

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

**SESSION LAW 2003-340  
SENATE BILL 824**

AN ACT TO AMEND VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES TO: (1) MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS; (2) AMEND THE REPORTING REQUIREMENT SET OUT IN S.L. 2001-442; (3) CLARIFY WHAT CONSTITUTES A BASE OF OPERATIONS FOR MOBILE FOOD UNITS AND PUSHCARTS; (4) INCREASE THE MEMBERSHIP OF THE ENVIRONMENTAL REVIEW COMMISSION BY TWO; (5) EXTEND BY ONE YEAR THE TIME THAT TEMPORARY RULES TO PROTECT WATER QUALITY AND RIPARIAN BUFFERS IN CERTAIN RIVER BASINS WILL REMAIN IN EFFECT; (6) EXTEND BY TWO YEARS THE PILOT PROGRAM FOR INSPECTION OF ANIMAL WASTE MANAGEMENT SYSTEMS INITIALLY ESTABLISHED BY SECTION 15.4 OF S.L. 1997-443; AND (7) ESTABLISH AN EXCEPTION TO THE MORATORIUM INITIALLY ESTABLISHED BY SECTION 1.2 OF S.L. 1997-458 FOR FACILITIES THAT WERE APPROVED FOR FUNDING UNDER THE AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL AT THE TIME THE MORATORIUM WAS ESTABLISHED.

The General Assembly of North Carolina enacts:

**SECTION 1.1.** G.S. 113-44.8(a) reads as rewritten:

"(a) The State of North Carolina offers unique archaeological, geologic, biological, scenic, and recreational resources. These resources are part of the heritage of the people of this State. The heritage of a people should be preserved and managed by ~~those~~ the people for their use and for the use of their visitors and descendants."

**SECTION 1.2.** G.S. 113-173(e) reads as rewritten:

"(e) Replacement RCGL. – The provisions of ~~G.S.~~ G.S. 113-168.1(h) apply to this section."

**SECTION 1.3.** Article 13A of Chapter 113 of the General Statutes (G.S. 113-145.1 through G.S. 113-145.8) is recodified as Article 18 of Chapter 113A of the General Statutes (G.S. 113A-251 through G.S. 113A-259). The Revisor of Statutes is authorized to correct any reference in the General Statutes to the statutes that are recodified by this section.

**SECTION 1.4.** G.S. 113A-232(a) reads as rewritten:

"(a) Fund Created. – The Conservation Grant Fund is created within the Department of Environment and Natural Resources. The Fund shall be administered by ~~that~~ the Department. The purpose of the Fund is to stimulate the use of conservation easements and conservation tax credits, to improve the capacity of private nonprofit land trust organizations to successfully accomplish conservation projects, to better equip real estate related professionals to pursue opportunities for conservation, to increase landowner participation in land and water conservation, and to provide an opportunity to leverage private and other public monies for conservation easements."

**SECTION 1.5.** G.S. 130A-248(a4) reads as rewritten:

"(a4) For the protection of the public health, the Commission shall adopt rules governing the sanitation of limited food service establishments. In adopting the rules, the Commission shall not limit the number of days that limited food service

establishments may operate. Limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, ~~or for establishments operated by other charitable organizations. On and after January 1, 1996, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that have applied for exemption or are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code. On and after January 1, 1997, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code.~~"

**SECTION 1.6.** G.S. 130A-309.14(a1)(3) reads as rewritten:

"(3) The Department of Administration and the Department of Transportation shall each provide by 1 October of each year to the Department of Environment and Natural Resources a detailed description of the respective Agency's review and revision of bid procedures and purchase and use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The information provided by the Department of Administration and the Department of Transportation to the Department of Environment and Natural Resources shall also be included in the report required by G.S. 130A-309.06(c)."

**SECTION 1.7.** G.S. 143-215.107B reads as rewritten:

**"§ 143-215.107B. Statewide goals for reduction in emissions of ~~nitrogen oxides;~~ oxides of nitrogen; report.**

It shall be the goal of the State to reduce emissions of ~~nitrogen oxides of nitrogen~~ (NOx) from all sources by at least twenty-five percent (25%) by 1 July 2009. It shall be the goal of the State to reduce the growth of vehicle miles traveled in the State by at least twenty-five percent (25%) of that growth that would otherwise occur by 1 July 2009. The Department of Environment and Natural Resources and the Department of Transportation shall evaluate progress toward achieving these goals in each fiscal year and shall report their findings and recommendations as to any measures that may be needed to achieve these goals to the Environmental Review Commission on or before 1 October of each year ~~beginning 1 October 2000 year.~~"

