraulic fracturing in light
38 of water supply in the areas of proposed activity, competing water
39 uses in those areas, and expected environmental impacts from such
40 water withdrawals, including, but not limited to, a requirement that
41 oil and gas operators prepare and have a water and wastewater
42 management plan approved by the Department, which, among other
43 things, limits water withdrawals during times of drought and periods
44 of low flows.
 - 45 d. Management of oil and gas wastes, including storage, transportation,
46 and disposal of wastes that may contain radioactive materials or
47 wastes that may be toxic or have other hazardous wastes'
48 characteristics, that are not otherwise regulated as a hazardous waste
49 by the federal Resource Conservation and Recovery Act, such as
50 top-hole water, brines, drilling fluids, additives, drilling muds,
51 stimulation fluids, well servicing fluids, oil, production fluids, and

- 1 drill cuttings from the drilling, alteration, production, plugging, or
2 other activity associated with oil and gas wells.
- 3 e. Full disclosure of hydraulic fracturing chemicals and constituents to
4 regulatory agencies, and, with the exception of those items
5 constituting trade secrets, requirements for disclosure of hydraulic
6 fracturing chemicals and constituents to the public.
- 7 f. Prohibitions on use of certain chemicals and constituents in hydraulic
8 fracturing fluids, particularly diesel fuel.
- 9 g. State regulation of toxic air emissions from drilling operations. In
10 formulating appropriate standards, the Department shall assess
11 emissions from oil and gas exploration and development activities
12 that use horizontal drilling and hydraulic fracturing technologies,
13 including emissions from associated truck traffic in order to (i)
14 determine the adequacy of the State's current air toxics program to
15 protect landowners who lease their property to drilling operations,
16 and (ii) determine the impact on ozone levels in the area in order to
17 determine measures needed to maintain compliance with federal
18 ozone standards.
- 19 h. Information and data to be submitted in association with applications
20 for permits to conduct oil and gas exploration and development
21 activities using the processes of horizontal drilling and hydraulic
22 fracturing, which may include submission of hydrogeological
23 investigations and identification of mechanisms to prevent and
24 diagnose sources of groundwater contamination in the area of drilling
25 sites. In formulating these requirements, the Department shall
26 specifically examine (i) how North Carolina's geology differs from
27 other states where oil and gas exploration and development activities
28 using the processes of horizontal drilling and hydraulic fracturing are
29 common, and (ii) the routes of possible groundwater contamination
30 resulting from these activities and the potential role of vertical
31 geological structures such as dikes and faults as conduits for
32 groundwater contamination.
- 33 i. Well construction standards to address the additional pressures of
34 horizontal drilling and hydraulic fracturing, such as standards for
35 casing and cementing sufficient to handle highly pressurized
36 injection of fluids into a well for purposes of fracturing bedrock and
37 extraction of gas, and construction standards for other gas production
38 infrastructure, such as storage pits and tanks.
- 39 j. Siting standards for wells and other gas production infrastructure,
40 such as storage pits and tanks, including appropriate setback
41 requirements and identification of areas, such as floodplains, where
42 oil and gas exploration and production activities should be
43 prohibited.
- 44 k. Installation of safety devices, such as blow-out preventers, and
45 actions to be taken in response to operational or mechanical
46 problems, including approved emergency response plans and
47 certified personnel to implement these plans as needed.
- 48 l. Notice, record keeping, and reporting.
- 49 m. Well closure, site reclamation, post-closure monitoring, and financial
50 assurance.

- 1 (2) Review and evaluate the advisability and efficacy of creation of a new board
2 or commission with jurisdiction over matters pertaining to oil and gas
3 exploration and development, which would withdraw jurisdiction over such
4 activities from existing entities such as the Environmental Management
5 Commission and the Mining Commission.
- 6 (3) Identification of appropriate levels of funding and potential sources for that
7 funding, including permit fees, bonds, taxes, and impact fees, necessary to
8 (i) support local governments impacted by the industry and associated
9 activities; (ii) address expected infrastructure impacts, including, but not
10 limited to, repair of roads damaged by truck traffic and heavy equipment;
11 (iii) cover any costs to the State for administering an oil and gas regulatory
12 program, including remediation and reclamation of drilling sites when
13 necessary due to abandonment or insolvency of an oil or gas operator or
14 other responsible party; and (iv) any other issues that may need to be
15 addressed in the Department's determination. The Department shall develop
16 recommendations on appropriate levels of funding in conjunction with the
17 Department of Transportation, the North Carolina League of Municipalities,
18 and the North Carolina Association of County Commissioners, as necessary.
- 19 (4) Identification of potential impacts on local governments and local
20 infrastructure, including, but not limited to, damage to roads by truck traffic
21 and heavy equipment, and recommendations on measures to mitigate those
22 impacts, as well as recommendations concerning the extent to which local
23 governments should have regulatory authority over oil and gas exploration
24 and development activities. The Department of Transportation, in
25 consultation with the North Carolina League of Municipalities and the North
26 Carolina Association of County Commissioners, shall identify these impacts
27 and formulate recommendations for inclusion in the study and
28 recommendations required by this act.
- 29 (5) Preparations necessary for appropriate response of State agencies, local first
30 responders, and industry to a well blowout, chemical spill, or other
31 emergency related to exploration and development activities, including
32 requirements for contingency planning and spill risk management
33 procedures. The Department shall develop these proposals in conjunction
34 with the Division of Emergency Management of the Department of Public
35 Safety.
- 36 (6) Development of proposals concerning landowner and consumer protections,
37 including, but not limited to, provisions concerning forced pooling or
38 unitization, mineral leases, disclosures to owners of land on which drilling is
39 to occur, notice of oil and gas exploration and development activities to
40 landowners in proximity to proposed sites, compensation for damages,
41 payment of royalties, and remedies for breach. The Consumer Protection
42 Division of the North Carolina Department of Justice shall develop these
43 proposals in consultation with the Department of Environment and Natural
44 Resources and the Rural Advancement Foundation International (RAFI) for
45 inclusion in the study and recommendations required by this act.
- 46 (7) Development of proposals concerning an operator's liability for
47 environmental contamination caused by exploration and development
48 activities, particularly as it concerns groundwater contamination. The
49 Consumer Protection Division of the North Carolina Department of Justice
50 shall develop these proposals in consultation with the Department of
51 Environment and Natural Resources and the Rural Advancement Foundation

