A BILL TO BE ENTITLED
AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS.

The General Assembly of North Carolina enacts:

REPEAL YARD WASTE PERMITTING REQUIREMENTS
SECTION 1.(a) G.S. 130A-290(a) reads as rewritten:

"§ 130A-290. Definitions.
(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

…

(45) "Yard trash" means solid waste consisting solely of vegetative matter resulting from landscaping maintenance and yard maintenance, including brush, grass, tree limbs, and similar vegetative material.

(46) "Yard waste" means yard trash and land-clearing debris, including stumps, limbs, leaves, grass, and untreated wood."

SECTION 1.(b) G.S. 130A-294 is amended by adding a new subsection to read:

"(v) Yard waste diverted from the waste stream or collected as source separated material is not subject to a solid waste permit for transfer, treatment, processing, storage, or disposal in a permitted solid waste management facility. Operators of facilities where yard waste is subject to transfer, treatment, processing, storage, or disposal shall, however, comply with all other federal, State, or local laws, ordinances, rules, regulations, or orders, including zoning, flood plain, and wetland restrictions, sedimentation and erosion control requirements, and mining regulations. Nothing in this subsection shall be construed as limiting the authority of any local government to manage the transfer, treatment, processing, storage, or disposal of yard waste."

SECTION 1.(c) This section becomes effective July 1, 2017, and applies to the transfer, treatment, processing, storage, or disposal of yard waste occurring on or after that date.

REPEAL PLASTIC BAG BAN
SECTION 1.1.(a) Part 2G of Article 9 of Chapter 130A of the General Statutes is repealed.

SECTION 1.1.(b) G.S. 130A-22(a) reads as rewritten:
"(a) The Secretary of Environmental Quality may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any term or condition of a permit or order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifteen thousand dollars ($15,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed thirty-two thousand five hundred dollars ($32,500) per day in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed thirty-two thousand five hundred dollars ($32,500) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). The penalty shall not exceed one hundred dollars ($100.00) for a first violation; two hundred dollars ($200.00) for a second violation within any 12-month period; and five hundred dollars ($500.00) for each additional violation within any 12-month period for any violation of Part 2G of Article 9 of this Chapter. For violations of Part 7 of Article 9 of this Chapter and G.S. 130A-309.10(m): (i) a warning shall be issued for a first violation; (ii) the penalty shall not exceed two hundred dollars ($200.00) for a second violation; and (iii) the penalty shall not exceed five hundred dollars ($500.00) for subsequent violations. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environmental Quality shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

SECTION 1.1.(c) Section 13.10(c) of S.L. 2010-31 is repealed.

SECTION 1.1.(d) This section becomes effective July 1, 2017.

LOCAL GOVERNMENT RIPARIAN BUFFER UNIFORMITY

SECTION 2.(a) The General Assembly finds the following:

(1) The State has declared certain water bodies to be nutrient-sensitive due to the high levels of nitrogen, phosphorus, sediment, or any combination of those pollutants.

(2) As a means for reducing the amount of nitrogen, phosphorus, and sediment that enters these nutrient-sensitive surface waters, the State has initiated a program to maintain existing riparian buffers that is a part of a complete and integrated regulatory scheme for the protection and improvement of water quality that may be delegated for enforcement to qualifying units of local government.

(3) When the enforcement of the buffer program is delegated to qualifying units of local government, those units of local government should apply riparian buffer standards that do not exceed established State or federal standards in order to assure uniformity of regulation throughout the State.

SECTION 2.(b) G.S. 143-214.23A reads as rewritten:

§ 143-214.23A. Limitations on local government riparian buffer requirements.

(a) As used in this section:

(1) "Local government ordinance"—action" means any action by a local government carrying the effect of law approved before or after October 1, 2015, whether by ordinance, ordinance, including, but not limited to, zoning.
subdivision control, flood control, or water supply watershed protection
ordinances, comprehensive plan, policy, resolution, condition of approval
imposed on an applicant for approval of a development plan, or special or
conditional permit, or other measure.

(2) "Protection of water quality" means nutrient removal, pollutant removal,
stream bank protection, or protection of an endangered species as required
by federal law.

(3) "Riparian buffer area" means an area subject to a riparian buffer
requirement.

(4) "Riparian buffer requirement" means a landward setback from surface
waters, water bodies or any other hydrologic bodies to which a riparian
buffer may be applied.

(a1) The provisions of this section apply to all enacted or proposed local government
actions that include or impose riparian buffer requirements violating subsection (b) of this
section, even if the local government action has been approved by the Commission, the
Department, or other State agency.

