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Short Title: Business Freedom Act.

(Public)

Sponsors:

Referred to:

March 16, 2017

1 A BILL TO BE ENTITLED
2 AN ACT MAKING TECHNICAL, CONFORMING, AND OTHER CHANGES TO THE
3 LABOR LAWS OF NORTH CAROLINA; CODIFYING THE CAROLINA STAR
4 PROGRAM IN THE DEPARTMENT OF LABOR; AND MAKING VARIOUS
5 CHANGES TO THE LAWS GOVERNING BUSINESSES.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. DEPARTMENT OF LABOR TECHNICAL CHANGES**

9 **SECTION 1.(a)** G.S. 95-25.5(a) reads as rewritten:

10 "(a) No youth under 18 years of age shall be employed by any employer in any
11 occupation without a youth employment certificate unless specifically exempted. The
12 Commissioner of Labor shall prescribe regulations for youths and employers concerning the
13 issuance, maintenance and revocation of certificates. Certificates will be issued, subject to
14 review by the Department of Labor, by county directors of social services and such of their
15 designees as are approved by the Commissioner; provided, the Commissioner may also issue
16 certificates, issued by the Commissioner, both directly and electronically."

17 **SECTION 1.(b)** G.S. 95-117 reads as rewritten:

18 "**§ 95-117. Definitions.**

19 Each word or term defined in this Article has the meaning indicated in this section, unless a
20 different meaning is plainly required by the context.

21 (1) Annual gross volume. – The gross receipts a person or passenger tramway
22 receives from all types of sales made and business done during a 12-month
23 period.

24 ~~(1)(2)~~ "Commissioner" means the Commisioner. – The Commissioner of Labor of
25 the State of North Carolina.

26 ~~(2)(3)~~ "Industry" means activities Industry. – Activities of all those persons in the
27 State who own, manage, or direct the operation of passenger tramways.

28 ~~(3)(4)~~ "Operator" means any Operator. – Any person, firm, corporation, or
29 organization which owns, manages, or directs the operation of a passenger
30 tramway. "Operator" may apply to the State or any political subdivision or
31 instrumentality thereof.

32 (5) Owner. – Any person or authorized agent of such person who owns a
33 passenger tramway or in the event the passenger tramway is leased, the



1 lessee. The term owner shall also include the State of North Carolina or any
 2 political subdivision thereof or any unit of local government.

3 ~~(4)(6) "Passenger tramway" means a Passenger tramway. – A device used to~~
 4 ~~transport passengers uphill on skis, or in cars on tracks, or suspended in the~~
 5 ~~air by the use of steel cables, chains or belts, or by ropes, and usually~~
 6 ~~supported by trestles or towers with one or more spans. "Passenger~~
 7 ~~tramway" shall include. The term includes any of the following devices:~~

8 a. ~~"Chairlift," a Chairlift. – A type of transportation on which~~
 9 ~~passengers are carried on chairs suspended in the air and attached to~~
 10 ~~a moving cable, chain or link belt supported by trestles or towers~~
 11 ~~with one or more spans, or similar devices; devices.~~

12 a1. ~~"Conveyor," a Conveyor. – A type of transportation on which~~
 13 ~~passengers are transported uphill on a flexible moving element~~
 14 ~~(conveyor belt) that travels uphill on one path and generally returns~~
 15 ~~underneath the uphill portion.~~

16 a2. Funicular. – A system in which passengers are transported in or on
 17 carriers that are supported and guided by a level or inclined
 18 guideway and propelled by means of a haul rope or other flexible
 19 element that is driven by a power unit remaining essentially at a
 20 single location.

21 a3. Gondola. – An enclosed cabin attached to a cable that mechanically
 22 transports people or cargo.

23 b. ~~"J bar, T bar or platter pull, so called and similar types of devices or~~
 24 ~~means of transportation J bar, T bar, or platter pull. – Devices which~~
 25 ~~pull skiers riding on skis by means of an attachment to a main~~
 26 ~~overhead cable supported by trestles or towers with one or more~~
 27 ~~spans; spans.~~

28 c. ~~"Multicar aerial passenger tramway," a Multicar aerial passenger~~
 29 ~~tramway. – A device used to transport passengers in several open or~~
 30 ~~in closed cars attached to, and suspended from, a moving wire rope~~
 31 ~~or attached to a moving wire rope and supported on a standing wire~~
 32 ~~rope, or similar device; device.~~

33 d. ~~"Rope tow," a Rope tow. – A type of transportation which pulls the~~
 34 ~~skiers, riding on skis as the skier grasps the rope manually, or similar~~
 35 ~~devices; device.~~

36 e. ~~"Skimobile," a Skimobile. – A device in which a passenger car~~
 37 ~~running on steel or wooden tracks is attached to and pulled by a steel~~
 38 ~~cable, or similar device; device.~~

39 f. ~~"Two-car aerial passenger tramway," a Two-car aerial passenger~~
 40 ~~tramway. – A device used to transport passengers in two open or~~
 41 ~~enclosed cars attached to, and suspended from, a moving wire rope~~
 42 ~~or attached to a moving wire rope and supported on a standing wire~~
 43 ~~rope or similar device.~~

44 (7) Person. – Any individual, association, partnership, firm, corporation, private
 45 organization, or the State of North Carolina or any political subdivision
 46 thereof or any unit of local government."

47 **SECTION 1.(c)** Article 15 of Chapter 95 of the General Statutes is amended by
 48 adding the following new sections to read:

49 **"§ 95-125.1. Operation of unsafe device.**

50 No person shall operate, permit to be operated, or use any device subject to the provisions
 51 of this Article if the person knows or reasonably should know that the operation or use of the

1 device will expose the public to an unsafe condition which is likely to result in personal injury
2 or property damage.

3 **"§ 95-125.2. Reports required.**

4 (a) The owner of any device regulated under the provisions of this Article, or the
5 owner's authorized agent, shall, within 24 hours, notify the Commissioner of each and every
6 occurrence involving the device when either of the following occurs:

7 (1) Death or injury requiring medical treatment, other than first aid, by a
8 physician. For the purposes of this section, "first aid" means (i) the one-time
9 treatment or observation of scratches, cuts not requiring stitches, burns,
10 splinters, or contusions or (ii) performing a diagnostic procedure, including
11 examination and X rays, which does not ordinarily require medical treatment
12 even though provided by a physician or other licensed personnel.

13 (2) Damage to the device indicating a substantial defect in design, mechanics,
14 structure, or equipment that affects the future safe operation of the device.
15 No reporting is required in the case of normal wear and tear.

16 (b) The Commissioner, without delay, after notification and determination that an
17 occurrence involving injury or damage as specified in subsection (a) of this section has
18 occurred, shall make a complete and thorough investigation of the occurrence. The report of the
19 investigation shall be placed on file in the office of the division and shall give in detail all facts
20 and information available. The owner may submit for inclusion in the file results of
21 investigations independent of the department's investigation.

