

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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**SENATE BILL 820
Commerce Committee Substitute Adopted 6/5/12**

Short Title: Clean Energy and Economic Security Act.

(Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

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

14
15 **PART I. LEGISLATIVE FINDINGS AND INTENT**

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

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

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

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



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 believes that hydraulic fracturing can be done safely as
12 long as the right protections are in place. It will be important to have those measures in place
13 before issuing permits for hydraulic fracturing in North Carolina's shale formations"; 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 the processes of horizontal drilling and hydraulic
19 fracturing, 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 hear permit appeals, conduct a full and complete hearing on such
4 controversies, and affirm, modify, or overrule permit decisions made
5 by the Department pursuant to G.S. 74-61.
6 c. To adopt rules necessary to administer the Mining Act of 1971
7 pursuant to G.S. 74-63.
8 d. To adopt rules necessary to administer the Control of Exploration for
9 Uranium in North Carolina Act of 1983 pursuant to G.S. 74-86.
10 e. To adopt rules necessary to administer the Oil and Gas Conservation
11 Act pursuant to G.S. 113-391.

12 (2) The Commission is authorized to make such rules, not inconsistent with the
13 laws of this State, as may be required by the federal government for
14 grants-in-aid for mining resource purposes which may be made available to
15 the State by the federal government. This section is to be liberally construed
16 in order that the State and its citizens may benefit from such grants-in-aid.

17 (3) The Commission shall make such rules consistent with the provisions of this
18 Chapter. All rules adopted by the Commission shall be enforced by the
19 Department of Environment and Natural Resources.

20 (b) The Commission shall have the authority to hear permit appeals, conduct a full and
21 complete hearing on such controversies, and affirm, modify, or overrule permit decisions made
22 by the Department under the Oil and Gas Conservation Act, Article 27 of Chapter 113 of the
23 General Statutes. The Commission shall also have the authority to make determinations and
24 issue orders pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells
25 and to establish drilling units as provided in G.S. 113-393; (ii) require the operation of wells
26 with efficient gas-oil ratios and to fix such ratios; (iii) limit and prorate the production of oil or
27 gas, or both, from any pool or field for the prevention of waste as provided in G.S. 113-394;
28 and (iv) require integration of interests as provided in G.S. 113-393.

29 (c) The Commission shall submit quarterly written reports as to its operation, activities,
30 programs, and progress to the Joint Legislative Commission on Energy Policy and the
31 Environmental Review Commission. The Commission shall supplement the written reports
32 required by this subsection with additional written and oral reports as may be requested by the
33 Joint Legislative Commission on Energy Policy and the Environmental Review Commission.
34 The Commission shall submit the written reports required by this subsection whether or not the
35 General Assembly is in session at the time the report is due.

36 **"§ 143B-293.2. North Carolina Mining and Energy Commission – members; selection;**
37 **removal; compensation; quorum; services.**

38 (a) Members; Selection. – The North Carolina Mining and Energy Commission shall
39 consist of 14 members appointed as follows:

- 40 (1) The Chair of the North Carolina State University Minerals Research
41 Laboratory Advisory Committee, or the Chair's designee, nonvoting ex
42 officio.
43 (2) The State Geologist, or the State Geologist's designee, nonvoting ex officio.
44 (3) The Assistant Secretary of Energy for the Department of Commerce, or the
45 Assistant Secretary's designee, nonvoting ex officio.
46 (4) The Chair of the Environmental Management Commission, or the Chair's
47 designee, nonvoting ex officio.
48 (5) The Chair of the Commission for Public Health, or the Chair's designee,
49 nonvoting ex officio.
50 (6) One appointed by the Governor who is a representative of the mining
51 industry.

- 1 (7) One appointed by the Governor who is a representative of the mining
2 industry.
- 3 (8) One appointed by the Governor with experience in oil and gas exploration,
4 production, or development.
- 5 (9) One appointed by the General Assembly upon recommendation of the
6 President Pro Tempore of the Senate with experience in environmental
7 conservation or mitigation.
- 8 (10) One appointed by the General Assembly upon recommendation of the
9 President Pro Tempore of the Senate with experience in oil and gas
10 exploration, production, or development.
- 11 (11) One appointed by the General Assembly upon recommendation of the
12 President Pro Tempore of the Senate with interest in mineral, oil, and gas
13 exploration, production, or development.
- 14 (12) One appointed by the General Assembly upon recommendation of the
15 Speaker of the House of Representatives with experience in environmental
16 conservation or mitigation.
- 17 (13) One appointed by the General Assembly upon recommendation of the
18 Speaker of the House of Representatives with experience in oil and gas
19 exploration, production, or development.
- 20 (14) One appointed by the General Assembly upon recommendation of the
21 Speaker of the House of Representatives with interest in mineral, oil, and gas
22 exploration, production, or development.

