

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 820
Commerce Committee Substitute Adopted 6/5/12
House Committee Substitute Favorable 6/13/12

Short Title: Clean Energy and Economic Security Act.

(Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO (1) RECONSTITUTE THE MINING COMMISSION AS THE MINING AND ENERGY COMMISSION, (2) REQUIRE THE MINING AND ENERGY COMMISSION AND OTHER REGULATORY AGENCIES TO DEVELOP A MODERN REGULATORY PROGRAM FOR THE MANAGEMENT OF OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES IN THE STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE, (3) AUTHORIZE HORIZONTAL DRILLING AND HYDRAULIC FRACTURING, BUT PROHIBIT THE ISSUANCE OF PERMITS FOR THESE ACTIVITIES PENDING SUBSEQUENT LEGISLATIVE ACTION, (4) ENHANCE LANDOWNER AND PUBLIC PROTECTIONS RELATED TO HORIZONTAL DRILLING AND HYDRAULIC FRACTURING, AND (5) ESTABLISH THE JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY.

PART I. LEGISLATIVE FINDINGS AND INTENT

Whereas, in S.L. 2011-276, the General Assembly directed the Department of Environment and Natural Resources, in conjunction with the Department of Commerce, the Department of Justice, and the Rural Advancement Foundation (RAFI-USA), to study the issue of oil and gas exploration in the State and the use of horizontal drilling and hydraulic fracturing for that purpose, including the study of all of the following:

- (1) Oil and gas resources present in the Triassic Basins and in any other areas of the State.
- (2) Methods of exploration and extraction of oil and gas, including directional and horizontal drilling and hydraulic fracturing.
- (3) Potential environmental, economic, and social impacts arising from such activities, as well as impacts on infrastructure.
- (4) Appropriate regulatory requirements for management of oil and gas exploration activities, with particular attention to regulation of horizontal drilling and hydraulic fracturing for that purpose; and

Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural Resources, in conjunction with the Department of Commerce, the Department of Justice, and the Rural Advancement Foundation (RAFI-USA), issued a draft report in March of 2012; and

Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural Resources received public comment regarding the draft report, including public comment received at public meetings held on March 20, March 27, and April 2, 2012; and



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1 Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural
2 Resources (DENR), in conjunction with the Department of Commerce, the Department of
3 Justice, and the Rural Advancement Foundation (RAFI-USA), issued a final report on April 30,
4 2012; and

5 Whereas, the final report set forth a number of recommendations, including
6 recommendations concerning all of the following:

- 7 (1) Development of a modern oil and gas regulatory program, taking into
8 consideration the processes involved in hydraulic fracturing and horizontal
9 drilling technologies, and long-term prevention of physical or economic
10 waste in developing oil and gas resources.
- 11 (2) Collection of baseline data for areas near proposed drill sites concerning air
12 quality and emissions, as well as groundwater and surface water resources
13 and quality.
- 14 (3) Requirements that oil and gas operators prepare and have approved water
15 management plans that limit water withdrawals during times of low-flow
16 conditions and droughts.
- 17 (4) Enhancements to existing oil and gas well construction standards to address
18 the additional pressures of horizontal drilling and hydraulic fracturing.
- 19 (5) Development of setback requirements and identification of areas where oil
20 and gas exploration and development activities should be prohibited.
- 21 (6) Development of a State stormwater regulatory program for oil and gas
22 drilling sites.
- 23 (7) Development of specific standards for management of oil and gas wastes.
- 24 (8) Requirements for disclosure of hydraulic fracturing chemicals and
25 constituents to regulatory agencies and the public.
- 26 (9) Prohibitions on use of certain chemicals or constituents in hydraulic
27 fracturing fluids.
- 28 (10) Improvements to data management capabilities.
- 29 (11) Development of a coordinated permitting program for oil and gas
30 exploration and development activities within the Department of
31 Environment and Natural Resources where it will benefit from the expertise
32 of State geological staff and the ability to coordinate air, land, and water
33 permitting.
- 34 (12) Development of protocols to ensure that State agencies, local first
35 responders, and industry are prepared to respond to a well blowout, chemical
36 spill, or other emergency.
- 37 (13) Adequate funding for any continued work on the development of a State
38 regulatory program for the natural gas industry.
- 39 (14) Appropriate distribution of revenues from any taxes or fees that may be
40 imposed on oil and gas exploration and development activities to support a
41 modern regulatory program for the management of all aspects of oil and gas
42 exploration and development activities using the processes of horizontal
43 drilling and hydraulic fracturing in the State, and to support local
44 governments impacted by the activities, including, but not limited to,
45 sufficient funding for improvements to and repair of roads subject to damage
46 by truck traffic and heavy equipment from these activities.
- 47 (15) Closure of gaps in regulatory authority over the siting, construction, and
48 operation of gathering pipelines.
- 49 (16) Clarifications needed to address local government regulatory authority over
50 oil and gas exploration and development activities, and use of horizontal
51 drilling and hydraulic fracturing for that purpose.

1 (17) Additional research required on impacts to local governments and local
2 infrastructure, as well as potential economic impacts from oil and gas
3 exploration and development activities.

4 (18) Development of provisions to address liability of the oil and gas industry for
5 environmental contamination caused by exploration and development
6 activities, particularly with regard to groundwater contamination.

7 (19) Establishment of a process that affords additional public participation in
8 connection with development of a modern oil and gas regulatory program;
9 and

10 Whereas, the final report also states "[a]fter reviewing other studies and experiences
11 in oil and gas-producing states, DENR has concluded that information available to date
12 suggests that production of natural gas by means of hydraulic fracturing can be done safely as
13 long as the right protections are in place"; and

14 Whereas, the General Assembly concurs in the conclusion of the final report that
15 hydraulic fracturing can be done safely as long as the right protective measures are in place
16 before any permits for horizontal drilling and hydraulic fracturing are issued; and

17 Whereas, it is the intent of the General Assembly to authorize oil and gas
18 exploration and development activities using horizontal drilling and hydraulic fracturing
19 treatments, but to prohibit the issuance of permits for these activities until such time as the
20 General Assembly has determined that a modern regulatory program for the management of oil
21 and gas exploration and development in the State and the use of horizontal drilling and
22 hydraulic fracturing for that purpose has been fully established and takes legislative action to
23 allow the issuance of permits; and

24 Whereas, it is the intent of the General Assembly to establish a modern regulatory
25 program based on the recommendations of the final report and the following principles:

26 (1) Protection of public health and safety.

27 (2) Protection of public and private property.

28 (3) Protection and conservation of the State's air, water, and other natural
29 resources.

30 (4) Promotion of economic development and expanded employment
31 opportunities.

32 (5) Productive and efficient development of the State's oil and gas resources;

33 Now, therefore,

34 The General Assembly of North Carolina enacts:

35
36 **PART II. RECONSTITUTE THE MINING COMMISSION AS THE MINING AND**
37 **ENERGY COMMISSION; RENAME THE DIVISION OF LAND RESOURCES AS**
38 **THE DIVISION OF ENERGY, MINERAL, AND LAND RESOURCES**

39 **SECTION 1.(a)** Part 6 of Article 7 of Chapter 143B of the General Statutes is
40 repealed.

41 **SECTION 1.(b)** Article 7 of Chapter 143B of the General Statutes is amended by
42 adding a new Part to read:

43 "Part 6A. North Carolina Mining and Energy Commission.

44 **"§ 143B-293.1. North Carolina Mining and Energy Commission – creation; powers and**
45 **duties.**

46 (a) There is hereby created the North Carolina Mining and Energy Commission of the
47 Department of Environment and Natural Resources with the power and duty to adopt rules for
48 the development of the oil, gas, and mining resources of the State.

49 (1) The North Carolina Mining and Energy Commission shall have the
50 following powers and duties:

- 1 a. To act as the advisory body to the Governor pursuant to Article V(a)
2 of the Interstate Mining Compact, as set out in G.S. 74-37.
3 b. To adopt rules necessary to administer the Mining Act of 1971
4 pursuant to G.S. 74-63.
5 c. To adopt rules necessary to administer the Control of Exploration for
6 Uranium in North Carolina Act of 1983 pursuant to G.S. 74-86.
7 d. To adopt rules necessary to administer the Oil and Gas Conservation
8 Act pursuant to G.S. 113-391.
9 (2) The Commission is authorized to make such rules, not inconsistent with the
10 laws of this State, as may be required by the federal government for
11 grants-in-aid for mining resource purposes which may be made available to
12 the State by the federal government. This section is to be liberally construed
13 in order that the State and its citizens may benefit from such grants-in-aid.
14 (3) The Commission shall make such rules consistent with the provisions of this
15 Chapter. All rules adopted by the Commission shall be enforced by the
16 Department of Environment and Natural Resources.
17 (b) The Commission shall have the authority to make determinations and issue orders
18 pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells and to
19 establish drilling units as provided in G.S. 113-393; (ii) require the operation of wells with
20 efficient gas-oil ratios and to fix such ratios; (iii) limit and prorate the production of oil or gas,
21 or both, from any pool or field for the prevention of waste as provided in G.S. 113-394; and
22 (iv) require integration of interests as provided in G.S. 113-393.
23 (c) The Commission shall submit quarterly written reports as to its operation, activities,
24 programs, and progress to the Joint Legislative Commission on Energy Policy and the
25 Environmental Review Commission. The Commission shall supplement the written reports
26 required by this subsection with additional written and oral reports as may be requested by the
27 Joint Legislative Commission on Energy Policy and the Environmental Review Commission.
28 The Commission shall submit the written reports required by this subsection whether or not the
29 General Assembly is in session at the time the report is due.

