

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

4

SENATE BILL 786
Commerce Committee Substitute Adopted 5/20/14
Third Edition Engrossed 5/22/14
House Committee Substitute Favorable 5/27/14

Short Title: Energy Modernization Act.

(Public)

Sponsors:

Referred to:

May 19, 2014

A BILL TO BE ENTITLED

1 AN ACT TO (1) EXTEND THE DEADLINE FOR DEVELOPMENT OF A MODERN
2 REGULATORY PROGRAM FOR THE MANAGEMENT OF OIL AND GAS
3 EXPLORATION, DEVELOPMENT, AND PRODUCTION IN THE STATE AND THE
4 USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING
5 TREATMENTS FOR THAT PURPOSE; (2) ENACT OR MODIFY CERTAIN
6 EXEMPTIONS FROM REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE
7 ACT APPLICABLE TO RULES FOR THE MANAGEMENT OF OIL AND GAS
8 EXPLORATION, DEVELOPMENT, AND PRODUCTION IN THE STATE AND THE
9 USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING
10 TREATMENTS FOR THAT PURPOSE; (3) AUTHORIZE ISSUANCE OF PERMITS
11 FOR OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION
12 ACTIVITIES SIXTY DAYS AFTER APPLICABLE RULES BECOME EFFECTIVE; (4)
13 CREATE THE NORTH CAROLINA OIL AND GAS COMMISSION AND
14 RECONSTITUTE THE NORTH CAROLINA MINING COMMISSION; (5) AMEND
15 MISCELLANEOUS STATUTES GOVERNING OIL AND GAS EXPLORATION,
16 DEVELOPMENT, AND PRODUCTION ACTIVITIES; (6) ESTABLISH A
17 SEVERANCE TAX APPLICABLE TO OIL AND GAS EXPLORATION,
18 DEVELOPMENT, AND PRODUCTION ACTIVITIES; (7) AMEND MISCELLANEOUS
19 STATUTES UNRELATED TO OIL AND GAS EXPLORATION, DEVELOPMENT,
20 AND PRODUCTION ACTIVITIES; AND (8) DIRECT STUDIES ON VARIOUS
21 ISSUES, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON
22 ENERGY POLICY.
23

24 The General Assembly of North Carolina enacts:

25
26 **PART I. EXTENSION OF RULE DEVELOPMENT DEADLINE**

27 **SECTION 1.** Section 2(m) of S.L. 2012-143 reads as rewritten:

28 **"SECTION 2.(m)** All rules required to be adopted by the Mining and Energy Commission,
29 the Environmental Management Commission, and the Commission for Public Health pursuant
30 to this act shall be adopted no later than ~~October 1, 2014~~ January 1, 2015. In order to provide
31 for the orderly, efficient, and effective development and adoption of rules and to prevent the
32 adoption of duplicative, inconsistent, or inadequate rules by these Commissions, the
33 Department of Environment and Natural Resources shall coordinate the adoption of the rules.
34 The Commissions and the Department shall develop the rules in an open and collaborative



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

18 **PART II. EXEMPTIONS FROM ADMINISTRATIVE PROCEDURE ACT**

19 **SECTION 2.(a)** Notwithstanding G.S. 150B-21.3(b1) and Section 1(a) of S.L.
20 2013-365, all rules adopted pursuant to Section 2(m) of S.L. 2012-143 shall be subject to
21 legislative review during the next regular session of the General Assembly that begins after the
22 date the Rules Review Commission approved the rule or during the regular session that is
23 underway on the date the Commission approved the rule.

24 **SECTION 2.(b)** Notwithstanding G.S. 150B-21.3(b1) and any rule of either house
25 of the General Assembly, any member of the General Assembly may introduce a bill to
26 disapprove any rule adopted pursuant to Section 2(m) of S.L. 2012-143 that has been approved
27 by the Rules Review Commission and that either has not become effective or has become
28 effective by executive order, as follows: (i) if the Rules Review Commission approves the rule
29 prior to the start of a legislative session, during the first 30 calendar days of the regular session
30 of the General Assembly that begins after the date the Commission approved all rules adopted
31 pursuant to Section 2(m) of S.L. 2012-143 or (ii) if the Rules Review Commission approves the
32 rule during a legislative session, 30 calendar days from the date the Rules Review Commission
33 approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143.

34 **SECTION 2.(c)** Notwithstanding G.S. 150B-21.3(b1) and any rule of either house
35 of the General Assembly, all rules adopted pursuant to Section 2(m) of S.L. 2012-143 become
36 effective on the earlier of the following:
37

- 38 (1) If the Rules Review Commission approves all rules adopted pursuant to
39 Section 2(m) of S.L. 2012-143 prior to the start of a legislative session, the
40 earlier of (i) the 31st calendar day of the regular session of the General
41 Assembly that begins after the date the Commission approved all rules
42 adopted pursuant to Section 2(m) of S.L. 2012-143 if a bill that specifically
43 disapproves any of these rules has not been introduced in either house of the
44 General Assembly by that date; (ii) if a bill that specifically disapproves a
45 rule is introduced in either house of the General Assembly before the 31st
46 calendar day of that session, the rule becomes effective on the earlier of
47 either the day an unfavorable final action is taken on the bill or the 61st
48 calendar day of that session if by that date a bill that specifically disapproves
49 the rule has not been ratified; or (iii) the day that session of the General
50 Assembly adjourns without ratifying a bill that specifically disapproves the
51 rule.

1 (2) If the Rules Review Commission approves all rules adopted pursuant to
2 Section 2(m) of S.L. 2012-143 during a legislative session, the earlier of (i)
3 the 31st calendar day after the date the Commission approved all rules
4 adopted pursuant to Section 2(m) of S.L. 2012-143 if a bill that specifically
5 disapproves a rule has not been introduced in either house of the General
6 Assembly by that date; (ii) if a bill that specifically disapproves a rule is
7 introduced in either house of the General Assembly within 30 calendar days
8 of the date that the Commission approved all rules adopted pursuant to
9 Section 2(m) of S.L. 2012-143, the rule becomes effective on the earlier of
10 either the day an unfavorable final action is taken on the bill or the 61st day
11 after the date that the Commission approved all rules adopted pursuant to
12 Section 2(m) of S.L. 2012-143 if by that date a bill that specifically
13 disapproves the rule has not been ratified; or (iii) the day that session of the
14 General Assembly adjourns without ratifying a bill that specifically
15 disapproves the rule.

16 **SECTION 2.(d)** Notwithstanding G.S. 150B-21.9, the Rules Review Commission
17 must review any permanent rule adopted pursuant to Section 2(m) of S.L. 2012-143 submitted
18 to it by the end of a month by the last day of the next month.

19 **SECTION 2.(e)** G.S. 150B-19.3 shall not apply to rules adopted by the Mining and
20 Energy Commission, the Environmental Management Commission, and the Commission for
21 Public Health for the management of oil and gas exploration, development, and production
22 activities in the State, including the use of horizontal drilling and hydraulic fracturing for that
23 purpose.

24 **SECTION 2.(f)** Section 1(b) of S.L. 2013-365 reads as rewritten:

25 "**SECTION 1.(b)** The Mining and Energy Commission, the Environmental Management
26 Commission, and the Commission for Public Health are exempt from the provisions of
27 Chapter 150B of the General Statutes that require the preparation of fiscal notes for any rule
28 proposed ~~for the creation of a modern regulatory program for that pertains to~~ the management
29 of oil and gas exploration and development activities in the State, including the use of
30 horizontal drilling and hydraulic fracturing for that purpose."

31 **SECTION 2.(g)** The Mining and Energy Commission, the Environmental
32 Management Commission, and the Commission for Public Health are exempt from the
33 provisions of Chapter 150B of the General Statutes that require that a certification be obtained
34 from the Office of State Budget and Management, including requirements under
35 G.S. 150B-19.1(h) and G.S. 150B-21.4, and any requirement for preliminary review by the
36 Office of State Budget and Management pursuant to G.S. 150B-21.26, for any rule proposed
37 for the creation of a modern regulatory program for the management of oil and gas exploration
38 and development activities in the State, including the use of horizontal drilling and hydraulic
39 fracturing for that purpose.

40 **SECTION 2.(h)** This Part is effective when it becomes law. Section 2(f) of this act
41 shall expire December 31, 2017.

42 43 **PART III. AUTHORIZE ISSUANCE OF PERMITS**

44 **SECTION 3.(a)** The Department of Environment and Natural Resources and the
45 Mining and Energy Commission are authorized to issue permits for oil and gas exploration and
46 development activities using horizontal drilling and hydraulic fracturing treatments in the State
47 pursuant to G.S. 113-395 on or after the 61st calendar day following the date that all rules
48 adopted pursuant to Section 2(m) of S.L. 2012-143 have become effective pursuant to Section
49 2(c) of this act.

50 **SECTION 3.(b)** Section 3(d) of S.L. 2012-143 is repealed.

51 **SECTION 3.(c)** Section 1(c) of S.L. 2013-365 is repealed.

1
2 **PART IV. CREATE OIL AND GAS COMMISSION AND RECONSTITUTE MINING**
3 **COMMISSION**

4 **SECTION 4.(a)** Part 6A of Article 7 of Chapter 143B of the General Statutes reads
5 as rewritten:

6 "Part 6A. North Carolina ~~Mining and Energy~~ Oil and Gas Commission.

7 "**§ 143B-293.1. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – creation;**
8 **powers and duties.**

9 (a) There is hereby created the North Carolina ~~Mining and Energy~~ Oil and Gas
10 Commission of the Department of Environment and Natural Resources with the power and
11 duty to adopt rules necessary to administer the Oil and Gas Conservation Act pursuant to
12 G.S. 113-391 and for the development of the ~~oil, gas, and mining~~ oil and gas resources of the
13 State. The Commission shall make such rules consistent with the provisions of this Chapter. All
14 rules adopted by the Commission shall be enforced by the Department of Environment and
15 Natural Resources.

16 (b) The Commission shall have the authority to make determinations and issue orders
17 pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells and to
18 establish drilling units as provided in G.S. 113-393; (ii) ~~require the operation of wells with~~
19 ~~efficient gas-oil ratios and to fix such ratios;~~ (iii) limit and prorate the production of oil or gas,
20 or both, from any pool or field for the prevention of waste as provided in G.S. 113-394; (iii)
21 classify wells for taxing purposes; and (iv) require integration of interests as provided in
22 G.S. 113-393.

23 (c) The Commission shall submit ~~quarterly~~ annual written reports as to its operation,
24 activities, programs, and progress to the Joint Legislative Commission on Energy Policy and
25 the Environmental Review Commission. The Commission shall supplement the written reports
26 required by this subsection with additional written and oral reports as may be requested by the
27 Joint Legislative Commission on Energy Policy and the Environmental Review Commission.
28 The Commission shall submit the written reports required by this subsection whether or not the
29 General Assembly is in session at the time the report is due.