**SECTION 1.8.(a)** If Senate Bill 945, 2003 Regular Session, does not become law, then G.S. 143-215.108(a) reads as rewritten:

"(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities ~~which that~~ contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained from the Commission a permit therefor for the activity from the Commission and has complied with any conditions of this the permit:

- (1) Establish or operate any air contaminant ~~source; source.~~
- (2) Build, erect, ~~use use,~~ or operate any equipment ~~which that~~ may result in the emission of an air contaminantscontaminant or which that is likely to cause air pollution;pollution.
- (3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be ~~emitted;emitted.~~
- (4) Enter into an irrevocable contract for the construction and installation of any air-cleaning device, or allow or cause ~~such any air-cleaning~~ device to be constructed, installed, or operated."

**SECTION 1.8.(b)** If Senate Bill 945, 2003 Regular Session, becomes law, then G.S. 143-215.108(a), as amended by Section 1 of Senate Bill 945, 2003 Regular Session, reads as rewritten:

"(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities that contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained a permit ~~therefor for the activity~~ from the Commission and has complied with any conditions of the permit:

- (1) Establish or operate any air contaminant source, except as provided in G.S. 143-215.108A.
- (2) Build, erect, ~~use-use,~~ or operate any equipment that may result in the emission of an air contaminant or that is likely to cause air pollution, except as provided in G.S. 143-215.108A.
- (3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted."

**SECTION 1.9.** G.S. 143-726(d)(4) reads as rewritten:

"(4) The Secretary of the ~~Department of~~ Environment and Natural Resources."

**SECTION 1.10.** G.S. 143B-428 reads as rewritten:

**"§ 143B-428. Department of Commerce – declaration of policy.**

It is hereby declared to be the policy of the State of North Carolina to actively encourage the expansion of existing environmentally sound North Carolina industry; to actively encourage the recruitment of environmentally sound national and international industry into North Carolina through industrial recruitment efforts and through effective advertising, with an emphasis on high-wage-paying industry; to promote the development of North Carolina's labor force to meet the State's growing industrial needs; to promote the growth and development of our travel and tourist industries; to promote the development of our State ports; ~~to promote the management of North Carolina's energy resources and the development of a State energy policy;~~ and to assure throughout State government, the coordination of North Carolina's economic development efforts."

**SECTION 2.** Section 7 of S.L. 2001-442 reads as rewritten:

**"SECTION 7.** Beginning 1 ~~March 2002,~~ September 2003, the ~~Department Secretary~~ of Environment and Natural Resources shall submit ~~a semiannual~~ an annual report to the Environmental Review Commission on the implementation of Sections 1 through 6 of this act as a part of the report required by G.S. 143-215.94M."

**SECTION 3.** G.S. 130A-248(c1) reads as rewritten:

"(c1) The Commission shall adopt rules governing the sanitation of pushcarts and mobile food units. A permitted restaurant or commissary shall serve as a base of operations for a pushcart or mobile food unit ~~shall be operated in conjunction with a permitted restaurant unit.~~"

**SECTION 4.** G.S. 120-70.42 reads as rewritten:

**"§ 120-70.42. Membership; cochairs; vacancies; quorum.**

(a) The Environmental Review Commission shall consist of six Senators appointed by the President Pro Tempore of the Senate, six Representatives appointed by the Speaker of the House of Representatives, who shall serve at the pleasure of their appointing officer, the Chair or a Cochair of the Senate Committee on Agriculture, Environment, and Natural Resources or the equivalent committee, ~~and the Chair or a Cochair~~ of the House of Representatives Committee on Environment and Natural Resources or the equivalent committee, ~~the Chair or a Cochair of the Senate Committee on Appropriations – Natural and Economic Resources or the equivalent committee,~~ and the Chair or a Cochair of the House of Representatives Committee on Appropriations – Natural and Economic Resources or the equivalent committee.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as cochair and the Speaker of the House of Representatives shall designate one Representative to serve as cochair.

(c) Except as otherwise provided in this subsection, a member of the Commission shall continue to serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the Commission who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from service on the Commission. Any vacancy that occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment.

(d) A quorum of the Environmental Review Commission shall consist of ~~eight~~ nine members."