30 **§ 143B-293.2. North Carolina Mining and Energy Commission – members; selection;**
31 **removal; compensation; quorum; services.**

- 32 (a) Members Selection. – The North Carolina Mining and Energy Commission shall
33 consist of 15 members appointed as follows:
34 (1) The Chair of the North Carolina State University Minerals Research
35 Laboratory Advisory Committee, or the Chair's designee, ex officio.
36 (2) The State Geologist, or the State Geologist's designee, ex officio.
37 (3) The Assistant Secretary of Energy for the Department of Commerce, ex
38 officio.
39 (4) One appointed by the General Assembly upon recommendation of the
40 Speaker of the House of Representatives who is a member of a
41 nongovernmental conservation interest.
42 (5) One appointed by the General Assembly upon recommendation of the
43 Speaker of the House of Representatives who is an elected official of a
44 municipal government located in the Triassic Basin of North Carolina.
45 (6) One appointed by the General Assembly upon recommendation of the
46 Speaker of the House of Representatives who is a member of the
47 Environmental Management Commission and knowledgeable in the
48 principles of water and air resources management.
49 (7) One appointed by the General Assembly upon recommendation of the
50 Speaker of the House of Representatives who shall be a geologist with
51 experience in oil and gas exploration and development.

- 1 (8) One appointed by the General Assembly upon recommendation of the
2 President Pro Tempore of the Senate who is a member of a nongovernmental
3 conservation interest.
- 4 (9) One appointed by the General Assembly upon recommendation of the
5 President Pro Tempore of the Senate who is a member of a county board of
6 commissioners of a county located in the Triassic Basin of North Carolina.
- 7 (10) One appointed by the General Assembly upon recommendation of the
8 President Pro Tempore of the Senate who is a member of the Commission
9 for Public Health and knowledgeable in the principles of waste management.
- 10 (11) One appointed by the General Assembly upon recommendation of the
11 President Pro Tempore of the Senate who shall be an engineer with
12 experience in oil and gas exploration and development.
- 13 (12) One appointed by the Governor who shall be a representative of a publicly
14 traded natural gas company.
- 15 (13) One appointed by the Governor who shall be an attorney on the staff of the
16 North Carolina Department of Justice with experience in legal matters
17 associated with oil and gas exploration and development, including
18 experience in mineral or oil and gas leasing.
- 19 (14) One appointed by the Governor who is a representative of the mining
20 industry.
- 21 (15) One appointed by the Governor who is a representative of the mining
22 industry.

23 (b) Terms. – The term of office of members of the Commission is three years. A
24 member may be reappointed to no more than two consecutive three-year terms. The term of a
25 member who no longer meets the qualifications of their respective appointment, as set forth in
26 subsection (a) of this section, shall terminate but the member may continue to serve until a new
27 member who meets the qualifications is appointed. The terms of members appointed under
28 subdivisions (4), (6), (9), and (12) of subsection (a) of this section shall expire on June 30 of
29 years evenly divisible by three. The terms of members appointed under subdivisions (7), (10),
30 (13), and (14) of subsection (a) of this section shall expire on June 30 of years that precede by
31 one year those years that are evenly divisible by three. The terms of members appointed under
32 subdivisions (5), (8), (11), and (15) of subsection (a) of this section shall expire on June 30 of
33 years that follow by one year those years that are evenly divisible by three.

34 (c) Vacancies; Removal from Office. –

- 35 (1) Any appointment by the Governor to fill a vacancy on the Commission
36 created by the resignation, dismissal, death, or disability of a member shall
37 be for the balance of the unexpired term. The Governor shall have the power
38 to remove any member of the Commission from office for misfeasance,
39 malfeasance, or nonfeasance in accordance with the provisions of
40 G.S. 143B-13 of the Executive Organization Act of 1973.
- 41 (2) Members appointed by the President Pro Tempore of the Senate and the
42 Speaker of the House of Representatives shall be made in accordance with
43 G.S. 120-121, and vacancies in those appointments shall be filled in
44 accordance with G.S. 120-122. In accordance with Section 10 of Article VI
45 of the North Carolina Constitution, a member may continue to serve until a
46 successor is duly appointed.

47 (d) Compensation. – The members of the Commission shall receive per diem and
48 necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

49 (e) Quorum. – A majority of the Commission shall constitute a quorum for the
50 transaction of business.

1 (f) Staff. – All staff support required by the Commission shall be supplied by the
2 Division of Energy, Mineral, and Land Resources and the North Carolina Geological Survey.

3 (g) Committees. – In addition to the Committee on Civil Penalty Remissions required to
4 be established under G.S. 143B-293.6, the chair may establish other committees from members
5 of the Commission to address specific issues as appropriate. No member of a committee may
6 hear or vote on any matter in which the member has an economic interest. A majority of a
7 committee shall constitute a quorum for the transaction of business. At a minimum, the chair
8 shall establish a Committee on Mining with exclusive responsibility and authority over matters
9 pertaining to mining and implementation of the Mining Act of 1971, including rule making for
10 those purposes. The Committee on Mining shall consist of members appointed under
11 subdivisions (1), (4), (6), (8), (10), (14), and (15) of subsection (a) of this section.

12 **"§ 143B-293.4. North Carolina Mining and Energy Commission – officers.**

13 The Mining and Energy Commission shall have a chair and a vice-chair. The Commission
14 shall elect one of its members to serve as chair and one of its members to serve as vice-chair.
15 The chair and vice-chair shall serve one-year terms beginning August 1 and ending July 31 of
16 the following year. The chair and vice-chair may serve any number of terms, but not more than
17 two terms consecutively.

18 **"§ 143B-293.5. North Carolina Mining and Energy Commission – meetings.**

19 The North Carolina Mining and Energy Commission shall meet at least quarterly and may
20 hold special meetings at any time and place within the State at the call of the chair or upon the
21 written request of at least nine members.

22 **"§ 143B-293.6. North Carolina Mining and Energy Commission – quasi-judicial powers;**
23 **procedures.**

24 (a) With respect to those matters within its jurisdiction, the Mining and Energy
25 Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter
26 150B of the General Statutes.

27 (b) The chair shall appoint a Committee on Civil Penalty Remissions from the members
28 of the Commission. No member of the Committee on Civil Penalty Remissions may hear or
29 vote on any matter in which the member has an economic interest. In determining whether a
30 remission request will be approved, the Committee shall consider the recommendation of the
31 Secretary or the Secretary's designee and all of the following factors:

- 32 (1) Whether one or more of the civil penalty assessment factors in subsection (b)
33 of this section were wrongly applied to the detriment of the petitioner.
- 34 (2) Whether the violator promptly abated continuing environmental damage
35 resulting from the violation.
- 36 (3) Whether the violation was inadvertent or a result of an accident.
- 37 (4) Whether the violator had been assessed civil penalties for any previous
38 violations.
- 39 (5) Whether payment of the civil penalty will prevent payment for the remaining
40 necessary remedial actions.

41 (c) The Committee on Civil Penalty Remissions may remit the entire amount of the
42 penalty only when the violator has not been assessed civil penalties for previous violations and
43 when payment of the civil penalty will prevent payment for the remaining necessary remedial
44 actions."

45 **SECTION 1.(c)** Pursuant to G.S. 150B-21.7, rules adopted by the North Carolina
46 Mining Commission shall remain in effect until amended or repealed by the North Carolina
47 Mining and Energy Commission established pursuant to subsection (b) of this section.

48 **SECTION 1.(d)** The Revisor of Statutes shall make the conforming statutory
49 changes necessary to reflect the reconstitution of the North Carolina Mining Commission as the
50 North Carolina Mining and Energy Commission as provided in subsection (b) of this section.
51 The Codifier of Rules shall make the conforming rule changes necessary to reflect the

1 reconstitution of the North Carolina Mining Commission to the North Carolina Mining and
2 Energy Commission as provided in subsection (b) of this section.

3 **SECTION 1.(e)** The Division of Land Resources of the Department of
4 Environment and Natural Resources is hereby renamed the Division of Energy, Mineral, and
5 Land Resources.

6 **SECTION 1.(f)** The Revisor of Statutes shall make the conforming statutory
7 changes necessary to reflect the renaming of the Division of Land Resources as the Division of
8 Energy, Mineral, and Land Resources as provided in subsection (e) of this section. The
9 Codifier of Rules shall make the conforming rule changes necessary to reflect the renaming of
10 the Division of Land Resources as the Division of Energy, Mineral, and Land Resources as
11 provided in subsection (e) of this section.

12 **SECTION 1.(g)** In order to maintain continuity and experience of membership, the
13 Governor and the General Assembly should consider the members of the North Carolina
14 Mining Commission, repealed pursuant to subsection (a) of this section, when appointing the
15 members of the North Carolina Mining and Energy Commission, created by G.S. 143B-293.1,
16 as enacted by subsection (b) of this section.

17 **SECTION 1.(h)** The North Carolina Mining and Energy Commission shall submit
18 the first report due under G.S. 143B-293.1(c), as enacted by subsection (b) of this section, on or
19 before January 1, 2013.

20
21 **PART III. MINING AND ENERGY COMMISSION AND OTHER REGULATORY**
22 **AGENCIES TO ESTABLISH REGULATORY PROGRAM FOR THE MANAGEMENT**
23 **OF OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE AND**
24 **THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR**
25 **THAT PURPOSE**

26 **SECTION 2.(a)** G.S. 113-380 reads as rewritten:

27 **"§ 113-380. Violation a misdemeanor.**

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

31 **SECTION 2.(b)** G.S. 113-389 reads as rewritten:

32 **"§ 113-389. Definitions.**

33 Unless the context otherwise requires, the words defined in this section shall have the
34 following meaning when found in this law:

35 (1) "Base fluid" shall mean the continuous phase fluid type, such as water, used
36 in a hydraulic fracturing treatment.

37 (1a) "Commission" shall mean the North Carolina Mining and Energy
38 Commission.