23 (b) Terms. – The term of office of members of the Commission is three years. A
24 member may be reappointed to any number of successive three-year terms. The term of
25 members appointed under subdivisions (6), (9), and (12) of subsection (a) of this section shall
26 expire on June 30 of years evenly divisible by three. The terms of members appointed under
27 subdivisions (7), (10), and (13) of subsection (a) of this section shall expire on June 30 of years
28 that precede by one year those years that are evenly divisible by three. The terms of members
29 appointed under subdivisions (8), (11), and (14) of subsection (a) of this section shall expire on
30 June 30 of years that follow by one year those years that are evenly divisible by three.

31 (c) Vacancies; Removal from Office. –

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

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

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

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

50 "§ 143B-293.4. North Carolina Mining and Energy Commission – officers.

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

6 **"§ 143B-293.5. North Carolina Mining and Energy Commission – meetings.**

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

10 **"§ 143B-293.6. North Carolina Mining and Energy Commission – quasi-judicial powers;**
11 **procedures.**

12 (a) With respect to those matters within its jurisdiction, the Mining and Energy
13 Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter
14 150B of the General Statutes.

15 (b) In the evaluation of each violation, the Commission shall recognize that harm to the
16 natural resources of the State arising from the violation of standards or limitations established
17 to protect those resources may be immediately observed through damaged resources or may be
18 incremental or cumulative with no damage that can be immediately observed or documented.
19 Penalties up to the maximum authorized may be based on any one or combination of the
20 following factors:

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

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

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

25 (4) The cost of rectifying the damage.

26 (5) The amount of money saved by noncompliance.

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

28 (7) The prior record of the violator in complying or failing to comply with
29 programs over which the Commission has regulatory authority.

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

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

36 (1) Whether one or more of the civil penalty assessment factors in subsection (b)
37 of this section were wrongly applied to the detriment of the petitioner.

38 (2) Whether the violator promptly abated continuing environmental damage
39 resulting from the violation.

40 (3) Whether the violation was inadvertent or a result of an accident.

41 (4) Whether the violator had been assessed civil penalties for any previous
42 violations.

43 (5) Whether payment of the civil penalty will prevent payment for the remaining
44 necessary remedial actions.

45 (d) The Committee on Civil Penalty Remissions may remit the entire amount of the
46 penalty only when the violator has not been assessed civil penalties for previous violations and
47 when payment of the civil penalty will prevent payment for the remaining necessary remedial
48 actions.

49 (e) If any civil penalty has not been paid within 30 days after the final decision by the
50 administrative law judge in accordance with G.S. 150B-34 or court order has been served on
51 the violator, the Secretary or the Secretary's designee shall request the Attorney General to

1 institute a civil action in the superior court of any county in which the violator resides or has his
2 or its principal place of business to recover the amount of the assessment.

3 (f) For purposes of this section, "Secretary" shall mean the Secretary of Environment
4 and Natural Resources."

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

8 **SECTION 1.(d)** The Revisor of Statutes shall make the conforming statutory
9 changes necessary to reflect the reconstitution of the North Carolina Mining Commission as the
10 North Carolina Mining and Energy Commission as provided in subsection (b) of this section.
11 The Codifier of Rules shall make the conforming rule changes necessary to reflect the
12 reconstitution of the North Carolina Mining Commission to the North Carolina Mining and
13 Energy Commission as provided in subsection (b) of this section.

14 **SECTION 1.(e)** The Division of Land Resources of the Department of
15 Environment and Natural Resources is hereby renamed the Division of Energy, Mineral, and
16 Land Resources.

17 **SECTION 1.(f)** The Revisor of Statutes shall make the conforming statutory
18 changes necessary to reflect the renaming of the Division of Land Resources as the Division of
19 Energy, Mineral, and Land Resources as provided in subsection (e) of this section. The
20 Codifier of Rules shall make the conforming rule changes necessary to reflect the renaming of
21 the Division of Land Resources as the Division of Energy, Mineral, and Land Resources as
22 provided in subsection (e) of this section.

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

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

31
32 **PART III. MINING AND ENERGY COMMISSION AND OTHER REGULATORY**
33 **AGENCIES TO ESTABLISH REGULATORY PROGRAM FOR THE MANAGEMENT**
34 **OF OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE AND**
35 **THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR**
36 **THAT PURPOSE**

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

38 **"§ 113-380. Violation a misdemeanor.**

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

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

43 **"§ 113-389. Definitions.**

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

46 (1) "Commission" shall mean the North Carolina Mining and Energy
47 Commission.

48 (1a) "Department" shall mean the "Department~~Department~~ of Environment and
49 Natural Resources," as created by this law.~~Resources.~~

50 (1b) "Division" shall mean the Division of Energy, Mineral, and Land Resources
51 of the Department of Environment and Natural Resources.

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

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

9 (3a) "Hydraulic fracturing fluid" shall mean the base fluid type utilized in a
10 particular hydraulic fracturing treatment.

11 (3b) "Hydraulic fracturing treatment" shall mean stimulating a well by the
12 application of hydraulic fracturing fluids and additives with force in order to
13 create artificial fractures in the formation for the purpose of improving the
14 capacity to produce hydrocarbons.