22 (c) No person, after an occurrence specified in subsection (a) of this section, shall do
23 either of the following:

24 (1) Operate, attempt to operate, use, or move or attempt to move such device or
25 part thereof without the approval of the Commissioner, unless so as to
26 prevent injury to any person or persons.

27 (2) Remove or attempt to remove from the premises any damaged or
28 undamaged part of such device or repair or attempt to repair any damaged
29 part necessary to a complete and thorough investigation. The Department
30 must initiate its investigation within 24 hours of being notified.

31 **"§ 95-125.3. Violations; civil penalties; appeal; criminal penalties.**

32 (a) Any person who violates G.S. 95-118 (Registration required; application
33 procedures) is subject to a civil penalty not to exceed one thousand two hundred fifty dollars
34 (\$1,250) for each day each device is so operated or used.

35 (b) Any person who violates G.S. 95-120.1 (Liability insurance) or G.S. 95-125.2
36 (Reports required) is subject to a civil penalty not to exceed two thousand five hundred dollars
37 (\$2,500) for each day each device is so operated and used.

38 (c) Any person who violates G.S. 95-125.1 (Operation of unsafe device) is subject to a
39 civil penalty not to exceed five thousand dollars (\$5,000) for each day each device is so
40 operated and used.

41 (d) In determining the amount of any penalty ordered under authority of this section, the
42 Commissioner shall give due consideration to the appropriateness of the penalty with respect to
43 the annual gross volume of the person being charged, the gravity of the violation, the good faith
44 of the person, and the record of previous violations.

45 (e) The Commissioner's determination of the amount of the penalty is final, unless
46 within 15 days after receipt of notice thereof by certified mail with return receipt, by signature
47 confirmation as provided by the U.S. Postal Service, by a designated delivery service
48 authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the
49 person charged with the violation takes exception to the determination, in which event final
50 determination of the penalty shall be made in an administrative proceeding pursuant to Chapter
51 150B of the General Statutes, the Administrative Procedures Act.

1 (f) The Commissioner may file in the office of the clerk of the superior court of the
2 county wherein the person, against whom a civil penalty has been ordered, resides or, if a
3 corporation is involved, in the county wherein the violation occurred, a certified copy of a final
4 order of the Commissioner unappealed form, or of a final order of the Commissioner affirmed
5 upon appeal. Upon such filing, the clerk of said court shall enter judgment in accordance with
6 the final order and notify the parties. The judgment shall have the same effect, and all
7 proceedings in relation to the judgment shall thereafter be the same, as though the judgment
8 had been rendered in a suit duly heard and determined by the superior court of the General
9 Court of Justice.

10 (g) Any person who willfully violates any provision of this Article and that violation
11 causes the serious injury or death of any person, then the person is guilty of a Class E felony,
12 which shall include a fine.

13 (h) Nothing in this section prevents any prosecuting officer of the State of North
14 Carolina from proceeding against a person who violates this Article on a prosecution charging
15 any degree of willful or culpable homicide."

16 **SECTION 1.(d)** G.S. 95-174 reads as rewritten:

17 **"§ 95-174. Definitions.**

18 (a) "~~Chemical manufacturer~~" ~~shall mean~~ means a manufacturing facility classified in
19 ~~Standard Industrial Classification (SIC) Codes 20 through 39~~ North American Industry
20 Classification System (NAICS) Codes 31 through 33 where chemicals are produced for use or
21 distribution in North Carolina.

22 (b) "Chemical name" ~~shall mean~~ means the scientific designation of a chemical in
23 accordance with the nomenclature system developed by the International Union of Pure and
24 Applied Chemistry (IUPAC), or the Chemical Abstracts Service (CAS) rules of nomenclature
25 or a name which will clearly identify the chemical for the purpose of conducting a hazard
26 evaluation.

27 (c) "Common name" ~~shall mean~~ means any designation or identification such as a code
28 name, code number, trade name, brand name or generic name used to identify a chemical other
29 than by its chemical name.

30 (d) "Distributor" ~~shall mean~~ means any business, other than a chemical manufacturer or
31 importer, which supplies hazardous chemicals to other distributors or to purchasers.

32 (e) "Employee" ~~shall mean~~ means any person who is employed by an employer under
33 normal operating conditions.

34 (f) "Employer" means a person engaged in business who has employees, including the
35 State and its political subdivisions but excluding an individual whose only employees are
36 domestic workers or casual laborers who are hired to work at the individual's residence.

37 (g) "Facility" ~~shall mean~~ means one or more establishments, factories, or buildings
38 located at one contiguous site in North Carolina.

39 (h) "Fire Chief" ~~shall mean~~ means Fire Chief or Fire Marshall, or Emergency Response
40 Coordinator in the absence of a Fire Chief or Fire Marshall for the appropriate local fire
41 department.

42 (i) Repealed by Session Laws 1987, c. 489, s. 1.

43 (j) "Fire Department" ~~shall mean~~ means the fire department having jurisdiction over the
44 facility.

45 (k) "Hazardous chemical" ~~shall mean~~ means any element, chemical compound or
46 mixture of elements and/or compounds which is a physical hazard or health hazard as defined
47 in subsection (c) of the OSHNC Standard or a hazardous substance as defined in standards
48 adopted by the Occupational Safety and Health Division of the North Carolina Department of
49 Labor in Title 13, Chapter 7 of the North Carolina Administrative Code (13 NCAC 7).

50 (l) "Hazardous Substance List" ~~shall mean~~ means the list required by G.S. 95-191.

1 (m) "Hazardous substance trade secret" means any formula, plan, pattern, device,
2 process, production information, or compilation of information, which is not patented, which is
3 known only to the employer, the employer's licensees, the employer's employees, and certain
4 other individuals, and which is used or developed for use in the employer's business, and which
5 gives the employer possessing it the opportunity to obtain a competitive advantage over
6 businesses who do not possess it, or the secrecy of which is certified by an appropriate official
7 of the federal government as necessary for national defense purposes. The chemical name and
8 Chemical Abstracts Service number of a substance shall be considered a trade secret only if the
9 employer can establish that the identity or composition of the substance cannot be readily
10 ascertained without undue expense by analytical techniques, laboratory procedures, or other
11 lawful means available to a competitor.

12 (n) "Label" ~~shall mean~~ means any written, printed, or graphic material displayed on or
13 affixed to containers of hazardous chemicals.

14 (o) "Manufacturing facility" ~~shall mean~~ means a facility classified in ~~SIC Codes 20~~
15 ~~through 39~~ NAICS Code 31 through 33 which manufactures or uses a hazardous chemical or
16 chemicals in North Carolina.