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

32 (a) ~~Members Selection. The North Carolina Mining and Energy Commission shall~~
33 ~~consist of 15 members appointed as follows:~~

- 34 (1) ~~The Chair of the North Carolina State University Minerals Research~~
35 ~~Laboratory Advisory Committee, or the Chair's designee, ex officio.~~
- 36 (2) ~~The State Geologist, or other designee of the Secretary of Environment and~~
37 ~~Natural Resources.~~
- 38 (3) ~~Repealed by Session Laws 2013-365, s. 3(a), effective July 29, 2013.~~
- 39 (3a) ~~One appointed by the Governor, at large.~~
- 40 (4) ~~One appointed by the General Assembly upon recommendation of the~~
41 ~~Speaker of the House of Representatives who is a member of a~~
42 ~~nongovernmental conservation interest.~~
- 43 (5) ~~One appointed by the General Assembly upon recommendation of the~~
44 ~~Speaker of the House of Representatives who, at the time of initial~~
45 ~~appointment, is an elected official of a municipal government located in a~~
46 ~~region of North Carolina that has oil and gas potential. A person serving in~~
47 ~~this seat may complete a term on the Commission even if the person is no~~
48 ~~longer serving as an elected official of a municipal government but may not~~
49 ~~be reappointed to a subsequent term.~~

- 1 ~~(6) One appointed by the General Assembly upon recommendation of the~~
2 ~~Speaker of the House of Representatives who is a representative of the~~
3 ~~mining industry.~~
- 4 ~~(7) One appointed by the General Assembly upon recommendation of the~~
5 ~~Speaker of the House of Representatives who shall be a geologist with~~
6 ~~experience in oil and gas exploration and development.~~
- 7 ~~(8) One appointed by the General Assembly upon recommendation of the~~
8 ~~President Pro Tempore of the Senate who is a member of a nongovernmental~~
9 ~~conservation interest.~~
- 10 ~~(9) One appointed by the General Assembly upon recommendation of the~~
11 ~~President Pro Tempore of the Senate who, at the time of initial appointment,~~
12 ~~is a member of a county board of commissioners of a county located in a~~
13 ~~region of North Carolina that has oil and gas potential. A person serving in~~
14 ~~this seat may complete a term on the Commission even if the person is no~~
15 ~~longer serving as county commissioner but may not be reappointed to a~~
16 ~~subsequent term.~~
- 17 ~~(10) One appointed by the General Assembly upon recommendation of the~~
18 ~~President Pro Tempore of the Senate who is a representative of the mining~~
19 ~~industry.~~
- 20 ~~(11) One appointed by the General Assembly upon recommendation of the~~
21 ~~President Pro Tempore of the Senate who shall be an engineer with~~
22 ~~experience in oil and gas exploration and development.~~
- 23 ~~(12) One appointed by the Governor who shall be a representative of a publicly~~
24 ~~traded natural gas company.~~
- 25 ~~(13) One appointed by the Governor who shall be a licensed attorney with~~
26 ~~experience in legal matters associated with oil and gas exploration and~~
27 ~~development.~~
- 28 ~~(14) One appointed by the Governor who is a member of the Environmental~~
29 ~~Management Commission.~~
- 30 ~~(15) One appointed by the Governor who is a member of the Commission for~~
31 ~~Public Health.~~

32 (a1) Members Selection. – The North Carolina Oil and Gas Commission shall consist of
33 nine members appointed as follows:

- 34 (1) One appointed by the General Assembly upon recommendation of the
35 Speaker of the House of Representatives who, at the time of initial
36 appointment, is an elected official of a municipal government located in a
37 region of North Carolina that has oil and gas potential. A person serving in
38 this seat may complete a term on the Commission even if the person is no
39 longer serving as an elected official of a municipal government but may not
40 be reappointed to a subsequent term.
- 41 (2) One appointed by the General Assembly upon recommendation of the
42 Speaker of the House of Representatives who shall be a geologist with
43 experience in oil and gas exploration and development.
- 44 (3) One appointed by the General Assembly upon recommendation of the
45 Speaker of the House of Representatives who is a member of a
46 nongovernmental conservation interest.
- 47 (4) One appointed by the General Assembly upon recommendation of the
48 President Pro Tempore of the Senate who, at the time of initial appointment,
49 is a member of a county board of commissioners of a county located in a
50 region of North Carolina that has oil and gas potential. A person serving in
51 this seat may complete a term on the Commission even if the person is no

1 longer serving as county commissioner but may not be reappointed to a
2 subsequent term.

3 (5) One appointed by the General Assembly upon recommendation of the
4 President Pro Tempore of the Senate who is a member of a nongovernmental
5 conservation interest.

6 (6) One appointed by the General Assembly upon recommendation of the
7 President Pro Tempore of the Senate who shall be an engineer with
8 experience in oil and gas exploration and development.

9 (7) One appointed by the Governor who shall be a representative of a publicly
10 traded natural gas company.

11 (8) One appointed by the Governor who shall be a licensed attorney with
12 experience in legal matters associated with oil and gas exploration and
13 development.

14 (9) One appointed by the Governor with experience in matters related to public
15 health.

16 (b) Terms. – The term of office of members of the Commission is three years. A
17 member may be reappointed to no more than two consecutive three-year terms. The term of a
18 member who no longer meets the qualifications of their respective appointment, as set forth in
19 subsection (a) of this section, shall terminate but the member may continue to serve until a new
20 member who meets the qualifications is appointed. The terms of members appointed under
21 subdivisions ~~(4), (6), (9), and (12)~~ (1), (4), and (7) of subsection ~~(a)~~ (a1) of this section shall
22 expire on June 30 of years evenly divisible by three. The terms of members appointed under
23 subdivisions ~~(7), (10), (13), and (14)~~ (2), (5), and (8) of subsection ~~(a)~~ (a1) of this section shall
24 expire on June 30 of years that precede by one year those years that are evenly divisible by
25 three. The terms of members appointed under subdivisions ~~(5), (8), (11), and (15)~~ (3), (6), and
26 (9) of subsection ~~(a)~~ (a1) of this section shall expire on June 30 of years that follow by one year
27 those years that are evenly divisible by three.

28 (c) Vacancies; Removal from Office. –

29 (1) Any appointment by the Governor to fill a vacancy on the Commission
30 created by the resignation, dismissal, death, or disability of a member shall
31 be for the balance of the unexpired term. The Governor shall have the power
32 to remove any member of the Commission from office for misfeasance,
33 malfeasance, or nonfeasance in accordance with the provisions of
34 G.S. 143B-13 of the Executive Organization Act of 1973.

35 (2) Members appointed by the President Pro Tempore of the Senate and the
36 Speaker of the House of Representatives shall be made in accordance with
37 G.S. 120-121, and vacancies in those appointments shall be filled in
38 accordance with G.S. 120-122. In accordance with Section 10 of Article VI
39 of the North Carolina Constitution, a member may continue to serve until a
40 successor is duly appointed.

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

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

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

47 (g) Committees. – In addition to the Committee on Civil Penalty Remissions required to
48 be established under G.S. 143B-293.6, the chair may establish other committees from members
49 of the Commission to address specific issues as appropriate. No member of a committee may
50 hear or vote on any matter in which the member has an economic interest. A majority of a
51 committee shall constitute a quorum for the transaction of business. ~~At a minimum, the chair~~

1 shall establish a Committee on Mining, which shall consist of members appointed under
2 subdivisions (1), (4), (6), (8), (10), (14), and (15) of subsection (a) of this section. The
3 Committee on Mining shall have exclusive responsibility and authority over matters pertaining
4 to mining and implementation of the Mining Act of 1971, including all of the following powers
5 and duties:

- 6 (1) To act as the advisory body to the Governor pursuant to Article V(a) of the
7 Interstate Mining Compact, as set out in G.S. 74-37.
- 8 (2) To adopt rules necessary to administer the Mining Act of 1971 pursuant to
9 G.S. 74-63.
- 10 (3) To adopt rules necessary to administer the Control of Exploration for
11 Uranium in North Carolina Act of 1983 pursuant to G.S. 74-86.
- 12 (4) To adopt rules, not inconsistent with the laws of this State, as may be
13 required by the federal government for grants in aid for mining resource
14 purposes which may be made available to the State by the federal
15 government. This section is to be liberally construed in order that the State
16 and its citizens may benefit from such grants in aid.

17 (h) Office May Be Held Concurrently With Others. – Membership on the ~~Mining and~~
18 ~~Energy~~ Oil and Gas Commission is hereby declared to be an office that may be held
19 concurrently with other elective or appointive offices in addition to the maximum number of
20 offices permitted to be held by one person under G.S. 128-1.1.

21 **"§ 143B-293.3. Reserved for future codification purposes.**

22 **"§ 143B-293.4. North Carolina Mining and Energy Oil and Gas Commission – officers.**

23 The ~~Mining and Energy~~ Oil and Gas Commission shall have a chair and a vice-chair. The
24 Commission shall elect one of its members to serve as chair and one of its members to serve as
25 vice-chair. The chair and vice-chair shall serve one-year terms beginning August 1 and ending
26 July 31 of the following year. The chair and vice-chair may serve any number of terms, but not
27 more than two terms consecutively.

28 **"§ 143B-293.5. North Carolina Mining and Energy Oil and Gas Commission – meetings.**

29 The ~~North Carolina Mining and Energy~~ Oil and Gas Commission shall meet at least
30 quarterly and may hold special meetings at any time and place within the State at the call of the
31 chair or upon the written request of at least ~~nine~~ five members.

32 **"§ 143B-293.6. North Carolina Mining and Energy Oil and Gas Commission –
33 quasi-judicial powers; procedures.**

34 (a) With respect to those matters within its jurisdiction, the ~~Mining and Energy~~ Oil and
35 Gas Commission shall exercise quasi-judicial powers in accordance with the provisions of
36 Chapter 150B of the General Statutes.

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

- 42 (1) Whether one or more of the civil penalty assessment factors in subsection (b)
43 of this section were wrongly applied to the detriment of the petitioner.
- 44 (2) Whether the violator promptly abated continuing environmental damage
45 resulting from the violation.
- 46 (3) Whether the violation was inadvertent or a result of an accident.
- 47 (4) Whether the violator had been assessed civil penalties for any previous
48 violations.
- 49 (5) Whether payment of the civil penalty will prevent payment for the remaining
50 necessary remedial actions.

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

5 **SECTION 4.(b)** The terms of all members of the Mining and Energy Commission
6 serving on July 31, 2015, shall expire on that date. A new Oil and Gas Commission of nine
7 members shall be appointed in the manner provided by G.S. 143B-293.2(a1), as enacted by
8 Section 4(a) of this act, and this section. Members appointed in the manner provided by
9 G.S. 143B-293.2(a1), as enacted by Section 4(a) of this act, shall be appointed no later than
10 August 1, 2015.