1 International (RAFI) for inclusion in the study and recommendations
2 required by this act.

3 (8) Development of a coordinated permitting process for oil and gas exploration
4 and development activities, which maintains the environmental permitting
5 program for such activities within the Department of Environment and
6 Natural Resources where it will benefit from the expertise of State
7 geological staff and the ability to coordinate air, land, and water quality
8 permitting. In developing a coordinated permitting process, the Department
9 shall also examine and make recommendations concerning an appropriate
10 fee structure applicable to oil and gas exploration and development activities
11 that will ensure adequate and sustainable staffing levels in the long term,
12 despite fluctuations in such activities and corresponding markets.

13 (9) Necessary data management capabilities and development of an electronic
14 permitting program.

15 (10) Identification of gaps in regulatory authority over the siting, construction,
16 and operation of gathering pipelines.

17 **SECTION 1.(b)** The Department shall identify all existing statutes and rules
18 governing all aspects of oil and gas exploration and development activities, identify all
19 statutory and rule changes necessary to implement the recommendations formulated pursuant to
20 Section 1(a) of this act, and provide draft legislative proposals accordingly.

21 **SECTION 1.(c)** In conducting the continuing study required by Section 1(a) of this
22 act, and in formulating the associated recommendations for legislative action by Section 1(b) of
23 this act, the Department of Environment and Natural Resources shall (i) do so using a process
24 involving scientific and technical advisory groups that allows for broad public participation and
25 (ii) consult and coordinate with local governments, the North Carolina League of
26 Municipalities, the North Carolina Association of County Commissioners, the Department of
27 Commerce, the Department of Transportation, the Division of Emergency Management of the
28 Department of Public Safety, the Consumer Protection Division of the Department of Justice,
29 the State Review of Oil and Natural Gas Environmental Regulations (STRONGER), the
30 American Petroleum Institute (API), and the Rural Advancement Foundation International
31 (RAFI).

32 **SECTION 2.** The Department of Environment and Natural Resources shall submit
33 an interim report on the progress of the study and the development of recommendations
34 required by this act to the Environmental Review Commission on or before December 1, 2012.
35 For study and recommendations required by sub-subdivisions a. through f. of subdivision (1) of
36 Section 1(a) of this act, and subdivisions (2) through (6) of Section 1(a) of this act, the
37 Department shall submit a final report, including findings, recommendations, and specific
38 proposals for legislative action to the Environmental Review Commission on or before March
39 1, 2013. For study and recommendations required by sub-subdivisions g. and h. of subdivision
40 (1) of Section 1(a) of this act, the Department shall submit a final report, including findings,
41 recommendations, and specific proposals for legislative action to the Environmental Review
42 Commission on or before July 1, 2013. For study and recommendations required by
43 sub-subdivisions i. through m. of subdivision (1) of Section 1(a) of this act, subdivisions (7)
44 through (9) of Section 1(a) of this act, and Section 12(b) of this act, the Department shall
45 submit a final report, including findings, recommendations, and specific proposals for
46 legislative action to the Environmental Review Commission on or before March 1, 2014.

47 **PART II. CONSUMER PROTECTION PROVISIONS**

48 **SECTION 3.** Part 3 of Article 27 of Chapter 113 of the General Statutes reads as
49 rewritten:
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51

"Part 3. Landowner Protection.

§ 113-420. Notice and entry to property.

(a) Notice Required for Activities That Do Not Disturb Surface of Property. – If an oil ~~and~~ or gas developer or operator is not the surface owner of the property on which oil and gas operations are to occur, before entering the property for oil ~~and~~ or gas operations that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil ~~and~~ or gas drilling operations, the developer or operator shall give written notice to the surface owner at least ~~seven~~ 14 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The requirements of this subsection may not be waived by agreement of the parties. The notice, at a minimum, shall include all of the following:

- (1) The identity of person(s) requesting entry upon the property.
- (2) The purpose for entry on the property.
- (3) The dates, times, and location on which entry to the property will occur, including the estimated number of entries.

(b) Notice Required for Land-Disturbing Activities. – If an oil ~~and~~ or gas developer or operator is not the surface owner of the property on which oil ~~and~~ or gas operations are to occur, before entering the property for oil ~~and~~ or gas operations that disturb the surface, the developer or operator shall give written notice to the surface owner at least ~~14~~ 30 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The notice, at a minimum, shall include all of the following:

- (1) A description of the exploration or development plan, including, but not limited to (i) the proposed locations of any roads, drill pads, pipeline routes, and other alterations to the surface estate and (ii) the proposed date on or after which the proposed alterations will begin.
- (2) An offer of the oil and gas developer or operator to consult with the surface owner to review and discuss the location of the proposed alterations.
- (3) The name, address, telephone number, and title of a contact person employed by or representing the oil or gas developer or operator who the surface owner may contact following the receipt of notice concerning the location of the proposed alterations.