17 (p) ~~"Material Safety"~~ "Safety Data Sheets" or ~~"MSDS"~~ "SDS" means
18 chemical information sheets adopted by the Occupational Safety and Health Division of the
19 North Carolina Department of Labor in Title 13, Chapter 7 of the North Carolina
20 Administrative Code (13 NCAC 7).

21 (q) "Nonmanufacturing facility" ~~shall mean~~ means any facility in North Carolina other
22 than a facility in ~~SIC Code 20 through 39~~, NAICS Code 31 through 33, the State of North
23 Carolina (and its political subdivisions) and volunteer emergency service organizations whose
24 members may be exposed to chemical hazards during emergency situations.

25 (r) "OSHNC Standard" ~~shall mean~~ means the current Hazard Communication Standard
26 adopted by the Occupational Safety and Health Division of North Carolina Department of
27 Labor in Title 13, Chapter 7 of the North Carolina Administrative Code (13 NCAC 7).

28 (s) "Storage and Container" ~~shall have~~ has the ordinary meaning however it does not
29 include pipes used in the transfer of substances or the fuel tanks of ~~self-propelled~~ self-propelled
30 internal combustion vehicles."

31 **SECTION 1.(e)** G.S. 95-191(a) reads as rewritten:

32 "(a) All employers who manufacture, process, use, store, or produce hazardous
33 chemicals, shall compile and maintain a Hazardous Substance List which shall contain all of
34 the following information for each hazardous chemical stored in the facility in quantities of 55
35 gallons or 500 pounds, whichever is greater:

36 (1) The chemical name or the common name used on the ~~MSDS~~ SDS or
37 container ~~label~~; label.

38 (2) The maximum amount of the chemical stored at the facility at any time
39 during a year, using the following ranges:

40 Class A, which ~~shall include~~ includes quantities of less than 55 gallons or
41 500 ~~pounds~~; pounds.

42 Class B, which ~~shall include~~ includes quantities of between 55 gallons to
43 550 gallons, and quantities of between 500 pounds and 5,000 ~~pounds~~;
44 and pounds.

45 Class C, which ~~shall include~~ includes quantities of between 550 gallons and
46 5500 gallons, and quantities between 5,000 pounds and 50,000 ~~pounds~~;
47 and pounds.

48 Class D, which ~~shall include~~ includes quantities of greater than 5500 gallons
49 or 50,000 ~~pounds~~; and pounds.

- 1 (3) The area in the facility in which the hazardous chemical is normally stored
2 and to what extent the chemical may be stored at altered temperature or
3 pressure."

4 **SECTION 1.(f)** G.S. 95-192 reads as rewritten:

5 "**§ 95-192. Material safety-Safety data sheets.**

6 (a) Chemical manufacturers and distributors shall provide ~~material~~-safety data sheets
7 (~~MSDS's~~)(SDSs) to manufacturing and nonmanufacturing purchasers of hazardous chemicals
8 in North Carolina for each hazardous chemical purchased.

9 (b) Employers shall maintain the most current ~~MSDS-SDS~~ received from manufacturers
10 or distributors for each hazardous chemical purchased. If an ~~MSDS-SDS~~ has not been provided
11 by the manufacturer or distributor for chemicals on the Hazardous Substance List at the time
12 the chemicals are received at the facility, the employer shall request one in writing from the
13 manufacturer or distributor within 30 days after receipt of the chemical. If the employer does
14 not receive an ~~MSDS-SDS~~ within 30 days after his written request, he shall notify the
15 Commissioner of Labor of the failure by manufacturer or distributor to provide the
16 ~~MSDS-SDS~~."

17 **SECTION 1.(g)** G.S. 95-194 reads as rewritten:

18 "**§ 95-194. Emergency information.**

19 ...
20 (d) Employers shall provide to the Fire Chief, upon written request of the Fire Chief, a
21 copy of the ~~MSDS-SDS~~ for any chemical on the Hazardous Substance List.

22 ...
23 (f) The Fire Chief shall make information from the Hazardous Substance List, the
24 emergency response plan, and ~~MSDS's-SDSs~~ available to members of the Fire Department
25 having jurisdiction over the facility and to personnel responsible for preplanning emergency
26 response, police, medical or fire activities, but shall not otherwise distribute or disclose (or
27 allow the disclosure of) information not available to the public under G.S. 95-208. Such
28 persons receiving such information shall not disclose the information received and shall use
29 such information only for the purpose of preplanning emergency response, police, medical or
30 fire activities.

31"

32 **SECTION 1.(h)** G.S. 95-208 reads as rewritten:

33 "**§ 95-208. Community information on hazardous chemicals.**

34 (a) Any person in North Carolina may request in writing from the employer a list of
35 chemicals used or stored at the facility. The request shall include the name and address of the
36 person making the request and a statement of the purpose for the request. If the person is
37 requesting the list on behalf of or for the use of an organization, partnership, or corporation, he
38 shall also disclose the name and business address of such organization, partnership, or
39 corporation. The request may include, at the option of the employer, a statement to the effect
40 that the information will be used only for the purpose stated. The employer shall furnish to the
41 person making the request a list containing, at a minimum, all chemicals included on the
42 Hazardous Substance List, the class of each chemical as defined in G.S. 95-191(a)(2), and an
43 ~~MSDS-SDS~~ for each chemical for which an ~~MSDS-SDS~~ is available and is requested.
44 Whenever an employer has withheld a chemical under the provisions of G.S. 95-197 from the
45 information provided under G.S. 95-208, the employer must state that the information is being
46 withheld and, upon request, must provide the ~~MSDS-SDS~~ for the chemical. Additional
47 information may be furnished to the person making the request at the option of the employer.
48 The employer shall provide, at a fee not to exceed the cost of reproducing the materials, the
49 materials requested within 10 working days of the date the employer receives the written
50 request for information.

1 (b) If the employer fails or refuses to provide the information required under subsection
2 (a) of this section, the person requesting the information may request in writing that the
3 Commissioner of Labor review the request. The Commissioner of Labor may conduct an
4 investigation in the same manner as provided in G.S. 95-195(b). Following the investigation,
5 the Commissioner shall make appropriate findings. Either the employer or the person making
6 the initial request may request an administrative hearing pursuant to Chapter 150B of the
7 General Statutes. This request for an administrative hearing shall be submitted to the
8 Commissioner of Labor within 30 days following the Commissioner making his findings. The
9 Commissioner of Labor shall within 30 days of receiving the request hold an administrative
10 hearing to consider the request for information under subsection (a) of this section. This
11 hearing shall be held as provided for in G.S. Chapter 150B, Article 3. If the Commissioner of
12 Labor finds that the request complies with the requirements of subsection (a) of this section, the
13 Commissioner of Labor shall direct that the employer provide to the person making the request
14 a list containing, at a minimum, all chemicals used or stored at the facility included on the
15 Hazardous Substance List, the class of each chemical as defined in G.S. 95-191(a)(2), and an
16 ~~MSDS-SDS~~ for each chemical for which an ~~MSDS-SDS~~ is available and is requested and may
17 in his discretion assess civil penalties as provided in G.S. 95-195(c); provided that it shall be a
18 defense to such disclosure if the employer proves that the information has been requested
19 directly or indirectly by, or in behalf of, a competitor of the employer, or that such information
20 is a Hazardous Substance Trade Secret, or that the request did not comply with the
21 requirements of subsection (a) of this section.