11 **SECTION 4.(c)** The Revisor of Statutes shall make the conforming statutory
12 changes necessary to the General Statutes to reflect renaming of the Mining and Energy
13 Commission to the Oil and Gas Commission, effective August 1, 2015, as provided in this
14 section.

15 **SECTION 5.(a)** Part 6 of Article 7 of Chapter 143B of the General Statutes is
16 reenacted and reads as rewritten:

17 "Part 6. North Carolina Mining Commission.

18 **"§ 143B-290. North Carolina Mining Commission – creation; powers and duties.**

19 There is hereby created the North Carolina Mining Commission of the Department of
20 Environment and Natural Resources with the power and duty to promulgate rules for the
21 enhancement of the mining resources of the State.

22 (1) The North Carolina Mining Commission shall have the following powers
23 and duties:

- 24 a. To act as the advisory body to the Governor pursuant to Article V(a)
25 of the Interstate Mining Compact, as set out in G.S. 74-37.
- 26 b. Repealed by Session Laws 2002-165, s. 1.10, effective October 23,
27 2002.
- 28 c. To hear permit appeals, conduct a full and complete hearing on such
29 controversies and affirm, modify, or overrule permit decisions made
30 by the Department pursuant to G.S. 74-61.
- 31 d. To promulgate rules necessary to administer the Mining Act of 1971,
32 pursuant to G.S. 74-63.
- 33 e. To promulgate rules necessary to administer the Control of
34 Exploration for Uranium in North Carolina Act of 1983, pursuant to
35 G.S. 74-86.

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

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

44 (4) Recodified as § 74-54.1 by c. 1039, s. 16, effective July 24, 1992.

45 **"§ 143B-291. North Carolina Mining Commission – members; selection; removal;
46 compensation; quorum; services.**

47 ~~(a) Members, Selection.—The North Carolina Mining Commission shall consist of nine
48 members appointed by the Governor under a specified subdivision of this subsection as
49 follows:~~

- 50 ~~(1) One member who is the chair of the North Carolina State University
51 Minerals Research Laboratory Advisory Committee, ex officio.~~

- 1 (2) One member who is a representative of the mining industry.
2 (3) One member who is a representative of the mining industry.
3 (4) One member who is a representative of the mining industry.
4 (5) One member who is a representative of nongovernmental conservation
5 interests.
6 (6) One member who is a representative of nongovernmental conservation
7 interests.
8 (7) One member who is a representative of nongovernmental conservation
9 interests.
10 (8) One who, at the time of the appointment to the Mining Commission, is a
11 member of the Environmental Management Commission and knowledgeable
12 in the principles of water and air resources management.
13 (9) One who, at the time of the appointment to the Mining Commission, is a
14 member of the Environmental Management Commission and knowledgeable
15 in the principles of water and air resources management.

16 (a1) Members, Selection. – The North Carolina Mining Commission shall consist of
17 seven members appointed as follows:

- 18 (1) One member who is the chair of the North Carolina State University
19 Minerals Research Laboratory Advisory Committee.
20 (2) The State Geologist.
21 (3) One member appointed by the Governor who is a representative of the
22 mining industry.
23 (4) One member appointed by the General Assembly upon recommendation of
24 the Speaker of the House of Representatives who is a representative of the
25 mining industry.
26 (5) One member appointed by the General Assembly upon recommendation of
27 the President Pro Tempore of the Senate who is a representative of the
28 mining industry.
29 (6) One member appointed by the General Assembly upon recommendation of
30 the Speaker of the House of Representatives who is a member of
31 nongovernmental conservation interests.
32 (7) One member appointed by the General Assembly upon recommendation of
33 the President Pro Tempore of the Senate who is a member of
34 nongovernmental conservation interests.

35 (b) Terms. – The term of office of a member of the Commission is six years. At the
36 expiration of each member's term, the ~~Governor appointing authority~~ shall replace the member
37 with a new member of like qualifications for a term of six years. The term of ~~members the~~
38 member appointed under subdivisions (2), (5), and (8) subdivision (5) of subsection (a)-(a1) of
39 this section shall expire on ~~30~~ June 30 of years that precede by one year those years that are
40 evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of
41 subsection ~~(a)-(a1)~~ of this section shall expire on ~~30~~ June 30 of years that follow by one year
42 those years that are evenly divisible by six. The term of members appointed under subdivisions
43 ~~(4), (7), and (9)~~ (4) and (7) of subsection ~~(a)-(a1)~~ of this section shall expire on ~~30~~ June 30
44 of years that follow by three years those years that are evenly divisible by six. Upon the expiration
45 of a six-year term, a member may continue to serve until a successor is appointed and duly
46 qualified as provided by G.S. 128-7.

47 (c) Vacancies. – An appointment to fill a vacancy shall be for the unexpired balance of
48 the term.

49 (d) Removal. – The Governor may remove any member of the Commission from office
50 for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of
51 G.S. 143B-13.

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

3 (f) Quorum. – A majority of the Commission shall constitute a quorum for the
4 transaction of business.

5 (g) Staff. – All clerical and other services required by the Commission shall be supplied
6 by the Secretary of Environment and Natural Resources.

7 **"§ 143B-292. North Carolina Mining Commission – officers.**

8 The North Carolina Mining Commission shall have a chair and a vice-chair. The chair shall
9 be designated by the Governor from among the members of the Commission to serve as chair at
10 the pleasure of the Governor. The vice-chair shall be elected by and from the members of the
11 Commission and shall serve for a term of two years or until the expiration of the vice-chair's
12 regularly appointed term.

13 **"§ 143B-293. North Carolina Mining Commission – meetings.**

14 The North Carolina Mining Commission shall meet at least semiannually and may hold
15 special meetings at any time and place within the State at the call of the chair or upon the
16 written request of at least ~~five~~four members."

17 **SECTION 5.(b)** The terms of all members of the Mining and Energy Commission
18 serving on July 31, 2015, shall expire on that date. A new Mining Commission of seven
19 members shall be appointed in the manner provided by G.S. 143B-291(a1), as enacted by
20 Section 5(a) of this act, and this section. Members appointed in the manner provided by
21 G.S. 143B-291(a1), as enacted by Section 5(a) of this act, shall be appointed no later than
22 August 1, 2015.

23 **SECTION 5.(c)** The Revisor of Statutes shall make the conforming statutory
24 changes necessary to the General Statutes to reflect renaming of the Mining and Energy
25 Commission to the Mining Commission, effective August 1, 2015, as provided in this section.

26 **SECTION 6.** This Part becomes effective July 31, 2015.

27
28 **PART V. MISCELLANEOUS STATUTORY AMENDMENTS RELATED TO SHALE**
29 **GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION**

30 **SECTION 7.(a)** G.S. 113-391 reads as rewritten:

31 **"§ 113-391. Jurisdiction and authority; rules and orders.**

32 ...

33 (a5) Entry of rules in the North Carolina Administrative Code that address the areas
34 identified by subsections (a) and (a3) of this section by July 1, 2015, create a rebuttable
35 presumption that the rules are sufficient to meet the requirements for development of a modern
36 regulatory program pursuant to this section.

37"

38 **SECTION 7.(b)** G.S. 143B-293.1(b) reads as rewritten:

39 "(b) The Commission shall have the authority to make determinations and issue orders
40 pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells and to
41 establish drilling units as provided in G.S. 113-393; (ii) ~~require the operation of wells with~~
42 ~~efficient gas-oil ratios and to fix such ratios;~~ (iii) limit and prorate the production of oil or gas,
43 or both, from any pool or field for the prevention of waste as provided in G.S. 113-394; (iii)
44 classify wells for taxing purposes; and (iv) require integration of interests as provided in
45 G.S. 113-393."

46 **SECTION 8.(a)** Article 27 of Chapter 113 of the General Statutes is amended by
47 adding a new section to read:

48 **"§ 113-391.1. Trade secret and confidential information determination; protection;**
49 **retention; disclosure to emergency personnel.**

50 (a) Legislative Findings. – The General Assembly finds that while confidential
51 information must be maintained as such with the utmost care, for the protection of public

1 health, safety, and the environment, the information should be immediately accessible to first
2 responders and medical personnel in the event that the information is deemed necessary to
3 address an emergency.

4 (b) Determination and Treatment of Confidential Information. – Information obtained
5 by the Commission and the Department pursuant to this Article, and rules adopted thereunder,
6 shall be available to the public except that, upon a showing satisfactory to the Commission by
7 any person that information to which the Commission and Department has access, if made
8 public, would divulge methods or processes entitled to protection as confidential information
9 pursuant to G.S. 132-1.2, the Commission shall consider the information confidential. In
10 accordance with subsection (b1) of G.S. 113-391, the State Geologist shall serve as the
11 custodian of the confidential information and shall ensure that it is maintained securely as
12 provided in G.S. 132-7. The State Geologist, or the Geologist's designee, shall:

13 (1) Review confidential information that concerns hydraulic fracturing fluid, as
14 that term is defined in G.S. 113-389, to ensure compliance with all State and
15 federal laws, rules, and regulations concerning prohibited chemicals or
16 constituents, or exceedances of standards for chemicals or constituents. The
17 State Geologist, or the Geologist's designee, shall issue a written certification
18 within five days of completion of the review that the hydraulic fracturing
19 fluids, including chemicals and constituents contained therein, comply with
20 all State and federal laws, rules, and regulations; (ii) transmit the
21 certification to the Mining and Energy Commission and the Director of the
22 Division of Energy, Mining, and Land Resources; and (iii) transmit a copy
23 of the certification electronically to the permittee. Horizontal drilling and
24 hydraulic fracturing treatments shall not commence until this written
25 certification has been issued and transmitted as required by this subsection.

26 (2) Review, in consultation with the State Health Director, confidential
27 information that concerns hydraulic fracturing fluid, as that term is defined
28 in G.S. 113-389, to advise local health departments of additional parameters
29 that should be included in testing for private drinking water wells in their
30 jurisdictions in compliance with the requirements of G.S. 87-97 and the
31 Private Well Water Education Act enacted by S.L. 2013-122.

32 (c) Exceptions to Disclosure Prohibitions. – Confidential information obtained by the
33 Commission and the Department pursuant to this Article, and rules adopted thereunder, may be
34 disclosed to any officer, employee, or authorized representative of any federal or State agency
35 if disclosure is necessary to carry out a proper function of the Department or other agency or
36 when relevant in any proceeding under this Article. Confidential information shall be disclosed
37 to the following:

38 (1) The Division of Emergency Management of the Department of Public
39 Safety. The Division shall maintain this information as confidential except if
40 disclosure is necessary to carry out a proper function of the Division,
41 including for the purposes of emergency planning and emergency response.
42 For purposes of this section, the term "emergency" is defined as provided in
43 G.S. 166A-19.3.