(b1) Persons Entering Land; Identification Required; Presumption of Proper Protection While on Surface Owners' Property. – Persons who enter land on behalf of an oil or gas developer or operator for oil and gas operations shall carry on their person identification sufficient to identify themselves and their employer or principal and shall present the identification to the surface owner upon request. Entry upon land by such a person creates a rebuttable presumption that the surface owner properly protected the person against personal injury or property damage while the person was on the land.

(c) Venue. – If the oil ~~and~~ or gas developer or operator fails to give notice or otherwise comply with the provisions of as provided in this section, the surface owner may seek appropriate relief in the superior court for the county in which the oil or gas well is located and may receive actual damages.

"§ 113-421. Compensation for damages.Presumptive liability for water contamination; compensation for other damages; responsibility for reclamation.

(a) Presumptive Liability for Water Contamination. – It shall be presumed that an oil or gas developer or operator is responsible for contamination of a water supply that is within 2,500 feet of an oil or gas well that is part of the oil or gas developer or operator's activities unless the presumption is rebutted by a defense established as set forth in subdivision (1) of this subsection. If a contaminated water supply is located within 2,500 feet of an oil or gas well, in addition to any other remedy available at law or in equity, including payment of compensation for damage to the water supply, the developer or operator shall provide a replacement water

1 supply to the surface owner and other persons using the water supply at the time the oil or gas
2 developer's activities were commenced on the property, which water supply shall be adequate
3 in quality and quantity for those persons' use.

4 (1) In order to rebut a presumption arising pursuant to subsection (a) of this
5 section, an oil or gas developer or operator shall have the burden of proving
6 any of the following:

7 a. The contamination existed prior to the commencement of the drilling
8 activities of the oil or gas developer or operator, as evidenced by a
9 pre-drilling test of the water supply in question conducted in
10 conformance with G.S. 113-423(e).

11 b. The surface owner or owner of the water supply in question refused
12 the oil or gas developer or operator access to conduct a pre-drilling
13 test of the water supply conducted in conformance with
14 G.S. 113-423(e).

15 c. The water supply in question is not within 2,500 feet of an oil or gas
16 well that is part of the oil or gas developer or operator's activities.

17 d. The contamination occurred as the result of a cause other than
18 drilling activities of the developer or operator.

19 (a1) Compensation for Other Damages Required. – The oil ~~and~~ or gas developer or
20 operator shall be obligated to pay the surface owner compensation for all of the following:

21 (1) Any damage to a water supply in use prior to the commencement of the
22 activities of the developer or operator which is due to those activities.

23 (2) The cost of repair of personal property of the surface owner, which personal
24 property is damaged due to activities of the developer or operator, up to the
25 value of replacement by personal property of like age, wear, and quality.

26 (3) Damage to any livestock, crops, or timber determined according to the
27 market value of the resources destroyed, damaged, or prevented from
28 reaching market due to the oil or gas developer's or operator's activities.

29 (a2) Reclamation of Surface Property Required. – An oil or gas developer or operator
30 who is not the surface owner of the property on which oil or gas operations are to occur shall
31 reclaim all surface areas affected by its operations no later than two years following completion
32 of the operations. Prior to commencement of activities on the property, the oil or gas developer
33 or operator shall provide a bond running to the surface owner sufficient to cover reclamation of
34 the surface owner's property.

35 (b) Time Frame for Compensation. – When compensation is required, the surface
36 owner shall have the option of accepting a one-time payment or annual payments for a period
37 of time not less than 10 years.

38 (c) Venue. – The surface owner has the right to seek damages pursuant to this section in
39 the superior court for the county in which the oil or gas well is located. The superior court for
40 the county in which the oil or gas well is located has jurisdiction over all proceedings brought
41 pursuant to this section. If the surface owner or the surface owner's assignee is the prevailing
42 party in an action to recover unpaid ~~royalties~~, royalties or other damages owed due to activities
43 of the developer or operator, the court shall award any court costs and reasonable attorneys'
44 fees to the surface owner or the surface owner's assignee.

45 (d) Conditions precedent, notice provisions, or arbitration clauses included in lease
46 documents that have the effect of limiting access to the superior court in the county in which
47 the oil or gas well is located are void and unenforceable.

48 **"§ 113-422. Indemnification.**

49 An oil or gas developer or operator shall indemnify and hold harmless a surface owner
50 against any claims related to the developer's or operator's activities on the surface owner's
51 property, including, but not limited to, (i) claims of injury or death to any person; (ii) ~~for~~

1 damage to impacted infrastructure or water supplies; (iii) damage to a third party's property that
2 is adjacent to property on which drilling occurs, as well as real or personal property; adjacent
3 infrastructure, and wells; and (iv) violations of any federal, State, or local law, rule, regulation,
4 or ordinance, including those for protection of the environment.

5 **"§ 113-423. Maximum Required lease terms.**

6 (a) Required Information to be Provided to Potential Lessors. – Prior to executing a
7 lease for oil or gas rights or any other conveyance of any kind separating rights to oil or gas
8 from the freehold estate of surface property with a surface owner, an oil or gas developer or
9 operator, or any agent thereof, shall provide that surface owner with a copy of this Part and a
10 publication produced by the Consumer Protection Division of the North Carolina Department
11 of Justice entitled "Oil & Gas Leases: Landowners' Rights."