39 (1b) "Department" shall mean the ~~Department~~ Department of Environment and
40 Natural Resources, ~~as created by this law.~~ Resources.

41 (1c) "Division" shall mean the Division of Energy, Mineral, and Land Resources
42 of the Department of Environment and Natural Resources.

43 (2) "Field" shall mean the general area which is underlaid or appears to be
44 underlaid by at least one pool; and "field" shall include the underground
45 reservoir or reservoirs containing crude petroleum oil or natural gas, or both.
46 The words "field" and "pool" mean the same thing when only one
47 underground reservoir is involved; "field," unlike "pool," may relate to two
48 or more pools.

49 (3) "Gas" shall mean all natural gas, including casing-head gas, and all other
50 hydrocarbons not defined as oil in subdivision (7).

1 (3a) "Hydraulic fracturing additive" shall mean any chemical substance or
2 combination of substances, including any chemical or proppants, which is
3 intentionally added to a base fluid for purposes of preparing a hydraulic
4 fracturing fluid or treatment of a well.

5 (3b) "Hydraulic fracturing fluid" shall mean the fluid, including the applicable
6 base fluid and all hydraulic fracturing additives, used to perform a hydraulic
7 fracturing treatment.

8 (3c) "Hydraulic fracturing treatment" shall mean all stages of the treatment of a
9 well by the application of hydraulic fracturing fluid under pressure that is
10 expressly designed to initiate or propagate fractures in a target geologic
11 formation to enhance production of oil and gas.

12 ...
13 (6a) "Lessee" shall mean the person entitled under an oil and gas lease to drill
14 and operate wells.

15 (6b) "Lessor" shall mean the mineral owner who has executed a lease and who is
16 entitled to the payment of a royalty on production.

17 ...
18 (12a) "Proppant" shall mean sand or any natural or man-made material that is used
19 in a hydraulic fracturing treatment to prop open the artificially created or
20 enhanced fractures once the treatment is completed.

21 (12b) "Surface owner" means the person who holds record title to or has a
22 purchaser's interest in the surface of real property.

23 ...
24 (15) "Water supply" shall mean any groundwater or surface water intended or
25 used for human consumption; household purposes; or farm, livestock, or
26 garden purposes."

27 **SECTION 2.(c)** G.S. 113-391 reads as rewritten:

28 **"§ 113-391. Jurisdiction and authority; rules and orders.**

29 (a) The Mining and Energy Commission, created by G.S. 143B-293.1, in conjunction
30 with rule-making authority specifically reserved to the Environmental Management
31 Commission under subsection (a3) of this section, shall establish a modern regulatory program
32 for the management of oil and gas exploration and development in the State and the use of
33 horizontal drilling and hydraulic fracturing treatments for that purpose. The program shall be
34 designed to protect public health and safety; protect public and private property; protect and
35 conserve the State's air, water, and other natural resources; promote economic development and
36 expand employment opportunities; and provide for the productive and efficient development of
37 the State's oil and gas resources. To establish the program, the Commission shall adopt rules for
38 all of the following purposes:

39 (1) Regulation of pre-drilling exploration activities, including seismic and other
40 geophysical and stratigraphic surveys and testing.

41 (2) Regulation of drilling, operation, casing, plugging, completion, and
42 abandonment of wells.

43 (3) Prevention of pollution of water supplies by oil, gas, or other fluids used in
44 oil and gas exploration and development.

45 (4) Protection of the quality of the water, air, soil, or any other environmental
46 resource against injury or damage or impairment.

47 (5) Regulation of horizontal drilling and hydraulic fracturing treatments for the
48 purpose of oil and gas exploration. Such rules shall, at a minimum, include
49 standards or requirements related to the following:

50 a. Information and data to be submitted in association with applications
51 for permits to conduct oil and gas exploration and development

- 1 activities using horizontal drilling and hydraulic fracturing
2 treatments, which may include submission of hydrogeological
3 investigations and identification of mechanisms to prevent and
4 diagnose sources of groundwater contamination in the area of drilling
5 sites. In formulating these requirements, the Commission shall
6 consider (i) how North Carolina's geology differs from other states
7 where oil and gas exploration and development activities using
8 horizontal drilling and hydraulic fracturing treatments are common
9 and (ii) the routes of possible groundwater contamination resulting
10 from these activities and the potential role of vertical geological
11 structures such as dikes and faults as conduits for groundwater
12 contamination.
- 13 b. Collection of baseline data, including groundwater, surface water,
14 and air quality in areas where oil and gas exploration and
15 development activities are proposed. With regard to rules applicable
16 to baseline data for groundwater and surface water, the Commission
17 shall adopt rules that, at a minimum, establish standards to satisfy the
18 pre-drilling testing requirement established under G.S. 113-421(a),
19 including contaminants for which an operator or developer must test
20 and necessary qualifications for persons conducting such tests.
- 21 c. Appropriate construction standards for oil and gas wells, which shall
22 address the additional pressures of horizontal drilling and hydraulic
23 fracturing treatments. These rules, at a minimum, shall include
24 standards for casing and cementing sufficient to handle highly
25 pressurized injection of hydraulic fracturing fluids into a well for
26 purposes of fracturing bedrock and extraction of gas, and
27 construction standards for other gas production infrastructure, such
28 as storage pits and tanks.
- 29 d. Appropriate siting standards for wells and other gas production
30 infrastructure, such as storage pits and tanks, including appropriate
31 setback requirements and identification of areas, such as floodplains,
32 where oil and gas exploration and production activities should be
33 prohibited. Siting standards adopted shall be consistent with any
34 applicable water quality standards adopted by the Environmental
35 Management Commission or by local governments pursuant to water
36 quality statutes, including standards for development in water supply
37 watersheds.
- 38 e. Limits on water use, including, but not limited to, a requirement that
39 oil and gas operators prepare and have a water and wastewater
40 management plan approved by the Department, which, among other
41 things, limits water withdrawals during times of drought and periods
42 of low flows. Rules adopted shall be (i) developed in light of water
43 supply in the areas of proposed activity, competing water uses in
44 those areas, and expected environmental impacts from such water
45 withdrawals and (ii) consistent with statutes, and rules adopted by the
46 Environmental Management Commission pursuant to those statutes,
47 which govern water quality and management of water resources,
48 including, but not limited to, statutes and rules applicable to water
49 withdrawal registration, interbasin transfer requirements, and water
50 quality standards related to wastewater discharges.

- 1 f. Management of wastes produced in connection with oil and gas
2 exploration and development and use of horizontal drilling and
3 hydraulic fracturing treatments for that purpose. Such rules shall
4 address storage, transportation, and disposal of wastes that may
5 contain radioactive materials or wastes that may be toxic or have
6 other hazardous wastes' characteristics that are not otherwise
7 regulated as a hazardous waste by the federal Resource Conservation
8 and Recovery Act (RCRA), such as top-hole water, brines, drilling
9 fluids, additives, drilling muds, stimulation fluids, well servicing
10 fluids, oil, production fluids, and drill cuttings from the drilling,
11 alteration, production, plugging, or other activity associated with oil
12 and gas wells. Wastes generated in connection with oil and gas
13 exploration and development and use of horizontal drilling and
14 hydraulic fracturing treatments for that purpose that constitute
15 hazardous waste under RCRA shall be subject to rules adopted by the
16 Commission for Public Health to implement RCRA requirements in
17 the State.
- 18 g. Prohibitions on use of certain chemicals and constituents in hydraulic
19 fracturing fluids, particularly diesel fuel.
- 20 h. Disclosure of chemicals and constituents used in oil and gas
21 exploration, drilling, and production, including hydraulic fracturing
22 fluids, to State regulatory agencies and to local government
23 emergency response officials, and, with the exception of those items
24 constituting trade secrets, as defined in G.S. 66-152(3), and that are
25 designated as confidential or as a trade secret under G.S. 132-1.2,
26 requirements for disclosure of those chemicals and constituents to the
27 public.
- 28 i. Installation of appropriate safety devices and development of
29 protocols for response to well blowouts, chemical spills, and other
30 emergencies, including requirements for approved emergency
31 response plans and certified personnel to implement these plans as
32 needed.
- 33 j. Measures to mitigate impacts on infrastructure, including damage to
34 roads by truck traffic and heavy equipment, in areas where oil and
35 gas exploration and development activities that use horizontal
36 drilling and hydraulic fracturing technologies are proposed to occur.
- 37 k. Notice, record keeping, and reporting.
- 38 l. Proper well closure, site reclamation, post-closure monitoring, and
39 financial assurance. Rules for financial assurance shall require that an
40 oil or gas developer or operator establish financial assurance that will
41 ensure that sufficient funds are available for well closure,
42 post-closure maintenance and monitoring, any corrective action that
43 the Department may require, and to satisfy any potential liability for
44 sudden and nonsudden accidental occurrences, and subsequent costs
45 incurred by the Department in response to an incident involving a
46 drilling operation, even if the developer or operator becomes
47 insolvent or ceases to reside, be incorporated, do business, or
48 maintain assets in the State.
- 49 (6) To require surveys upon application of any owner who has reason to believe
50 that a well has been unlawfully drilled by another person into land of the

1 owner without permission. In the event such surveys are required, the costs
2 thereof shall be borne by the owner making the request.

3 (7) To require the making of reports showing the location of oil and gas wells
4 and the filing of logs and drilling records.

5 (8) To prevent "blowouts," "caving," and "seepage," as such terms are generally
6 understood in the oil and gas industry.

7 (9) To identify the ownership of all oil or gas wells, producing leases, refineries,
8 tanks, plants, structures, and all storage and transportation equipment and
9 facilities.

10 (10) To regulate the "shooting," perforating, and chemical treatment of wells.

11 (11) To regulate secondary recovery methods, including the introduction of gas,
12 air, water, or other substances into producing formations.