22 (c) Any order by the Commissioner of Labor under subsection (b) of this section shall
23 be subject to judicial review as provided under G.S. Chapter 150B, Article 4."

24 **SECTION 1.(i)** G.S. 95-216 reads as rewritten:

25 **"§ 95-216. Exemptions.**

26 Notwithstanding any language to the contrary, the provisions of this Article shall not apply
27 to chemicals in or on any of the following:

- 28 (1) Hazardous substances while being transported in interstate commerce into or
29 through this ~~State;~~State.
- 30 (2) Products intended for personal consumption by employees in the
31 ~~facilities;~~facilities.
- 32 (3) Retail food sale establishments and all other retail trade establishments in
33 ~~Standard Industrial Classification Codes 53 through 59, North American~~
34 Industry Classification System Codes 44 through 45, exclusive of processing
35 and repair areas, except that the employer must comply with the provisions
36 of G.S. 95-194(a)(i);G.S. 95-194(a)(i).
- 37 (4) Any food, food additive, color additive, drug or cosmetic as such terms are
38 defined in the Federal Food, Drug and Cosmetic Act (~~21 U.S.C. 301 et~~
39 ~~seq.);~~(21 U.S.C. § 301 et seq.).
- 40 (5) A laboratory under the direct supervision or guidance of a technically
41 qualified individual provided that:
 - 42 a. Labels on containers of incoming chemicals shall not be removed or
43 defaced;
 - 44 b. ~~MSDS's-SDSs~~ received by the laboratory shall be maintained and
45 made accessible to employees and students;
 - 46 c. The laboratory is not used primarily to produce hazardous chemicals
47 in bulk for commercial purposes; and
 - 48 d. The laboratory operator complies with the provisions of
49 ~~G.S. 95-194(a)(i);G.S. 95-194(a)(i).~~
- 50 (6) Any farming operation which employs 10 or fewer full-time employees,
51 except that if any hazardous chemical in an amount in excess of 55 gallons

1 or 500 pounds, whichever is greater, is normally stored at the farming
2 operation, the employer must comply with the provisions of
3 ~~G.S. 95-194(a)(i); and~~ G.S. 95-194(a)(i).

4 (7) Any distilled spirits, tobacco, and untreated wood ~~products; and~~ products.

5 (8) Medicines used directly in patient care in health care facilities and health
6 care facility laboratories."

7 **SECTION 1.(j)** Section 1(c) of this part becomes effective October 1, 2017, and
8 applies to violations occurring and offenses committed on or after that date. The remainder of
9 this part becomes effective July 1, 2017.

10 11 **PART II. DEPARTMENT OF LABOR/CAROLINA STAR PROGRAM**

12 **SECTION 2.(a)** G.S. 95-127 is amended by adding a new subdivision to read:

13 "(2a) Carolina Star Program. – A voluntary program designed to recognize work
14 sites that implement effective safety and health management systems and
15 that meet standards adopted by the Commissioner pursuant to G.S. 95-157.
16 The Carolina Star Program is inclusive of four distinct programs, which
17 includes the following: Carolina Star, Rising Star, Building Star, and Public
18 Sector Star."

19 **SECTION 2.(b)** Article 16 of Chapter 95 of the General Statutes is amended by
20 adding a new section to read:

21 **"§ 95-157. Carolina Star Program.**

22 (a) The Commissioner may adopt rules for the operation of the Carolina Star Program
23 in a manner that will promote safe and healthy workplaces throughout the State. The rules for
24 the Carolina Star Program adopted by the Commissioner shall pertain to the following matters:

25 (1) Upper management leadership and active and meaningful employee
26 involvement.

27 (2) Systematic assessment of occupational hazards.

28 (3) Comprehensive hazard prevention, control, and mitigation programs.

29 (4) Employee safety and health training.

30 (5) Annual safety and health program evaluation.

31 (6) Star Annual Report.

32 (7) Attendance and active participation on Carolina Star Safety Conference
33 Regional Teams and conference related activities.

34 (b) Applications for participation in the Carolina Star Program shall be submitted by the
35 workplace's management. Applications shall include documentation establishing to the
36 satisfaction of the Commissioner that the employer meets all standards for Carolina Star
37 Program participation.

38 (c) The Department shall provide for on-site evaluations, as resources allow, by
39 Carolina Star Program evaluation teams of each workplace that has applied to participate in the
40 Carolina Star Program to determine if the applicant's workplace complies with the standards for
41 Carolina Star Program participation.

42 (d) A workplace's continued participation in the Carolina Star Program shall be
43 conditioned on meeting the requirements and expectations established by the Carolina Star
44 Program Policies and Procedures Manual, Star Annual Report, and successful completion of
45 periodic on-site evaluations conducted by the Carolina Star Program evaluation team.

46 (e) During periods in which a workplace is a participant in the Carolina Star Program,
47 the workplace shall be exempt from inspections under G.S. 95-136; however, this exception
48 shall not apply to inspections or investigations of the workplace arising from complaints,
49 referrals, fatalities, catastrophes, nonfatal accidents, or significant toxic chemical releases."

50 **SECTION 2.(c)** A workplace that was a participant in the uncodified Carolina Star
51 Program prior to July 1, 2017, may continue as a participant in the Carolina Star Program

1 established pursuant to G.S. 95-157, as enacted by this act. On and after July 1, 2017, the
 2 continued participation by that workplace in the Carolina Star Program shall be conditioned
 3 upon the workplace's ability to meet the requirements and expectations established by all
 4 guidelines for participation in the Carolina Star Program adopted by the Commissioner under
 5 G.S. 95-157.

6 **SECTION 2.(d)** This part becomes effective July 1, 2017.
 7

8 **PART III. OTHER CHANGES RELATED TO LAWS GOVERNING BUSINESSES**

9 **LANDFILL/LIFE OF SITE**

10 **SECTION 3.(a)** Section 3.2(a) of S.L. 2017-10 is repealed.