12 (b) Maximum Duration. – Any lease of oil or gas rights or any other conveyance of any
13 kind separating rights to oil or gas from the freehold estate of surface property shall expire at
14 the end of 10 years from the date the lease is executed, unless, at the end of the 10-year period,
15 oil or gas is being produced for commercial purposes from the land to which the lease applies.
16 If, at any time after the 10-year period, commercial production of oil or gas is terminated for a
17 period of six months or more, all rights to the oil or gas shall revert to the surface owner of the
18 property to which the lease pertains. No assignment or agreement to waive the provisions of
19 this subsection shall be valid or enforceable. As used in this subsection, the term "production"
20 includes the actual production of oil or gas by a lessee, or when activities are being conducted
21 by the lessee for injection, withdrawal, storage, or disposal of water, gas, or other fluids, or
22 when rentals or royalties are being paid by the lessee. No force majeure clause shall operate to
23 extend a lease beyond the time frames set forth in this subsection.

24 (c) Minimum Royalty Payments. – Any lease of oil or gas rights or any other
25 conveyance of any kind separating rights to oil or gas from the freehold estate of surface
26 property shall provide that the owner of the surface property to which the lease pertains shall
27 receive a royalty payment of not less than twelve and one-half percent (12.5%) of the proceeds
28 of sale of all oil or gas produced from the property, which sum shall not be diminished by
29 preproduction or postproduction costs, fees, or other charges assessed by the oil or gas
30 developer or operator against the property owner. Royalty payments shall commence no later
31 than six months after the date of first sale of product from the drilling operations subject to the
32 lease and thereafter no later than 60 days after the end of the calendar month within which
33 subsequent production is sold. At the time each royalty payment is made, the oil or gas
34 developer or operator shall provide documentation on the time period for which the royalty
35 payment is made, the quantity of product sold within that period, and the price received, at a
36 minimum. If royalty payments have not been made within the required time frames, the owner
37 of the property to which the lease pertains shall be entitled to interest on the unpaid royalties
38 commencing on the payment due date at the rate of twelve and one-half percent (12.5%) per
39 annum on the unpaid amounts. Upon written request, the owner of the surface property to
40 which the lease pertains shall be entitled to inspect and copy records of the oil or gas developer
41 or operator related to production and royalty payments associated with the lease.

42 (d) Agreements for Use of Other Resources; Associated Payments. – Any lease of oil or
43 gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold
44 estate of surface property shall clearly state whether the oil or gas developer or operator shall
45 use groundwater or surface water supplies located on the property and, if so, shall clearly state
46 the estimated amount of water to be withdrawn from the supplies on the property, and shall
47 require permission of the landowner therefore. At a minimum, water used by the developer or
48 operator shall not restrict the supply of water for domestic uses by the surface owner. The lease
49 shall provide for full compensation to the landowner for water used from the property by the
50 developer or operator in amount not less than the fair market value of the water consumed
51 based on water sales in the area at the time of use.

1 (e) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other
2 conveyance of any kind separating rights to oil or gas from the freehold estate of surface
3 property shall include a clause that requires the oil or gas developer or operator to conduct a
4 test of water supplies within 2,500 feet of a well operation at least 30 days prior to initial
5 drilling activities and at least two follow-up tests within a 24-month period after production has
6 commenced.

7 (f) Recordation of Leases. – Any lease of oil or gas rights or any other conveyance of
8 any kind separating rights to oil or gas from the freehold estate of surface property, including
9 assignments of such leases, shall be recorded within 30 days of execution in the register of
10 deeds office in the county that the land that is subject to the lease is located.

11 (g) Notice of Assignment Required. – Notice of assignment of any lease of oil or gas
12 rights or any other conveyance of any kind separating rights to oil or gas from the freehold
13 estate of surface property shall be provided to the owner of the property to which the lease
14 pertains within 30 days of such assignment.

15 **"§ 113-423.1. Surface activities.**

16 (a) Agreements on Rights and Obligations of Parties. – The developer or operator and
17 the surface owner may enter into a mutually acceptable agreement that sets forth the rights and
18 obligations of the parties with respect to the surface activities conducted by the developer or
19 operator.

20 (b) Minimization of Intrusion Required. – An oil or gas developer or operator shall
21 conduct oil and gas operations in a manner that accommodates the surface owner by
22 minimizing intrusion upon and damage to the surface of the land. As used in this subsection,
23 "minimizing intrusion upon and damage to the surface" means selecting alternative locations
24 for wells, roads, pipelines, or production facilities, or employing alternative means of
25 operation, that prevent, reduce, or mitigate the impacts of the oil and gas operations on the
26 surface, where such alternatives are technologically sound, economically practicable, and
27 reasonably available to the operator. The standard of conduct set forth in this subsection shall
28 not be construed to (i) prevent an operator from entering upon and using that amount of the
29 surface as is reasonable and necessary to explore for, develop, and produce oil and gas and (ii)
30 abrogate or impair a contractual provision binding on the parties that expressly provides for the
31 use of the surface for the conduct of oil and gas operations or that releases the operator from
32 liability for the use of the surface. Failure of an oil or gas developer or operator to comply with
33 the requirements of this subsection shall give rise to a cause of action by the surface owner.
34 Upon a determination by the trier of fact that such failure has occurred, a surface owner may
35 seek compensatory damages and equitable relief. In any litigation or arbitration based upon this
36 subsection, the surface owner shall present evidence that the developer or operator's use of the
37 surface materially interfered with the surface owner's use of the surface of the land. After such
38 showing, the developer or operator shall bear the burden of proof of showing that it minimized
39 intrusion upon and damage to the surface of the land in accordance with the provisions of this
40 subsection. If a developer or operator makes that showing, the surface owner may present
41 rebuttal evidence. A developer or operator may assert, as an affirmative defense, that it has
42 conducted oil or gas operations in accordance with a regulatory requirement, contractual
43 obligation, or land-use plan provision that is specifically applicable to the alleged intrusion or
44 damage. Nothing in this subsection shall do any of the following:

- 45 (1) Preclude or impair any person from obtaining any and all other remedies
46 allowed by law.
47 (2) Prevent a developer or operator and a surface owner from addressing the use
48 of the surface for oil and gas operations in a lease, surface use agreement, or
49 other written contract.
50 (3) Establish, alter, impair, or negate the authority of local governments to
51 regulate land use related to oil and gas operations.