13 (12) To regulate the spacing of wells and to establish drilling units.

14 (13) To regulate and, if necessary in its judgment for the protection of unique
15 environmental values, to prohibit the location of wells in the interest of
16 protecting the quality of the water, air, soil, or any other environmental
17 resource against injury, damage, or impairment.

18 (14) Any other matter the Commission deems necessary for implementation of a
19 modern regulatory program for the management of oil and gas exploration
20 and development in the State and the use of horizontal drilling and hydraulic
21 fracturing for that purpose.

22 (a1) The regulatory program required to be established and the rules required to be
23 adopted pursuant to subsection (a) of this section shall not include a program or rules for the
24 regulation of oil and gas exploration and development in the waters of the Atlantic Ocean and
25 the coastal sounds as defined in G.S. 113A-103.

26 (a2) In addition to the matters for which the Commission is required to adopt rules
27 pursuant to subsection (a) of this section, the Commission may adopt rules as it deems
28 necessary for any of the following purposes:

29 (1) To require the operation of wells with efficient gas-oil ratios and to fix such
30 ratios.

31 (2) To limit and prorate the production of oil or gas, or both, from any pool or
32 field for the prevention of waste as defined in this Article and rules adopted
33 thereunder.

34 (3) To require, either generally or in or from particular areas, certificates of
35 clearance or tenders in connection with the transportation of oil or gas.

36 (4) To prevent, so far as is practicable, reasonably avoidable drainage from each
37 developed unit which is not equalized by counter-drainage.

38 (a3) The Environmental Management Commission shall adopt rules, after consideration
39 of recommendations from the Mining and Energy Commission, for all of the following
40 purposes:

41 (1) Stormwater control for sites on which oil and gas exploration and
42 development activities are conducted.

43 (2) Regulation of toxic air emissions from drilling operations. In formulating
44 appropriate standards, the Department shall assess emissions from oil and
45 gas exploration and development activities that use horizontal drilling and
46 hydraulic fracturing technologies, including emissions from associated truck
47 traffic, in order to (i) determine the adequacy of the State's current air toxics
48 program to protect landowners who lease their property to drilling operations
49 and (ii) determine the impact on ozone levels in the area in order to
50 determine measures needed to maintain compliance with federal ozone
51 standards.

1 ~~(a4) The Department shall have jurisdiction and authority of and over all persons and~~
2 ~~property necessary to administer and enforce effectively the provisions of this law Article, and~~
3 ~~rules adopted thereunder, and all other laws relating to the conservation of oil and gas-gas,~~
4 ~~except for jurisdiction and authority reserved to the Department of Labor and the Mining and~~
5 ~~Energy Commission, as otherwise provided. The Commission and the Department may issue~~
6 ~~orders as may be necessary from time to time in the proper administration and enforcement of~~
7 ~~this Article and rules adopted thereunder.~~

8 ~~(b) The Commission and the Department Department, as appropriate, shall have the~~
9 ~~authority and it shall be its their duty to make such inquiries as it may think be proper to~~
10 ~~determine whether or not waste over which it has jurisdiction exists or is imminent implement~~
11 ~~the provisions of this Article. In the exercise of such power the Commission and the~~
12 ~~Department Department, as appropriate, shall have the authority to collect data; to make~~
13 ~~investigations and inspections; to examine properties, leases, papers, books and records; to~~
14 ~~examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation;~~
15 ~~to hold hearings; and to provide for the keeping of records and the making of reports; and to~~
16 ~~take such action as may be reasonably necessary to enforce this law.~~

17 ~~(b1) In the exercise of their respective authority over oil and gas exploration and~~
18 ~~development activities, the Commission and the Department, as applicable, shall have access to~~
19 ~~all data, records, and information related to such activities, including, but not limited to,~~
20 ~~seismic surveys, stratigraphic testing, geologic cores, proposed well bore trajectories, hydraulic~~
21 ~~fracturing fluid chemicals and constituents, drilling mud chemistry, and geophysical borehole~~
22 ~~logs. With the exception of information designated as a trade secret, as defined in~~
23 ~~G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2,~~
24 ~~the Department shall make any information it receives available to the public. The State~~
25 ~~Geologist shall serve as the custodian of all data, information, and records received by the~~
26 ~~Department pursuant to this subsection and shall ensure that the information is maintained~~
27 ~~securely as provided in G.S. 132-7.~~

28 ~~(c) The Department may make rules and orders as may be necessary from time to time~~
29 ~~in the proper administration and enforcement of this law, including rules or orders for the~~
30 ~~following purposes:~~

- 31 ~~(1) To require the drilling, operation, casing and plugging of wells to be done in~~
32 ~~such manner as to prevent the escape of oil or gas out of one stratum to~~
33 ~~another; to prevent the intrusion of water into an oil or gas stratum from a~~
34 ~~separate stratum; to prevent the pollution of freshwater supplies by oil, gas~~
35 ~~or salt water, or to protect the quality of the water, air, soil or any other~~
36 ~~environmental resource against injury or damage or impairment; and to~~
37 ~~require reasonable bond condition for the performance of the duty to plug~~
38 ~~each dry or abandoned well.~~
- 39 ~~(2) To require directional surveys upon application of any owner who has~~
40 ~~reason to believe that a well or wells of others has or have been drilled into~~
41 ~~the lands owned by him or held by him under lease. In the event such~~
42 ~~surveys are required, the costs thereof shall be borne by the owners making~~
43 ~~the request.~~
- 44 ~~(3) To require the making of reports showing the location of oil and gas wells,~~
45 ~~and the filing of logs and drilling records.~~
- 46 ~~(4) To prevent the drowning by water of any stratum or part thereof capable of~~
47 ~~producing oil or gas in paying quantities, and to prevent the premature and~~
48 ~~irregular encroachment of water which reduces, or tends to reduce, the total~~
49 ~~ultimate recovery of oil or gas from any pool.~~
- 50 ~~(5) To require the operation of wells with efficient gas oil ratios, and to fix such~~
51 ~~ratios.~~

- 1 (6) To prevent "blow-outs," "caving" and "seepage" in the sense that conditions
2 indicated by such terms are generally understood in the oil and gas business.
3 (7) To prevent fires.
4 (8) To identify the ownership of all oil or gas wells, producing leases, refineries,
5 tanks, plants, structures and all storage and transportation equipment and
6 facilities.
7 (9) To regulate the "shooting," perforating, and chemical treatment of wells.
8 (10) To regulate secondary recovery methods, including the introduction of gas,
9 air, water or other substances into producing formations.
10 (11) To limit and prorate the production of oil or gas, or both, from any pool or
11 field for the prevention of waste as herein defined.
12 (12) To require, either generally or in or from particular areas, certificates of
13 clearance or tenders in connection with the transportation of oil or gas.
14 (13) To regulate the spacing of wells and to establish drilling units.
15 (14) To prevent, so far as is practicable, reasonably avoidable drainage from each
16 developed unit which is not equalized by counter drainage.
17 (15) To prevent where necessary the use of gas for the manufacture of carbon
18 black.
19 (16) To regulate and, if necessary in its judgment for the protection of unique
20 environmental values, to prohibit the location of wells in the interest of
21 protecting the quality of the water, air, soil or any other environmental
22 resource against injury, or damage or impairment.

23 (d) The Department of Labor shall develop, adopt, and enforce rules establishing health
24 and safety standards for workers engaged in oil and gas operations in the State, including
25 operations in which hydraulic fracturing treatments are used for that purpose.

26 (e) The Department shall submit an annual report on its activities conducted pursuant to
27 this Article and rules adopted thereunder to the Environmental Review Commission, the Joint
28 Legislative Commission on Energy Policy, the Senate and House of Representatives
29 Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research
30 Division of the General Assembly on or before October 1 of each year."

31 SECTION 2.(d) G.S. 113-392 reads as rewritten:

32 "§ 113-392. **Protecting pool owners; drilling units in pools; location of wells; shares in**
33 **pools.**

34 (a) Whether or not the total production from a pool be limited or prorated, no rule or
35 order of the ~~Department~~ Commission shall be such in terms or effect.

- 36 (1) That it shall be necessary at any time for the producer from, or the owner of,
37 a tract of land in the pool, in order that he may obtain such tract's just and
38 equitable share of the production of such pool, as such share is set forth in
39 this section, to drill and operate any well or wells on such tract in addition to
40 such well or wells as can produce without waste such share, or
41 (2) As to occasion net drainage from a tract unless there be drilled and operated
42 upon such tract a well or wells in addition to such well or wells thereon as
43 can produce without waste such tract's just and equitable share, as set forth
44 in this section, of the production of such pool.

45 (b) For the prevention of waste and to avoid the augmenting and accumulation of risks
46 arising from the drilling of an excessive number of wells, the ~~Commission~~ Department shall,
47 after a hearing, establish a drilling unit or units for each pool. The ~~Commission~~ Department
48 may establish drainage units of uniform size for the entire pool or may, if the facts so justify,
49 divide into zones any pool, establish a drainage unit for each zone, which unit may differ in
50 size from that established in any other zone; and the ~~Commission~~ Department may from time
51 to time, if the facts so justify, change the size of the unit established for the entire pool or for

1 any zone or zones, or part thereof, establishing new zones and units if the facts justify their
2 establishment.

3 (c) Each well permitted to be drilled upon any drilling unit shall be drilled
4 approximately in the center thereof, with such exception as may reasonably be necessary where
5 it is shown, after notice and upon hearing, and the ~~Commission~~ ~~Department~~ finds that the unit
6 is partly outside the pool or, for some other reason, a well approximately in the center of the
7 unit would be nonproductive or where topographical conditions are such as to make the drilling
8 approximately in the center of the unit unduly burdensome. Whenever an exception is granted,
9 the ~~Commission~~ ~~Department~~ shall take such action as will offset any advantage which the
10 person securing the exception may have over producers by reason of the drilling of the well as
11 an exception, and so that drainage from developed units to the tract with respect to which the
12 exception is granted will be prevented or minimized and the producer of the well drilled as an
13 exception will be allowed to produce no more than his just and equitable share of the oil and
14 gas in the pool, as such share is set forth in this section.