15"

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

17 **"§ 113-391. Jurisdiction and authority; rules and orders.**

18 (a) The Mining and Energy Commission, created by G.S. 143B-293.1, shall establish a
19 modern regulatory program for the management of oil and gas exploration and development in
20 the State and the use of horizontal drilling and hydraulic fracturing for that purpose. The
21 program shall be designed to protect public health and safety; protect public and private
22 property; protect and conserve the State's air, water, and other natural resources; promote
23 economic development and expand employment opportunities; and provide for the productive
24 and efficient development of the State's oil and gas resources. To establish the program, the
25 Commission shall adopt rules for all of the following purposes:

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

28 (2) Regulation of drilling, operation, casing plugging, completion, and
29 abandonment of wells.

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

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

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

37 a. Information and data to be submitted in association with applications
38 for permits to conduct oil and gas exploration and development
39 activities using the processes of horizontal drilling and hydraulic
40 fracturing, which may include submission of hydrogeological
41 investigations and identification of mechanisms to prevent and
42 diagnose sources of groundwater contamination in the area of drilling
43 sites. In formulating these requirements, the Commission shall
44 consider (i) how North Carolina's geology differs from other states
45 where oil and gas exploration and development activities using the
46 processes of horizontal drilling and hydraulic fracturing are common,
47 and (ii) the routes of possible groundwater contamination resulting
48 from these activities and the potential role of vertical geological
49 structures such as dikes and faults as conduits for groundwater
50 contamination.

- 1 b. Collection of baseline data, including groundwater, surface water,
2 and air quality in areas where oil and gas exploration and
3 development activities are proposed.
- 4 c. Appropriate well construction standards, as may be appropriate
5 relative to responsibilities of the Environmental Management
6 Commission for such matters. Such standards shall address the
7 additional pressures of horizontal drilling and hydraulic fracturing,
8 such as standards for casing and cementing sufficient to handle
9 highly pressurized injection of fluids into a well for purposes of
10 fracturing bedrock and extraction of gas, and construction standards
11 for other gas production infrastructure, such as storage pits and tanks.
- 12 d. Appropriate siting standards for wells and other gas production
13 infrastructure, such as storage pits and tanks, including appropriate
14 setback requirements and identification of areas, such as floodplains,
15 where oil and gas exploration and production activities should be
16 prohibited, as may be appropriate relative to responsibilities of the
17 Environmental Management Commission for such matters.
- 18 e. Limits on water use, as may be appropriate relative to responsibilities
19 of the Environmental Management Commission for such matters.
20 Such rules shall be developed in light of water supply in the areas of
21 proposed activity, competing water uses in those areas, and expected
22 environmental impacts from such water withdrawals, including, but
23 not limited to, a requirement that oil and gas operators prepare and
24 have a water and wastewater management plan approved by the
25 Department, which, among other things, limits water withdrawals
26 during times of drought and periods of low flows.
- 27 f. Stormwater control at sites, as may be appropriate relative to
28 responsibilities of the Environmental Management Commission for
29 such matters.
- 30 g. Management of wastes produced in connection with oil and gas
31 exploration and development and use of horizontal drilling and
32 hydraulic fracturing for that purpose, as may be appropriate relative
33 to responsibilities of the Commission for Public Health for such
34 matters. Such rules shall address storage, transportation, and disposal
35 of wastes that may contain radioactive materials or wastes that may
36 be toxic or have other hazardous wastes' characteristics, that are not
37 otherwise regulated as a hazardous waste by the federal Resource
38 Conservation and Recovery Act, such as top-hole water, brines,
39 drilling fluids, additives, drilling muds, stimulation fluids, well
40 servicing fluids, oil, production fluids, and drill cuttings from the
41 drilling, alteration, production, plugging, or other activity associated
42 with oil and gas wells.
- 43 h. Regulation of toxic air emissions from drilling operations, as may be
44 appropriate relative to responsibilities of the Environmental
45 Management Commission for such matters. In formulating
46 appropriate standards, the Department shall assess emissions from oil
47 and gas exploration and development activities that use horizontal
48 drilling and hydraulic fracturing technologies, including emissions
49 from associated truck traffic in order to (i) determine the adequacy of
50 the State's current air toxics program to protect landowners who lease
51 their property to drilling operations and (ii) determine the impact on

