

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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**SENATE BILL 820
Commerce Committee Substitute Adopted 6/5/12
House Committee Substitute Favorable 6/13/12
Fourth Edition Engrossed 6/14/12**

Short Title: Clean Energy and Economic Security Act.

(Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

1
2 AN ACT TO (1) RECONSTITUTE THE MINING COMMISSION AS THE MINING AND
3 ENERGY COMMISSION, (2) REQUIRE THE MINING AND ENERGY COMMISSION
4 AND OTHER REGULATORY AGENCIES TO DEVELOP A MODERN
5 REGULATORY PROGRAM FOR THE MANAGEMENT OF OIL AND GAS
6 EXPLORATION AND DEVELOPMENT ACTIVITIES IN THE STATE, INCLUDING
7 THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR
8 THAT PURPOSE, (3) AUTHORIZE HORIZONTAL DRILLING AND HYDRAULIC
9 FRACTURING, BUT PROHIBIT THE ISSUANCE OF PERMITS FOR THESE
10 ACTIVITIES PENDING SUBSEQUENT LEGISLATIVE ACTION, (4) ENHANCE
11 LANDOWNER AND PUBLIC PROTECTIONS RELATED TO HORIZONTAL
12 DRILLING AND HYDRAULIC FRACTURING, AND (5) ESTABLISH THE JOINT
13 LEGISLATIVE COMMISSION ON ENERGY POLICY.
14

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

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

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

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



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

4 Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural
5 Resources (DENR), in conjunction with the Department of Commerce, the Department of
6 Justice, and the Rural Advancement Foundation (RAFI-USA), issued a final report on April 30,
7 2012; and

8 Whereas, the final report set forth a number of recommendations, including
9 recommendations concerning all of the following:

- 10 (1) Development of a modern oil and gas regulatory program, taking into
11 consideration the processes involved in hydraulic fracturing and horizontal
12 drilling technologies, and long-term prevention of physical or economic
13 waste in developing oil and gas resources.
- 14 (2) Collection of baseline data for areas near proposed drill sites concerning air
15 quality and emissions, as well as groundwater and surface water resources
16 and quality.
- 17 (3) Requirements that oil and gas operators prepare and have approved water
18 management plans that limit water withdrawals during times of low-flow
19 conditions and droughts.
- 20 (4) Enhancements to existing oil and gas well construction standards to address
21 the additional pressures of horizontal drilling and hydraulic fracturing.
- 22 (5) Development of setback requirements and identification of areas where oil
23 and gas exploration and development activities should be prohibited.
- 24 (6) Development of a State stormwater regulatory program for oil and gas
25 drilling sites.
- 26 (7) Development of specific standards for management of oil and gas wastes.
- 27 (8) Requirements for disclosure of hydraulic fracturing chemicals and
28 constituents to regulatory agencies and the public.
- 29 (9) Prohibitions on use of certain chemicals or constituents in hydraulic
30 fracturing fluids.
- 31 (10) Improvements to data management capabilities.
- 32 (11) Development of a coordinated permitting program for oil and gas
33 exploration and development activities within the Department of
34 Environment and Natural Resources where it will benefit from the expertise
35 of State geological staff and the ability to coordinate air, land, and water
36 permitting.
- 37 (12) Development of protocols to ensure that State agencies, local first
38 responders, and industry are prepared to respond to a well blowout, chemical
39 spill, or other emergency.
- 40 (13) Adequate funding for any continued work on the development of a State
41 regulatory program for the natural gas industry.
- 42 (14) Appropriate distribution of revenues from any taxes or fees that may be
43 imposed on oil and gas exploration and development activities to support a
44 modern regulatory program for the management of all aspects of oil and gas
45 exploration and development activities using the processes of horizontal
46 drilling and hydraulic fracturing in the State, and to support local
47 governments impacted by the activities, including, but not limited to,
48 sufficient funding for improvements to and repair of roads subject to damage
49 by truck traffic and heavy equipment from these activities.
- 50 (15) Closure of gaps in regulatory authority over the siting, construction, and
51 operation of gathering pipelines.

- 1 (16) Clarifications needed to address local government regulatory authority over
2 oil and gas exploration and development activities, and use of horizontal
3 drilling and hydraulic fracturing for that purpose.
- 4 (17) Additional research required on impacts to local governments and local
5 infrastructure, as well as potential economic impacts from oil and gas
6 exploration and development activities.
- 7 (18) Development of provisions to address liability of the oil and gas industry for
8 environmental contamination caused by exploration and development
9 activities, particularly with regard to groundwater contamination.
- 10 (19) Establishment of a process that affords additional public participation in
11 connection with development of a modern oil and gas regulatory program;
12 and

13 Whereas, the final report also states "[a]fter reviewing other studies and experiences
14 in oil and gas-producing states, DENR has concluded that information available to date
15 suggests that production of natural gas by means of hydraulic fracturing can be done safely as
16 long as the right protections are in place"; and

17 Whereas, the General Assembly concurs in the conclusion of the final report that
18 hydraulic fracturing can be done safely as long as the right protective measures are in place
19 before any permits for horizontal drilling and hydraulic fracturing are issued; and

20 Whereas, it is the intent of the General Assembly to authorize oil and gas
21 exploration and development activities using horizontal drilling and hydraulic fracturing
22 treatments, but to prohibit the issuance of permits for these activities until such time as the
23 General Assembly has determined that a modern regulatory program for the management of oil
24 and gas exploration and development in the State and the use of horizontal drilling and
25 hydraulic fracturing for that purpose has been fully established and takes legislative action to
26 allow the issuance of permits; and

27 Whereas, it is the intent of the General Assembly to establish a modern regulatory
28 program based on the recommendations of the final report and the following principles:

- 29 (1) Protection of public health and safety.
- 30 (2) Protection of public and private property.
- 31 (3) Protection and conservation of the State's air, water, and other natural
32 resources.
- 33 (4) Promotion of economic development and expanded employment
34 opportunities.
- 35 (5) Productive and efficient development of the State's oil and gas resources;

36 Now, therefore,

37 The General Assembly of North Carolina enacts:

38
39 **PART II. RECONSTITUTE THE MINING COMMISSION AS THE MINING AND**
40 **ENERGY COMMISSION; RENAME THE DIVISION OF LAND RESOURCES AS**
41 **THE DIVISION OF ENERGY, MINERAL, AND LAND RESOURCES**

42 **SECTION 1.(a)** Part 6 of Article 7 of Chapter 143B of the General Statutes is
43 repealed.