15 (d) Subject to the reasonable requirements for prevention of waste, a producer's just and
16 equitable share of the oil and gas in the pool (also sometimes referred to as a tract's just and
17 equitable share) is that part of the authorized production for the pool (whether it be the total
18 which could be produced without any restriction on the amount of production, or whether it be
19 an amount less than that which the pool could produce if no restriction on the amount were
20 imposed) which is substantially in the proportion that the quantity of recoverable oil and gas in
21 the developed area of his tract in the pool bears to the recoverable oil and gas in the total
22 developed area of the pool, insofar as these amounts can be ascertained practically; and to that
23 end, the rules, permits and orders of the ~~Commission~~ ~~Department~~ shall be such as will prevent
24 or minimize reasonably avoidable net drainage from each developed unit (that is, drainage
25 which is not equalized by counter-drainage), and will give to each producer the opportunity to
26 use his just and equitable share of the reservoir energy."

27 **SECTION 2.(e)** G.S. 113-394 reads as rewritten:

28 **"§ 113-394. Limitations on production; allocating and prorating "allowables."**

29 (a) Whenever the total amount of oil, including condensate, which all the pools in the
30 State can produce, exceeds the amount reasonably required to meet the reasonable market
31 demand for oil, including condensate, produced in this State, then the ~~Department~~ ~~Commission~~
32 shall limit the total amount of oil, including condensate, which may be produced in the State by
33 fixing an amount which shall be designated "allowable" for this State, which will not exceed
34 the reasonable market demand for oil, including condensate, produced in this State. The
35 ~~Commission~~ ~~Department~~ shall then allocate or distribute the "allowable" for the State among
36 the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so
37 that waste will be prevented. In allocating the "allowable" for the State, and in fixing
38 "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such
39 hydrocarbons, the ~~Department~~ ~~Commission~~ shall take into account the producing conditions
40 and other relevant facts with respect to such pools, including the separate needs for oil, gas and
41 condensate, and shall formulate rules setting forth standards or a program for the distribution of
42 the "allowable" for the State, and shall distribute the "allowable" for the State in accordance
43 with such standards or program, and where conditions in one pool or area are substantially
44 similar to those in another pool or area, then the same standards or programs shall be applied to
45 such pools and areas so that as far as practicable a uniform program will be followed; provided,
46 however, the ~~Department~~ ~~Commission~~ shall ~~permit~~ allow the production of a sufficient amount
47 of natural gas from any pool to supply adequately the reasonable market demand for such gas
48 for light and fuel purposes if such production can be obtained without waste, and the
49 condensate "allowable" for such pool shall not be less than the total amount of condensate
50 produced or obtained in connection with the production of the gas "allowable" for light and fuel
51 purposes, and provided further that, if the amount allocated to pool as its share of the

1 "allowable" for the State is in excess of the amount which the pool should produce to prevent
2 waste, then the ~~Department-Commission~~ shall fix the "allowable" for the pool so that waste will
3 be prevented.

4 (b) The ~~Commission Department~~ shall not be required to determine the reasonable
5 market demand applicable to any single pool except in relation to all pools producing oil of
6 similar kind and quality and in relation to the demand applicable to the State, and in relation to
7 the effect of limiting the production of pools in the State. In allocating "allowables" to pools,
8 the ~~Department-Commission~~ shall not be bound by nominations or desires of purchasers to
9 purchase oil from particular fields or areas, and the ~~Commission Department~~ shall allocate the
10 "allowable" for the State in such manner as will prevent undue discrimination against any pool
11 or area in favor of another or others which would result from selective buying or nominating by
12 purchasers of oil, as such term "selective buying or nominating" is understood in the oil
13 business.

14 (c) Whenever the ~~Department-Commission~~ limits the total amount of oil or gas which
15 may be produced in any pool in this State to an amount less than that which the pool could
16 produce if no restrictions were imposed (which limitation may be imposed either incidental to,
17 or without, a limitation of the total amount of oil or gas which may be produced in the State),
18 the ~~Department-Commission~~ shall prorate or distribute the "allowable" production among the
19 producers in the pool on a reasonable basis, and so that each producer will have the opportunity
20 to produce or receive his just and equitable share, as such share is set forth in subsection
21 G.S. 113-392(d), subject to the reasonable necessities for the prevention of waste.

22 (d) Whenever the total amount of gas which can be produced from any pool in this
23 State exceeds the amount of gas reasonably required to meet the reasonable market demand
24 therefrom, the ~~Commission Department~~ shall limit the total amount of gas which may be
25 produced from such pool. The ~~Commission Department~~ shall then allocate or distribute the
26 allowable production among the developed areas in the pool on a reasonable basis, so that each
27 producer will have the opportunity to produce his just and equitable share, as such share is set
28 forth in subsection G.S. 113-392(d), whether the restriction for the pool as a whole is
29 accomplished by order or by the automatic operation of the prohibitory provisions of this law.
30 As far as applicable, the provisions of subsection (a) of this section shall be followed in
31 allocating any "allowable" of gas for the State.

32 (e) After the effective date of any rule or order of the ~~Department-Commission~~ fixing
33 the "allowable" production of oil or gas, or both, or condensate, no person shall produce from
34 any well, lease, or property more than the "allowable" production which is fixed, nor shall such
35 amount be produced in a different manner than that which may be authorized."

36 **SECTION 2.(f)** G.S. 113-410 reads as rewritten:

37 **"§ 113-410. Penalties for other violations.**

38 (a) Any person who fails to secure a permit prior to drilling a well or using hydraulic
39 fracturing treatments, or who knowingly and willfully violates any provision of this
40 law, Article, or any rule or order of the ~~Commission or the~~ Department made hereunder, shall,
41 in the event a penalty for such violation is not otherwise provided for herein, be subject to a
42 penalty of not to exceed ~~one-twenty-five thousand dollars (\$1,000)~~ (\$25,000) a day for each and
43 every day of such violation, and for each and every act of violation, such penalty to be
44 recovered in a suit in the superior court of the county where the defendant resides, or in the
45 county of the residence of any defendant if there be more than one defendant, or in the superior
46 court of the county where the violation took place. The place of suit shall be selected by the
47 Department, and such suit, by direction of the Department, shall be instituted and conducted in
48 the name of the Department by the Attorney General. The payment of any penalty as provided
49 for herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal
50 gas, or illegal product into legal product, nor shall such payment have the effect of authorizing
51 the sale or purchase or acquisition, or the transportation, refining, processing, or handling in

1 any other way, of such illegal oil, illegal gas or illegal product, but, to the contrary, penalty
2 shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal
3 product.

4 (b) Any person knowingly and willfully aiding or abetting any other person in the
5 violation of any statute of this State relating to the conservation of oil or gas, or the violation of
6 any provisions of this law, or any rule or order made thereunder, shall be subject to the same
7 penalties as prescribed ~~herein~~ in subsection (a) of this section for the violation by such other
8 person.

9 (c) In determining the amount of a penalty under this section, the Department shall
10 consider all of the following factors:

11 (1) The degree and extent of harm to the natural resources of the State, to the
12 public health, or to private property resulting from the violation.

13 (2) The duration and gravity of the violation.

14 (3) The effect on ground or surface water quantity or quality or on air quality.

15 (4) The cost of rectifying the damage.

16 (5) The amount of money the violator saved by noncompliance.

17 (6) Whether the violation was committed willfully or intentionally.

18 (7) The prior record of the violator in complying or failing to comply with this
19 Article or a rule adopted pursuant to this Article.

20 (8) The cost to the State of the enforcement procedures.

21 (d) If any civil penalty has not been paid within 60 days after notice of assessment has
22 been served on the violator or within 30 days after service of the final decision by the
23 administrative law judge in accordance with G.S. 150B-34, a final decision by the Committee
24 on Civil Penalty Remissions established under G.S. 143B-293.6, or a court order, whichever is
25 later, the Secretary or the Secretary's designee shall request the Attorney General to institute a
26 civil action in the superior court of any county in which the violator resides or has his or its
27 principal place of business to recover the amount of the civil penalty.

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

30 **SECTION 2.(g)** G.S. 113-415 reads as rewritten:

31 "**§ 113-415. Conflicting laws.**

32 No provision of this Article shall be construed to repeal, amend, abridge or otherwise
33 ~~affect~~ affect: (i) the authority and responsibility vested in the Environmental Management
34 Commission by Article 7 of Chapter 87,87 of the General Statutes, pertaining to the location,
35 construction, repair, operation and abandonment of wells, or the authority and responsibility
36 vested in the Environmental Management Commission related to the control of water and air
37 pollution as provided in Articles 21 and 21A of Chapter 143 of the General Statutes; ~~or~~ or (ii)
38 the authority or responsibility vested in the Department and the Commission for Public Health
39 by Article 10 of Chapter 130A of the General Statutes pertaining to public water-supply
40 requirements, requirements, or the authority and responsibility vested in the Commission for
41 Public Health related to the management of solid and hazardous waste as provided in Article 9
42 of Chapter 130A of the General Statutes."

43 **SECTION 2.(h)** G.S. 143B-282 reads as rewritten:

44 "**§ 143B-282. Environmental Management Commission – creation; powers and duties.**

45 ...

46 (2) The Environmental Management Commission shall adopt rules:

47 ...

48 l. For matters within its jurisdiction that allow for and regulate
49 horizontal drilling and hydraulic fracturing for the purpose of oil and
50 gas exploration and development.