1 **§ 113-424. Applicability; effect.**

2 This Part applies to leases or contracts, and amendments to leases or contracts, entered into
3 on or after June 15, 2011.

4 **"§ 113-425. Registry of landmen required.**

5 (a) Establishment of Registry. – The Department of Environment and Natural
6 Resources shall establish and maintain a registry of landmen operating in this State. As used in
7 this section, "landman" means a person that, in the course and scope of the person's business,
8 does any of the following:

9 (1) Acquires or manages oil, gas, or mineral interests.

10 (2) Performs title or contract functions related to the exploration, exploitation, or
11 disposition of oil, gas, or mineral interests.

12 (3) Negotiates for the acquisition or divestiture of oil, gas, or mineral rights,
13 including the acquisition or divestiture of land or oil, gas, or mineral rights
14 for a pipeline.

15 (4) Negotiates business agreements that provide for the exploration for or
16 development of oil, gas, or minerals.

17 (b) Registration Required. – A person may not act, offer to act, or hold oneself out as a
18 landman in this State unless the person is registered with the Department in accordance with
19 this section. To apply for registration as a landman, a person shall submit an application to the
20 Department on a form to be provided by the Department, which shall include, at a minimum,
21 all of the following information:

22 (1) The name of the applicant or, if the applicant is not an individual, the names
23 and addresses of all principals of the applicant.

24 (2) The business address, telephone number, and electronic mail address of the
25 applicant.

26 (3) The social security number of the applicant or, if the applicant is not an
27 individual, the federal employer identification number of the applicant.

28 (4) A list of all states and other jurisdictions in which the applicant holds or has
29 held a similar registration or license.

30 (5) A list of all states and other jurisdictions in which the applicant has had a
31 similar registration or license suspended or revoked.

32 (6) A statement whether any pending judgments or tax liens exist against the
33 applicant.

34 (c) The Department may deny registration to an applicant, reprimand a registrant,
35 suspend or revoke a registration, or impose a civil penalty on a registrant if the Department
36 determines that the applicant or registrant does any of the following:

37 (1) Fraudulently or deceptively obtains, or attempts to obtain, a registration.

38 (2) Uses or attempts to use an expired, suspended, or revoked registration.

39 (3) Falsely represents oneself as a registered landman.

40 (4) Engages in any other fraud, deception, misrepresentation, or knowing
41 omission of material facts related to oil, gas, or mineral interests.

42 (5) Had a similar registration or license denied, suspended, or revoked in
43 another state or jurisdiction.

44 (6) Otherwise violates this section.

45 (d) An applicant may challenge a denial, suspension, or revocation of a registration or a
46 reprimand issued pursuant to subsection (c) of this section, as provided in Chapter 150B of the
47 General Statutes.

48 (d) The Department shall adopt rules as necessary to implement the provisions of this
49 section.

50 **"§ 113-426. Publication of information for landowners.**

1 In order to effect the pre-lease publication distribution requirement as set forth in
2 G.S. 113-423(a), and to otherwise inform the public, the Consumer Protection Division of the
3 North Carolina Department of Justice, in consultation with the North Carolina Real Estate
4 Commission, shall develop and make available a publication entitled "Oil & Gas Leases:
5 Landowners' Rights" to provide general information on consumer protection issues and
6 landowner rights, including information on mineral leases, applicable to exploration and
7 extraction of gas or oil. The Division and the Commission shall update the publication as
8 necessary.

9 **"§ 113-427. Additional remedies.**

10 The remedies provided by this Part are not exclusive and do not preclude any other
11 remedies that may be allowed by law."

12 **SECTION 4.(a)** G.S. 113-380 reads as rewritten:

13 **"§ 113-380. Violation a misdemeanor.**

14 Any ~~Except~~ as otherwise provided, any person, firm or officer of a corporation violating
15 any of the provisions of G.S. 113-378 or 113-379, this Article, shall upon conviction thereof be
16 guilty of a Class 1 misdemeanor."

17 **SECTION 4.(b)** G.S. 113-410 reads as rewritten:

18 **"§ 113-410. Penalties for other violations.**

19 Any person who knowingly and willfully violates any provision of this ~~law, Article,~~ or any
20 rule or order of the Department made hereunder, shall, in the event a penalty for such violation
21 is not otherwise provided for herein, be subject to a penalty of not to exceed ~~one twenty-five~~
22 thousand dollars (~~\$1,000~~)(\$25,000) a day for each and every day of such violation, and for each
23 and every act of violation, such penalty to be recovered in a suit in the superior court of the
24 county where the defendant resides, or in the county of the residence of any defendant if there
25 be more than one defendant, or in the superior court of the county where the violation took
26 place. The place of suit shall be selected by the Department, and such suit, by direction of the
27 Department, shall be instituted and conducted in the name of the Department by the Attorney
28 General. The payment of any penalty as provided for herein shall not have the effect of
29 changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product,
30 nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the
31 transportation, refining, processing, or handling in any other way, of such illegal oil, illegal gas
32 or illegal product, but, to the contrary, penalty shall be imposed for each prohibited transaction
33 relating to such illegal oil, illegal gas or illegal product.