44 **SECTION 1.(b)** Article 7 of Chapter 143B of the General Statutes is amended by
45 adding a new Part to read:

46 "Part 6A. North Carolina Mining and Energy Commission.

47 "**§ 143B-293.1. North Carolina Mining and Energy Commission – creation; powers and**
48 **duties.**

49 (a) There is hereby created the North Carolina Mining and Energy Commission of the
50 Department of Environment and Natural Resources with the power and duty to adopt rules
51 necessary to administer the Oil and Gas Conservation Act pursuant to G.S. 113-391 and for the

1 development of the oil, gas, and mining resources of the State. The Commission shall make
2 such rules consistent with the provisions of this Chapter. All rules adopted by the Commission
3 shall be enforced by the Department of Environment and Natural Resources.

4 (b) The Commission shall have the authority to make determinations and issue orders
5 pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells and to
6 establish drilling units as provided in G.S. 113-393; (ii) require the operation of wells with
7 efficient gas-oil ratios and to fix such ratios; (iii) limit and prorate the production of oil or gas,
8 or both, from any pool or field for the prevention of waste as provided in G.S. 113-394; and
9 (iv) require integration of interests as provided in G.S. 113-393.

10 (c) The Commission shall submit quarterly written reports as to its operation, activities,
11 programs, and progress to the Joint Legislative Commission on Energy Policy and the
12 Environmental Review Commission. The Commission shall supplement the written reports
13 required by this subsection with additional written and oral reports as may be requested by the
14 Joint Legislative Commission on Energy Policy and the Environmental Review Commission.
15 The Commission shall submit the written reports required by this subsection whether or not the
16 General Assembly is in session at the time the report is due.

17 **"§ 143B-293.2. North Carolina Mining and Energy Commission – members; selection;**
18 **removal; compensation; quorum; services.**

19 (a) Members Selection. – The North Carolina Mining and Energy Commission shall
20 consist of 15 members appointed as follows:

- 21 (1) The Chair of the North Carolina State University Minerals Research
22 Laboratory Advisory Committee, or the Chair's designee, ex officio.
- 23 (2) The State Geologist, or the State Geologist's designee, ex officio.
- 24 (3) The Assistant Secretary of Energy for the Department of Commerce, ex
25 officio.
- 26 (4) One appointed by the General Assembly upon recommendation of the
27 Speaker of the House of Representatives who is a member of a
28 nongovernmental conservation interest.
- 29 (5) One appointed by the General Assembly upon recommendation of the
30 Speaker of the House of Representatives who is an elected official of a
31 municipal government located in the Triassic Basin of North Carolina.
- 32 (6) One appointed by the General Assembly upon recommendation of the
33 Speaker of the House of Representatives who is a member of the
34 Environmental Management Commission and knowledgeable in the
35 principles of water and air resources management.
- 36 (7) One appointed by the General Assembly upon recommendation of the
37 Speaker of the House of Representatives who shall be a geologist with
38 experience in oil and gas exploration and development.
- 39 (8) One appointed by the General Assembly upon recommendation of the
40 President Pro Tempore of the Senate who is a member of a nongovernmental
41 conservation interest.
- 42 (9) One appointed by the General Assembly upon recommendation of the
43 President Pro Tempore of the Senate who is a member of a county board of
44 commissioners of a county located in the Triassic Basin of North Carolina.
- 45 (10) One appointed by the General Assembly upon recommendation of the
46 President Pro Tempore of the Senate who is a member of the Commission
47 for Public Health and knowledgeable in the principles of waste management.
- 48 (11) One appointed by the General Assembly upon recommendation of the
49 President Pro Tempore of the Senate who shall be an engineer with
50 experience in oil and gas exploration and development.

- 1 (12) One appointed by the Governor who shall be a representative of a publicly
2 traded natural gas company.
- 3 (13) One appointed by the Governor who shall be a licensed attorney with
4 experience in legal matters associated with oil and gas exploration and
5 development.
- 6 (14) One appointed by the Governor who is a representative of the mining
7 industry.
- 8 (15) One appointed by the Governor who is a representative of the mining
9 industry.

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

21 (c) Vacancies; Removal from Office. –

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

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

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

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

40 (g) Committees. – In addition to the Committee on Civil Penalty Remissions required to
41 be established under G.S. 143B-293.6, the chair may establish other committees from members
42 of the Commission to address specific issues as appropriate. No member of a committee may
43 hear or vote on any matter in which the member has an economic interest. A majority of a
44 committee shall constitute a quorum for the transaction of business. At a minimum, the chair
45 shall establish a Committee on Mining, which shall consist of members appointed under
46 subdivisions (1), (4), (6), (8), (10), (14), and (15) of subsection (a) of this section. The
47 Committee on Mining shall have exclusive responsibility and authority over matters pertaining
48 to mining and implementation of the Mining Act of 1971, including all of the following powers
49 and duties.

- 50 (1) To act as the advisory body to the Governor pursuant to Article V(a) of the
51 Interstate Mining Compact, as set out in G.S. 74-37.

- 1 (2) To adopt rules necessary to administer the Mining Act of 1971 pursuant to
2 G.S. 74-63.
- 3 (3) To adopt rules necessary to administer the Control of Exploration for
4 Uranium in North Carolina Act of 1983 pursuant to G.S. 74-86.
- 5 (4) To adopt rules, not inconsistent with the laws of this State, as may be
6 required by the federal government for grants-in-aid for mining resource
7 purposes which may be made available to the State by the federal
8 government. This section is to be liberally construed in order that the State
9 and its citizens may benefit from such grants-in-aid.

10 **"§ 143B-293.4. North Carolina Mining and Energy Commission – officers.**

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

16 **"§ 143B-293.5. North Carolina Mining and Energy Commission – meetings.**

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

20 **"§ 143B-293.6. North Carolina Mining and Energy Commission – quasi-judicial powers;**
21 **procedures.**

22 (a) With respect to those matters within its jurisdiction, the Mining and Energy
23 Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter
24 150B of the General Statutes.