11 **SECTION 3.(b)** Section 3.2(e) of S.L. 2017-10, reads as rewritten:

12 **"SECTION 3.2.(e)** Subsection (a) of this section applies to franchise agreements
 13 ~~(i) executed on or after October 1, 2015, and (ii) executed on or before October 1, 2015, only if~~
 14 ~~all parties to a valid and operative agreement consent to modify the agreement for the purpose~~
 15 ~~of extending the agreement's duration of the life-of-site of the landfill for which the agreement~~
 16 ~~was executed, and public notice and hearing is provided for such modification in compliance~~
 17 ~~with the requirements of G.S. 130A-294(b1)(3).2015."~~
 18

19 **SECTION 3.(c)** G.S. 130A-294 reads as rewritten:

20 "...

21 (a2) Permits for sanitary landfills and transfer stations shall be issued for the life-of-site
 22 of the facility unless ~~revoked as otherwise provided under this Article or upon the expiration of~~
 23 ~~any local government franchise required for the facility pursuant to subsection (b1) of this~~
 24 ~~section. revoked.~~ For purposes of this section, "life-of-site" means the period from the initial
 25 receipt of solid waste at the facility until ~~the Department approves final closure of the facility.~~
 26 the facility reaches its final permitted elevations, which period shall not exceed 60 years.
 27 Permits issued pursuant to this subsection shall take into account the duration of any permits
 28 previously issued for the facility and the remaining capacity at the facility.

29 (a3) In order to preserve long-term disposal capacity, a life-of-site permit issued for a
 30 sanitary landfill shall survive the expiration of a local government approval or franchise. In
 31 order to preserve any economic benefits included in the franchise, the County may extend the
 32 franchise under the same terms and conditions for the term of the life-of-site permit. The
 33 extension of the franchise hereby shall not trigger the requirements for a new permit, a major
 34 permit modification, or a substantial amendment to the permit.
 35

36 ...

37 (b1) (1) For purposes of this subsection and subdivision (4) of subsection (a) of this
 38 section, a "substantial amendment" means either:

39 ...

40 (2) A person who intends to apply for a new permit for a sanitary landfill shall
 41 obtain, prior to applying for a permit, a franchise for the operation of the
 42 sanitary landfill from each local government having jurisdiction over any
 43 part of the land on which the sanitary landfill and its appurtenances are
 44 located or to be located. A local government may adopt a franchise
 45 ordinance under G.S. 153A-136 or G.S. 160A-319. A franchise granted for a
 46 sanitary landfill shall (i) be granted for the life-of-site of the landfill, but for
 47 a period not to exceed 60 years, and (ii) include all of the following:

- 48 a. A statement of the population to be served, including a description of
 49 the geographic area.
- 50 b. A description of the volume and characteristics of the waste stream.
- 51 c. A projection of the useful life of the sanitary landfill.
- d. Repealed by Session Laws 2013-409, s. 8, effective August 23, 2013.

- 1 e. The procedures to be followed for governmental oversight and
 2 regulation of the fees and rates to be charged by facilities subject to
 3 the franchise for waste generated in the jurisdiction of the franchising
 4 entity.
- 5 f. A facility plan for the sanitary landfill that shall include the
 6 boundaries of the proposed facility, proposed development of the
 7 facility site, the boundaries of all waste disposal units, final
 8 elevations and capacity of all waste disposal units, the amount of
 9 waste to be received per day in tons, the total waste disposal capacity
 10 of the sanitary landfill in tons, a description of environmental
 11 controls, and a description of any other waste management activities
 12 to be conducted at the facility. In addition, the facility plan shall
 13 show the proposed location of soil borrow areas, leachate facilities,
 14 and all other facilities and infrastructure, including ingress and egress
 15 to the facility.

- 16 (3) Prior to the award of a franchise for the construction or operation of a
 17 sanitary landfill, the board of commissioners of the county or counties in
 18 which the sanitary landfill is proposed to be located or is located or, if the
 19 sanitary landfill is proposed to be located or is located in a city, the
 20 governing board of the city shall conduct a public hearing. The board of
 21 commissioners of the county or counties in which the sanitary landfill is
 22 proposed to be located or is located or, if the sanitary landfill is proposed to
 23 be located or is located in a city, the governing board of the city shall
 24 provide at least 30 days' notice to the public of the public hearing. The notice
 25 shall include a summary of all the information required to be included in the
 26 franchise, and shall specify the procedure to be followed at the public
 27 hearing. The applicant for the franchise shall provide a copy of the
 28 application for the franchise that includes all of the information required to
 29 be included in the franchise, to the public library closest to the proposed
 30 sanitary landfill site to be made available for inspection and copying by the
 31 public. The requirements of this subdivision shall not apply to franchises
 32 extended pursuant to subsection (a3) of this section.

33"

34 PROTECT NC UTILITY RATEPAYERS

35 SECTION 4.(a) G.S. 130A-309.216 reads as rewritten:

36 "§ 130A-309.216. Ash beneficiation projects.

37 (a) On or before January 1, 2017, an impoundment owner shall (i) identify, at a
 38 minimum, impoundments at two sites located within the State with ash stored in the
 39 impoundments on that date that is suitable for processing for cementitious purposes and (ii)
 40 enter into a binding agreement for the installation and operation of an ash beneficiation project
 41 at each site capable of annually processing 300,000 tons of ash to specifications appropriate for
 42 cementitious products, with all ash processed to be removed from the impoundment(s) located
 43 at the sites. As soon as legally practicable thereafter, the impoundment owner shall apply for all
 44 permits necessary for the ash beneficiation projects from the Department. The Department shall
 45 expedite any State permits and approvals required for such projects. No later than 24 months
 46 after issuance of all necessary permits, operation of both ash beneficiation projects shall be
 47 commenced. An impoundment owner shall use commercially reasonable efforts to produce
 48 300,000 tons of ash to specifications appropriate for cementitious products from each project.

49 (b) ~~On or before July 1, 2017, an impoundment owner shall (i) identify an
 50 impoundment at an additional site located within the State with ash stored in the impoundment
 51~~

1 on that date that is suitable for processing for cementitious purposes and (ii) enter into a
2 binding agreement for the installation and operation of an ash beneficiation project capable of
3 annually processing 300,000 tons of ash to specifications appropriate for cementitious products,
4 with all ash processed to be removed from the impoundment(s) located at the site. As soon as
5 legally practicable thereafter, the impoundment owner shall apply for all permits necessary for
6 the ash beneficiation project from the Department. The Department shall expedite any State
7 permits and approvals required for such projects. No later than 24 months after issuance of all
8 necessary permits, operation of the ash beneficiation project shall be commenced. An
9 impoundment owner shall use commercially reasonable efforts to produce 300,000 tons of ash
10 to specifications appropriate for cementitious products from the project.