- 1 ozone levels in the area in order to determine measures needed to
2 maintain compliance with federal ozone standards.
- 3 i. Prohibitions on use of certain chemicals and constituents in hydraulic
4 fracturing fluids, particularly diesel fuel.
- 5 j. Disclosure of chemicals and constituents used in oil and gas
6 exploration, drilling, and production and, with the exception of those
7 items constituting trade secrets as defined in G.S. 66-152(3), and that
8 are designated as confidential or as a trade secret under G.S. 132-1.2,
9 requirements for disclosure of those chemicals and constituents to the
10 public.
- 11 k. Installation of appropriate safety devices and development of
12 protocols for response to well blowouts, chemical spills, and other
13 emergencies, including requirements for approved emergency
14 response plans and certified personnel to implement these plans as
15 needed.
- 16 l. Measures to mitigate impacts on infrastructure, including damage to
17 roads by truck traffic and heavy equipment, in areas where oil and
18 gas exploration and development activities that use horizontal
19 drilling and hydraulic fracturing technologies are proposed to occur.
- 20 m. Notice, record keeping, and reporting.
- 21 n. Proper well closure, site reclamation, post-closure monitoring, and
22 financial assurance. Rules for financial assurance shall require that an
23 oil or gas developer or operator establish financial assurance that will
24 ensure that sufficient funds are available for well closure,
25 post-closure maintenance and monitoring, any corrective action that
26 the Department may require, and to satisfy any potential liability for
27 sudden and nonsudden accidental occurrences, and subsequent costs
28 incurred by the Department in response to an incident involving a
29 drilling operation, even if the developer or operator becomes
30 insolvent or ceases to reside, be incorporated, do business, or
31 maintain assets in the State.
- 32 (6) To require surveys upon application of any owner who has reason to believe
33 that a well has been unlawfully drilled by another into land of the owner
34 without permission. In the event such surveys are required, the costs thereof
35 shall be borne by the owner making the request.
- 36 (7) To require the making of reports showing the location of oil and gas wells
37 and the filing of logs and drilling records.
- 38 (8) To prevent "blowouts," "caving," and "seepage," as such terms are generally
39 understood in the oil and gas industry.
- 40 (9) To identify the ownership of all oil or gas wells, producing leases, refineries,
41 tanks, plants, structures, and all storage and transportation equipment and
42 facilities.
- 43 (10) To regulate the "shooting," perforating, and chemical treatment of wells.
- 44 (11) To regulate secondary recovery methods, including the introduction of gas,
45 air, water, or other substances into producing formations.
- 46 (12) To regulate the spacing of wells and to establish drilling units.
- 47 (13) To regulate and, if necessary in its judgment for the protection of unique
48 environmental values, to prohibit the location of wells in the interest of
49 protecting the quality of the water, air, soil, or any other environmental
50 resource against injury, damage, or impairment.

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

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

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

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

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

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

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

21 (a3) ~~The Department shall have jurisdiction and authority of and over all persons and~~
22 ~~property necessary to administer and enforce effectively the provisions of this law Article, and~~
23 ~~rules adopted thereunder, and all other laws relating to the conservation of oil and gas-gas,~~
24 ~~except for jurisdiction and authority reserved to the Department of Labor and the Mining and~~
25 ~~Energy Commission, as otherwise provided. The Commission and the Department may issue~~
26 ~~orders as may be necessary from time to time in the proper administration and enforcement of~~
27 ~~this Article and rules adopted thereunder.~~

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

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

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

- ~~(1) To require the drilling, operation, casing and plugging of wells to be done in such manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into an oil or gas stratum from a separate stratum; to prevent the pollution of freshwater supplies by oil, gas or salt water, or to protect the quality of the water, air, soil or any other environmental resource against injury or damage or impairment; and to require reasonable bond condition for the performance of the duty to plug each dry or abandoned well.~~
- ~~(2) To require directional surveys upon application of any owner who has reason to believe that a well or wells of others has or have been drilled into the lands owned by him or held by him under lease. In the event such surveys are required, the costs thereof shall be borne by the owners making the request.~~
- ~~(3) To require the making of reports showing the location of oil and gas wells, and the filing of logs and drilling records.~~
- ~~(4) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.~~
- ~~(5) To require the operation of wells with efficient gas-oil ratios, and to fix such ratios.~~
- ~~(6) To prevent "blow-outs," "caving" and "seepage" in the sense that conditions indicated by such terms are generally understood in the oil and gas business.~~
- ~~(7) To prevent fires.~~
- ~~(8) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures and all storage and transportation equipment and facilities.~~
- ~~(9) To regulate the "shooting," perforating, and chemical treatment of wells.~~
- ~~(10) To regulate secondary recovery methods, including the introduction of gas, air, water or other substances into producing formations.~~
- ~~(11) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as herein defined.~~
- ~~(12) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.~~
- ~~(13) To regulate the spacing of wells and to establish drilling units.~~
- ~~(14) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter drainage.~~
- ~~(15) To prevent where necessary the use of gas for the manufacture of carbon black.~~
- ~~(16) To regulate and, if necessary in its judgment for the protection of unique environmental values, to prohibit the location of wells in the interest of protecting the quality of the water, air, soil or any other environmental resource against injury, or damage or impairment.~~

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

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

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

2 "**§ 113-392. Protecting pool owners; drilling units in pools; location of wells; shares in**
3 **pools.**

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

6 (1) That it shall be necessary at any time for the producer from, or the owner of,
7 a tract of land in the pool, in order that he may obtain such tract's just and
8 equitable share of the production of such pool, as such share is set forth in
9 this section, to drill and operate any well or wells on such tract in addition to
10 such well or wells as can produce without waste such share, or

11 (2) As to occasion net drainage from a tract unless there be drilled and operated
12 upon such tract a well or wells in addition to such well or wells thereon as
13 can produce without waste such tract's just and equitable share, as set forth
14 in this section, of the production of such pool.