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

- 30 (1) Whether one or more of the civil penalty assessment factors in subsection (b)
31 of this section were wrongly applied to the detriment of the petitioner.
- 32 (2) Whether the violator promptly abated continuing environmental damage
33 resulting from the violation.
- 34 (3) Whether the violation was inadvertent or a result of an accident.
- 35 (4) Whether the violator had been assessed civil penalties for any previous
36 violations.
- 37 (5) Whether payment of the civil penalty will prevent payment for the remaining
38 necessary remedial actions.

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

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

46 **SECTION 1.(d)** The Revisor of Statutes shall make the conforming statutory
47 changes necessary to reflect the reconstitution of the North Carolina Mining Commission as the
48 North Carolina Mining and Energy Commission as provided in subsection (b) of this section.
49 The Codifier of Rules shall make the conforming rule changes necessary to reflect the
50 reconstitution of the North Carolina Mining Commission to the North Carolina Mining and
51 Energy Commission as provided in subsection (b) of this section.

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

4 **SECTION 1.(f)** The Revisor of Statutes shall make the conforming statutory
5 changes necessary to reflect the renaming of the Division of Land Resources as the Division of
6 Energy, Mineral, and Land Resources as provided in subsection (e) of this section. The
7 Codifier of Rules shall make the conforming rule changes necessary to reflect the renaming of
8 the Division of Land Resources as the Division of Energy, Mineral, and Land Resources as
9 provided in subsection (e) of this section.

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

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

18
19 **PART III. MINING AND ENERGY COMMISSION AND OTHER REGULATORY**
20 **AGENCIES TO ESTABLISH REGULATORY PROGRAM FOR THE MANAGEMENT**
21 **OF OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE AND**
22 **THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR**
23 **THAT PURPOSE**

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

25 **"§ 113-380. Violation a misdemeanor.**

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

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

30 **"§ 113-389. Definitions.**

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

33 (1) "Base fluid" shall mean the continuous phase fluid type, such as water, used
34 in a hydraulic fracturing treatment.

35 (1a) "Commission" shall mean the North Carolina Mining and Energy
36 Commission.

37 (1b) "Department" shall mean the ~~Department~~Department of Environment and
38 Natural Resources," as created by this law. ~~Resources.~~

39 (1c) "Division" shall mean the Division of Energy, Mineral, and Land Resources
40 of the Department of Environment and Natural Resources.

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

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

49 (3a) "Hydraulic fracturing additive" shall mean any chemical substance or
50 combination of substances, including any chemical or proppants, which is

1 intentionally added to a base fluid for purposes of preparing a hydraulic
2 fracturing fluid or treatment of a well.

3 (3b) "Hydraulic fracturing fluid" shall mean the fluid, including the applicable
4 base fluid and all hydraulic fracturing additives, used to perform a hydraulic
5 fracturing treatment.

6 (3c) "Hydraulic fracturing treatment" shall mean all stages of the treatment of a
7 well by the application of hydraulic fracturing fluid under pressure that is
8 expressly designed to initiate or propagate fractures in a target geologic
9 formation to enhance production of oil and gas.

10 ...

11 (6a) "Lessee" shall mean the person entitled under an oil and gas lease to drill
12 and operate wells.

13 (6b) "Lessor" shall mean the owner of subsurface oil or gas resources who has
14 executed a lease and who is entitled to the payment of a royalty on
15 production.

16 ...

17 (12a) "Proppant" shall mean sand or any natural or man-made material that is used
18 in a hydraulic fracturing treatment to prop open the artificially created or
19 enhanced fractures once the treatment is completed.

20 (12b) "Surface owner" means the person who holds record title to or has a
21 purchaser's interest in the surface of real property.

22 ...

23 (15) "Water supply" shall mean any groundwater or surface water intended or
24 used for human consumption; household purposes; or farm, livestock, or
25 garden purposes."

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

27 **"§ 113-391. Jurisdiction and authority; rules and orders.**

28 (a) The Mining and Energy Commission, created by G.S. 143B-293.1, in conjunction
29 with rule-making authority specifically reserved to the Environmental Management
30 Commission under subsection (a3) of this section, shall establish a modern regulatory program
31 for the management of oil and gas exploration and development in the State and the use of
32 horizontal drilling and hydraulic fracturing treatments for that purpose. The program shall be
33 designed to protect public health and safety; protect public and private property; protect and
34 conserve the State's air, water, and other natural resources; promote economic development and
35 expand employment opportunities; and provide for the productive and efficient development of
36 the State's oil and gas resources. To establish the program, the Commission shall adopt rules for
37 all of the following purposes:

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

40 (2) Regulation of drilling, operation, casing, plugging, completion, and
41 abandonment of wells.

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

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

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

49 a. Information and data to be submitted in association with applications
50 for permits to conduct oil and gas exploration and development
51 activities using horizontal drilling and hydraulic fracturing

- 1 treatments, which may include submission of hydrogeological
2 investigations and identification of mechanisms to prevent and
3 diagnose sources of groundwater contamination in the area of drilling
4 sites. In formulating these requirements, the Commission shall
5 consider (i) how North Carolina's geology differs from other states
6 where oil and gas exploration and development activities using
7 horizontal drilling and hydraulic fracturing treatments are common
8 and (ii) the routes of possible groundwater contamination resulting
9 from these activities and the potential role of vertical geological
10 structures such as dikes and faults as conduits for groundwater
11 contamination.
- 12 b. Collection of baseline data, including groundwater, surface water,
13 and air quality in areas where oil and gas exploration and
14 development activities are proposed. With regard to rules applicable
15 to baseline data for groundwater and surface water, the Commission
16 shall adopt rules that, at a minimum, establish standards to satisfy the
17 pre-drilling testing requirement established under G.S. 113-421(a),
18 including contaminants for which an operator or developer must test
19 and necessary qualifications for persons conducting such tests.
- 20 c. Appropriate construction standards for oil and gas wells, which shall
21 address the additional pressures of horizontal drilling and hydraulic
22 fracturing treatments. These rules, at a minimum, shall include
23 standards for casing and cementing sufficient to handle highly
24 pressurized injection of hydraulic fracturing fluids into a well for
25 purposes of fracturing bedrock and extraction of gas, and
26 construction standards for other gas production infrastructure, such
27 as storage pits and tanks.
- 28 d. Appropriate siting standards for wells and other gas production
29 infrastructure, such as storage pits and tanks, including appropriate
30 setback requirements and identification of areas, such as floodplains,
31 where oil and gas exploration and production activities should be
32 prohibited. Siting standards adopted shall be consistent with any
33 applicable water quality standards adopted by the Environmental
34 Management Commission or by local governments pursuant to water
35 quality statutes, including standards for development in water supply
36 watersheds.
- 37 e. Limits on water use, including, but not limited to, a requirement that
38 oil and gas operators prepare and have a water and wastewater
39 management plan approved by the Department, which, among other
40 things, limits water withdrawals during times of drought and periods
41 of low flows. Rules adopted shall be (i) developed in light of water
42 supply in the areas of proposed activity, competing water uses in
43 those areas, and expected environmental impacts from such water
44 withdrawals and (ii) consistent with statutes, and rules adopted by the
45 Environmental Management Commission pursuant to those statutes,
46 which govern water quality and management of water resources,
47 including, but not limited to, statutes and rules applicable to water
48 withdrawal registration, interbasin transfer requirements, and water
49 quality standards related to wastewater discharges.
- 50 f. Management of wastes produced in connection with oil and gas
51 exploration and development and use of horizontal drilling and