11 (c) Notwithstanding any deadline for closure provided by G.S. 130A-309.214, any
12 impoundment classified as intermediate- or low-risk that is located at a site at which an ash
13 beneficiation project is installed, operating, and processing at least 300,000 tons of ash annually
14 from the impoundment, shall be closed no later than December 31, 2029."

15 **SECTION 4.(b)** The Environmental Management Commission shall conduct a
16 study to determine if (i) there is a projected unmet annual demand in North Carolina and
17 contiguous states of at least 300,000 tons of additional ash beneficiated to specifications
18 appropriate for cementitious products over that to be supplied by the ash beneficiation projects
19 required pursuant to G.S. 130A-309.216 and (ii) if such demand is projected to exist, whether
20 the installation and operation of an additional ash beneficiation project is commercially viable
21 to meet such demand in that the costs associated with the project are less than any revenues
22 derived from the sale of processed ash. In conducting this study, the Environmental
23 Management Commission shall consider both of the following:

- 24 (1) The impact of the two ash beneficiation projects required pursuant to
25 G.S. 130A-309.216.
26 (2) The availability of ash appropriate for cementitious products from other
27 suppliers, including beneficiation projects in other states.

28 For purposes of the study, (i) the Commission shall assume a twenty percent (20%) cement
29 replacement rate for beneficiated fly ash in order to determine the projected unmet annual
30 demand for ash in North Carolina and contiguous states and (ii) "costs associated with the
31 project" includes costs for acquiring and improving land for the project, costs of equipment for
32 the project, costs of construction and installation, costs of operation of the project, and the costs
33 of transportation of raw materials or finished goods to or from sellers or purchasers when those
34 costs are borne by the impoundment owner.

35 The Environmental Management Commission shall report its findings and
36 recommendations, including any legislative proposals, to the Environmental Review
37 Commission no later than July 1, 2018."
38

39 **BUILDING CODE EXEMPTION**

40 **SECTION 5.(a)** Notwithstanding any provision of the North Carolina State
41 Building Code to the contrary, if a lot line or public way exists between a single city-owned lot
42 and a single privately owned lot, a parking garage that extends across the lot line or public way
43 between the two lots may be constructed as if the city-owned lot has been combined with the
44 privately owned lot such that there is no lot line or public way between them.

45 **SECTION 5.(b)** This section shall apply only to municipalities with a population
46 of more than 250,000.

47 **SECTION 5.(c)** This section expires June 30, 2020.
48

49 **CLARIFY DEFINITION OF COMMERCIAL REAL ESTATE/BROKER LIEN**

50 **SECTION 6.** G.S. 44A-24.2(3) reads as rewritten:

- 1 "(3) Commercial real estate. – Any real property or interest therein, whether
2 freehold or nonfreehold, which at the time the property or interest is made
3 the subject of an agreement for broker services:
4 a. Is lawfully used primarily for sales, office, research, institutional,
5 agricultural, forestry, warehouse, manufacturing, industrial, or
6 mining purposes or for multifamily residential purposes involving
7 five or more dwelling units;
8 b. May lawfully be used for any of the purposes listed in
9 sub-subdivision (3)a. of this section by a zoning ordinance adopted
10 pursuant to the provisions of Article 18 of Chapter 153A or Article
11 19 of Chapter 160A of the General Statutes or which is the subject of
12 an official application or petition to amend the applicable zoning
13 ordinance to permit any of the uses listed in sub-subdivision (3)a. of
14 this section which is under consideration by the government agency
15 with authority to approve the amendment; or
16 c. Is in good faith intended to be immediately used for any of the
17 purposes listed in sub-subdivision (3)a. of this section by the parties
18 to any contract, lease, option, or offer to make any contract, lease, or
19 option."
20

21 **PRESSURE VESSEL EXCLUSION**

22 **SECTION 7.** G.S. 95-69.10(b)(8) reads as rewritten:

- 23 "(8) Any of the following pressure vessels that do not exceed the listed
24 limitations if the vessel is not equipped with a quick actuating closure:
25 a. Five cubic feet in volume and 250 psig.
26 b. Three cubic feet in volume and 350 psig.
27 c. One and one-half cubic feet in volume and 600 psig.
28 d. An inside diameter of six inches with no limitation on pressure.
29 e. Five cubic feet in volume when the pressure vessel is constructed and
30 operated on the same real property zoned industrial and where its
31 operation is undertaken using commercially acceptable safety
32 precautions for the application."
33

34 **WASTEWATER SYSTEM PERMIT EXTENSION**

35 **SECTION 8.** G.S. 130A-336 is amended by adding a new subsection to read:

36 "(b1) An improvement permit or authorization for wastewater system construction issued
37 by a local health department from January 1, 2000, to January 1, 2015, which has not been
38 acted on and would have otherwise expired, shall remain valid until January 1, 2020, without
39 penalty, unless there are changes in the hydraulic flows or wastewater characteristics from the
40 original local health department evaluation. Permits are transferrable with ownership of the
41 property. Permits shall retain the site, soil evaluations, and construction conditions of the
42 original permit."
43

44 **MODIFY SCRAP TIRE TAX**

45 **SECTION 9.(a)** G.S. 105-187.15 reads as rewritten:

46 **"§ 105-187.15. Definitions.**

47 The definitions in G.S. 105-164.3 apply to this Article, except that the term "sale" does not
48 include lease or rental, and the following definitions apply to this Article:

- 49 (1) Scrap tire. – A tire that is no longer suitable for its original, intended purpose
50 because of wear, damage, or defect.
51 (2) Tire. – A continuous solid or pneumatic rubber covering encircling a wheel.

(3) Used tire. – A tire other than a new tire and includes retreaded or recapped tires."

SECTION 9.(b) G.S. 105-187.16 reads as rewritten:

"§ 105-187.16. Tax imposed.

(a) Levy. – A privilege tax is imposed on a tire retailer at a percentage rate of the sales price of for each new and used tire sold at retail by the retailer. A privilege tax is imposed on a tire retailer and on a tire wholesale merchant at a percentage rate of the sales price of for each new or used tire sold by the retailer or wholesale merchant to a wholesale merchant or retailer for placement on a vehicle offered for sale, lease, or rental by the retailer or wholesale merchant. An excise tax is imposed on a new or used tire purchased for storage, use, or consumption in this State or for placement in this State on a vehicle offered for sale, lease, or rental. This excise tax is a percentage rate of the purchase price of the tire. These taxes are in addition to all other taxes.

(b) Rate. Tax. – The percentage rate of the taxes tax imposed by subsection (a) of this section is a flat dollar amount as set by the following table; the rate table and is based on the bead diameter of the new or used tire sold or purchased:

<u>Bead Diameter of Tire</u>	<u>Percentage Rate Tax</u>
Less than 20 inches	<u>2% \$1.00</u>
At least 20 inches	<u>1% \$2.00"</u>

SECTION 9.(c) G.S. 105-187.17 reads as rewritten:

"§ 105-187.17. Administration.