51"

1 **SECTION 2.(i)** G.S. 130A-29 reads as rewritten:
2 "**§ 130A-29. Commission for Public Health – Creation, powers and duties.**

3 ...
4 (c) The Commission shall adopt rules:

5 ...
6 (11) For matters within its jurisdiction that allow for and regulate horizontal
7 drilling and hydraulic fracturing for the purpose of oil and gas exploration
8 and development.

9 "

10 **SECTION 2.(j)** The Mining and Energy Commission, in conjunction with the
11 Department of Environment and Natural Resources, the Department of Transportation, the
12 North Carolina League of Municipalities, and the North Carolina Association of County
13 Commissioners, shall identify appropriate levels of funding and potential sources for that
14 funding, including permit fees, bonds, taxes, and impact fees, necessary to (i) support local
15 governments impacted by the industry and associated activities; (ii) address expected
16 infrastructure impacts, including, but not limited to, repair of roads damaged by truck traffic
17 and heavy equipment; (iii) cover any costs to the State for administering an oil and gas
18 regulatory program, including remediation and reclamation of drilling sites when necessary due
19 to abandonment or insolvency of an oil or gas operator or other responsible party; and (iv) any
20 other issues that may need to be addressed in the Commission's determination. Any
21 recommendation concerning local impact fees shall be formulated to require that all such fees
22 be used exclusively to address infrastructure impacts from the drilling operation for which a fee
23 is imposed. The Commission shall report its findings and recommendations, including
24 legislative proposals, to the Joint Legislative Commission on Energy Policy, created under
25 Section 6(a) of this act, and the Environmental Review Commission on or before January 1,
26 2013.

27 **SECTION 2.(k)** The Mining and Energy Commission, in conjunction with the
28 Department of Environment and Natural Resources, the North Carolina League of
29 Municipalities, and the North Carolina Association of County Commissioners, shall examine
30 the issue of local government regulation of oil and gas exploration and development activities,
31 and the use of horizontal drilling and hydraulic fracturing for that purpose. The Commission
32 shall formulate recommendations that maintain a uniform system for the management of such
33 activities, which allow for reasonable local regulations, including required setbacks,
34 infrastructure placement, and light and noise restrictions, that do not prohibit or have the effect
35 of prohibiting oil and gas exploration and development activities, and the use of horizontal
36 drilling and hydraulic fracturing for that purpose, or otherwise conflict with State law. The
37 Commission shall report its findings and recommendations, including legislative proposals, to
38 the Joint Legislative Commission on Energy Policy, created under Section 6(a) of this act, and
39 the Environmental Review Commission on or before January 1, 2013.

40 **SECTION 2.(l)** The Mining and Energy Commission, in conjunction with the
41 Department of Environment and Natural Resources and the Consumer Protection Division of
42 the North Carolina Department of Justice, shall study the State's current law on the issue of
43 integration or compulsory pooling and other states' laws on the matter. The Department shall
44 report its findings and recommendations, including legislative proposals, to the Joint
45 Legislative Commission on Energy Policy, created under Section 6(a) of this act, and the
46 Environmental Review Commission on or before January 1, 2013.

47 **SECTION 2.(m)** All rules required to be adopted by the Mining and Energy
48 Commission, the Environmental Management Commission, and the Commission for Public
49 Health pursuant to this act shall be adopted no later than October 1, 2014. In order to provide
50 for the orderly, efficient, and effective development and adoption of rules and to prevent the
51 adoption of duplicative, inconsistent, or inadequate rules by these Commissions, the

1 Department of Environment and Natural Resources shall coordinate the adoption of the rules.
2 The Commissions and the Department shall develop the rules in an open and collaborative
3 process that includes (i) input from scientific and technical advisory groups; (ii) consultation
4 with the North Carolina League of Municipalities, the North Carolina Association of County
5 Commissioners, the Division of Energy of the Department of Commerce, the Department of
6 Transportation, the Division of Emergency Management of the Department of Public Safety,
7 the Consumer Protection Division of the Department of Justice, the Department of Labor, the
8 Department of Health and Human Services, the State Review of Oil and Natural Gas
9 Environmental Regulations (STRONGER), the American Petroleum Institute (API), and the
10 Rural Advancement Foundation (RAFI-USA); and (iii) broad public participation. During the
11 development of the rules, the Commissions and the Department shall identify changes required
12 to all existing rules and statutes necessary for the implementation of this act, including repeal or
13 modification of rules and statutes. Until such time as all of the rules are adopted pursuant to this
14 act, the Department shall submit quarterly reports to the Joint Legislative Commission on
15 Energy Policy, created under Section 6(a) of this act, and the Environmental Review
16 Commission on its progress in developing and adopting the rules. The quarterly reports shall
17 include recommendations on changes required to existing rules and statutes and any other
18 findings or recommendations necessary for the implementation of this act. The first report
19 required by this subsection is due January 1, 2013.

20 **SECTION 2.(n)** Notwithstanding G.S. 143B-293.5, as enacted by Section 1(b) of
21 this act, the North Carolina Mining and Energy Commission shall meet at least twice quarterly
22 until December 31, 2015, in order to develop a modern regulatory program for the management
23 of oil and gas exploration and development activities in the State, including the use of
24 horizontal drilling and hydraulic fracturing for that purpose.

25
26 **PART IV. AUTHORIZE HORIZONTAL DRILLING AND HYDRAULIC**
27 **FRACTURING; PROHIBIT ISSUANCE OF PERMITS PENDING SUBSEQUENT**
28 **LEGISLATIVE ACTION**

29 **SECTION 3.(a)** G.S. 113-393 reads as rewritten:

30 "**§ 113-393. Development of lands as drilling unit by agreement or order of**
31 **Department-Commission.**

32 (a) Integration of Interests and Shares in Drilling Unit. – When two or more separately
33 owned tracts of land are embraced within an established drilling unit, the owners thereof may
34 agree validly to integrate their interests and to develop their lands as a drilling unit. Where,
35 however, such owners have not agreed to integrate their interests, the ~~Department-Commission~~
36 shall, for the prevention of waste or to avoid drilling of unnecessary wells, require such owners
37 to do so and to develop their lands as a drilling unit. All orders requiring such integration shall
38 be made after notice and hearing, and shall be upon terms and conditions that are just and
39 reasonable, and will afford to the owner of each tract the opportunity to recover or receive his
40 just and equitable share of the oil and gas in the pool without unnecessary expense, and will
41 prevent or minimize reasonably avoidable drainage from each developed unit which is not
42 equalized by counter-drainage. The portion of the production allocated to the owner of each
43 tract included in a drilling unit formed by an integration order shall, when produced, be
44 considered as if it had been produced from such tract by a well drilled thereon.

45 In the event such integration is required, and provided also that after due notice to all the
46 owners of tracts within such drilling unit of the creation of such drilling unit, and provided
47 further that the ~~Department-Commission~~ has received no protest thereto, or request for hearing
48 thereon, whether or not 10 days have elapsed after notice has been given of the creation of the
49 drilling unit, the operator designated by the ~~Department-Commission~~ to develop and operate the
50 integrated unit shall have the right to charge to each other interested owner the actual
51 expenditures required for such purpose not in excess of what are reasonable, including a

1 reasonable charge for supervision, and the operator shall have the right to receive the first
2 production from the well drilled by him thereon, which otherwise would be delivered or paid to
3 the other parties jointly interested in the drilling of the well, so that the amount due by each of
4 them for his shares of the expense of drilling, equipping, and operating the well may be paid to
5 the operator of the well out of production; with the value of the production calculated at the
6 market price in the field at the time such production is received by the operator or placed to his
7 credit. After being reimbursed for the actual expenditures for drilling and equipping and
8 operating expenses incurred during the drilling operations and until the operator is reimbursed,
9 the operator shall thereafter pay to the owner of each tract within the pool his ratable share of
10 the production calculated at the market price in the field at the time of such production less the
11 reasonable expense of operating the well. In the event of any dispute relative to such costs, the
12 ~~Department-Commission~~ shall determine the proper costs.

13 (b) When Each Owner May Drill. – Should the owners of separate tracts embraced
14 within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on
15 the unit, and should it be established that the ~~Department-Commission~~ is without authority to
16 require integration as provided for in subsection (a) of this section, then, subject to all other
17 applicable provisions of this law, the owner of each tract embraced within the drilling unit may
18 drill on his tract, but the allowable production from each tract shall be such proportion of the
19 allowable for the full drilling unit as the area of such separately owned tract bears to the full
20 drilling unit.

21 (c) Cooperative Development Not in Restraint of Trade. – Agreements made in the
22 interests of conservation of oil or gas, or both, or for the prevention of waste, between and
23 among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in
24 any area that appears from geological or other data to be underlaid by a common accumulation
25 of oil or gas, or both, or between and among such owners or operators, or both, and royalty
26 owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out
27 a plan for the cooperative development and operation thereof, when such agreements are
28 approved by the ~~Department-Commission~~, are hereby authorized and shall not be held or
29 construed to violate any of the statutes of this State relating to trusts, monopolies, or contracts
30 and combinations in restraining of trade.

31 (d) Variation from Vertical. – Whenever the Department fixes the location of any well
32 or wells on the surface, the point at which the maximum penetration of such wells into the
33 producing formation is reached shall not unreasonably vary from the vertical drawn from the
34 center of the hole at the surface, provided, that the ~~Department-Commission~~ shall prescribe
35 rules and the Department shall prescribe orders governing the reasonableness of such variation.
36 This subsection shall not apply to wells drilled for the purpose of exploration or development
37 of natural gas through use of horizontal drilling in conjunction with hydraulic fracturing
38 treatments."