(b) Except as provided in this section, a local government may not enact, implement, or
enforce a local government ordinance action or apply for or renew a permit issued by any State
or federal agency that requires a local government action that establishes a riparian buffer
requirement that exceeds riparian buffer requirements necessary to comply with or implement
federal or State law or a condition of a permit, certificate, or other approval issued by a federal
or State agency- riparian buffer requirements directly imposed by State or federal law. This
subsection shall not apply to a permit required by a federal agency as a condition of federal
funding or of federal approval for a project initiated prior to the effective date of this section.

(c) Subsection (b) of this section shall not apply to any local government ordinance
action that establishes a riparian buffer requirement enacted prior to August 1, 1997, if (i) the
ordinance action included findings that the requirement was imposed for purposes that include
the protection of aesthetics, fish and wildlife habitat, and recreational use by maintaining water
temperature, healthy tree canopy and understory, and the protection of the natural shoreline
through minimization of erosion and potential chemical pollution in addition to the protection
of water quality and the prevention of excess nutrient runoff, and (ii) the ordinance action
would permit small or temporary structures within 50 feet of the water body and docks and
piers within and along the edge of the water body under certain circumstances.

(d) A local government may request from the Commission the authority to enact,
enforce, and implement a local government ordinance that establishes a riparian buffer
requirement for the protection of water quality that exceeds riparian buffer requirements for the
protection of water quality necessary to comply with or implement federal or State law or a
condition of a permit, certificate, or other approval issued by a federal or State agency. To do
so, a local government shall submit to the Commission an application requesting this authority
that includes the local government ordinance, including the riparian buffer requirement for the
protection of water quality, scientific studies of the local environmental and physical conditions
that support the necessity of the riparian buffer requirement for the protection of water quality,
and any other information requested by the Commission. Within 90 days after the Commission
receives a complete application, the Commission shall review the application and notify the
local government whether the application has been approved, approved with modifications, or
disapproved. The Commission shall not approve a local government ordinance that establishes
a riparian buffer requirement for the protection of water quality unless the Commission finds
that the scientific evidence presented by the local government supports the necessity of the
riparian buffer requirement for the protection of water quality.

(d1) Local government actions violating subsection (b) of this section that are required
by a permit issued by a State or federal agency, including, but not limited to, an NPDES or a
permit condition imposed to meet a TMDL, shall remain in place and may be enforced until the permit upon which they are based expires. Upon the expiration of the permit that is the basis for an existing local government action violating subsection (b) of this section, the existing local government action shall be unenforceable.

"...

SECTION 2.(c) This section is effective when this act becomes law.

AMEND THE RULE FOR PROTECTION OF EXISTING BUFFERS TO EXEMPT CERTAIN APPLICABILITY REQUIREMENTS FOR PUBLIC SAFETY

SECTION 2.1.(a) Definitions. – "Protection of Existing Buffers Rule" means 15A NCAC 02B .0267 (Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers) for purposes of this section and its implementation.

SECTION 2.1.(b) Protection of Existing Buffers Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission and the Department of Environmental Quality shall implement the Protection of Existing Buffers Rule, as provided in subsection (c) of this section.

SECTION 2.1.(c) Implementation. – The Commission shall exempt from the applicability requirements of the Protection of Existing Buffers Rule any publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the buffers pose a risk to public safety.

SECTION 2.1.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the Protection of Existing Buffers Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission, pursuant to this section, shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 2.1.(e) Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

SHELLFISH ENTERPRISE AREAS

SECTION 3.(a) G.S. 113-201 is amended by adding a new subsection to read:

"(d) The Marine Fisheries Commission may adopt rules to establish Shellfish Aquaculture Enterprise Areas to facilitate shellfish aquaculture opportunities through advanced siting and preapprovals from relevant federal and State agencies. The Secretary shall only issue nontransferrable leases within designated Shellfish Aquaculture Enterprise Areas. Any leased parcel within a Shellfish Aquaculture Enterprise Area that is relinquished or terminated shall revert to the State and be made available to other applicants."

SECTION 3.(b) G.S. 113-201.1 is amended by adding a new subdivision to read:

"(3a) "Shellfish Aquaculture Enterprise Area" means an area designated and permitted by the Department that is subdivided into parcels and made available for shellfish aquaculture leasing."

MARINE FISHERIES CLARIFYING CHANGES

SECTION 4.(a) G.S. 113-203 reads as rewritten:

"§ 113-203. Transplanting of oysters and clams.

…

(a2) It is unlawful to do any of the following:
(1) Transplant oysters or clams taken from public grounds to private beds except when lawfully taken during open season and transported directly to a private bed in accordance with rules of the Marine Fisheries Commission.

(2) Transplant oysters or clams taken from permitted aquaculture operations to private beds except from waters in the approved classification.