- 1 hydraulic fracturing treatments for that purpose. Such rules shall
2 address storage, transportation, and disposal of wastes that may
3 contain radioactive materials or wastes that may be toxic or have
4 other hazardous wastes' characteristics that are not otherwise
5 regulated as a hazardous waste by the federal Resource Conservation
6 and Recovery Act (RCRA), such as top-hole water, brines, drilling
7 fluids, additives, drilling muds, stimulation fluids, well servicing
8 fluids, oil, production fluids, and drill cuttings from the drilling,
9 alteration, production, plugging, or other activity associated with oil
10 and gas wells. Wastes generated in connection with oil and gas
11 exploration and development and use of horizontal drilling and
12 hydraulic fracturing treatments for that purpose that constitute
13 hazardous waste under RCRA shall be subject to rules adopted by the
14 Commission for Public Health to implement RCRA requirements in
15 the State.
- 16 g. Prohibitions on use of certain chemicals and constituents in hydraulic
17 fracturing fluids, particularly diesel fuel.
- 18 h. Disclosure of chemicals and constituents used in oil and gas
19 exploration, drilling, and production, including hydraulic fracturing
20 fluids, to State regulatory agencies and to local government
21 emergency response officials, and, with the exception of those items
22 constituting trade secrets, as defined in G.S. 66-152(3), and that are
23 designated as confidential or as a trade secret under G.S. 132-1.2,
24 requirements for disclosure of those chemicals and constituents to the
25 public.
- 26 i. Installation of appropriate safety devices and development of
27 protocols for response to well blowouts, chemical spills, and other
28 emergencies, including requirements for approved emergency
29 response plans and certified personnel to implement these plans as
30 needed.
- 31 j. Measures to mitigate impacts on infrastructure, including damage to
32 roads by truck traffic and heavy equipment, in areas where oil and
33 gas exploration and development activities that use horizontal
34 drilling and hydraulic fracturing technologies are proposed to occur.
- 35 k. Notice, record keeping, and reporting.
- 36 l. Proper well closure, site reclamation, post-closure monitoring, and
37 financial assurance. Rules for financial assurance shall require that an
38 oil or gas developer or operator establish financial assurance that will
39 ensure that sufficient funds are available for well closure,
40 post-closure maintenance and monitoring, any corrective action that
41 the Department may require, and to satisfy any potential liability for
42 sudden and nonsudden accidental occurrences, and subsequent costs
43 incurred by the Department in response to an incident involving a
44 drilling operation, even if the developer or operator becomes
45 insolvent or ceases to reside, be incorporated, do business, or
46 maintain assets in the State.
- 47 (6) To require surveys upon application of any owner who has reason to believe
48 that a well has been unlawfully drilled by another person into land of the
49 owner without permission. In the event such surveys are required, the costs
50 thereof shall be borne by the owner making the request.

- 1 (7) To require the making of reports showing the location of oil and gas wells
2 and the filing of logs and drilling records.
- 3 (8) To prevent "blowouts," "caving," and "seepage," as such terms are generally
4 understood in the oil and gas industry.
- 5 (9) To identify the ownership of all oil or gas wells, producing leases, refineries,
6 tanks, plants, structures, and all storage and transportation equipment and
7 facilities.
- 8 (10) To regulate the "shooting," perforating, and chemical treatment of wells.
- 9 (11) To regulate secondary recovery methods, including the introduction of gas,
10 air, water, or other substances into producing formations.
- 11 (12) To regulate the spacing of wells and to establish drilling units.
- 12 (13) To regulate and, if necessary in its judgment for the protection of unique
13 environmental values, to prohibit the location of wells in the interest of
14 protecting the quality of the water, air, soil, or any other environmental
15 resource against injury, damage, or impairment.
- 16 (14) Any other matter the Commission deems necessary for implementation of a
17 modern regulatory program for the management of oil and gas exploration
18 and development in the State and the use of horizontal drilling and hydraulic
19 fracturing for that purpose.
- 20 (a1) The regulatory program required to be established and the rules required to be
21 adopted pursuant to subsection (a) of this section shall not include a program or rules for the
22 regulation of oil and gas exploration and development in the waters of the Atlantic Ocean and
23 the coastal sounds as defined in G.S. 113A-103.
- 24 (a2) In addition to the matters for which the Commission is required to adopt rules
25 pursuant to subsection (a) of this section, the Commission may adopt rules as it deems
26 necessary for any of the following purposes:
- 27 (1) To require the operation of wells with efficient gas-oil ratios and to fix such
28 ratios.
- 29 (2) To limit and prorate the production of oil or gas, or both, from any pool or
30 field for the prevention of waste as defined in this Article and rules adopted
31 thereunder.
- 32 (3) To require, either generally or in or from particular areas, certificates of
33 clearance or tenders in connection with the transportation of oil or gas.
- 34 (4) To prevent, so far as is practicable, reasonably avoidable drainage from each
35 developed unit which is not equalized by counter-drainage.
- 36 (a3) The Environmental Management Commission shall adopt rules, after consideration
37 of recommendations from the Mining and Energy Commission, for all of the following
38 purposes:
- 39 (1) Stormwater control for sites on which oil and gas exploration and
40 development activities are conducted.
- 41 (2) Regulation of toxic air emissions from drilling operations. In formulating
42 appropriate standards, the Department shall assess emissions from oil and
43 gas exploration and development activities that use horizontal drilling and
44 hydraulic fracturing technologies, including emissions from associated truck
45 traffic, in order to (i) determine the adequacy of the State's current air toxics
46 program to protect landowners who lease their property to drilling operations
47 and (ii) determine the impact on ozone levels in the area in order to
48 determine measures needed to maintain compliance with federal ozone
49 standards.
- 50 (a4) The Department shall ~~have jurisdiction and authority of and over all persons and~~
51 ~~property necessary to administer and enforce effectively the provisions of this law Article, and~~