39 **SECTION 3.(b)** G.S. 143-214.2 reads as rewritten:

40 "**§ 143-214.2. Prohibited discharges.**

41 (a) The discharge of any radiological, chemical or biological warfare agent or
42 high-level radioactive waste to the waters of the State is prohibited.

43 (b) The discharge of any wastes to the subsurface or groundwaters of the State by
44 means of wells is prohibited. This section shall not be construed to ~~prohibit~~ prohibit (i) the
45 operation of closed-loop groundwater remediation systems in accordance with
46 G.S. 143-215.1A-G.S. 143-215.1A or (ii) injection of hydraulic fracturing fluid for the
47 exploration or development of natural gas resources.

48 (c) Unless permitted by a rule of the Commission, the discharge of wastes, including
49 thermal discharges, to the open waters of the Atlantic Ocean over which the State has
50 jurisdiction are prohibited."

51 **SECTION 3.(c)** G.S. 113-395 reads as rewritten:

1 "**§ 113-395. Permits, fees, and notice required for oil and gas activities.**~~Notice and~~
2 ~~payment of fee to Department before drilling or abandoning well; plugging~~
3 ~~abandoned well.~~

4 (a) Before any well, in search of oil or gas, shall be drilled, the person desiring to drill
5 the same shall ~~notify~~ submit an application for a permit to the Department upon such form as~~it~~
6 ~~the Department~~ may prescribe and shall pay a fee of three thousand dollars (\$3,000) for each
7 well. The drilling of any well is ~~hereby prohibited until such notice is given and such fee has~~
8 ~~been paid and permit granted.~~ unless the Department has issued a permit for the activity.

9 (b) Any person desiring to use hydraulic fracturing treatments in conjunction with oil
10 and gas operations or activities shall submit an application for a permit to the Department upon
11 such form as the Department may prescribe. The use of hydraulic fracturing treatments is
12 prohibited unless the Department has issued a permit for the activity.

13 (c) Each abandoned well and each dry hole shall be plugged promptly in the manner
14 and within the time required by rules prescribed by the Department, and the owner of such well
15 shall give notice, upon such form as the Department may prescribe, of the abandonment of each
16 dry hole and of the owner's intention to abandon, and shall pay a fee of four hundred fifty
17 dollars (\$450.00). No well shall be abandoned until such notice has been given and such fee has
18 been paid."

19 **SECTION 3.(d)** The issuance of permits for oil and gas exploration and
20 development activities using horizontal drilling and hydraulic fracturing treatments in the State
21 pursuant to G.S. 113-395, as amended by subsection (c) of this section, or any other provision
22 of law shall be prohibited in order to allow the Mining and Energy Commission sufficient time
23 for development of a modern regulatory program for the management of oil and gas exploration
24 and development in the State and the use of horizontal drilling and hydraulic fracturing
25 treatments for that purpose, and for adoption of appropriate environmental standards applicable
26 to these activities. No agency of the State, including the Department of Environment and
27 Natural Resources, the Environmental Management Commission, the Commission on Public
28 Health, or the Mining and Energy Commission, shall issue a permit for oil or gas exploration or
29 development activities using horizontal drilling and hydraulic fracturing treatments until the
30 General Assembly takes legislative action to allow the issuance of such permits.

31 32 **PART V. LANDOWNER AND PUBLIC PROTECTIONS**

33 **SECTION 4.(a)** G.S. 113-420 reads as rewritten:

34 "**§ 113-420. Notice and entry to property.**

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

44 (1) The identity of person(s) requesting entry upon the property.

45 (2) The purpose for entry on the property.

46 (3) The dates, times, and location on which entry to the property will occur,
47 including the estimated number of entries.

48 (b) Notice Required for Land-Disturbing Activities. – If an oil ~~and or~~ gas developer or
49 operator is not the surface owner of the property on which oil ~~and or~~ gas operations are to
50 occur, before entering the property for oil ~~and or~~ gas operations that disturb the surface, the
51 developer or operator shall give written notice to the surface owner at least ~~14~~ 30 days before

1 the desired date of entry to the property. Notice shall be given by certified mail, return receipt
2 requested. The notice, at a minimum, shall include all of the following:

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

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

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

24 **SECTION 4.(b)** G.S. 113-421 reads as rewritten:

25 **"§ 113-421. ~~Compensation for damages.~~Presumptive liability for water contamination;**
26 **compensation for other damages; responsibility for reclamation.**

27 (a) Presumptive Liability for Water Contamination. – It shall be presumed that an oil or
28 gas developer or operator is responsible for contamination of all water supplies that are within
29 5,000 feet of a wellhead that is part of the oil or gas developer's or operator's activities unless
30 the presumption is rebutted by a defense established as set forth in subdivision (1) of this
31 subsection. If a contaminated water supply is located within 5,000 feet of a wellhead, in
32 addition to any other remedy available at law or in equity, including payment of compensation
33 for damage to a water supply, the developer or operator shall provide a replacement water
34 supply to the surface owner and other persons using the water supply at the time the oil or gas
35 developer's activities were commenced on the property, which water supply shall be adequate
36 in quality and quantity for those persons' use.

37 (1) In order to rebut a presumption arising pursuant to subsection (a) of this
38 section, an oil or gas developer or operator shall have the burden of proving
39 by a preponderance of the evidence any of the following:

- 40 a. The contamination existed prior to the commencement of the drilling
41 activities of the oil or gas developer or operator, as evidenced by a
42 pre-drilling test of the water supply in question conducted in
43 conformance with G.S. 113-423(f).
- 44 b. The surface owner or owner of the water supply in question refused
45 the oil or gas developer or operator access to conduct a pre-drilling
46 test of the water supply conducted in conformance with
47 G.S. 113-423(f).
- 48 c. The water supply in question is not within 5,000 feet of a wellhead
49 that is part of the oil or gas developer's or operator's activities.
- 50 d. The contamination occurred as the result of a cause other than
51 activities of the developer or operator.

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

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

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

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

11 (a2) Reclamation of Surface Property Required. – An oil or gas developer or operator
12 shall reclaim all surface areas affected by its operations no later than two years following
13 completion of the operations. If the developer or operator is not the surface owner of the
14 property, prior to commencement of activities on the property, the oil or gas developer or
15 operator shall provide a bond running to the surface owner sufficient to cover reclamation of
16 the surface owner's property.

17 (a3) Remediation Required. – Nothing in this Article shall be construed to obviate or
18 affect the obligation of a developer or operator to comply with any other requirement under law
19 to remediate contamination caused by its activities.

20 (a4) Replacement Water Supply Required. – If a water supply belonging to the surface
21 owner or third parties is contaminated due to the activities of the developer or operator, in
22 addition to any other remedy available at law or in equity, the developer or operator shall
23 provide a replacement water supply to persons using the water supply at the time the oil or gas
24 developer's activities were commenced on the property, which water supply shall be adequate
25 in quality and quantity for those persons' use.

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

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

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

39 **SECTION 4.(c)** G.S. 113-422 reads as rewritten:

40 **"§ 113-422. Indemnification.**

41 An oil or gas developer or operator shall indemnify and hold harmless a surface owner
42 against any claims related to the developer's or operator's activities on the surface owner's
43 property, including, but not limited to, (i) claims of injury or death to any person; (ii) for
44 damage to impacted infrastructure or water supplies; (iii) damage to a third party's property that
45 is adjacent to property on which drilling occurs, as well as real or personal property; adjacent
46 infrastructure, and wells; and (iv) violations of any federal, State, or local law, rule, regulation,
47 or ordinance, including those for protection of the environment."

48 **SECTION 4.(d)** G.S. 113-423 reads as rewritten:

49 **"§ 113-423. Maximum Required lease terms.**

50 (a) Required Information to be Provided to Potential Lessors and Surface Owners. –
51 Prior to executing a lease for oil and gas rights or any other conveyance of any kind separating

1 rights to oil or gas from the freehold estate of surface property, an oil or gas developer or
2 operator, or any agent thereof, shall provide the lessor with a copy of this Part and a publication
3 produced by the Consumer Protection Division of the North Carolina Department of Justice
4 entitled "Oil & Gas Leases: Landowners' Rights." If the lessor is not the surface owner of the
5 property, the oil or gas developer or operator shall also provide the surface owner with a copy
6 of this Part and the publication prior to execution of a lease for oil and gas rights.

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

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

37 (d) Bonus Payments. – Any bonus payments, or other initial payments, due under a
38 lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas
39 from the freehold estate of surface property shall be paid by the lessee to the lessor within 60
40 days of execution of a lease. If a bonus payment or other initial payment has not been made
41 within the required time frame, the lessor shall be entitled to interest on the unpaid amount
42 commencing on the payment due date at the rate of ten percent (10%) per annum on the unpaid
43 amount.

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

1 by the developer or operator in an amount not less than the fair market value of the water
2 consumed based on water sales in the area at the time of use.

3 (f) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other
4 conveyance of any kind separating rights to oil or gas from the freehold estate of surface
5 property shall include a clause that requires the oil or gas developer or operator to conduct a
6 test of all water supplies within 5,000 feet from a wellhead that is part of the oil or gas
7 developer's or operator's activities at least 30 days prior to initial drilling activities and at least
8 two follow-up tests within a 24-month period after production has commenced. The
9 Department shall identify the location of all water supplies, including wells, on a property on
10 which drilling operations are proposed to occur. A surface owner may elect to have the
11 Department sample wells located on their property, in lieu of sampling conducted by the oil or
12 gas developer or operator, in which case the developer or operator shall reimburse the
13 Department for the reasonable costs involved in testing of the wells in question. Nothing in this
14 subsection shall be construed to preclude or impair the right of any surface owner to refuse
15 pre-drilling testing of wells located on their property.