(3) Transplant oysters or clams from public grounds or permitted aquaculture operations utilizing waters in the prohibited, restricted or conditionally approved classification to private beds except when the transplanting is done in accordance with the provisions of this section and implementing rules.

(a3) Unless the Secretary determines that the nursery of shellfish in an area will present a risk to public health, it is lawful to transplant seed oysters or seed clams taken from permitted aquaculture operations that use waters in the prohibited, restricted or conditionally approved classification to private beds pursuant to an Aquaculture Seed Transplant Permit issued by the Secretary that sets times during which transplant is permissible and other reasonable restrictions imposed by the Secretary under either of the following circumstances:

(1) When transplanting seed clams less than 12 millimeters in their largest dimension.

(2) When transplanting seed oysters less than 25 millimeters in their largest dimension.

..."

SECTION 4.(b) G.S. 113-168.4(b) reads as rewritten:

"(b) Except as otherwise provided in this section, it is unlawful for any person licensed under this Article to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters. A person licensed under this Article may sell fish taken outside the territorial waters of the State or sell fish taken from coastal fishing waters under any of the following circumstances:

(1) The sale is to a fish dealer licensed under G.S. 113-169.3.

(2) The sale is to the public and the seller is a licensed fish dealer under G.S. 113-169.3.

(3) The sale is of oysters or clams from fish reared in a hatchery or aquaculture operation to the holder of an Aquaculture Operation Permit, an Under Dock Culture Permit, or a shellfish cultivation lease for further grow out."

RIVER HERRING FISHERIES MANAGEMENT

SECTION 5. The Division of Marine Fisheries shall review its Fishery Management Plan for river herring (blueback herring, Alosa aestivalis, and alewife, Alosa pseudoharengus) and report no later than December 15, 2017, to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources regarding the continuing validity and scientific basis for the continued status of both species as "overfished." If the Division does not have an adequate scientific basis to review the status of both species, then the report should include cost estimates for the restoration of spawning and nursery area surveys and age composition work for all coastal streams within the State that historically contained significant river herring fisheries.

STATE PARTICIPATION IN SITING OF ATLANTIC INTRACOASTAL WATERWAY DREDGED MATERIAL DISPOSAL EASEMENTS

SECTION 6.(a) The Division of Coastal Management of the Department of Environmental Quality and the State Property Office are authorized to negotiate with appropriate agencies of the federal government an agreement for the State to assume responsibility for acquiring dredged material easement sites appropriate for maintenance dredging of the Atlantic Intracoastal Waterway between Beaufort Inlet and the border with the
Commonwealth of Virginia in exchange for the reduction in size and possible change in location of dredged material disposal easement sites currently held by the federal government. The agreement shall provide for the federal government to relinquish certain dredged material disposal easements that are excess to maintenance project needs in exchange for the acquisition and furnishing to the federal government other easements that are sited and permitted by the Division of Coastal Management and acquired by the State Property Office under its powers of condemnation or otherwise using such funds as may be appropriated by the General Assembly from the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund established under Part 8B of Article 21 of Chapter 143 of the General Statutes for that purpose.

**SECTION 6.(b)** G.S. 143-215.73F(b) is amended by adding a new subdivision to read:

"(4) To provide funding for siting and acquisition of dredged disposal easement sites associated with the maintenance of the Atlantic Intracoastal Waterway north of Beaufort Inlet and south of the border with the Commonwealth of Virginia, under a Memorandum of Agreement between the State and the federal government."

**ENERGY POLICY COUNCIL CLARIFICATION**

**SECTION 7.** G.S. 113B-4(a) reads as rewritten:

"(a) The Lieutenant Governor or the Lieutenant Governor's designee shall serve as chair of the Council."

**NUTRIENT MANAGEMENT REGULATORY FRAMEWORK REVISIONS**

**SECTION 7.1.(a)** Section 14.13(c)(2) of S.L. 2016-94 reads as rewritten:

"(2) With respect to Falls Lake, the final results of its study and recommendations for further action (including any statutory or regulatory changes necessary to implement the recommendations) no later than December 31, 2023, with interim updates no later than December 31, 2019, and December 31, 2021."

**SECTION 7.1.(b)** Section 14.13(d) of S.L. 2016-94 reads as rewritten:

"SECTION 14.13.(d) As part of the periodic review and readoption of rules required by G.S. 150B-21.3A, the Environmental Management Commission shall, based on the study required by subsection (c) of this section and any monitoring or modeling study conducted pursuant to existing regulations as defined in this section, review the following Nutrient Strategies:


(3) Any changes to these regulations imposed by acts of the General Assembly.