1 rules adopted thereunder, and all other laws relating to the conservation of oil and ~~gas-gas,~~
2 except for jurisdiction and authority reserved to the Department of Labor and the Mining and
3 Energy Commission, as otherwise provided. The Commission and the Department may issue
4 orders as may be necessary from time to time in the proper administration and enforcement of
5 this Article and rules adopted thereunder.

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

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

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

- 29 (1) To ~~require the drilling, operation, casing and plugging of wells to be done in~~
30 such manner as to prevent the escape of oil or gas out of one stratum to
31 another; to prevent the intrusion of water into an oil or gas stratum from a
32 separate stratum; to prevent the pollution of freshwater supplies by oil, gas
33 or salt water, or to protect the quality of the water, air, soil or any other
34 environmental resource against injury or damage or impairment; and to
35 require reasonable bond condition for the performance of the duty to plug
36 each dry or abandoned well.
- 37 (2) To ~~require directional surveys upon application of any owner who has~~
38 reason to believe that a well or wells of others has or have been drilled into
39 the lands owned by him or held by him under lease. In the event such
40 surveys are required, the costs thereof shall be borne by the owners making
41 the request.
- 42 (3) To ~~require the making of reports showing the location of oil and gas wells,~~
43 and the filing of logs and drilling records.
- 44 (4) To ~~prevent the drowning by water of any stratum or part thereof capable of~~
45 producing oil or gas in paying quantities, and to prevent the premature and
46 irregular encroachment of water which reduces, or tends to reduce, the total
47 ultimate recovery of oil or gas from any pool.
- 48 (5) To ~~require the operation of wells with efficient gas-oil ratios, and to fix such~~
49 ratios.
- 50 (6) To ~~prevent "blow-outs," "caving" and "seepage" in the sense that conditions~~
51 indicated by such terms are generally understood in the oil and gas business.

- 1 (7) To prevent fires.
- 2 (8) ~~To identify the ownership of all oil or gas wells, producing leases, refineries,~~
3 ~~tanks, plants, structures and all storage and transportation equipment and~~
4 ~~facilities.~~
- 5 (9) To regulate the "shooting," perforating, and chemical treatment of wells.
- 6 (10) ~~To regulate secondary recovery methods, including the introduction of gas,~~
7 ~~air, water or other substances into producing formations.~~
- 8 (11) ~~To limit and prorate the production of oil or gas, or both, from any pool or~~
9 ~~field for the prevention of waste as herein defined.~~
- 10 (12) ~~To require, either generally or in or from particular areas, certificates of~~
11 ~~clearance or tenders in connection with the transportation of oil or gas.~~
- 12 (13) ~~To regulate the spacing of wells and to establish drilling units.~~
- 13 (14) ~~To prevent, so far as is practicable, reasonably avoidable drainage from each~~
14 ~~developed unit which is not equalized by counter drainage.~~
- 15 (15) ~~To prevent where necessary the use of gas for the manufacture of carbon~~
16 ~~black.~~
- 17 (16) ~~To regulate and, if necessary in its judgment for the protection of unique~~
18 ~~environmental values, to prohibit the location of wells in the interest of~~
19 ~~protecting the quality of the water, air, soil or any other environmental~~
20 ~~resource against injury, or damage or impairment.~~

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

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

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

30 **"§ 113-392. Protecting pool owners; drilling units in pools; location of wells; shares in**
31 **pools.**

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

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

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

43 (b) For the prevention of waste and to avoid the augmenting and accumulation of risks
44 arising from the drilling of an excessive number of wells, the ~~Commission Department~~ shall,
45 after a hearing, establish a drilling unit or units for each pool. The ~~Commission Department~~
46 may establish drainage units of uniform size for the entire pool or may, if the facts so justify,
47 divide into zones any pool, establish a drainage unit for each zone, which unit may differ in
48 size from that established in any other zone; and the ~~Commission Department~~ may from time
49 to time, if the facts so justify, change the size of the unit established for the entire pool or for
50 any zone or zones, or part thereof, establishing new zones and units if the facts justify their
51 establishment.

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

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

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

26 **"§ 113-394. Limitations on production; allocating and prorating "allowables."**

27 (a) Whenever the total amount of oil, including condensate, which all the pools in the
28 State can produce, exceeds the amount reasonably required to meet the reasonable market
29 demand for oil, including condensate, produced in this State, then the ~~Department~~Commission
30 shall limit the total amount of oil, including condensate, which may be produced in the State by
31 fixing an amount which shall be designated "allowable" for this State, which will not exceed
32 the reasonable market demand for oil, including condensate, produced in this State. The
33 ~~Commission Department~~ shall then allocate or distribute the "allowable" for the State among
34 the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so
35 that waste will be prevented. In allocating the "allowable" for the State, and in fixing
36 "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such
37 hydrocarbons, the ~~Department~~Commission shall take into account the producing conditions
38 and other relevant facts with respect to such pools, including the separate needs for oil, gas and
39 condensate, and shall formulate rules setting forth standards or a program for the distribution of
40 the "allowable" for the State, and shall distribute the "allowable" for the State in accordance
41 with such standards or program, and where conditions in one pool or area are substantially
42 similar to those in another pool or area, then the same standards or programs shall be applied to
43 such pools and areas so that as far as practicable a uniform program will be followed; provided,
44 however, the ~~Department~~Commission shall ~~permit~~allow the production of a sufficient amount
45 of natural gas from any pool to supply adequately the reasonable market demand for such gas
46 for light and fuel purposes if such production can be obtained without waste, and the
47 condensate "allowable" for such pool shall not be less than the total amount of condensate
48 produced or obtained in connection with the production of the gas "allowable" for light and fuel
49 purposes, and provided further that, if the amount allocated to pool as its share of the
50 "allowable" for the State is in excess of the amount which the pool should produce to prevent

1 waste, then the ~~Department-Commission~~ shall fix the "allowable" for the pool so that waste will
2 be prevented.