The privilege tax this Article imposes on a tire retailer who sells new or used tires at retail is an additional State sales ~~tax tax~~, and the excise tax this Article imposes on the storage, use, or consumption of a new or used tire in this State is an additional State use tax. Except as otherwise provided in this Article, these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when a new or used tire is sold is a credit against the additional State use tax imposed on the storage, use, or consumption of the same tire.

The privilege tax this Article imposes on a tire retailer and on a tire wholesale merchant who sell new or used tires for placement in this State on a vehicle offered for sale, lease, or rental is a tax on the wholesale sale of the tires. This tax and the excise tax this Article imposes on a new or used tire purchased for placement in this State on a vehicle offered for sale, lease, or rental shall, to the extent practical, be collected and administered as if they were additional State sales and use taxes. The privilege tax paid when a new or used tire is sold for placement on a vehicle offered for sale, lease, or rental is a credit against the use tax imposed on the purchase of the same tire for placement in this State on a vehicle offered for sale, lease, or rental."

SECTION 9.(d) G.S. 105-187.18(a) reads as rewritten:

"(a) The taxes imposed by this Article do not apply to:

- (1) Bicycle tires and other tires for vehicles propelled by human power.
- (2) ~~Recapped tires.~~
- (3) Tires sold for placement on newly manufactured vehicles."

SECTION 9.(e) G.S. 130A-309.54 reads as rewritten:

"§ 130A-309.54. Use of scrap tire tax proceeds.

Article 5B of Chapter 105 imposes a tax on new and used tires to provide funds for the disposal of scrap tires, for the cleanup of inactive hazardous waste sites under Part 3 of this Article, and for all the purposes for which the Bernard Allen Memorial Emergency Drinking Water Fund may be used under G.S. 87-98. A county may use proceeds of the tax distributed to it under that Article only for the disposal of scrap tires pursuant to the provisions of this Part or for the abatement of a nuisance pursuant to G.S. 130A-309.60."

1 **SECTION 9.(f)** This section becomes effective October 1, 2017, and applies to
2 sales or purchases of new or used tires on or after that date.

3
4 **REDUCE COST AND REGULATORY BURDEN/HOSPITAL CONSTRUCTION**

5 **SECTION 10.(a)** Definitions. – For purposes of this section and its
6 implementation:

7 (1) Commission or Medical Care Commission. – The Medical Care Commission
8 created by Part 10 of Article 3 of Chapter 143B of the General Statutes.

9 (2) Hospital Facilities Rules. – Means all of the following:

- 10 a. 10A NCAC 13B .6001 – Physical Plant: Location.
11 b. 10A NCAC 13B .6002 – Physical Plant: Roads and Parking.
12 c. 10A NCAC 13B .6104 – General Requirements: Access and Safety.
13 d. 10A NCAC 13B .6201 – Construction Requirements: Medical,
14 Surgical, and Post-Partum Care Unit.
15 e. 10A NCAC 13B .6202 – Construction Requirements: Special Care
16 Unit.
17 f. 10A NCAC 13B .6203 – Construction Requirements: Neonatal Level
18 I and Level II Nursery Unit.
19 g. 10A NCAC 13B .6204 – Construction Requirements: Neonatal Level
20 III and Level IV Nursery.
21 h. 10A NCAC 13B .6205 – Construction Requirements: Psychiatric
22 Unit.
23 i. 10A NCAC 13B .6206 – Construction Requirements: Surgical
24 Department Requirements.
25 j. 10A NCAC 13B .6207 – Construction Requirements: Obstetrical
26 Department Requirements.
27 k. 10A NCAC 13B .6209 – Construction Requirements: Emergency
28 Services.
29 l. 10A NCAC 13B .6210 – Construction Requirements: Imaging
30 Services.
31 m. 10A NCAC 13B .6211 – Construction Requirements: Laboratory
32 Services.
33 n. 10A NCAC 13B .6212 – Construction Requirements: Morgue.
34 o. 10A NCAC 13B .6213 – Construction Requirements: Pharmacy
35 Services.
36 p. 10A NCAC 13B .6214 – Construction Requirements: Dietary
37 Services.
38 q. 10A NCAC 13B .6215 – Construction Requirements:
39 Administration.
40 r. 10A NCAC 13B .6216 – Construction Requirements: Medical
41 Records Services.
42 s. 10A NCAC 13B .6217 – Construction Requirements: Central
43 Medical and Surgical Supply Services.
44 t. 10A NCAC 13B .6218 – Construction Requirements: General
45 Storage.
46 u. 10A NCAC 13B .6219 – Construction Requirements: Laundry
47 Services.
48 v. 10A NCAC 13B .6220 – Construction Requirements: Physical
49 Rehabilitation Services.
50 w. 10A NCAC 13B .6221 – Construction Requirements: Engineering
51 Services.

- 1 x. 10A NCAC 13B .6222 – Construction Requirements: Waste
2 Processing.
3 y. 10A NCAC 13B .6223 – Construction Requirements: Details and
4 Finishes.
5 z. 10A NCAC 13B .6224 – Construction Requirements: Elevator
6 Requirements.
7 aa. 10A NCAC 13B .6225 – Construction Requirements: Mechanical
8 Requirements.
9 bb. 10A NCAC 13B .6226 – Construction Requirements: Plumbing and
10 Other Piping Systems Requirements.
11 cc. 10A NCAC 13B .6227 – Construction Requirements: Electrical
12 Requirements.

- 13 (3) Guidelines. – The American Society for Healthcare Engineering's Facility
14 Guidelines Institute "Guidelines for Design and Construction of Hospitals
15 and Outpatient Facilities."

16 **SECTION 10.(b)** Repeal Hospital Facilities Rules. – The Secretary of Health and
17 Human Services and the Medical Care Commission shall repeal the Hospital Facilities Rules
18 within 120 days after this act becomes law.

19 **SECTION 10.(c)** Implementation and Rule-Making Authority. – Before the
20 effective date of the repeal of the Hospital Facilities Rules required pursuant to subsection (b)
21 of this section, the Medical Care Commission shall adopt temporary rules to replace the
22 Hospital Facilities Rules and incorporate by reference all applicable rules, standards, and
23 requirements of the most current edition of the Guidelines. If temporary rules are not adopted
24 before the repeal of the Hospital Facilities Rules required pursuant to subsection (b) of this
25 section, the Commission shall utilize the 2014 Edition of the Guidelines until such time as
26 temporary rules are adopted. Furthermore, the Commission shall adopt permanent rules
27 pursuant to this section.