The schedule set forth in this subsection shall modify the review and readoption schedule set by the Rules Review Commission under G.S. 150B-21.3A to the extent the schedules conflict. No later than December 31, 2016, the Department of Environmental Quality shall report to the Environmental Review Commission a list of any other rules and any acts of the General Assembly changing the rules identified in this subsection, and the Environmental Management Commission's review shall include the rules identified in this section and in that report. As part of its rule review process, the Environmental Management Commission shall (i) hold public hearings in the upstream and downstream portions of the Falls Lake and Jordan Lake river basins and subbasins and (ii) no later than December 31, 2016, convene a stakeholder working group that represents all classes of users and all geographic parts of the impacted river basins and subbasins and that will provide input to the Environmental
Management Commission regarding the revision to the Nutrient Strategies. The Environmental Management Commission shall issue recommendations for revisions of the Nutrient Strategies based on its review and begin rule readoption required by G.S. 150B-21.3A no later than March 15, 2019. Begin rule readoption for the Jordan Lake Water Supply Nutrient Strategy no later than six months after it receives the completed study and final recommendations prepared in response to subsection (c) of this section. The Environmental Management Commission shall begin rule readoption for the Falls Water Supply Nutrient Strategy no later than six months after it receives the completed study and final recommendations prepared in response to subsection (c) of this section and any monitoring or modeling study conducted pursuant to existing regulations for nutrient management in Falls Lake or (ii) December 31, 2024. For purposes of the G.S. 150B-21.3A readoption process, the Nutrient Strategies shall be considered "necessary with substantive public interest."

**SECTION 7.1.(c) Section 14.13(h) of S.L. 2016-94 reads as rewritten:**

"SECTION 14.13.(h) The rules described below shall not take effect and are subject to the review and readoption required by subsection (d) of this section:

1. With respect to the Jordan Lake rules, as defined by subdivisions (2) and (3) of subsection (d) of this section, any rules with effective dates between the effective date of this act and October 15, 2019.
2. With respect to the Falls Lake rules, as defined by subdivisions (1) and (3) of subsection (d) of this section, any rules with effective dates between the effective date of this act and October 15, 2022-2022, provided that provisions of the Falls Lake rules which establish Stage I reduction actions and goals shall remain in effect until the Falls Lake rules, as modified under subsection (d) of this section, become effective. The due dates for reduction actions and goals set to be completed by December 31, 2020, and the reduction actions and goals identified as Stage II in the Falls Lake rules are delayed until the Falls Lake rules, as modified under subsection (d) of this section, become effective."

**REPEAL CATAWBA BUFFER RULES**

**SECTION 7.2.(a) Section 7.1 of S.L. 1999-329 reads as rewritten:**

"Section 7.1. Notwithstanding G.S. 150B-21.1(a)(2) and Section 8.6 of S.L. 1997-458, the Environmental Management Commission may adopt temporary rules as provided in this section to protect water quality standards and uses as required to implement basinwide water quality management plans for the Cape Fear, Catawba, Cape Fear and Tar-Pamlico River Basins pursuant to G.S. 143-214.1, 143-214.7, 143-215.3, and 143B-282. Prior to the adoption of a temporary rule under this subsection, the Commission shall:

1. Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.
2. Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comment on the proposed rule may be submitted. The Commission shall accept written comment on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule is published in the North Carolina Register.
3. Hold a public hearing on the proposed temporary rule in the river basin to which the proposed temporary rule applies."
SECTION 7.2.(b) The Environmental Management Commission shall repeal 15A NCAC 02B .0243 (Catawba River Basin: Protection and Maintenance of Existing Riparian Buffers) on or before July 1, 2018.

COASTAL STORMWATER PROGRAM VARIANCE

SECTION 7.3.(a) Notwithstanding S.L. 2008-211 and rules adopted to implement the act, any subdivision meeting all of the following requirements shall be deemed to be in compliance with the impervious surface limitations of the act and its implementing rules:

(1) The subdivision's original declaration of covenants was recorded at least 20 years prior to the effective date of this act.

(2) The original developer of the subdivision is financially insolvent.

(3) The original developer of the subdivision transferred the stormwater permit to the homeowners association for the subdivision and, at the time of the transfer, the homeowners association had no notice from the original developer or any regulatory agency that the subdivision was not in compliance with the impervious surface limitations.

SECTION 7.3.(b) Section 7.3(a) of this act applies only to impervious surface built prior to January 1, 2017. Any impervious surface built on or after January 1, 2017, shall be subject to S.L. 2008-211 and its implementing rules.

GENERAL PROVISIONS

SECTION 8.(a) If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 8.(b) Except as otherwise provided, this act is effective when it becomes law.