3 (b) The ~~Commission Department~~ shall not be required to determine the reasonable
4 market demand applicable to any single pool except in relation to all pools producing oil of
5 similar kind and quality and in relation to the demand applicable to the State, and in relation to
6 the effect of limiting the production of pools in the State. In allocating "allowables" to pools,
7 the ~~Department-Commission~~ shall not be bound by nominations or desires of purchasers to
8 purchase oil from particular fields or areas, and the ~~Commission Department~~ shall allocate the
9 "allowable" for the State in such manner as will prevent undue discrimination against any pool
10 or area in favor of another or others which would result from selective buying or nominating by
11 purchasers of oil, as such term "selective buying or nominating" is understood in the oil
12 business.

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

21 (d) Whenever the total amount of gas which can be produced from any pool in this
22 State exceeds the amount of gas reasonably required to meet the reasonable market demand
23 therefrom, the ~~Commission Department~~ shall limit the total amount of gas which may be
24 produced from such pool. The ~~Commission Department~~ shall then allocate or distribute the
25 allowable production among the developed areas in the pool on a reasonable basis, so that each
26 producer will have the opportunity to produce his just and equitable share, as such share is set
27 forth in subsection G.S. 113-392(d), whether the restriction for the pool as a whole is
28 accomplished by order or by the automatic operation of the prohibitory provisions of this law.
29 As far as applicable, the provisions of subsection (a) of this section shall be followed in
30 allocating any "allowable" of gas for the State.

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

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

36 **"§ 113-410. Penalties for other violations.**

37 (a) Any person who fails to secure a permit prior to drilling a well or using hydraulic
38 fracturing treatments, or who knowingly and willfully violates any provision of this
39 law, Article, or any rule or order of the Commission or the Department made hereunder, shall,
40 in the event a penalty for such violation is not otherwise provided for herein, be subject to a
41 penalty of not to exceed ~~one~~ twenty-five thousand dollars ~~(\$1,000)~~ (\$25,000) a day for each and
42 every day of such violation, and for each and every act of violation, such penalty to be
43 recovered in a suit in the superior court of the county where the defendant resides, or in the
44 county of the residence of any defendant if there be more than one defendant, or in the superior
45 court of the county where the violation took place. The place of suit shall be selected by the
46 Department, and such suit, by direction of the Department, shall be instituted and conducted in
47 the name of the Department by the Attorney General. The payment of any penalty as provided
48 for herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal
49 gas, or illegal product into legal product, nor shall such payment have the effect of authorizing
50 the sale or purchase or acquisition, or the transportation, refining, processing, or handling in
51 any other way, of such illegal oil, illegal gas or illegal product, but, to the contrary, penalty

1 shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal
2 product.

3 (b) Any person knowingly and willfully aiding or abetting any other person in the
4 violation of any statute of this State relating to the conservation of oil or gas, or the violation of
5 any provisions of this law, or any rule or order made thereunder, shall be subject to the same
6 penalties as prescribed ~~herein~~ in subsection (a) of this section for the violation by such other
7 person.

8 (c) In determining the amount of a penalty under this section, the Department shall
9 consider all of the following factors:

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

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

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

14 (4) The cost of rectifying the damage.

15 (5) The amount of money the violator saved by noncompliance.

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

17 (7) The prior record of the violator in complying or failing to comply with this
18 Article or a rule adopted pursuant to this Article.

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

20 (d) If any civil penalty has not been paid within 60 days after notice of assessment has
21 been served on the violator or within 30 days after service of the final decision by the
22 administrative law judge in accordance with G.S. 150B-34, a final decision by the Committee
23 on Civil Penalty Remissions established under G.S. 143B-293.6, or a court order, whichever is
24 later, the Secretary or the Secretary's designee shall request the Attorney General to institute a
25 civil action in the superior court of any county in which the violator resides or has his or its
26 principal place of business to recover the amount of the civil penalty.

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

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

30 "**§ 113-415. Conflicting laws.**

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

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

43 "**§ 143B-282. Environmental Management Commission – creation; powers and duties.**

44 ...

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

46 ...

47 1. For matters within its jurisdiction that allow for and regulate
48 horizontal drilling and hydraulic fracturing for the purpose of oil and
49 gas exploration and development.

50"

51 **SECTION 2.(i)** G.S. 130A-29 reads as rewritten:

1 "§ 130A-29. Commission for Public Health – Creation, powers and duties.

2 ...
3 (c) The Commission shall adopt rules:

4 ...
5 (11) For matters within its jurisdiction that allow for and regulate horizontal
6 drilling and hydraulic fracturing for the purpose of oil and gas exploration
7 and development.

8"

9 **SECTION 2.(j)** The Mining and Energy Commission, in conjunction with the
10 Department of Environment and Natural Resources, the Department of Transportation, the
11 North Carolina League of Municipalities, and the North Carolina Association of County
12 Commissioners, shall identify appropriate levels of funding and potential sources for that
13 funding, including permit fees, bonds, taxes, and impact fees, necessary to (i) support local
14 governments impacted by the industry and associated activities; (ii) address expected
15 infrastructure impacts, including, but not limited to, repair of roads damaged by truck traffic
16 and heavy equipment; (iii) cover any costs to the State for administering an oil and gas
17 regulatory program, including remediation and reclamation of drilling sites when necessary due
18 to abandonment or insolvency of an oil or gas operator or other responsible party; and (iv) any
19 other issues that may need to be addressed in the Commission's determination. Any
20 recommendation concerning local impact fees shall be formulated to require that all such fees
21 be used exclusively to address infrastructure impacts from the drilling operation for which a fee
22 is imposed. The Commission shall report its findings and recommendations, including
23 legislative proposals, to the Joint Legislative Commission on Energy Policy, created under
24 Section 6(a) of this act, and the Environmental Review Commission on or before January 1,
25 2013.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 **SECTION 3.(c)** G.S. 113-395 reads as rewritten:

1 "**§ 113-395. Permits, fees, and notice required for oil and gas activities.**~~Notice and~~
2 ~~payment of fee to Department before drilling or abandoning well; plugging~~
3 ~~abandoned well.~~

4 (a) Before any well, in search of oil or gas, shall be drilled, the person desiring to drill
5 the same shall ~~notify~~ submit an application for a permit to the Department upon such form as~~it~~
6 the Department may prescribe and shall pay a fee of three thousand dollars (\$3,000) for each
7 well. The drilling of any well is ~~hereby prohibited until such notice is given and such fee has~~
8 ~~been paid and permit granted.~~ unless the Department has issued a permit for the activity.