44 (2) A treating health care provider who determines that a medical emergency
45 exists and that the information is necessary for emergency or first aid
46 treatment. Regardless of the existence of a written statement of need or a
47 confidentiality agreement, the Department shall immediately disclose the
48 confidential information to the treating health care provider upon request. If
49 confidential information is disclosed pursuant to this subdivision, the
50 Department shall notify the owner of the confidential information as soon as
51 practicable, but no later than 24 hours after disclosure. The owner of the

1 confidential information may require execution of a written statement of
2 need and a confidentiality agreement from the treating health care provider
3 as soon as circumstances permit. The confidentiality agreement (i) may
4 restrict the use of the information to the health purposes indicated in a
5 written statement of need; (ii) may provide for appropriate legal remedies in
6 the event of a breach of the agreement, including stipulation of a reasonable
7 pre-estimate of likely damages; and (iii) may not include requirements for
8 the posting of a penalty bond. The parties are not precluded from pursuing
9 noncontractual remedies to the extent permitted by law.

10 (3) A Fire Chief, as that term is defined in G.S. 95-174, who determines that an
11 emergency exists and that the information is necessary to address the
12 emergency. Regardless of the existence of a written statement of need or a
13 confidentiality agreement, the Department shall immediately disclose the
14 confidential information to the Fire Chief upon request. If confidential
15 information is disclosed pursuant to this subdivision, the Department shall
16 notify the owner of the confidential information as soon as practicable, but
17 no later than 24 hours after disclosure. The owner of the confidential
18 information may require execution of a written statement of need and a
19 confidentiality agreement from the Fire Chief as soon as circumstances
20 permit. The confidentiality agreement (i) may restrict the use of the
21 information to the emergency purposes indicated in a written statement of
22 need; (ii) may provide for appropriate legal remedies in the event of a breach
23 of the agreement, including stipulation of a reasonable pre-estimate of likely
24 damages; and (iii) may not include requirements for the posting of a penalty
25 bond. The parties are not precluded from pursuing noncontractual remedies
26 to the extent permitted by law.

27 (d) Penalties for Unlawful Disclosure. – Except as provided in subsection (c) of this
28 section or as otherwise provided by law, any person who has access to confidential information
29 pursuant to this section and who discloses it knowing it to be confidential information to any
30 person not authorized to receive it shall be guilty of a Class 1 misdemeanor, and if knowingly
31 or negligently disclosed to any person not authorized, shall be subject to civil action for
32 damages and injunction by the owner of the confidential information, including, without
33 limitation, actions under Article 24 of Chapter 66 of the General Statutes.

34 (e) Appeal From Commission Decisions Concerning Confidentiality. – Within 10 days
35 of any decision made pursuant to subsection (b) of this section, the Commission shall provide
36 notice to any person who submits information asserted to be confidential (i) that the
37 information is not entitled to confidential treatment and (ii) of any decision to release such
38 information to any person who has requested the information. Notwithstanding the provisions
39 of G.S. 132-9, or procedures for appeal provided under Article 4 of Chapter 150B of the
40 General Statutes, any person who requests information and any person who submits
41 information who is dissatisfied with a decision of the Commission to withhold or release
42 information made pursuant to subsection (b) of this section shall have 30 days after receipt of
43 notification from the Commission to bring an action in Business Court to appeal the decision in
44 accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and
45 the Business Court shall have exclusive jurisdiction over such actions. The information may not
46 be released by the Commission until the earlier of (i) the 30-day period for filing of an appeal
47 has expired without filing of an appeal or (ii) a final judicial determination has been made in an
48 action brought to appeal a decision of the Commission. In addition, the following shall apply to
49 actions brought pursuant to this section:

50 (1) Such actions shall be set down for immediate hearing.

1 (2) The burden shall be on the owner of the information to show that the
2 information is entitled to protection as confidential information pursuant to
3 G.S. 132-1.2.

4 (3) The court shall allow a party seeking disclosure of information who
5 substantially prevails to recover its reasonable attorneys' fees if attributed to
6 the information. The court may not assess attorneys' fees against the
7 Commission or the Department, however, but shall impose such fees on the
8 owner of the information asserting confidentiality.

9 (4) If the court determines that an action brought pursuant to this section was
10 filed in bad faith or was frivolous, the court shall assess reasonable attorneys'
11 fees against the person or persons instituting the action and award to the
12 prevailing party or parties."

13 **SECTION 8.(b)** G.S. 113-391(b1) reads as rewritten:

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

29 **SECTION 8.(c)** This section is effective when it becomes law, except that
30 113-391A(d), as enacted by Section 8(a) of this act, shall become effective December 1, 2014.

31 **SECTION 9.** G.S. 113-391(a)(6) is repealed.

32 **SECTION 10.** G.S. 113-392(c) is repealed.

33 **SECTION 11.** G.S. 113-395(a) reads as rewritten:

34 "(a) Before any well, in search of oil or gas, shall be drilled, the person desiring to drill
35 the same shall submit an application for a permit to the Department upon such form as the
36 Department may prescribe and shall pay a fee of three thousand dollars (\$3,000) for ~~each well-~~
37 the first well to be drilled on a pad, and fifteen hundred dollars (\$1,500) for each additional
38 well to be drilled on the same pad. The drilling of any well is prohibited unless the Department
39 has issued a permit for the activity."

40 **SECTION 12.** G.S. 113-420 reads as rewritten:

41 "**§ 113-420. Notice and entry to property.**

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

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

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

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

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

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

27 (b2) Notice of Initiation of Exploration, Development, and Production Activities to
28 Owner of Subsurface Oil or Gas Resources. – If an oil or gas developer or operator is the lessee
29 of subsurface oil or gas resources, before initiating oil or gas exploration or development
30 operations with respect to those resources, the developer or operator shall give written notice to
31 the lessor of those resources at least 30 days before the oil and gas operations are to be
32 initiated. The notice, at a minimum, shall include all of the following:

33 (1) A description of the exploration or development plan, including, the
34 proposed date on which the exploration or development will begin.
35 (2) The name, address, telephone number, and title of a contact person
36 employed by or representing the oil or gas developer or operator who the
37 lessor may contact following the receipt of notice.

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

42 **SECTION 13.(a)** G.S. 113-421 reads as rewritten:

43 **"§ 113-421. Presumptive liability for water contamination; compensation for other**
44 **damages; responsibility for reclamation.**

45 (a) Presumptive Liability for Water Contamination. – It shall be presumed that an oil or
46 gas developer or operator is responsible for contamination of all water supplies that are within
47 5,000 feet a one-half mile radius of a wellhead that is part of the oil or gas developer's or
48 operator's activities unless the presumption is rebutted by a defense established as set forth in
49 subsection (a1) of this subsection. If a contaminated water supply is located within 5,000 feet a
50 one-half mile radius of a wellhead, in addition to any other remedy available at law or in
51 equity, including payment of compensation for damage to a water supply, the developer or

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

4 (a1) [Rebuttal of Presumption. –] In order to rebut a presumption arising pursuant to
5 subsection (a) of this section, an oil or gas developer or operator shall have the burden of
6 proving by a preponderance of the evidence any of the following:

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

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

14 (3) The water supply in question is not within ~~5,000 feet~~ a one-half mile radius
15 of a wellhead that is part of the oil or gas developer's or operator's activities.

16 (4) The contamination occurred as the result of a cause other than activities of
17 the developer or operator.

18 ...

19 (a3) Reclamation of Surface Property Required. – An oil or gas developer or operator
20 ~~shall reclaim~~ shall:

21 (1) Reclaim all surface areas affected by its operations no later than two years
22 following completion of the operations. If the developer or operator is not
23 the surface owner of the property, prior to commencement of activities on
24 the property, the oil or gas developer or operator shall provide a bond
25 running to the surface owner sufficient to cover reclamation of the surface
26 owner's property. Upon registration with the Department pursuant to
27 G.S. 113-378, a developer shall request that the Mining and Energy
28 Commission set the amount of the bond required by this subsection. As part
29 of its request, the developer shall provide supporting documentation,
30 including information about the proposed oil and gas activities to be
31 conducted, the site on which they are to occur, and any additional
32 information required by the Commission. The Commission shall set the
33 amount of the bond in accordance with the criteria adopted by the
34 Commission pursuant to G.S. 113-391(a)(13a) and notify the developer and
35 surface owner of the amount within 30 days of setting the amount of a bond.
36 A surface owner or developer may appeal the amount of a bond set pursuant
37 to this subsection to the Commission within 60 days after receipt of notice
38 from the Commission of the amount required. After evaluation of the appeal
39 and issuance of written findings, the Commission may order that the amount
40 of the bond be modified. Parties aggrieved by a decision of the Commission
41 pursuant to this subsection may appeal the decision as provided under
42 Article 4 of Chapter 150B of the General Statutes within 30 days of the date
43 of the decision.

44 (2) Provide a bond running to the State sufficient to cover any potential
45 environmental damage caused by the drilling process in an amount no less
46 than one million dollars (\$1,000,000). The Commission may increase the
47 amount of the bond required by this subdivision if the Commission
48 determines that the drilling operation would be sited in an environmentally
49 sensitive area.

50 ...

1 (e) Joint and Several Liability. – In order to provide maximum protection for the public
2 interest, any actions brought for recovery of cleanup costs, damages, or for civil penalties
3 brought pursuant to this section or any other section of this Article or rules adopted thereunder
4 may be brought against any one or more of the persons having control over the activities that
5 contributed to the contamination, damage to property, or other violations. All such persons
6 shall be jointly and severally liable, but ultimate liability as between the parties may be
7 determined by common-law principles."

8 **SECTION 13.(b)** G.S. 113-423(f) reads as rewritten:

9 (f) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other
10 conveyance of any kind separating rights to oil or gas from the freehold estate of surface
11 property shall include a clause that requires the oil or gas developer or operator to pay for the
12 reasonable costs involved in testing~~conduct a test~~ of all water supplies within 5,000 feet~~a~~
13 one-half mile radius from a proposed wellhead that is part of the oil or gas developer's or
14 operator's activities at least 30 days prior to initial drilling activities and at least two~~five~~
15 follow-up tests within a 24 month period~~at six months, 12 months, 18 months, and 24 months~~
16 after production has commenced~~commenced and a test within 30 days after completion of~~
17 production activities at the site. The Department shall identify the location of all water supplies,
18 including wells, on a property on which drilling operations are proposed to occur. A surface
19 owner may elect to have the Department~~shall use an independent third party selected from a~~
20 laboratory certified by the Department's Wastewater/Groundwater Laboratory Certification
21 program to sample wells located on their property, and in lieu of sampling~~conducted by the oil~~
22 or gas developer or operator, in which case the developer or operator shall pay~~reimburse the~~
23 Department~~for the reasonable costs involved in testing of the wells in question. Developers~~
24 and operators may share analytical results obtained with other developers and operators as
25 necessary or advisable. All analytical results from testing conducted pursuant to this section (i)
26 shall be provided to the Department within 30 days of testing and (ii) shall constitute a public
27 record under Chapter 132 of the General Statutes, and the Department shall post any results to
28 the Department's Web site within 30 days of receipt of the results. Nothing in this subsection
29 shall be construed to preclude or impair the right of any surface owner to refuse pre-drilling
30 testing of wells located on their property."