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

20 (h) Notice of Assignment Required. – Written notice of assignment of any lease of oil
21 or gas rights or any other conveyance of any kind separating rights to oil or gas from the
22 freehold estate of surface property shall be provided to the lessor within 30 days of such
23 assignment. If the surface owner of the property is not the lessor, written notice of assignment
24 of any lease of oil or gas rights shall also be given to the surface owner of the property to which
25 the lease pertains within 30 days of such assignment.

26 (i) Lender Approval of Lease. – Any lease for oil or gas rights or any other conveyance
27 of any kind separating rights to oil or gas from the freehold estate of surface property with a
28 surface owner shall include a conspicuous boldface disclosure concerning notification to
29 lenders, which shall be initialed by the surface owner, and state the following:

30
31 NOTICE TO LENDER(S) PRIOR TO EXECUTION OF LEASE:

32
33 Surface owners are advised to secure written approval from any lender who
34 holds a mortgage or deed of trust on any portion of the surface property
35 involved in the lease prior to execution of the lease and obtain written
36 confirmation that execution of the lease will not violate any provision
37 associated with any applicable mortgage or deed of trust, which could
38 potentially result in foreclosure.

39
40 I have read and understood the
41 terms of this provision.

_____ Surface Owner's Initials

42 (j) Three-Day Right of Rescission. – Any lease of oil or gas rights or any other
43 conveyance of any kind separating rights to oil or gas from the freehold estate of surface
44 property shall be subject to a three-day right of rescission in which the lessor or lessee may
45 cancel the lease. In order to cancel the lease, the lessor or lessee shall notify the other party in
46 writing within three business days of execution of the lease, and the lessor shall return any
47 sums paid by the lessee to the lessor under the terms of the lease."

48 **SECTION 4.(e)** Part 3 of Article 27 of Chapter 113 of the General Statutes is
49 amended by adding a new section to read:

50 **"§ 113-423.1. Surface activities.**

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

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

- 30 (1) Preclude or impair any person from obtaining any and all other remedies
31 allowed by law.
32 (2) Prevent a developer or operator and a surface owner from addressing the use
33 of the surface for oil and gas operations in a lease, surface use agreement, or
34 other written contract.
35 (3) Establish, alter, impair, or negate the authority of local governments to
36 regulate land use related to oil and gas operations."

37 **SECTION 4.(f)** G.S. 113-424 is repealed.

38 **SECTION 4.(g)** Part 3 of Article 27 of Chapter 113 of the General Statutes is
39 amended by adding a new section to read:

40 **"§ 113-425. Registry of landmen required.**

41 (a) Establishment of Registry. – The Department of Environment and Natural
42 Resources, in consultation with the Consumer Protection Division of the North Carolina
43 Department of Justice, shall establish and maintain a registry of landmen operating in this
44 State. As used in this section, "landman" means a person that, in the course and scope of the
45 person's business, does any of the following:

- 46 (1) Acquires or manages oil or gas interests.
47 (2) Performs title or contract functions related to the exploration, exploitation, or
48 disposition of oil or gas interests.
49 (3) Negotiates for the acquisition or divestiture of oil, gas, or mineral rights,
50 including the acquisition or divestiture of land or oil or gas rights for a
51 pipeline.

- 1 (4) Negotiates business agreements that provide for the exploration for or
2 development of oil or gas.
- 3 (b) Registration Required. – A person may not act, offer to act, or hold oneself out as a
4 landman in this State unless the person is registered with the Department in accordance with
5 this section. To apply for registration as a landman, a person shall submit an application to the
6 Department on a form to be provided by the Department, which shall include, at a minimum,
7 all of the following information:
- 8 (1) The name of the applicant or, if the applicant is not an individual, the names
9 and addresses of all principals of the applicant.
- 10 (2) The business address, telephone number, and electronic mail address of the
11 applicant.
- 12 (3) The social security number of the applicant or, if the applicant is not an
13 individual, the federal employer identification number of the applicant.
- 14 (4) A list of all states and other jurisdictions in which the applicant holds or has
15 held a similar registration or license.
- 16 (5) A list of all states and other jurisdictions in which the applicant has had a
17 similar registration or license suspended or revoked.
- 18 (6) A statement whether any pending judgments or tax liens exist against the
19 applicant.
- 20 (c) The Department may deny registration to an applicant, reprimand a registrant,
21 suspend or revoke a registration, or impose a civil penalty on a registrant if the Department
22 determines that the applicant or registrant does any of the following:
- 23 (1) Fraudulently or deceptively obtains, or attempts to obtain, a registration.
- 24 (2) Uses or attempts to use an expired, suspended, or revoked registration.
- 25 (3) Falsely represents oneself as a registered landman.
- 26 (4) Engages in any other fraud, deception, misrepresentation, or knowing
27 omission of material facts related to oil, gas, or mineral interests.
- 28 (5) Had a similar registration or license denied, suspended, or revoked in
29 another state or jurisdiction.
- 30 (6) Otherwise violates this section.
- 31 (d) An applicant may challenge a denial, suspension, or revocation of a registration or a
32 reprimand issued pursuant to subsection (c) of this section, as provided in Chapter 150B of the
33 General Statutes.
- 34 (e) The Department shall adopt rules as necessary to implement the provisions of this
35 section."

36 **SECTION 4.(h)** Part 3 of Article 27 of Chapter 113 of the General Statutes is
37 amended by adding a new section to read:

38 **"§ 113-426. Publication of information for landowners.**

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

47 **SECTION 4.(i)** Part 3 of Article 27 of Chapter 113 of the General Statutes is
48 amended by adding a new section to read:

49 **"§ 113-427. Additional remedies.**

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

1 **SECTION 5.** G.S. 47E-4 reads as rewritten:

2 "**§ 47E-4. Required disclosures.**

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

6 (1) Disclose those items which are required to be disclosed relative to the
7 characteristics and condition of the property and of which the owner has
8 actual knowledge; or

9 (2) State that the owner makes no representations as to the characteristics and
10 condition of the real property or any improvements to the real property
11 except as otherwise provided in the real estate contract.

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

18 (1) The water supply and sanitary sewage disposal system;

19 (2) The roof, chimneys, floors, foundation, basement, and other structural
20 components and any modifications of these structural components;

21 (3) The plumbing, electrical, heating, cooling, and other mechanical systems;

22 (4) Present infestation of wood-destroying insects or organisms or past
23 infestation the damage for which has not been repaired;

24 (5) The zoning laws, restrictive covenants, building codes, and other land-use
25 restrictions affecting the real property, any encroachment of the real property
26 from or to adjacent real property, and notice from any governmental agency
27 affecting this real property; and

28 (6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground
29 storage tank, hazardous material or toxic material (whether buried or
30 covered), and other environmental contamination.

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

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

37 (1) The North Carolina Real Estate Commission shall develop and require the
38 use of a standard disclosure statement to comply with the requirements of
39 this subsection. The disclosure statement shall specify that certain transfers
40 of residential property are excluded from this requirement by G.S. 47E-2,
41 including transfers of residential property made pursuant to a lease with an
42 option to purchase where the lessee occupies or intends to occupy the
43 dwelling. The standard disclosure statement shall require disclosure of
44 whether or not the property to be conveyed is subject to regulation by one or
45 more owners' association(s) and governing documents which impose various
46 mandatory covenants, conditions, and restrictions upon the property,
47 including, but not limited to, obligations to pay regular assessments or dues
48 and special assessments. The statement required by this subsection shall
49 include information on all of the following:

50 a. The name, address, telephone number, or e-mail address for the
51 president or manager of the association to which the lot is subject.

PART VI. CREATE ENERGY POLICY OVERSIGHT COMMISSION

SECTION 6.(a) Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Joint Legislative Commission on Energy Policy.

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

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

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

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

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

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

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

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

(1) Monitor and evaluate the programs, policies, and actions of the Mining and Energy Commission established pursuant to G.S. 143B-293.1, the Energy Policy Council established pursuant to G.S. 113B-2, the Energy Division in the Department of Commerce, the Utilities Commission and Public Staff established pursuant to Chapter 62 of the General Statutes, and of any other board, commission, department, or agency of the State or local government with jurisdiction over energy policy in the State.

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

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

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

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

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

"§ 120-287. Organization of Commission.

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

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

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

1 (d) From funds available to the General Assembly, the Legislative Services
2 Commission shall allocate monies to fund the Joint Legislative Commission on Energy Policy.
3 Members of the Commission receive subsistence and travel expenses as provided in
4 G.S. 120-3.1. The Legislative Services Commission, through the Legislative Services Officer,
5 shall assign professional staff to assist the Commission in its work. Upon the direction of the
6 Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of
7 Representatives shall assign clerical staff to the Commission. The expenses for clerical
8 employees shall be borne by the Commission."

9 **SECTION 6.(b)** Notwithstanding G.S. 120-285(c), as enacted by Section 6(a) of
10 this act, the President Pro Tempore of the Senate and the Speaker of the House of
11 Representatives may appoint members to the Joint Legislative Commission on Energy Policy to
12 terms that begin prior to the convening of the 2013 General Assembly. The terms of members
13 appointed pursuant to this section shall end upon the convening of the 2013 General Assembly.
14 Members appointed pursuant to this section who are otherwise qualified to serve on the
15 Commission may be reappointed to the Commission upon the convening of the 2013 General
16 Assembly.

17

18 **PART VII. EFFECTIVE DATE**

19 **SECTION 7.** Sections 4(a) through 4(f), 4(h), and 4(i) of this act are effective
20 when this act becomes law and apply to wells drilled and leases or contracts entered into on or
21 after that date. Sections 1(a) through 1(h), Sections 2(a) through 2(n), Sections 3(a) through
22 3(d), and Sections 6(a) and 6(b) of this act become effective August 1, 2012. Section 4(g) and
23 Section 5 become effective October 1, 2012, and Section 5 applies to real estate transfers or
24 dispositions occurring on or after that date. All other sections of this act are effective when this
25 act becomes law.