9 (b) Any person desiring to use hydraulic fracturing treatments in conjunction with oil
10 and gas operations or activities shall submit an application for a permit to the Department upon
11 such form as the Department may prescribe. The use of hydraulic fracturing treatments is
12 prohibited unless the Department has issued a permit for the activity.

13 (c) Each abandoned well and each dry hole shall be plugged promptly in the manner
14 and within the time required by rules prescribed by the Department, and the owner of such well
15 shall give notice, upon such form as the Department may prescribe, of the abandonment of each
16 dry hole and of the owner's intention to abandon, and shall pay a fee of four hundred fifty
17 dollars (\$450.00). No well shall be abandoned until such notice has been given and such fee has
18 been paid."

19 **SECTION 3.(d)** The issuance of permits for oil and gas exploration and
20 development activities using horizontal drilling and hydraulic fracturing treatments in the State
21 pursuant to G.S. 113-395, as amended by subsection (c) of this section, or any other provision
22 of law shall be prohibited in order to allow the Mining and Energy Commission sufficient time
23 for development of a modern regulatory program for the management of oil and gas exploration
24 and development in the State and the use of horizontal drilling and hydraulic fracturing
25 treatments for that purpose, and for adoption of appropriate environmental standards applicable
26 to these activities. No agency of the State, including the Department of Environment and
27 Natural Resources, the Environmental Management Commission, the Commission on Public
28 Health, or the Mining and Energy Commission, shall issue a permit for oil or gas exploration or
29 development activities using horizontal drilling and hydraulic fracturing treatments until the
30 General Assembly takes legislative action to allow the issuance of such permits.

31 32 **PART V. LANDOWNER AND PUBLIC PROTECTIONS**

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

34 "**§ 113-420. Notice and entry to property.**

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

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

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

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

48 (b) Notice Required for Land-Disturbing Activities. – If an oil ~~and or~~ gas developer or
49 operator is not the surface owner of the property on which oil ~~and or~~ gas operations are to
50 occur, before entering the property for oil ~~and or~~ gas operations that disturb the surface, the
51 developer or operator shall give written notice to the surface owner at least ~~14~~ 30 days before

1 the desired date of entry to the property. Notice shall be given by certified mail, return receipt
2 requested. The notice, at a minimum, shall include all of the following:

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

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

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

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

25 "**§ 113-421. Compensation for damages.Presumptive liability for water contamination;**
26 **compensation for other damages; responsibility for reclamation.**

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

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

- 40 a. The contamination existed prior to the commencement of the drilling
41 activities of the oil or gas developer or operator, as evidenced by a
42 pre-drilling test of the water supply in question conducted in
43 conformance with G.S. 113-423(f).
- 44 b. The surface owner or owner of the water supply in question refused
45 the oil or gas developer or operator access to conduct a pre-drilling
46 test of the water supply conducted in conformance with
47 G.S. 113-423(f).
- 48 c. The water supply in question is not within 5,000 feet of a wellhead
49 that is part of the oil or gas developer's or operator's activities.
- 50 d. The contamination occurred as the result of a cause other than
51 activities of the developer or operator.

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

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

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

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

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

17 (a3) Remediation Required. – Nothing in this Article shall be construed to obviate or
18 affect the obligation of a developer or operator to comply with any other requirement under law
19 to remediate contamination caused by its activities.

20 (a4) Replacement Water Supply Required. – If a water supply belonging to the surface
21 owner or third parties is contaminated due to the activities of the developer or operator, in
22 addition to any other remedy available at law or in equity, the developer or operator shall
23 provide a replacement water supply to persons using the water supply at the time the oil or gas
24 developer's activities were commenced on the property, which water supply shall be adequate
25 in quality and quantity for those persons' use.

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

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

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

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

40 **"§ 113-422. Indemnification.**

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

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

49 **"§ 113-423. Maximum-Required lease terms.**

50 (a) Required Information to be Provided to Potential Lessors and Surface Owners. –
51 Prior to executing a lease for oil and gas rights or any other conveyance of any kind separating

1 rights to oil or gas from the freehold estate of surface property, an oil or gas developer or
2 operator, or any agent thereof, shall provide the lessor with a copy of this Part and a publication
3 produced by the Consumer Protection Division of the North Carolina Department of Justice
4 entitled "Oil & Gas Leases: Landowners' Rights." If the lessor is not the surface owner of the
5 property, the oil or gas developer or operator shall also provide the surface owner with a copy
6 of this Part and the publication prior to execution of a lease for oil and gas rights.

7 (b) Maximum Duration. – Any lease of oil or gas rights or any other conveyance of any
8 kind separating rights to oil or gas from the freehold estate of surface property shall expire at
9 the end of 10 years from the date the lease is executed, unless, at the end of the 10-year period,
10 oil or gas is being produced for commercial purposes from the land to which the lease applies.
11 If, at any time after the 10-year period, commercial production of oil or gas is terminated for a
12 period of six months or more, all rights to the oil or gas shall revert to the surface owner of the
13 property to which the lease pertains. No assignment or agreement to waive the provisions of
14 this subsection shall be valid or enforceable. As used in this subsection, the term "production"
15 includes the actual production of oil or gas by a lessee, or when activities are being conducted
16 by the lessee for injection, withdrawal, storage, or disposal of water, gas, or other fluids, or
17 when rentals or royalties are being paid by the lessee. No force majeure clause shall operate to
18 extend a lease beyond the time frames set forth in this subsection.

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

37 (d) Bonus Payments. – Any bonus payments, or other initial payments, due under a
38 lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas
39 from the freehold estate of surface property shall be paid by the lessee to the lessor within 60
40 days of execution of a lease. If a bonus payment or other initial payment has not been made
41 within the required time frame, the lessor shall be entitled to interest on the unpaid amount
42 commencing on the payment due date at the rate of ten percent (10%) per annum on the unpaid
43 amount.