15 (b) For the prevention of waste and to avoid the augmenting and accumulation of risks
16 arising from the drilling of an excessive number of wells, the ~~Commission Department~~ shall,
17 after a hearing, establish a drilling unit or units for each pool. The ~~Commission Department~~
18 may establish drainage units of uniform size for the entire pool or may, if the facts so justify,
19 divide into zones any pool, establish a drainage unit for each zone, which unit may differ in
20 size from that established in any other zone; and the ~~Commission Department~~ may from time
21 to time, if the facts so justify, change the size of the unit established for the entire pool or for
22 any zone or zones, or part thereof, establishing new zones and units if the facts justify their
23 establishment.

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

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

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

49 "**§ 113-394. Limitations on production; allocating and prorating "allowables."**

50 (a) Whenever the total amount of oil, including condensate, which all the pools in the
51 State can produce, exceeds the amount reasonably required to meet the reasonable market

1 demand for oil, including condensate, produced in this State, then the ~~Department~~ Commission
2 shall limit the total amount of oil, including condensate, which may be produced in the State by
3 fixing an amount which shall be designated "allowable" for this State, which will not exceed
4 the reasonable market demand for oil, including condensate, produced in this State. The
5 Commission ~~Department~~ shall then allocate or distribute the "allowable" for the State among
6 the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so
7 that waste will be prevented. In allocating the "allowable" for the State, and in fixing
8 "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such
9 hydrocarbons, the ~~Department~~ Commission shall take into account the producing conditions
10 and other relevant facts with respect to such pools, including the separate needs for oil, gas and
11 condensate, and shall formulate rules setting forth standards or a program for the distribution of
12 the "allowable" for the State, and shall distribute the "allowable" for the State in accordance
13 with such standards or program, and where conditions in one pool or area are substantially
14 similar to those in another pool or area, then the same standards or programs shall be applied to
15 such pools and areas so that as far as practicable a uniform program will be followed; provided,
16 however, the ~~Department~~ Commission shall ~~permit~~ allow the production of a sufficient amount
17 of natural gas from any pool to supply adequately the reasonable market demand for such gas
18 for light and fuel purposes if such production can be obtained without waste, and the
19 condensate "allowable" for such pool shall not be less than the total amount of condensate
20 produced or obtained in connection with the production of the gas "allowable" for light and fuel
21 purposes, and provided further that, if the amount allocated to pool as its share of the
22 "allowable" for the State is in excess of the amount which the pool should produce to prevent
23 waste, then the ~~Department~~ Commission shall fix the "allowable" for the pool so that waste will
24 be prevented.

25 (b) The ~~Commission~~ Department shall not be required to determine the reasonable
26 market demand applicable to any single pool except in relation to all pools producing oil of
27 similar kind and quality and in relation to the demand applicable to the State, and in relation to
28 the effect of limiting the production of pools in the State. In allocating "allowables" to pools,
29 the ~~Department~~ Commission shall not be bound by nominations or desires of purchasers to
30 purchase oil from particular fields or areas, and the Commission ~~Department~~ shall allocate the
31 "allowable" for the State in such manner as will prevent undue discrimination against any pool
32 or area in favor of another or others which would result from selective buying or nominating by
33 purchasers of oil, as such term "selective buying or nominating" is understood in the oil
34 business.

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

43 (d) Whenever the total amount of gas which can be produced from any pool in this
44 State exceeds the amount of gas reasonably required to meet the reasonable market demand
45 therefrom, the Commission ~~Department~~ shall limit the total amount of gas which may be
46 produced from such pool. The Commission ~~Department~~ shall then allocate or distribute the
47 allowable production among the developed areas in the pool on a reasonable basis, so that each
48 producer will have the opportunity to produce his just and equitable share, as such share is set
49 forth in subsection G.S. 113-392(d), whether the restriction for the pool as a whole is
50 accomplished by order or by the automatic operation of the prohibitory provisions of this law.

1 As far as applicable, the provisions of subsection (a) of this section shall be followed in
2 allocating any "allowable" of gas for the State.

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

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

8 "**§ 113-410. Penalties for other violations.**

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

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

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

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

32 "**§ 113-415. Effect on laws applicable to water and air pollution control, and management**
33 **of solid and hazardous waste.**~~Conflicting laws.~~

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

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

45 "**§ 143B-282. Environmental Management Commission – creation; powers and duties.**

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

47 ...

- 48 1. 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 or before January 1, 2013.