**SECTION 5.** Subsection (a) of Section 4 of S.L. 2001-418 reads as rewritten:

"**SECTION 4.(a)** Notwithstanding G.S. 150B-21.1(d), temporary rules 15A NCAC 2B.0243 and 15A NCAC 2B.0244, which were adopted pursuant to Section 7.1 of S.L. 1999-329 and which became effective on or before 1 July 2001, shall continue in effect until 1 September ~~2003-2004~~ in order to provide sufficient time for the Environmental Management Commission to further consult with businesses and industries, local governments, landowners, and other interested or potentially affected persons in the upper and lower Catawba River Basin as to the appropriate scope of permanent rules to protect water quality and riparian buffers in that river basin. In developing permanent rules, the Commission shall consider whether riparian buffers on the main stem of the Catawba River and on lake shorelines are adequate to protect water quality in the river and whether riparian buffer protection requirements should or should not be extended to some or all of the tributary streams in the river basin, taking into account the sources of water quality degradation in the river, the topography of the land in the river basin, and other relevant factors."

**SECTION 6.1.** Section 15.4(a) of S.L. 1997-443, as amended by Section 3.1 of S.L. 1999-329, Section 5 of S.L. 2001-254, and Section 1.1 of S.L. 2002-176, reads as rewritten:

"(a) The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 November 1997, and to terminate 1 September ~~2003, 2005,~~ regarding the annual inspections of animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes. The Department shall select two counties located in a part of the State that has a high concentration of swine farms to participate in this pilot program. In addition, Brunswick County shall be added to the program. Notwithstanding G.S. 143-215.10F, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall conduct inspections of all animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes in these three counties at least once a year to determine whether any animal waste management system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The personnel of the Division of Soil and Water Conservation who are to conduct these inspections in each of these three counties shall be located in an office in the county in which that person will be conducting inspections. As part of this pilot program, the Department of Environment and Natural Resources shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the three counties are used for the quick response to complaints and reported problems previously referred only to the Division of Water Quality of the Department of Environment and Natural Resources."

**SECTION 6.2.** Section 3.3 of S.L. 1999-329, as amended by Section 6 of S.L. 2001-254 and Section 1.2 of S.L. 2002-176, reads as rewritten:

"Section 3.3. The Department of Environment and Natural Resources, in consultation with both the Division of Water Quality and the Division of Soil and Water Conservation, shall submit semiannual interim reports no later than ~~15 October 1999, 15 April 2000, and 15 October 2000, 15 April 2001, 15 October 2001, 15 April 2002, and 15 April 2003~~ of each year beginning 15 October 1999 and shall submit a final report no later than ~~15 October 2003~~ 2005 to the Environmental Review Commission and to the Fiscal Research Division. These reports shall indicate whether the pilot program has increased the effectiveness of the annual inspections program or the response to complaints and reported problems, specifically whether the pilot program had resulted in identifying violations earlier, taking corrective actions earlier, increasing compliance with the animal waste management plans and permit conditions, improving the time to respond to discharges, complaints, and reported problems, improving communications between farmers and Department employees, and any other consequences deemed pertinent by the Department. These reports shall also compare the costs of conducting operations reviews and inspections under the pilot program with the costs of conducting operations reviews and inspections pursuant to G.S. 143-215.10D and G.S. ~~143-215.10F, 143-215.10F and the resources that would be required to expand the pilot program to all counties.~~ The final report shall include a recommendation as to whether to continue or expand the pilot program under this act. The Environmental Review Commission may recommend to the ~~2003~~ General Assembly whether to continue or expand the pilot program under this act and may make any related legislative proposals."

**SECTION 7.** The moratorium established by Section 1.2 of S.L. 1997-458; as amended by Section 3 of S.L. 1998-188, Section 2.2 of S.L. 1999-329, Section 2 of S.L. 2001-254, and Section 2 of S.L. 2003-266; on new swine farms and lagoons and on the expansion of existing swine farms and lagoons shall not apply to any swine farm or lagoon that would otherwise be prohibited by the moratorium if, on or before 27 August 1997, the Soil and Water Conservation Commission allocated funds under the Agriculture Cost Share Program for Nonpoint Source Pollution Control established pursuant to G.S. 143-215.74 for the construction or expansion of the otherwise prohibited swine farm or lagoon. The Environmental Management Commission may issue a permit for an animal waste management system, as defined by G.S. 143-215.10B, or for a new swine farm or lagoon or the expansion of an existing swine farm or lagoon, as defined in G.S. 106-802, that is authorized by this section.

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

**SECTION 9.** Section 5 of this act is effective retroactively to 30 June 2003. All other sections of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 10<sup>th</sup> day of July, 2003.

s/ Beverly E. Perdue  
President of the Senate

s/ Richard T. Morgan  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 1:32 p.m. this 27<sup>th</sup> day of July, 2003