31 **SECTION 14.** Article 27 of Chapter 113 of the General Statutes is amended by
32 adding a new section to read:

33 **"§ 113-415.1. Local ordinances prohibiting oil and gas exploration, development, and**
34 **production activities invalid; petition to preempt local ordinance.**

35 (a) It is the intent of the General Assembly to maintain a uniform system for the
36 management of oil and gas exploration, development, and production activities, and the use of
37 horizontal drilling and hydraulic fracturing for that purpose, and to place limitations upon the
38 exercise by all units of local government in North Carolina of the power to regulate the
39 management of oil and gas exploration, development, and production activities by means of
40 special, local, or private acts or resolutions, ordinances, property restrictions, zoning
41 regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or
42 other local authorities to adopt local ordinances, including, but not limited to, those imposing
43 taxes, fees, or charges or regulating health, environment, or land use, any local ordinance that
44 prohibits or has the effect of prohibiting oil and gas exploration, development, and production
45 activities that the Mining and Energy Commission has preempted pursuant this section, shall be
46 invalid to the extent necessary to effectuate the purposes of this Article. To this end, all
47 provisions of special, local, or private acts or resolutions are repealed that do the following:

48 (1) Prohibit the siting of wells for oil and gas exploration, development, and
49 production within any county, city, or other political subdivision.

1 (2) Prohibit the use of horizontal drilling or hydraulic fracturing for the purpose
2 of oil or gas exploration or development within any county, city, or other
3 political subdivision.

4 (3) Place any restriction or condition not placed by this Article upon oil and gas
5 exploration, development, and production activities and use of horizontal
6 drilling or hydraulic fracturing for that purpose within any county, city, or
7 other political subdivision.

8 (4) In any manner are in conflict or inconsistent with the provisions of this
9 Article.

10 (b) No special, local, or private act or resolution enacted or taking effect hereafter may
11 be construed to modify, amend, or repeal any portion of this Article, unless it expressly
12 provides for such by specific references to the appropriate section of this Article. Further to this
13 end, all provisions of local ordinances, including those regulating land use, adopted by
14 counties, municipalities, or other local authorities that prohibit or have the effect of prohibiting
15 oil and gas exploration, development, and production activities and use of horizontal drilling or
16 hydraulic fracturing for that purpose within the jurisdiction of a local government are
17 invalidated to the extent preempted by the Commission pursuant to this section.

18 (c) When oil and gas exploration, development, and production activities would be
19 prevented from construction or operation by a county, municipal, or other local ordinance, the
20 operator of the proposed activities may petition the Mining and Energy Commission to review
21 the matter. After receipt of a petition, the Commission shall hold a hearing in accordance with
22 the procedures in subsection (d) of this section and shall determine whether or to what extent to
23 preempt the local ordinance to allow for the proposed oil and gas exploration, development,
24 and production activities.

25 (d) When a petition described in subsection (c) of this section has been filed with the
26 Mining and Energy Commission, the Commission shall hold a public hearing to consider the
27 petition. The public hearing shall be held in the affected locality within 60 days after receipt of
28 the petition by the Commission. The Commission shall give notice of the public hearing by
29 both of the following means:

30 (1) Publication in a newspaper or newspapers having general circulation in the
31 county or counties where the activities are to be conducted, once a week for
32 three consecutive weeks, the first notice appearing at least 30 days prior to
33 the scheduled date of the hearing.

34 (2) First-class mail to persons who have requested notice. The Commission shall
35 maintain a mailing list of persons who request notice in advance of the
36 hearing pursuant to this section. Notice by mail shall be complete upon
37 deposit of a copy of the notice in a postage-paid wrapper addressed to the
38 person to be notified at the address that appears on the mailing list
39 maintained by the Commission, in a post office or official depository under
40 the exclusive care and custody of the United States Postal Service.

41 (e) Any interested person may appear before the Mining and Energy Commission at the
42 hearing to offer testimony. In addition to testimony before the Commission, any interested
43 person may submit written evidence to the Commission for the Commission's consideration. At
44 least 20 days shall be allowed for receipt of written comment following the hearing.

45 (f) A local zoning or land-use ordinance is presumed to be valid and enforceable to the
46 extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that
47 are generally applicable to development, including, but not limited to, setback, buffer, and
48 stormwater requirements, unless the Mining and Energy Commission makes a finding of fact to
49 the contrary. The Commission shall determine whether or to what extent to preempt local
50 ordinances so as to allow for the establishment and operation of the facility no later than 60

1 days after conclusion of the hearing. The Commission shall preempt a local ordinance only if
2 the Commission makes all of the following findings:

3 (1) That there is a local ordinance that would prohibit or have the effect of
4 prohibiting oil and gas exploration, development, and production activities,
5 or use of horizontal drilling or hydraulic fracturing for that purpose.

6 (2) That all legally required State and federal permits or approvals have been
7 issued by the appropriate State and federal agencies or that all State and
8 federal permit requirements have been satisfied and that the permits or
9 approvals have been denied or withheld only because of the local ordinance.

10 (3) That local citizens and elected officials have had adequate opportunity to
11 participate in the permitting process.

12 (4) That the oil and gas exploration, development, and production activities, and
13 use of horizontal drilling or hydraulic fracturing for that purpose, will not
14 pose an unreasonable health or environmental risk to the surrounding
15 locality and that the operator has taken or consented to take reasonable
16 measures to avoid or manage foreseeable risks and to comply to the
17 maximum feasible extent with applicable local ordinances.

18 (g) If the Mining and Energy Commission does not make all of the findings under
19 subsection (f) of this section, the Commission shall not preempt the challenged local ordinance.
20 The Commission's decision shall be in writing and shall identify the evidence submitted to the
21 Commission plus any additional evidence used in arriving at the decision.

22 (h) The decision of the Mining and Energy Commission shall be final unless a party to
23 the action files a written appeal under Article 4 of Chapter 150B of the General Statutes, as
24 modified by this section, within 30 days of the date of the decision. The record on appeal shall
25 consist of all materials and information submitted to or considered by the Commission, the
26 Commission's written decision, a complete transcript of the hearing, all written material
27 presented to the Commission regarding the location of the oil and gas exploration,
28 development, and production activities, the specific findings required by subsection (f) of this
29 section, and any minority positions on the specific findings required by subsection (f) of this
30 section. The scope of judicial review shall be that the court may affirm the decision of the
31 Commission, or may remand the matter for further proceedings, or may reverse or modify the
32 decision if the substantial rights of the parties may have been prejudiced because the
33 Commission's findings, inferences, conclusions, or decisions are any of the following:

34 (1) In violation of constitutional provisions.

35 (2) In excess of the statutory authority or jurisdiction of the Commission.

36 (3) Made upon unlawful procedure.

37 (4) Affected by other error of law.

38 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or
39 G.S. 150B-30 in view of the entire record as submitted.

40 (6) Arbitrary or capricious.

41 (i) If the court reverses or modifies the decision of the Mining and Energy
42 Commission, the judge shall set out in writing, which writing shall become part of the record,
43 the reasons for the reversal or modification.

44 (j) In computing any period of time prescribed or allowed by this procedure, the
45 provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply."

46 **SECTION 15.(a)** Article 27 of Chapter 113 of the General Statutes is amended by
47 adding four new sections to read:

48 **"§ 113-395.1. Miscellaneous permit requirements.**

49 The Department shall require that all natural gas compressor stations associated with an oil
50 and gas drilling operation be located inside a baffled building.

51 **"§ 113-395.2. Subsurface injection of waste prohibited.**

1 Disposal of wastes produced in connection with oil and gas exploration, development, and
2 production, and use of horizontal drilling and hydraulic fracturing treatments for that purpose
3 by injection to subsurface or groundwaters of the State by means of wells is prohibited in
4 accordance with G.S. 143-214.2.

5 **"§ 113-395.3. Environmental compliance review requirements for applicants and permit**
6 **holders.**

7 (a) For purposes of this section, "applicant" means an applicant for a permit and a
8 permit holder and includes the owner or operator of the facility, and if the owner or operator is
9 a business entity, applicant also includes (i) the parent, subsidiary, or other affiliate of the
10 applicant; (ii) a partner, officer, director, member, or manager of the business entity, parent,
11 subsidiary, or other affiliate of the applicant; and (iii) any person with a direct or indirect
12 interest in the applicant, other than a minority shareholder of a publicly traded corporation who
13 has no involvement in management or control of the corporation or any of its parents,
14 subsidiaries, or affiliates.

15 (b) The Department shall conduct an environmental compliance review of each
16 applicant for a new permit under this Article. The environmental compliance review shall
17 evaluate the environmental compliance history of the applicant for a period of five years prior
18 to the date of the application and may cover a longer period at the discretion of the Department.
19 The environmental compliance review of an applicant may include consideration of the
20 environmental compliance history of the parents, subsidiaries, or other affiliates of an applicant
21 or parent that is a business entity, including any business entity or joint venturer with a direct or
22 indirect interest in the applicant, and other facilities owned or operated by any of them. The
23 Department shall determine the scope of the review of the environmental compliance history of
24 the applicant, parents, subsidiaries, or other affiliates of the applicant or parent, including any
25 business entity or joint venturer with a direct or indirect interest in the applicant, and of other
26 facilities owned or operated by any of them. An applicant for a permit shall provide
27 environmental compliance history information for each facility, business entity, joint venture,
28 or other undertaking in which any of the persons listed in this subsection is or has been an
29 owner, operator, officer, director, manager, member, or partner, or in which any of the persons
30 listed in this subsection has had a direct or indirect interest as requested by the Department.

31 (c) The Department shall determine the extent to which the applicant, or a parent,
32 subsidiary, or other affiliate of the applicant or parent, or a joint venturer with a direct or
33 indirect interest in the applicant, has substantially complied with the requirements applicable to
34 any activity in which any of these entities previously engaged and has substantially complied
35 with federal, North Carolina, and other states' laws, regulations, and rules for the protection of
36 the environment. The Department may deny an application for a permit if the applicant has a
37 history of significant or repeated violations of statutes, rules, orders, or permit terms or
38 conditions for the protection of the environment or for the conservation of natural resources as
39 evidenced by civil penalty assessments, administrative or judicial compliance orders, or
40 criminal penalties.

41 (d) A permit holder shall notify the Department of any significant change in its
42 environmental compliance history or any significant change in the (i) identity of any person or
43 structure of the business entity that holds the permit for the facility; (ii) identity of any person
44 or structure of the business entity that owns or operates the facility; or (iii) assets of the permit
45 holder, owner, or operator of the facility. The permit holder shall notify the Department within
46 30 days of a significant change. A change shall be considered significant if it would result in a
47 change in the identity of the permit holder, owner, or operator for purposes of environmental
48 compliance review. Based on its review of the changes, the Department may modify or revoke
49 a permit, or require issuance of a new permit.