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

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

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

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

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

24
25 **PART IV. AUTHORIZE HORIZONTAL DRILLING AND HYDRAULIC**
26 **FRACTURING; PROHIBIT ISSUANCE OF PERMITS PENDING SUBSEQUENT**
27 **LEGISLATIVE ACTION**

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

29 **"§ 113-393. Development of lands as drilling unit by agreement or order of**
30 **Department-Commission.**

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

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

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

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

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

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

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

39 **"§ 143-214.2. Prohibited discharges.**

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

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

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

50 **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 the processes of horizontal drilling and hydraulic fracturing in the
21 State pursuant to G.S. 113-395, as amended by subsection (c) of this section, or any other
22 provision of law shall be prohibited in order to allow the Mining and Energy Commission to
23 create a modern regulatory program to govern all aspects of such activities. No agency of the
24 State, including the Department of Environment and Natural Resources, the Environmental
25 Management Commission, the Commission on Public Health, or the Mining and Energy
26 Commission, shall issue a permit for oil or gas exploration or development activities using the
27 processes of horizontal drilling and hydraulic fracturing until the General Assembly takes
28 legislative action to allow the issuance of such permits.

30 **PART V. LANDOWNER AND PUBLIC PROTECTIONS**

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

32 "**§ 113-420. Notice and entry to property.**

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

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

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

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

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

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

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

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

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

23 **"§ 113-421. ~~Compensation for damages.~~Presumptive liability for water contamination;**
24 **compensation for other damages; responsibility for reclamation.**

25 (a) Presumptive Liability for Water Contamination. – It shall be presumed that an oil or
26 gas developer or operator is responsible for contamination of a private drinking water well or
27 water supply well, as those terms are defined in G.S. 87-85, that is within 5,000 feet of a
28 wellhead that is part of the oil or gas developer's or operator's activities unless the presumption
29 is rebutted by a defense established as set forth in subdivision (1) of this subsection. If a
30 contaminated private drinking water well or water supply well is located within 5,000 feet of a
31 wellhead, in addition to any other remedy available at law or in equity, including payment of
32 compensation for damage to a private drinking water well or water supply well, the developer
33 or operator shall provide a replacement water supply to the surface owner and other persons
34 using the water supply at the time the oil or gas developer's activities were commenced on the
35 property, which water supply shall be adequate in quality and quantity for those persons' use.

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

- 39 a. The contamination existed prior to the commencement of the drilling
40 activities of the oil or gas developer or operator, as evidenced by a
41 pre-drilling test of the private drinking water well or water supply
42 well in question conducted in conformance with G.S. 113-423(e).
- 43 b. The surface owner or owner of the water supply in question refused
44 the oil or gas developer or operator access to conduct a pre-drilling
45 test of the private drinking water well or water supply well conducted
46 in conformance with G.S. 113-423(e).
- 47 c. The private drinking water well or water supply well, as those terms
48 are defined in G.S. 87-85, in question is not within 5,000 feet of a
49 wellhead that is part of the oil or gas developer's or operator's
50 activities.

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

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

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

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

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

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

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

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

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

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

33 "**§ 113-422. Indemnification.**

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

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

42 "**§ 113-423. Maximum Required lease terms.**

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

49 (b) Maximum Duration. – Any lease of oil or gas rights or any other conveyance of any
50 kind separating rights to oil or gas from the freehold estate of surface property shall expire at
51 the end of 10 years from the date the lease is executed, unless, at the end of the 10-year period,

1 oil or gas is being produced for commercial purposes from the land to which the lease applies.
2 If, at any time after the 10-year period, commercial production of oil or gas is terminated for a
3 period of six months or more, all rights to the oil or gas shall revert to the surface owner of the
4 property to which the lease pertains. No assignment or agreement to waive the provisions of
5 this subsection shall be valid or enforceable. As used in this subsection, the term "production"
6 includes the actual production of oil or gas by a lessee, or when activities are being conducted
7 by the lessee for injection, withdrawal, storage, or disposal of water, gas, or other fluids, or
8 when rentals or royalties are being paid by the lessee. No force majeure clause shall operate to
9 extend a lease beyond the time frames set forth in this subsection.

10 (c) Minimum Royalty Payments. – Any lease of oil or gas rights or any other
11 conveyance of any kind separating rights to oil or gas from the freehold estate of surface
12 property shall provide that the owner of the surface property to which the lease pertains shall
13 receive a royalty payment of not less than twelve and one-half percent (12.5%) of the proceeds
14 of sale of all oil or gas produced from the surface owner's just and equitable share of the oil and
15 gas in the pool, which sum may be diminished by production costs that shall not exceed ten
16 percent (10%) of the proceeds of sale of all oil or gas produced from the surface owner's just
17 and equitable share of the oil and gas in the pool. Production costs shall be limited to those
18 associated with compression and dehydration. Royalty payments shall commence no later than
19 six months after the date of first sale of product from the drilling operations subject to the lease
20 and thereafter no later than 60 days after the end of the calendar month within which
21 subsequent production is sold. At the time each royalty payment is made, the oil or gas
22 developer or operator shall provide documentation on the time period for which the royalty
23 payment is made, the quantity of product sold within that period, and the price received, at a
24 minimum. If royalty payments have not been made within the required time frames, the owner
25 of the property to which the lease pertains shall be entitled to interest on the unpaid royalties
26 commencing on the payment due date at the rate of twelve and one-half percent (12.5%) per
27 annum on the unpaid amounts. Upon written request, the owner of the surface property to
28 which the lease pertains shall be entitled to inspect and copy records of the oil or gas developer
29 or operator related to production and royalty payments associated with the lease.