28 **SECTION 10.(d)** Additional Rule-Making Authority. – The Medical Care
29 Commission shall adopt rules to replace the Hospital Facilities Rules. Notwithstanding
30 G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall conform to
31 the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not
32 subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant
33 to this section shall become effective as provided in subsection (b1) of G.S. 150B-21.3 as
34 though 10 or more written objections had been received as provided by subsection (b2) of
35 G.S. 150B-21.3. Furthermore, rules adopted pursuant to this section shall be exempt from the
36 provisions of Chapter 150B of the General Statutes that require the preparation of fiscal notes
37 for any rule proposed to incorporate the Guidelines by reference.

38 **SECTION 10.(e)** Exemption From Periodic Review. – Until such time as the
39 Hospital Facilities Rules are repealed pursuant to subsection (b) of this section, the Hospital
40 Facilities Rules shall be exempt from the periodic review process required pursuant to
41 G.S. 150B-21.3A.

42 **SECTION 10.(f)** This section is effective when it becomes law and applies to any
43 licensee or prospective applicant who seeks to make specified types of alterations or additions
44 to its hospital facilities or to construct new hospital facilities and who submits plans and
45 specifications to the Department of Health and Human Services pursuant to Article 5 of
46 Chapter 131E of the General Statutes on or after January 1, 2016.

47 **STORMWATER RUNOFF/AIRPORTS**

48 **SECTION 11.** G.S. 143-214.7 reads as rewritten:
49 "§ 143-214.7. Stormwater runoff rules and programs.
50 ...
51

1 (c3) In accordance with the Federal Aviation Administration August 28, 2007, Advisory
2 Circular No. 150/5200-33B (Hazardous Wildlife Attractants on or Near Airports), neither the
3 Department shall not nor any local government shall require the use of stormwater retention
4 ponds, stormwater detention ponds, or any other stormwater control measure that promotes
5 standing water in order to comply with this ~~section~~-section, or in order to comply with any local
6 ordinance adopted under G.S. 143-214.5, at public airports that support commercial air carriers
7 or general aviation services. Development projects located within five statute miles from the
8 farthest edge of an airport air operations area, as that term is defined in 14 C.F.R. § 153.3 (July
9 2011 Edition), shall not be required to use stormwater retention ponds, stormwater detention
10 ponds, or any other stormwater control measure that promotes standing water in order to
11 comply with this ~~section~~-section or with any local ordinance. Existing stormwater retention
12 ponds, stormwater detention ponds, or any other stormwater control measure that promotes
13 standing water in order to comply with this ~~section~~-section, or with any local ordinance, and
14 that is located at a public airports-airport or that are-is within five statute miles from the farthest
15 edge of an airport operations area may be replaced with alternative measures included in the
16 Division of Water Resources' Best Management Practice Manual chapter on airports. In order
17 to be approved by the Department, alternative measures or management designs that are not
18 expressly included in the Division of Water Resources' Best Management Practice Manual shall
19 provide for equal or better stormwater control based on the pre- and post-development
20 hydrograph. Any replacement of existing stormwater retention ponds, stormwater detention
21 ponds, or any other stormwater control measure that promotes standing water shall be
22 considered a minor modification to the State general stormwater permit-permit, and a variance
23 to allow any replacement shall be considered a minor variance under any local government
24 ordinance adopted under G.S. 143-214.5.

25 (c4) The Department and local governments shall deem runways, taxiways, and any
26 other areas that provide for overland stormwater flow that promote infiltration and treatment of
27 stormwater into grassed buffers, shoulders, and grass swales permitted pursuant to the State
28 post-construction stormwater ~~requirements~~-requirements and to be in compliance with any local
29 government water supply watershed management protection ordinance adopted under
30 G.S. 143-214.5."

31 32 DEQ AND EMC CONTESTED CASES

33 SECTION 12.(a) Article 3 of Chapter 150B of the General Statutes is amended by
34 adding a new section to read:

35 "§ 150B-31.2. Contested cases for certain decisions of the Department of Environmental 36 Quality and the Environmental Management Commission.

37 (a) Application. – This section establishes additional requirements for contested cases
38 filed at the Office of Administrative Hearings that involve the issuance, denial, or modification
39 of a permit, certificate for interbasin transfer, or certification pursuant to section 401 of the
40 Clean Water Act, by the Department of Environmental Quality or the Environmental
41 Management Commission, where the Department or Commission accepts public comment
42 through a procedure set out by statute or rule.

43 (b) Filing. – If a party timely files a petition for a contested case challenging a decision
44 by the Department or Commission pursuant to G.S. 150B-23, the party shall simultaneously
45 serve a copy of the petition on the Department or Commission that made the decision, and the
46 Department or Commission shall transmit to the Office of Administrative Hearings a complete
47 copy of the administrative record created in support of the decision, which shall include all of
48 the following:

- 49 (1) Any application materials and all related or supporting materials submitted
50 by the applicant in support of the application at any time prior to the
51 challenged decision.

- 1 (2) All memoranda, electronic messages, meeting notes, and other public record
2 documents created or received by the Department or Commission pertaining
3 to the application and the final decision.
- 4 (3) All written comments submitted by any person regarding the application,
5 including any supporting materials provided therewith.
- 6 (c) Contested Issues. – No party may bring a contested case or seek judicial review
7 regarding a decision governed by this section unless one of the following applies:
- 8 (1) The party is the applicant for the permit, certificate for interbasin transfer, or
9 certification pursuant to section 401 of the Clean Water Act, by the
10 Department or Commission.
- 11 (2) The party submitted comments to the Department or Commission during the
12 comment period and raises an issue that either (i) was raised with the
13 Department or Commission prior to the decision and with sufficient
14 particularity for the Department or Commission to evaluate the merit of the
15 basis or (ii) could not have been raised as a particular basis prior to the
16 decision."

17 **SECTION 12.(b)** The Department of Environmental Quality shall convene a series
18 of meetings with relevant stakeholders, including, but not limited to, the Office of
19 Administrative Hearings, to review federal and other state models that utilize an administrative
20 record review and develop procedures implementing, or propose modifications to, this section.
21 The Department shall report those procedures or proposed modifications to the Joint
22 Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the
23 Joint Legislative Oversight Committee on Justice and Public Safety, and the Joint Legislative
24 Administrative Procedure Oversight Committee no later than March 31, 2018.

25 **SECTION 12.(c)** Subsection (a) of this section becomes effective January 1, 2019,
26 and applies to any contested case that involves issuance, denial, or modification of a permit,
27 certificate for interbasin transfer, or certification pursuant to section 401 of the Clean Water
28 Act, by the Department or Commission for which the application was received by the
29 Department or Commission on or after that date. The remainder of this section is effective
30 when it becomes law.

31
32 **PART IV. EFFECTIVE DATE**

33 **SECTION 13.** Except as otherwise provided, this act is effective when it becomes
34 law.