50 **"§ 113-395.4. Seismic or geophysical data collection.**

1 (a) Notwithstanding any other provision of law, no liability for trespass shall arise from
2 activities conducted for the purpose of seismic or geophysical data collection. Provided,
3 however, (i) persons conducting seismic and geophysical data collection may only conduct
4 such activity by undershooting from an off-site location and without physical entry to private
5 land, unless the landowner's consent for such activity is obtained in writing and (ii) persons
6 conducting seismic or geophysical data collection shall be civilly liable for any physical or
7 property damage determined to be a direct result of their seismic or geophysical data collection
8 activities, whether or not the seismic or geophysical data collection was conducted by
9 undershooting the land at an off-site location or by physical entry to land as permitted by the
10 landowner.

11 (b) Conduct of seismic or geophysical data collection activities through physical entry
12 to land without a landowner's written consent shall constitute a Class 1 misdemeanor."

13 **SECTION 15.(b)** This section is effective when it becomes law, except that
14 G.S. 113-395D(b), as enacted by Section 15(a) of this act, shall become effective December 1,
15 2014.

16 **SECTION 16.** G.S. 87-98.4(b) is amended by adding a new subdivision to read:

17 **"§ 87-98.4. Well contractor certification required; exemptions.**

18 (a) Certification Required. – No person shall perform, manage, or supervise any well
19 contractor activity without being certified under this Article. A person who is not a certified
20 well contractor or who is not employed by a certified well contractor shall not offer to perform
21 any well contractor activity unless the person utilizes a certified well contractor to perform the
22 well contractor activity and, prior to the performance of the well contractor activity, the person
23 discloses to the landowner in writing the name of the certified well contractor who will perform
24 the well contractor activity, the certification number of the well contractor, and the name of the
25 company that employs the certified well contractor.

26 (b) Exempt persons and activities. – This Article does not apply to any of the following
27 persons or activities:

28 ...

29 (14) Construction, repair, or abandonment of a well used for the exploration or
30 development of oil or gas.

31"

32
33 **PART VI. ESTABLISH SEVERANCE TAX**

34 **SECTION 17.(a)** Chapter 105 of the General Statutes is amended by adding a new
35 Article to read:

36 "Article 5I.

37 "Severance Tax.

38 **"§ 105-187.71. Definitions.**

39 The following definitions apply in this Article:

40 (1) Casinghead gas. – Gas or vapor indigenous to an oil stratum and produced
41 from the stratum with oil.

42 (2) Commission. – The Mining and Energy Commission.

43 (3) Condensate. – Liquid hydrocarbon that is or can be recovered from gas by a
44 separator or other means.

45 (4) Energy mineral. – All forms of natural gas, oil, and related condensates.

46 (5) First purchaser. – A person who purchases an energy mineral from a
47 producer.

48 (6) Gas. – All natural gas, including casinghead gas, and all other hydrocarbons
49 not defined as condensates.

50 (7) Gross price. – The total price paid by the first purchaser of the energy
51 mineral at the wellhead.

- 1 (8) Marginal gas well. – A well incapable of producing more than 100 MCF per
2 day, as determined by the Commission using the current wellhead
3 deliverability rate methodology utilized by the Commission, during the
4 calendar month for which the severance tax report is filed.
- 5 (9) MCF. – One thousand cubic feet of natural gas.
- 6 (10) Oil. – Crude petroleum oil, and other hydrocarbons, regardless of gravity,
7 which are produced at the well in liquid form by ordinary production
8 methods and which are not the result of condensation of gas after it leaves
9 the reservoir.
- 10 (11) Owner. – An owner of a landowner's royalty interest, of an overriding
11 royalty, of profits and working interests, or any combination thereof in
12 energy minerals. The term does not include an owner of federal, State, or
13 local governmental royalty interest.
- 14 (12) Person. – Defined in G.S. 105-228.90.
- 15 (13) Producer. – A person who takes an energy mineral from the soil or water in
16 this State.
- 17 (14) Return. – Any report or statement required to be filed under this Article to
18 determine the tax due.
- 19 (15) Royalty interest. – An interest in mineral rights in a producing leasehold in
20 the State. A royalty interest does not include the interest of a person having
21 only the management and operation of a well.
- 22 (16) Secretary. – The Secretary of Revenue.
- 23 (17) Severance. – The extraction or other removal of an energy mineral from the
24 soil or water of this State.
- 25 (18) Severed. – The point at which the energy mineral has been separated from
26 the soil or water of this State.
- 27 (19) Standard barrel of oil. – A barrel of oil containing 42 gallons.
- 28 (20) Taxpayer. – Any person required to pay the severance tax levied by this
29 Article.

30 **§ 105-187.72. Tax on severance of energy minerals.**

31 (a) Purpose. – An excise tax is levied on the privilege of engaging in the severance of
32 energy minerals from the soil or water of this State. The purpose of the tax is to provide
33 revenue to administer and enforce the provisions of this Article, to administer the State's natural
34 gas and oil reclamation regulatory program, to meet the environmental and resource
35 management needs of this State, and to reclaim land affected by exploration for, drilling for,
36 and production of natural gas and oil. The severance tax is imposed upon all energy minerals
37 severed when sold.

38 (b) Calculation of Tax. – The amount of the severance tax is calculated as follows:

- 39 (1) Condensates. – The applicable percentage rate of the gross price paid.
40 (2) Gas. – The applicable percentage rate of the market value as determined in
41 G.S. 105-187.73.
42 (3) Oil. – The applicable percentage rate of the gross price paid.

43 (c) Oil and Condensates Rate. – The percentage rate for condensates and oil is two
44 percent (2%).

45 (d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to
46 the Mining and Energy Commission for a determination that the well qualifies as a marginal
47 gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate.
48 For severance of gas from a marginal gas well the percentage rate is four-tenths of one percent
49 (0.4%).

50 (e) Gas Rate. – The percentage rate for gas is nine-tenths of one percent (0.9%).

51 **§ 105-187.73. Delivered to Market Value.**

1 (a) Delivered to Market Value of Natural Gas. – The delivered to market value of
2 natural gas is the total actual gross price as adjusted in this section. The delivered to market
3 value of gas is determined by subtracting the producer's actual costs to deliver the gas to the
4 market from the producer's total gross cash receipts from the sale of the natural gas. A producer
5 receiving a cost reimbursement from the gas purchaser shall include the reimbursement in the
6 gross cash receipts and is entitled to deduct the actual costs of delivering the gas to market
7 incurred.

8 (b) Records. – In order to be eligible to subtract the actual costs to deliver the gas to the
9 market from the producer's gross receipts for purposes of calculating the delivered-to-market
10 value of natural gas, the producer shall provide any information required by the Secretary.
11 Every producer subtracting the costs to deliver the gas to the market as permitted under this
12 subsection shall maintain and make available for inspection by the Secretary any records the
13 Secretary considers necessary to determine and verify the amount of the costs to deliver the gas
14 to the market the producer is eligible to subtract. The burden of proving eligibility for
15 subtracting the costs to deliver the gas to the market and the amount of the costs to deliver the
16 gas to the market to be subtracted shall rest upon the producer, and no subtraction of costs to
17 deliver the gas to the market shall be allowed to a producer that fails to maintain adequate
18 records or to make them available for inspection.

19 (c) Costs to Deliver the Gas to the Market and Facilities Used to Deliver the Gas to the
20 Market. – A "facility used to deliver the gas to market" includes flow lines or gathering systems
21 from the separator to the purchaser's transmission line, compressor stations, dehydration units,
22 line heaters after the separator, and treating facilities. "Costs to deliver the gas to the market"
23 are the actual and reasonable costs incurred by the producer to get the gas from the mouth of
24 the well to the first purchaser, except costs incurred in normal lease separation of the oil or
25 condensate from the gas, and costs associated with insurance premiums on a facility used to
26 deliver the gas to market. Costs to deliver the gas to the market include only the following:

- 27 (1) Costs for compressing the gas sold.
- 28 (2) Costs for dehydrating the gas sold.
- 29 (3) Costs for sweetening and treating the gas sold.
- 30 (4) Costs for delivering the gas to the purchaser.
- 31 (5) Reasonable charges for depreciation of the facility used to deliver the gas to
32 market being used, provided that, if the facility is rented, the actual rental fee
33 is added.
- 34 (6) Costs of direct or allocated labor associated with the facility used to deliver
35 the gas to market.
- 36 (7) Costs of materials, supplies, maintenance, repairs, and fuel associated with
37 the facility used to deliver the gas to market.
- 38 (8) Property taxes paid on the facility used to deliver the gas to market.
- 39 (9) Charges for fees paid by the producer to any provider of dehydration,
40 treating, compression, and delivery services.

41 **"§ 105-187.74. On-site use exemption from the tax.**

42 On-site use is exempt from the tax imposed under this Article. On-site use is the severance
43 of energy minerals from land or water in this State owned legally or beneficially by the
44 producer, which energy minerals are used on the land from which they are taken by the
45 producer as part of the improvement of or use in the producer's homestead and which have a
46 yearly cumulative delivered to market value of not greater than one thousand two hundred
47 dollars (\$1,200). When severed energy minerals so used exceed a cumulative delivered to
48 market value of one thousand two hundred dollars (\$1,200) during any year, the further
49 severance of energy minerals shall be subject to the tax imposed by this Article.

50 **"§ 105-187.75. Returns and payment of tax.**

1 (a) General. – Severance taxes are payable when a return is due. A return is due
2 quarterly or monthly as specified in this section. A return must be filed by the producer of the
3 energy mineral with the Secretary on a form prescribed by the Secretary and in the manner
4 required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

5 (b) Payment. – A producer of energy minerals shall pay the tax for all owners of the
6 energy minerals. The producer shall withhold from any payment due owners the proportionate
7 tax due for remittance to the Secretary.

8 (c) Quarterly. – A taxpayer who is consistently liable for less than one thousand dollars
9 (\$1,000) a month in severance taxes must file a return and pay the taxes due on a quarterly
10 basis. A quarterly return covers a calendar quarter and is due by the 25th day of the second
11 month following the end of the quarter.

12 (d) Monthly. – A taxpayer who is consistently liable for at least one thousand dollars
13 (\$1,000) a month in severance taxes must file a return and pay the taxes due on a monthly
14 basis. A monthly return is due by the 25th day of the second month following the calendar
15 month covered by the return.

16 (e) Category. – The Secretary must monitor the amount of severance taxes paid by a
17 taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each
18 taxpayer to pay tax and file returns as required by this section. In determining the amount of
19 taxes due from a taxpayer, the Secretary must consider the total amount due from all places of
20 business owned or operated by the same person as the amount due from that person. A taxpayer
21 must file a return and pay tax in accordance with the Secretary's direction.

22 (f) Information on Return. – The amount of tax due and any other information required
23 by the Secretary must be included on the return. Returns that do not contain the required
24 information will not be accepted. When an unacceptable return is submitted, the Secretary will
25 require a corrected return to be filed. The return must contain the following information
26 concerning energy minerals produced during the month being reported:

27 (1) The gross amount of energy minerals produced that are subject to the tax
28 imposed by this Article.