30 (d) Agreements for Use of Other Resources; Associated Payments. – Any lease of oil or
31 gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold
32 estate of surface property shall clearly state whether the oil or gas developer or operator shall
33 use groundwater or surface water supplies located on the property and, if so, shall clearly state
34 the estimated amount of water to be withdrawn from the supplies on the property, and shall
35 require permission of the landowner therefore. At a minimum, water used by the developer or
36 operator shall not restrict the supply of water for domestic uses by the surface owner. The lease
37 shall provide for full compensation to the landowner for water used from the property by the
38 developer or operator in an amount not less than the fair market value of the water consumed
39 based on water sales in the area at the time of use.

40 (e) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other
41 conveyance of any kind separating rights to oil or gas from the freehold estate of surface
42 property shall include a clause that requires the oil or gas developer or operator to conduct a
43 test of all private drinking water wells or water supply wells, as those terms are defined in
44 G.S. 87-85, within 5,000 feet from a wellhead that is part of the oil or gas developer's or
45 operator's activities at least 30 days prior to initial drilling activities and at least two follow-up
46 tests within a 24-month period after production has commenced. The Department shall identify
47 the location of all such wells on a property on which drilling operations are proposed to occur.
48 A surface owner may elect to have the Department sample wells located on their property, in
49 lieu of sampling conducted by the oil or gas developer or operator, in which case the developer
50 or operator shall reimburse the Department for the reasonable costs involved in testing of the

1 wells in question. Nothing in this subsection shall be construed to preclude or impair the right
2 of any surface owner to refuse pre-drilling testing of wells located on their property.

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

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

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

13 **"§ 113-423.1. Surface activities.**

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

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

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

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

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

3 **"§ 113-425. Registry of landmen required.**

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

- 8 (1) Acquires or manages oil, gas, or mineral interests.
- 9 (2) Performs title or contract functions related to the exploration, exploitation, or
10 disposition of oil, gas, or mineral interests.
- 11 (3) Negotiates for the acquisition or divestiture of oil, gas, or mineral rights,
12 including the acquisition or divestiture of land or oil, gas, or mineral rights
13 for a pipeline.
- 14 (4) Negotiates business agreements that provide for the exploration for or
15 development of oil, gas, or minerals.

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

- 21 (1) The name of the applicant or, if the applicant is not an individual, the names
22 and addresses of all principals of the applicant.
- 23 (2) The business address, telephone number, and electronic mail address of the
24 applicant.
- 25 (3) The social security number of the applicant or, if the applicant is not an
26 individual, the federal employer identification number of the applicant.
- 27 (4) A list of all states and other jurisdictions in which the applicant holds or has
28 held a similar registration or license.
- 29 (5) A list of all states and other jurisdictions in which the applicant has had a
30 similar registration or license suspended or revoked.
- 31 (6) A statement whether any pending judgments or tax liens exist against the
32 applicant.

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

- 36 (1) Fraudulently or deceptively obtains, or attempts to obtain, a registration.
- 37 (2) Uses or attempts to use an expired, suspended, or revoked registration.
- 38 (3) Falsely represents oneself as a registered landman.
- 39 (4) Engages in any other fraud, deception, misrepresentation, or knowing
40 omission of material facts related to oil, gas, or mineral interests.
- 41 (5) Had a similar registration or license denied, suspended, or revoked in
42 another state or jurisdiction.
- 43 (6) Otherwise violates this section.

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

47 (e) The Department shall adopt rules as necessary to implement the provisions of this
48 section."

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

51 **"§ 113-426. Publication of information for landowners.**

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

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

11 **"§ 113-427. Additional remedies.**

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

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

15 **"§ 47E-4. Required disclosures.**

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

- 19 (1) Disclose those items which are required to be disclosed relative to the
20 characteristics and condition of the property and of which the owner has
21 actual knowledge; or
- 22 (2) State that the owner makes no representations as to the characteristics and
23 condition of the real property or any improvements to the real property
24 except as otherwise provided in the real estate contract.

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

- 31 (1) The water supply and sanitary sewage disposal system;
- 32 (2) The roof, chimneys, floors, foundation, basement, and other structural
33 components and any modifications of these structural components;
- 34 (3) The plumbing, electrical, heating, cooling, and other mechanical systems;
- 35 (4) Present infestation of wood-destroying insects or organisms or past
36 infestation the damage for which has not been repaired;
- 37 (5) The zoning laws, restrictive covenants, building codes, and other land-use
38 restrictions affecting the real property, any encroachment of the real property
39 from or to adjacent real property, and notice from any governmental agency
40 affecting this real property; and
- 41 (6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground
42 storage tank, hazardous material or toxic material (whether buried or
43 covered), and other environmental contamination.