34 Any person knowingly and willfully aiding or abetting any other person in the violation of
35 any statute of this State relating to the conservation of oil or gas, or the violation of any
36 provisions of this law, or any rule or order made thereunder, shall be subject to the same
37 penalties as prescribed herein for the violation by such other person.

38 The clear proceeds of penalties provided for in this section shall be remitted to the Civil
39 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

40 **SECTION 5.(a)** G.S. 47E-4 reads as rewritten:

41 **"§ 47E-4. Required disclosures.**

42 (a) With regard to transfers described in G.S. 47E-1, the owner of the real property
43 shall furnish to a purchaser a residential property disclosure statement. The disclosure
44 statement shall:

- 45 (1) Disclose those items which are required to be disclosed relative to the
46 characteristics and condition of the property and of which the owner has
47 actual knowledge; or
- 48 (2) State that the owner makes no representations as to the characteristics and
49 condition of the real property or any improvements to the real property
50 except as otherwise provided in the real estate contract.

1 (b) The North Carolina Real Estate Commission shall develop and require the use of a
2 standard disclosure statement to comply with the requirements of this section. The disclosure
3 statement shall specify that certain transfers of residential property are excluded from this
4 requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease
5 with an option to purchase where the lessee occupies or intends to occupy the dwelling, and
6 shall include at least the following characteristics and conditions of the property:

- 7 (1) The water supply and sanitary sewage disposal system;
- 8 (2) The roof, chimneys, floors, foundation, basement, and other structural
9 components and any modifications of these structural components;
- 10 (3) The plumbing, electrical, heating, cooling, and other mechanical systems;
- 11 (4) Present infestation of wood-destroying insects or organisms or past
12 infestation the damage for which has not been repaired;
- 13 (5) The zoning laws, restrictive covenants, building codes, and other land-use
14 restrictions affecting the real property, any encroachment of the real property
15 from or to adjacent real property, and notice from any governmental agency
16 affecting this real property; and
- 17 (6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground
18 storage tank, hazardous material or toxic material (whether buried or
19 covered), and other environmental contamination.

20 The disclosure statement shall provide the owner with the option to indicate whether the
21 owner has actual knowledge of the specified characteristics or conditions, or the owner is
22 making no representations as to any characteristic or condition.

23 (b1) With regard to transfers described in G.S. 47E-1, the owner of the real property
24 shall furnish to a purchaser an owners' association and mandatory covenants disclosure
25 statement.

- 26 (1) The North Carolina Real Estate Commission shall develop and require the
27 use of a standard disclosure statement to comply with the requirements of
28 this subsection. The disclosure statement shall specify that certain transfers
29 of residential property are excluded from this requirement by G.S. 47E-2,
30 including transfers of residential property made pursuant to a lease with an
31 option to purchase where the lessee occupies or intends to occupy the
32 dwelling. The standard disclosure statement shall require disclosure of
33 whether or not the property to be conveyed is subject to regulation by one or
34 more owners' association(s) and governing documents which impose various
35 mandatory covenants, conditions, and restrictions upon the property,
36 including, but not limited to, obligations to pay regular assessments or dues
37 and special assessments. The statement required by this subsection shall
38 include information on all of the following:
 - 39 a. The name, address, telephone number, or e-mail address for the
40 president or manager of the association to which the lot is subject.
 - 41 b. The amount of any regular assessments or dues to which the lot is
42 subject.
 - 43 c. Whether there are any services that are paid for by regular
44 assessments or dues to which the lot is subject.
 - 45 d. Whether, as of the date the disclosure is signed, there are any
46 assessments, dues, fees, or special assessments which have been duly
47 approved as required by the applicable declaration or bylaws,
48 payable to an association to which the lot is subject.
 - 49 e. Whether, as of the date the disclosure is signed, there are any
50 unsatisfied judgments against or pending lawsuits involving the lot,
51 the planned community or the association to which the lot is subject,

1 with the exception of any action filed by the association for the
2 collection of delinquent assessments on lots other than the lot to be
3 sold.

4 f. Any fees charged by an association or management company to
5 which the lot is subject in connection with the conveyance or transfer
6 of the lot to a new owner.

7 (2) The owners' association and mandatory covenants disclosure statement shall
8 provide the owner with the option to indicate whether the owner has actual
9 knowledge of the specified characteristics, or conditions or the owner is
10 making no representations as to any characteristic or condition contained in
11 the statement.

12 (b2) With regard to transfers described in G.S. 47E-1, the owner of the real property
13 shall furnish to a purchaser an oil, gas, and mineral rights mandatory disclosure statement as
14 provided in this subsection.

15 (1) The North Carolina Real Estate Commission shall develop and require the
16 use of a standard disclosure statement to comply with the requirements of
17 this subsection. The disclosure statement shall specify that certain transfers
18 of residential property are excluded from this requirement as set forth in
19 G.S. 47E-2, except that the exemptions provided under subdivisions (9) and
20 (11) of G.S. 47E-2 shall not apply to the disclosure requirement under this
21 subsection. The standard disclosure statement shall require disclosure of the
22 status of oil, gas, and mineral rights associated with the property to be
23 conveyed, including (i) whether oil, gas, and mineral rights have been
24 severed from rights to the surface of the real property by previous owners of
25 the property; (ii) whether the owner has severed these rights; and (iii)
26 whether it is the intention of the owner to sever these rights upon transfer of
27 the property.