29 (2) The leases from which the energy minerals were produced.

30 (3) The names and addresses of the first purchasers of the energy minerals.

31 (g) Additional Information. – To claim an exemption for on-site use, the producer or
32 taxpayer of a proposed or existing gas well shall apply to the Secretary for determination of
33 eligibility. The Secretary may require an applicant to provide any information required to
34 administer this provision. The Secretary shall make the determination within 15 calendar days
35 of the receipt of all information required by the Secretary from the producer or taxpayer, and
36 the producer or taxpayer shall attach the determination of eligibility to its severance tax form
37 next due, as applicable. The taxpayer shall provide any information required by the Secretary.
38 Every taxpayer claiming the exemption shall maintain and make available for inspection by the
39 Secretary of Revenue any records the Secretary considers necessary to determine and verify the
40 claim to which the taxpayer is entitled. The burden of proving eligibility shall rest upon the
41 taxpayer, and no exemption shall be allowed to a taxpayer who fails to maintain adequate
42 records or to make them available for inspection. The portion of the severance tax that is
43 required to be deducted from the royalty owner or other interest shall be calculated in the same
44 manner as the portion of the severance tax borne by the producer.

45 (h) Commission Determination. – To claim the marginal gas rate, the producer or
46 taxpayer of a proposed or existing gas well shall provide to the Secretary proof that the Mining
47 and Energy Commission has determined the well qualifies as a marginal gas well.

48 **"§ 105-187.76. Bond or letter of credit required.**

49 A producer must file with the Secretary a bond or an irrevocable letter of credit if the
50 producer fails to file a return required under this Article. A bond or an irrevocable letter of
51 credit must be conditioned upon compliance with the requirements of this Article, be payable to

1 the State, and be in the form required by the Secretary. The amount of the bond or irrevocable
2 letter of credit is two times the applicant's average expected monthly tax liability under this
3 Article, as determined by the Secretary. When notified to do so by the Secretary, a person who
4 is required to file a bond or an irrevocable letter of credit must file the bond or irrevocable letter
5 of credit in the amount required by the Secretary within 30 days after receiving the notice from
6 the Secretary.

7 **"§ 105-187.77. Liability of producer for tax.**

8 The tax imposed by this Article is the primary liability of the producer, except as provided
9 in this section. A first purchaser may not take delivery of energy minerals from a producer
10 unless the producer furnishes the purchaser with a taxpayer identification number assigned by
11 the Secretary. A first purchaser failing to secure the producer's taxpayer number, either from
12 the producer or the Secretary, will be liable for any tax, penalty, and interest due on the energy
13 minerals purchased from the producer.

14 **"§ 105-187.78. Royalty owner's records.**

15 The owner of a royalty interest shall keep and provide to the Secretary, upon request, both
16 of the following:

- 17 (1) A record of all money received as royalty from each producing leasehold in
18 the State.
- 19 (2) A copy of all settlement sheets furnished by a purchaser or operator or other
20 statement showing the amount of energy minerals for which a royalty was
21 received and the amount of severance tax deducted.

22 **"§ 105-187.79. Permits suspended for failure to report.**

23 If an entity fails to file any report or return or to pay any tax or fee required by this Article
24 for 90 days after it is due, the Secretary shall inform the Secretary of Environment and Natural
25 Resources of this failure. The Secretary of Environment and Natural Resources shall suspend
26 permits for oil and gas exploration using horizontal drilling and hydraulic fracturing under
27 G.S. 113-395 of any entity that fails to file a return under this Article. The Secretary of
28 Environment and Natural Resources shall immediately notify by mail an entity of a suspension
29 under this section.

30 **"§ 105-187.80. No local taxation.**

31 A city or county may not impose a franchise, privilege, license, income, or excise tax on the
32 severing, production, treating, processing, ownership, sale, storage, purchase, marketing, or
33 transportation on any energy minerals produced in the State, or upon the business of severing,
34 producing, treating, processing, owning, selling, buying, storing, marketing, or transporting
35 such energy minerals, or upon the ownership, operation, or maintenance of plants, facilities,
36 machinery, pipelines, and gathering lines related to the severing, production, treating,
37 processing, ownership, storage, sale, purchase, marketing, or transportation of energy minerals.
38 This section does not preclude the taxation of the property in accordance with Article 11 of this
39 Chapter."

40 **SECTION 17.(b)** G.S. 105-259(b) is amended by adding a new subdivision to
41 read:

- 42 "(46) To furnish to the Department of Environment and Natural Resources the
43 name, address, tax year end, and account and identification numbers of an
44 entity liable for severance tax to enable the Secretary of Environment and
45 Natural Resources to notify the entity that the Department of Environment
46 and Natural Resources shall suspend permits of the entity for oil and gas
47 exploration using horizontal drilling and hydraulic fracturing under
48 G.S. 113-395."

49 **SECTION 17.(c)** G.S. 113-387 and G.S. 113-388 are repealed.

50 **SECTION 17.(d)** G.S. 105-187.72, as enacted by Section 17(a) of this act, reads as
51 rewritten:

"§ 105-187.72. Tax on severance of energy minerals.

(c) Oil and Condensates Rate. – The percentage rate for condensates and oil is ~~two percent (2%)~~ three and one-half percent (3.5%).

(d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is ~~four-tenths of one percent (0.4%)~~ six-tenths of one percent (0.6%).

(e) Gas Rate. – The percentage rate for gas is ~~nine tenths of one percent (0.9%)~~ is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	\$3.00 per MCF	0.9%
\$3.01 per MCF	\$4.00	1.9%
\$4.01	N/A	2.9%"

SECTION 17.(e) G.S. 105-187.72, as enacted by Section 17(a) of this act, and amended by Section 17(d) of this act, reads as rewritten:

"§ 105-187.72. Tax on severance of energy minerals.

(c) Oil and Condensates Rate. – The percentage rate for condensates and oil is ~~three and one-half percent (3.5%)~~ five percent (5%).

(d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is ~~six tenths of one percent (0.6%)~~ eight-tenths of one percent (0.8%).

(e) Gas Rate. – The percentage rate for gas is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	\$3.00 per MCF	0.9%
\$3.01 per MCF	\$4.00	1.9%
\$4.01	N/A <u>\$5.00</u>	2.9%
<u>\$5.01</u>	<u>\$6.00</u>	<u>3.9%</u>
<u>\$6.01</u>	<u>\$7.00</u>	<u>4.9%</u>
<u>\$7.01</u>	N/A	<u>5%"</u>

SECTION 17.(f) G.S. 105-187.72(e), as enacted by Section 17(a) of this act, and amended by Sections 17(d) and 17(e) of this act, reads as rewritten:

"(e) Gas Rate. – The percentage rate for gas is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	\$3.00 per MCF	0.9%
\$3.01 per MCF	\$4.00	1.9%
\$4.01	\$5.00	2.9%
\$5.01	\$6.00	3.9%
\$6.01	\$7.00	4.9%
\$7.01	N/A <u>\$8.00</u>	5% <u>5.9%</u>
<u>\$8.01</u>	<u>\$9.00</u>	<u>6.9%</u>
<u>\$9.01</u>	<u>\$10.00</u>	<u>7.9%</u>
<u>\$10.01</u>	N/A	<u>9%"</u>

SECTION 18. G.S. 105-275 is amended by adding a new subdivision to read:

1 "(47) Energy mineral interest in property for which a permit has not been issued
2 under G.S. 113-395. For the purposes of this subdivision, "energy mineral"
3 has the same meaning as in G.S. 105-187.71."

4 **SECTION 19.** Sections 17(a), 17(b), and 17(c) become effective July 1, 2015, and
5 apply to energy minerals severed on or after that date. Section 17(d) becomes effective January
6 1, 2019, and applies to energy minerals severed on or after that date. Section 17(e) becomes
7 effective January 1, 2021, and applies to energy minerals severed on or after that date. Section
8 17(f) becomes effective January 1, 2023, and applies to energy minerals severed on or after that
9 date. Section 18 is effective for taxes imposed for taxable years beginning on or after July 1,
10 2015. The remainder of this Part is effective when it becomes law.

11 12 **PART VII. STUDIES**

13 **SECTION 20.** The Local Government Division of the Department of Revenue
14 shall study how other states value energy minerals for the purpose of property taxation. The
15 Division shall establish guidelines for counties to ensure the consistent and fair taxation of
16 energy minerals throughout the State. The Local Government Division shall report its findings
17 to the Joint Legislative Commission on Energy Policy by January 1, 2015.

18 **SECTION 21.** The Joint Legislative Commission on Energy Policy shall study
19 how the development of the oil and gas industry in the State would affect the property tax
20 revenues of local governments. The study shall examine how the presence of energy minerals
21 will affect property enrolled in the present use value program. The study shall also study ways
22 to limit the growth of property tax revenues that result from increased property valuations due
23 to the development of the oil and gas industry in the State. The Commission shall report to the
24 2015 General Assembly on its findings and recommendations, including any legislative
25 recommendations.

26 **SECTION 22.(a)** The Department of Commerce, in consultation with the
27 Department of Environment and Natural Resources, the North Carolina Ports Authority, and
28 the Department of Administration, shall study the desirability and feasibility of siting,
29 constructing, and operating a liquefied natural gas (LNG) export terminal in North Carolina. At
30 a minimum, as a part of the study, the agencies shall:

- 31 (1) Identify the State, federal, and local regulatory programs under which LNG
32 export terminals are permitted and approved.
- 33 (2) Identify any State statutory or regulatory barriers to siting, constructing, or
34 operating a LNG export terminal in the State.
- 35 (3) Evaluate infrastructure needs and impacts as follows:
 - 36 a. Identify the infrastructure that is necessary to support a LNG export
37 terminal.
 - 38 b. Identify any idle publicly owned infrastructure that may be utilized to
39 support LNG export terminal operations.
 - 40 c. Identify publicly owned unutilized or underutilized lands that may be
41 used to support LNG export terminal operations.
 - 42 d. Identify potential impacts on infrastructure, including roads,
43 pipelines, and water and wastewater services, and other provision of
44 services by local governments including schools, law enforcement,
45 and development.
- 46 (4) Conduct a cost-benefit analysis for the construction and operation of an
47 LNG export terminal. The analysis shall evaluate scenarios in which the
48 State is the primary producer of the exported natural gas and scenarios in
49 which the State is not the primary producer of the exported natural gas.
- 50 (5) Examine potential economic impacts, including:

- 1 a. Possible sources of revenue that could accrue to the benefit of the
2 State if LNG is exported from a terminal in North Carolina.
- 3 b. The number of jobs that may be expected as a result from the
4 construction and operation of a LNG export terminal.
- 5 (6) Identify and evaluate potential environmental impacts of construction and
6 operation of a LNG export terminal. In examining this issue, the agencies
7 shall gather information on regulatory programs in other states where LNG
8 export terminals are in operation.
- 9 (7) Identify potential social impacts, including impacts of construction and
10 operation of a LNG export terminal on nearby communities and quality of
11 life within those communities, recreational activities, and commercial and
12 residential development.
- 13 (8) Examine any other pertinent issues that the agencies deem relevant to the
14 construction and operation of a LNG export facility in the State.