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

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

- 50 (1) The North Carolina Real Estate Commission shall develop and require the
51 use of a standard disclosure statement to comply with the requirements of

1 this subsection. The disclosure statement shall specify that certain transfers
2 of residential property are excluded from this requirement by G.S. 47E-2,
3 including transfers of residential property made pursuant to a lease with an
4 option to purchase where the lessee occupies or intends to occupy the
5 dwelling. The standard disclosure statement shall require disclosure of
6 whether or not the property to be conveyed is subject to regulation by one or
7 more owners' association(s) and governing documents which impose various
8 mandatory covenants, conditions, and restrictions upon the property,
9 including, but not limited to, obligations to pay regular assessments or dues
10 and special assessments. The statement required by this subsection shall
11 include information on all of the following:

- 12 a. The name, address, telephone number, or e-mail address for the
13 president or manager of the association to which the lot is subject.
- 14 b. The amount of any regular assessments or dues to which the lot is
15 subject.
- 16 c. Whether there are any services that are paid for by regular
17 assessments or dues to which the lot is subject.
- 18 d. Whether, as of the date the disclosure is signed, there are any
19 assessments, dues, fees, or special assessments which have been duly
20 approved as required by the applicable declaration or bylaws,
21 payable to an association to which the lot is subject.
- 22 e. Whether, as of the date the disclosure is signed, there are any
23 unsatisfied judgments against or pending lawsuits involving the lot,
24 the planned community or the association to which the lot is subject,
25 with the exception of any action filed by the association for the
26 collection of delinquent assessments on lots other than the lot to be
27 sold.
- 28 f. Any fees charged by an association or management company to
29 which the lot is subject in connection with the conveyance or transfer
30 of the lot to a new owner.

- 31 (2) The owners' association and mandatory covenants disclosure statement shall
32 provide the owner with the option to indicate whether the owner has actual
33 knowledge of the specified characteristics, or conditions or the owner is
34 making no representations as to any characteristic or condition contained in
35 the statement.

36 (b2) With regard to transfers described in G.S. 47E-1, the owner of the real property
37 shall include in any real estate contract an oil, gas, and mineral rights mandatory disclosure as
38 provided in this subsection.

- 39 (1) Transfers of residential property set forth in G.S.47E-2 are excluded from
40 this requirement, except that the exemptions provided under subdivisions (9)
41 and (11) of G.S. 47E-2 specifically are not excluded from this requirement.

- 42 (2) The disclosure shall be conspicuous, shall be in boldface type, and shall be
43 as follows:

44 OIL, GAS, AND MINERAL RIGHTS DISCLOSURE

45
46
47 Oil, gas, and mineral rights (hereinafter "mineral rights") can be severed
48 from the title to real property by conveyance (deed) of the mineral rights
49 from the owner or by reservation of the mineral rights by the owner. If
50 mineral rights are or will be severed from the property, the owner of those
51 rights may have the perpetual right to drill, mine, explore, and remove any of

the subsurface resources on or from the property either directly from the surface of the property or from a nearby location. With regard to the severance of mineral rights, Seller makes the following disclosures:

		<u>Yes</u>	<u>No</u>	<u>No Representation</u>
1 2 3 4 5 6 7	_____ <u>Buyer Initials</u>	1. <u>Mineral rights were severed from the property by a previous owner.</u>		
		—	—	—
8 9 10 11	_____ <u>Buyer Initials</u>	2. <u>Seller has severed the mineral rights from the property.</u>		
		<u>Yes</u>	<u>No</u>	
12 13 14	_____ <u>Buyer Initials</u>	3. <u>Seller intends to sever the mineral rights from the property prior to transfer of title to Buyer."</u>		
		—	—	

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.

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

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

6 **"§ 120-287. Organization of Commission.**

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

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

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

15 (d) From funds available to the General Assembly, the Legislative Services
16 Commission shall allocate monies to fund the Joint Legislative Commission on Energy Policy.
17 Members of the Commission receive subsistence and travel expenses as provided in
18 G.S. 120-3.1. The Legislative Services Commission, through the Legislative Services Officer,
19 shall assign professional staff to assist the Commission in its work. Upon the direction of the
20 Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of
21 Representatives shall assign clerical staff to the Commission. The expenses for clerical
22 employees shall be borne by the Commission."

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

31
32 **PART VII. EFFECTIVE DATE**

33 **SECTION 7.** Sections 4(a) through 4(f), 4(h), and 4(i) of this act are effective
34 when this act becomes law and apply to wells drilled and leases or contracts entered into on or
35 after that date. Sections 1(a) through 1(h), Sections 2(a) through 2(j), Sections 3(a) through
36 3(d), Section 4(g), and Sections 6(a) and 6(b) of this act become effective October 1, 2012.
37 Section 5 becomes effective October 1, 2012, and applies to real estate transfers or dispositions
38 occurring on or after that date. All other sections of this act are effective when the act becomes
39 law.