28 (2) The oil, gas, and mineral rights mandatory disclosure statement shall (i)
29 provide the owner with the option to indicate whether the owner has actual
30 knowledge of severance of oil, gas, and mineral rights by previous owners,
31 or the owner is making no representations as to severance of these rights by
32 previous owners and, (ii) notwithstanding the provisions of subsection (c) of
33 this section, require the owner to indicate whether they have severed these
34 rights, or the owner intends to sever these rights at the time of transfer of the
35 property.

36 (c) The rights of the parties to a real estate contract as to conditions of the property of
37 which the owner had no actual knowledge are not affected by this Article unless the residential
38 disclosure statement or the owners' association and mandatory covenants disclosure statement,
39 as applicable, states that the owner makes no representations as to those conditions. Except as
40 provided in subdivision (2) of subsection (b2) of this section, if~~if~~ the statement states that an
41 owner makes no representations as to the conditions of the property, then the owner has no duty
42 to disclose those conditions, whether or not the owner should have known of them."

43 **SECTION 5.(b)** G.S. 47E-5 reads as rewritten:

44 **"§ 47E-5. Time for disclosure; cancellation of contract.**

45 (a) The owner of real property subject to this Chapter shall deliver to the purchaser the
46 disclosure statements required by this Chapter no later than the time the purchaser makes an
47 offer to purchase, exchange, or option the property, or exercises the option to purchase the
48 property pursuant to a lease with an option to purchase. The residential property disclosure
49 statement or the owners' association and mandatory covenants disclosure statement may be
50 included in the real estate contract, in an addendum, or in a separate document. The oil, gas,
51 and mineral rights mandatory disclosure statement shall be included in a separate document.

1 (b) If the disclosure statements required by this Chapter are not delivered to the
2 purchaser prior to or at the time the purchaser makes an offer, the purchaser may cancel any
3 resulting real estate contract. The purchaser's right to cancel shall expire if not exercised prior
4 to the following, whichever occurs first:

- 5 (1) The end of the third calendar day following the purchaser's receipt of the
6 disclosure statement;
- 7 (2) The end of the third calendar day following the date the contract was made;
- 8 (3) Settlement or occupancy by the purchaser in the case of a sale or exchange;
9 or
- 10 (4) Settlement in the case of a purchase pursuant to a lease with option to
11 purchase.

12 Any right of the purchaser to cancel the contract provided by this subsection is waived
13 conclusively if not exercised in the manner required by this subsection.

14 In order to cancel a real estate contract when permitted by this section, the purchaser shall,
15 within the time required above, give written notice to the owner or the owner's agent either by
16 hand delivery or by depositing into the United States mail, postage prepaid, and properly
17 addressed to the owner or the owner's agent. If the purchaser cancels a real estate contract in
18 compliance with this subsection, the cancellation shall be without penalty to the purchaser, and
19 the purchaser shall be entitled to a refund of any deposit the purchaser may have paid. Any
20 rights of the purchaser to cancel or terminate the contract for reasons other than those set forth
21 in this subsection are not affected by this subsection."

22 **SECTION 5.(c)** G.S. 47E-6 reads as rewritten:

23 **"§ 47E-6. Owner liability for disclosure of information provided by others.**

24 The owner may discharge the duty to disclose imposed by this Chapter by providing a
25 written report attached to the residential property disclosure ~~statement and statement~~, the
26 owners' association and mandatory covenants disclosure ~~statement statement~~, and the oil, gas,
27 and mineral rights mandatory disclosure statement by a public agency or by an attorney,
28 engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other
29 expert, dealing with matters within the scope of the public agency's functions or the expert's
30 license or expertise. The owner shall not be liable for any error, inaccuracy, or omission of any
31 information delivered pursuant to this section if the error, inaccuracy, or omission was made in
32 reasonable reliance upon the information provided by the public agency or expert and the
33 owner was not grossly negligent in obtaining the information or transmitting it."

34 **SECTION 5.(d)** G.S. 47E-7 reads as rewritten:

35 **"§ 47E-7. Change in circumstances.**

36 If, subsequent to the owner's delivery of a residential property disclosure ~~statement~~
37 ~~and statement~~, the owners' association and mandatory covenants disclosure ~~statement statement~~,
38 and the oil, gas, and mineral rights mandatory disclosure statement to a purchaser, the owner
39 discovers a material inaccuracy in a disclosure statement, or a disclosure statement is rendered
40 inaccurate in a material way by the occurrence of some event or circumstance, the owner shall
41 promptly correct the inaccuracy by delivering a corrected disclosure statement or statements to
42 the purchaser. Failure to deliver a corrected disclosure statement or to make the repairs made
43 necessary by the event or circumstance shall result in such remedies for the buyer as are
44 provided for by law in the event the sale agreement requires the property to be in substantially
45 the same condition at closing as on the date of the offer to purchase, reasonable wear and tear
46 excepted."

47 **SECTION 5.(e)** G.S. 47E-8 reads as rewritten:

48 **"§ 47E-8. Agent's duty.**

49 A real estate broker or salesman acting as an agent in a residential real estate transaction has
50 the duty to inform each of the clients of the real estate broker or salesman of the client's rights
51 and obligations under this Chapter. Provided the owner's real estate broker or salesman has

1 performed this duty, the broker or salesman shall not be responsible for the owner's willful
2 refusal to provide a prospective purchaser with a residential property disclosure ~~statement~~
3 ~~or statement~~, an owners' association and mandatory covenants disclosure ~~statement~~, ~~statement~~, or
4 an oil, gas, and mineral rights mandatory disclosure statement. Nothing in this Chapter shall be
5 construed to conflict with, or alter, the broker or salesman's duties under Chapter 93A of the
6 General Statutes."