15 **SECTION 22.(b)** The Department of Commerce shall report its findings and
16 recommendations to the Joint Legislative Commission on Energy Policy and the Environmental
17 Review Commission on or before January 1, 2015.

18 **SECTION 23.(a)** The Department of Transportation shall study (i) additional
19 statutory authority that may be necessary or advisable for the Department to adequately address
20 energy-related traffic, including authority that pertains to permitting and assessment of fees; (ii)
21 the feasibility and advisability of including any requirements that the Department may
22 recommend to manage energy-related traffic, and resulting impacts, in a coordinated permit in
23 conjunction with requirements of the Department of Environment and Natural Resources, or
24 whether such requirements should be implemented through a separate permitting process; and
25 (iii) performance bonding and other surety mechanisms, including road use agreements, to
26 reclaim and repair any State posted roads that are damaged due to heavy vehicle, equipment,
27 and machinery traffic used in support of and conjunction with horizontal drilling and hydraulic
28 fracturing operations on State posted roads. For purposes of this study, the term "posted roads"
29 means a system that records any secondary road on the State Highway System that is unable to
30 carry heavy vehicles or equipment. In the conduct of its study, the Department shall do the
31 following:

- 32 (1) Consider mechanisms for requiring performance bonds running to the
33 Department.
- 34 (2) Develop criteria for setting the amount of the bond, including the weight and
35 size of the proposed vehicles, equipment and machinery projected to utilize
36 posted roads, the planned route and projected number of trips, and the
37 duration of the activity necessitating travel of heavy vehicles, equipment,
38 and machinery along posted roads.
- 39 (3) Identify documentation necessary to support bonding of posted roads.
- 40 (4) Identify any statutory or regulatory changes necessary to maintain and
41 protect the State's transportation infrastructure network.

42 **SECTION 23.(b)** The Department of Transportation shall report its findings and
43 recommendations, including any legislative proposals, to the Joint Legislative Energy Policy
44 Commission and the Joint Legislative Transportation Oversight Committee on or before
45 January 1, 2015.

46 **SECTION 24.(a)** The State Board of Community Colleges shall study the
47 feasibility and desirability of developing a program to prepare students with a general
48 education foundation and technical competencies for employment opportunities in the oil and
49 natural gas drilling, gathering, and field operations industry. In particular, the State Board shall
50 consider developing such a program at one or more of the community colleges located where

1 the potential for shale gas resources is highest. In the conduct of its study, the State Board shall
2 evaluate similar education programs in community college systems in other states.

3 **SECTION 24.(b)** The State Board shall report its findings and recommendations,
4 including any legislative proposals, to the Joint Legislative Energy Policy Commission and the
5 Joint Legislative Education Oversight Committee on or before January 1, 2015.

6 **SECTION 25.(a)** The General Assembly finds the following:

- 7 (1) Section 2(1) of S.L. 2012-143 directed the Mining and Energy Commission,
8 in conjunction with the Department of Environment and Natural Resources
9 and the Consumer Protection Division of the North Carolina Department of
10 Justice, to study the State's current law on the issue of integration or
11 compulsory pooling and other states' laws on the matter; and
- 12 (2) Whereas, the Department was directed to report its findings and
13 recommendations, including legislative proposals, to the Joint Legislative
14 Commission on Energy Policy and the Environmental Review Commission
15 on or before January 1, 2013; and
- 16 (3) The Mining and Energy Commission and the Department issued separate
17 reports pursuant to the study; and
- 18 (4) The Mining and Energy Commission's report included specific
19 recommendations for legislative changes related to compulsory pooling; and
- 20 (5) The Department's report did not include specific recommendations for
21 legislative changes related to compulsory pooling; and
- 22 (6) In lieu of specific recommendations for legislative changes, the Department
23 recommended that "prior to establishing new laws related to compulsory
24 pooling, the General Assembly should consider the rules adopted by the
25 Mining and Energy Commission related to oil and gas exploration,
26 including, but not limited to, rules concerning drilling units, spacing
27 requirements, and setbacks, all of which will affect the regulation of
28 compulsory pooling in the State." And the Department further recommended
29 that "decisions on the status and implementation of a compulsory pooling
30 law precede decisions related to cost sharing, notifications, and
31 compensation for damages" and "further study on the issue of amending
32 current dormant mineral statutes regarding extinguishment and other
33 consumer protection issues related to split estates."

34 **SECTION 25.(b)** Based upon the findings of Section 25(a) of this act, the General
35 Assembly directs the Department to do the following:

- 36 (1) Examine the Mining and Energy Commission's rules, once adopted, related
37 to oil and gas exploration, including, but not limited to, rules concerning
38 drilling units, spacing requirements, and setbacks, and all rules the
39 Department determines will affect the regulation of compulsory pooling in
40 the State.
- 41 (2) Study, in conjunction with the Mining and Energy Commission and the
42 Consumer Protection Division of the North Carolina Department of Justice,
43 the issue of amending current dormant mineral statutes regarding
44 extinguishment and other consumer protection issues related to split estates.
- 45 (3) Issue specific recommendations for legislative action related to compulsory
46 pooling and dormant mineral statutes and report the findings of their study,
47 including specific proposals for legislative action, to the Joint Legislative
48 Commission on Energy Policy and the Environmental Review Commission
49 on or before October 1, 2015.

50 **SECTION 26.** The Mining and Energy Commission and the Department of
51 Environment and Natural Resources shall study the development of midstream infrastructure in

1 North Carolina, which is necessary or advisable to facilitate the exploration, development, and
2 production of the State's oil and gas resources. Infrastructure examined shall include
3 development of pipelines, gathering systems, compressor stations, pumping systems, on-site
4 and near-site storage tanks, and natural gas liquids processing systems. All State agencies,
5 including the constituent institutions of The University of North Carolina, shall provide
6 information and support to the Commission and the Department in the conduct of this study.
7 The Commission shall report the findings of this study, including specific proposals for
8 legislative action, to the Joint Legislative Commission on Energy Policy on or before March 1,
9 2015.

10 **SECTION 27.** The State Energy Office in the Department of Environment and
11 Natural Resources shall study and make legislative recommendations on a comprehensive
12 long-range State energy policy to achieve maximum effective management and use of present
13 and future sources of energy. The Office shall study all of the following:

- 14 (1) The long-term environmental and economic impact of base load power
15 generation of electric public utilities.
- 16 (2) The comparison of base load power generation alongside all other forms of
17 energy used for power generation, including renewable and alternative
18 sources of energy, and the environmental and economic impact of all forms
19 of power generation.
- 20 (3) The implementation of S.L. 2007-397, including environmental and
21 economic impacts of the law, and recommendations on any changes to the
22 law as necessary.
- 23 (4) The impact to the electrical grid and to the economy of allowing third-party
24 sales of electricity on the State's military installations.

25 The State Energy Office shall report its findings to the Joint Legislative
26 Commission on Energy Policy on or before December 1, 2014.

27 **SECTION 28.(a)** The Division of Purchase and Contract in the Department of
28 Administration shall, in coordination with the Department of Public Instruction, provide that
29 any fuel option may be considered for the award of a school bus contract. In the development
30 of requests for proposals for school buses, the Departments shall include any fuel option
31 practicable, including diesel, propane, liquefied natural gas, compressed natural gas, and
32 electricity.

33 **SECTION 28.(b)** The consideration of any fuel sources in Section 28(a) of this act
34 shall apply to any changes or modifications to term contracts executed on or after the effective
35 date of this section.

36 **SECTION 28.(c)** The Department of Administration and the Department of Public
37 Instruction shall jointly study the infrastructure that would be necessary to support school bus
38 fleets fueled by natural gas and report any findings and recommendations to the Joint
39 Legislative Energy Policy Commission on or before January 1, 2015.

40 **PART VIII. MISCELLANEOUS PROVISIONS UNRELATED TO SHALE GAS**

41 **SECTION 29.(a)** G.S. 114-4.2D is repealed.

42 **SECTION 29.(b)** G.S. 113B-11(e) reads as rewritten:

43 "(e) Staff support required by the Council shall be supplied by the Division of Energy,
44 Mineral, and Land Resources of the Department of Environment and Natural Resources. The
45 Department of Environment and Natural Resources shall provide legal support to the Council
46 as needed from the Department's staff. The Department of Commerce and the Utilities
47 Commission are hereby authorized to make their staff available to the Council to assist in the
48 development of a State energy policy."

49 **SECTION 30.(a)** G.S. 105-449.130 is amended by adding a new subdivision to
50 read:
51

1 "(1f) Diesel gallon equivalent of liquefied natural gas. – The energy equivalent of
2 6.06 pounds of liquefied natural gas."

3 **SECTION 30.(b)** G.S. 105-449.130 is amended by adding a new subdivision to
4 read:

5 "(1g) Gas gallon equivalent of compressed natural gas. – The energy equivalent of
6 5.66 pounds of compressed natural gas."

7 **SECTION 30.(c)** G.S. 105-449.136 reads as rewritten:

8 **"§ 105-449.136. Tax on alternative fuel.**

9 (a) Rate. – A tax at the motor fuel rate is imposed on liquid alternative fuel used to
10 operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the
11 purpose of supplying fuel to operate the vehicle. The tax on liquefied natural gas is imposed on
12 each diesel gallon equivalent of liquefied natural gas. A tax at the equivalent of the motor fuel
13 rate is imposed on all other alternative fuel used to operate a highway vehicle. The tax on
14 compressed natural gas is imposed on each gas gallon equivalent of compressed natural gas.
15 The Secretary must determine the equivalent ~~rate.~~ rate for all other non-liquid alternative fuels.

16 (b) Administration. – The exemptions from the tax on motor fuel in G.S. 105-449.88
17 apply to the tax imposed by this section. The refunds for motor fuel tax allowed by Part 5 of
18 Article 36C of this Chapter apply to the tax imposed by this section, except that the refund
19 allowed by G.S. 105-449.107(b) for certain vehicles that use power takeoffs does not apply to a
20 vehicle whose use of alternative fuel is taxed on the basis of miles driven. The proceeds of the
21 tax imposed by this section must be allocated in accordance with G.S. 105-449.125."

22 **SECTION 30.(d)** This section becomes effective January 1, 2015.

23
24 **PART IX. SEVERABILITY AND EFFECTIVE DATE**

25 **SECTION 31.(a)** If any section or provision of this act is declared unconstitutional
26 or invalid by the courts, it does not affect the validity of this act as a whole or any part other
27 than the part so declared to be unconstitutional or invalid.

28 **SECTION 31.(b)** Except as otherwise provided, this act is effective when it
29 becomes law.