7 **SECTION 5.(f)** This section becomes effective December 1, 2012, and applies to
8 real estate transfers or dispositions occurring on or after that date. The North Carolina Real
9 Estate Commission shall develop and make available the standard disclosure form required by
10 G.S. 47E-4(b2), as enacted by Section 5(a) of this act, by October 1, 2012.

11 **SECTION 6.** The Department of Environment and Natural Resources, in
12 conjunction with the Consumer Protection Division of the North Carolina Department of
13 Justice, shall study the State's current law on the issue of compulsory pooling and other states'
14 laws on the matter. The Department shall report its findings and recommendations, including
15 legislative proposals, to the Environmental Review Commission on or before January 1, 2013.

16 **SECTION 7.** The sum of three hundred thousand dollars (\$300,000) in recurring
17 funds shall be used to establish three full-time permanent positions in the Department of
18 Environment and Natural Resources dedicated to hydraulic fracturing matters, one of which
19 shall be located in the Division of Land Resources, one of which shall be located in the
20 Division of Water Quality, and one of which shall be located in the Division of Waste
21 Management.

22 23 **PART III. CREATE ENERGY POLICY OVERSIGHT COMMISSION**

24
25 **SECTION 8.(a)** Chapter 120 of the General Statutes is amended by adding a new
26 Article to read:

27 "Article 33.

28 "Joint Legislative Commission on Energy Policy.

29 **"§ 120-285. Creation and membership of Joint Legislative Commission on Energy Policy.**

30 (a) The Joint Legislative Commission on Energy Policy is established.

31 (b) The Commission shall consist of 10 members as follows:

32 (1) Five members of the Senate appointed by the President Pro Tempore of the
33 Senate, at least one of whom is a member of the minority party.

34 (2) Five members of the House of Representatives appointed by the Speaker of
35 the House of Representatives, at least one of whom is a member of the
36 minority party.

37 (c) Terms on the Commission are for two years and begin on the convening of the
38 General Assembly in each odd-numbered year. Members may complete a term of service on
39 the Commission even if they do not seek reelection or are not reelected to the General
40 Assembly, but resignation or removal from service in the General Assembly constitutes
41 resignation or removal from service on the Commission. A member continues to serve until the
42 member's successor is appointed.

43 **"§ 120-286. Purpose and powers and duties of Commission.**

44 (a) The Joint Legislative Commission on Energy Policy shall exercise legislative
45 oversight over energy policy in the State. In the exercise of this oversight, the Commission may
46 do any of the following:

47 (1) Monitor and evaluate the programs, policies, and actions of the Oil and Gas
48 Board established pursuant to G.S. 113-430, the Energy Policy Council
49 established pursuant to G.S. 113B-2, the Energy Division in the Department
50 of Commerce, the Utilities Commission and Public Staff established
51 pursuant to Chapter 62 of the General Statutes, and of any other board,

1 commission, department, or agency of the State or local government with
2 jurisdiction over energy policy in the State.

3 (2) Review and evaluate existing and proposed State statutes and rules affecting
4 energy policy and determine whether any modification of these statutes or
5 rules is in the public interest.

6 (3) Monitor changes in federal law and court decisions affecting energy policy.

7 (4) Monitor and evaluate energy-related industries in the State and study
8 measures to promote these industries.

9 (5) Study any other matters related to energy policy that the Commission
10 considers necessary to fulfill its mandate.

11 (b) The Commission may make reports and recommendations, including proposed
12 legislation, to the General Assembly from time to time as to any matter relating to its oversight
13 and the powers and duties set out in this section.

14 **"§ 120-287. Organization of Commission.**

15 (a) The President Pro Tempore of the Senate and the Speaker of the House of
16 Representatives shall each designate a cochair of the Joint Legislative Commission on Energy
17 Policy. The Commission may meet at any time upon the call of either cochair, whether or not
18 the General Assembly is in session.

19 (b) A quorum of the Commission is six members.

20 (c) While in the discharge of its official duties, the Commission has the powers of a
21 joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission
22 may contract for consultants or hire employees in accordance with G.S. 120-32.02.

23 (d) From funds available to the General Assembly, the Legislative Services
24 Commission shall allocate monies to fund the Joint Legislative Commission on Energy Policy.
25 Members of the Commission receive subsistence and travel expenses as provided in
26 G.S. 120-3.1. The Legislative Services Commission, through the Legislative Services Officer,
27 shall assign professional staff to assist the Commission in its work. Upon the direction of the
28 Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of
29 Representatives shall assign clerical staff to the Commission. The expenses for clerical
30 employees shall be borne by the Commission."

31 **SECTION 8.(b)** Notwithstanding G.S. 120-285(c), as enacted by Section 8(a) of
32 this act, the President Pro Tempore of the Senate and the Speaker of the House of
33 Representatives may appoint members to the Joint Legislative Commission on Energy Policy to
34 terms that begin prior to the convening of the 2013 General Assembly. The terms of members
35 appointed pursuant to this section shall end upon the convening of the 2013 General Assembly.
36 Members appointed pursuant to this section who are otherwise qualified to serve on the
37 Commission may be reappointed to the Commission upon the convening of the 2013 General
38 Assembly.

39
40 **PART IV. EFFECTIVE DATE**

41
42 **SECTION 9.** Except as otherwise provided, this act is effective when it becomes
43 law and applies to leases or contracts, or amendments to leases or contracts, entered into on or
44 after that date. The publication required pursuant to G.S. 113-426, as enacted by Section 3 of
45 this act, shall be made available by October 1, 2012.