44 (e) Agreements for Use of Other Resources; Associated Payments. – Any lease of oil or
45 gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold
46 estate of surface property shall clearly state whether the oil or gas developer or operator shall
47 use groundwater or surface water supplies located on the property and, if so, shall clearly state
48 the estimated amount of water to be withdrawn from the supplies on the property, and shall
49 require permission of the surface owner therefore. At a minimum, water used by the developer
50 or operator shall not restrict the supply of water for domestic uses by the surface owner. The
51 lease shall provide for full compensation to the surface owner for water used from the property

1 by the developer or operator in an amount not less than the fair market value of the water
2 consumed based on water sales in the area at the time of use.

3 (f) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other
4 conveyance of any kind separating rights to oil or gas from the freehold estate of surface
5 property shall include a clause that requires the oil or gas developer or operator to conduct a
6 test of all water supplies within 5,000 feet from a wellhead that is part of the oil or gas
7 developer's or operator's activities at least 30 days prior to initial drilling activities and at least
8 two follow-up tests within a 24-month period after production has commenced. The
9 Department shall identify the location of all water supplies, including wells, on a property on
10 which drilling operations are proposed to occur. A surface owner may elect to have the
11 Department sample wells located on their property, in lieu of sampling conducted by the oil or
12 gas developer or operator, in which case the developer or operator shall reimburse the
13 Department for the reasonable costs involved in testing of the wells in question. Nothing in this
14 subsection shall be construed to preclude or impair the right of any surface owner to refuse
15 pre-drilling testing of wells located on their property.

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

20 (h) Notice of Assignment Required. – Written notice of assignment of any lease of oil
21 or gas rights or any other conveyance of any kind separating rights to oil or gas from the
22 freehold estate of surface property shall be provided to the lessor within 30 days of such
23 assignment. If the surface owner of the property is not the lessor, written notice of assignment
24 of any lease of oil or gas rights shall also be given to the surface owner of the property to which
25 the lease pertains within 30 days of such assignment.

26 (i) Lender Approval of Lease. – Any lease for oil or gas rights or any other conveyance
27 of any kind separating rights to oil or gas from the freehold estate of surface property with a
28 surface owner shall include a conspicuous boldface disclosure concerning notification to
29 lenders, which shall be initialed by the surface owner, and state the following:

30
31 NOTICE TO LENDER(S) PRIOR TO EXECUTION OF LEASE:

32
33 Surface owners are advised to secure written approval from any lender who
34 holds a mortgage or deed of trust on any portion of the surface property
35 involved in the lease prior to execution of the lease and obtain written
36 confirmation that execution of the lease will not violate any provision
37 associated with any applicable mortgage or deed of trust, which could
38 potentially result in foreclosure.

39
40 I have read and understood the
41 terms of this provision.

_____ Surface Owner's Initials

42 (j) Three-Day Right of Rescission. – Any lease of oil or gas rights or any other
43 conveyance of any kind separating rights to oil or gas from the freehold estate of surface
44 property shall be subject to a three-day right of rescission in which the lessor or lessee may
45 cancel the lease. A bold and conspicuous notice of this right of rescission shall be included in
46 all such leases. In order to cancel the lease, the lessor or lessee shall notify the other party in
47 writing within three business days of execution of the lease, and the lessor shall return any
48 sums paid by the lessee to the lessor under the terms of the lease."

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

51 **"§ 113-423.1. Surface activities.**

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

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

- 30 (1) Preclude or impair any person from obtaining any and all other remedies
31 allowed by law.
32 (2) Prevent a developer or operator and a surface owner from addressing the use
33 of the surface for oil and gas operations in a lease, surface use agreement, or
34 other written contract.
35 (3) Establish, alter, impair, or negate the authority of local governments to
36 regulate land use related to oil and gas operations."

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

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

40 **"§ 113-425. Registry of landmen required.**

41 (a) Establishment of Registry. – The Department of Environment and Natural
42 Resources, in consultation with the Consumer Protection Division of the North Carolina
43 Department of Justice, shall establish and maintain a registry of landmen operating in this
44 State. As used in this section, "landman" means a person that, in the course and scope of the
45 person's business, does any of the following:

- 46 (1) Acquires or manages oil or gas interests.
47 (2) Performs title or contract functions related to the exploration, exploitation, or
48 disposition of oil or gas interests.
49 (3) Negotiates for the acquisition or divestiture of oil or gas rights, including the
50 acquisition or divestiture of land or oil or gas rights for a pipeline.

- 1 (4) Negotiates business agreements that provide for the exploration for or
2 development of oil or gas.
- 3 (b) Registration Required. – A person may not act, offer to act, or hold oneself out as a
4 landman in this State unless the person is registered with the Department in accordance with
5 this section. To apply for registration as a landman, a person shall submit an application to the
6 Department on a form to be provided by the Department, which shall include, at a minimum,
7 all of the following information:
- 8 (1) The name of the applicant or, if the applicant is not an individual, the names
9 and addresses of all principals of the applicant.
- 10 (2) The business address, telephone number, and electronic mail address of the
11 applicant.
- 12 (3) The social security number of the applicant or, if the applicant is not an
13 individual, the federal employer identification number of the applicant.
- 14 (4) A list of all states and other jurisdictions in which the applicant holds or has
15 held a similar registration or license.
- 16 (5) A list of all states and other jurisdictions in which the applicant has had a
17 similar registration or license suspended or revoked.
- 18 (6) A statement whether any pending judgments or tax liens exist against the
19 applicant.
- 20 (c) The Department may deny registration to an applicant, reprimand a registrant,
21 suspend or revoke a registration, or impose a civil penalty on a registrant if the Department
22 determines that the applicant or registrant does any of the following:
- 23 (1) Fraudulently or deceptively obtains, or attempts to obtain, a registration.
- 24 (2) Uses or attempts to use an expired, suspended, or revoked registration.
- 25 (3) Falsely represents oneself as a registered landman.
- 26 (4) Engages in any other fraud, deception, misrepresentation, or knowing
27 omission of material facts related to oil or gas interests.
- 28 (5) Had a similar registration or license denied, suspended, or revoked in
29 another state or jurisdiction.
- 30 (6) Otherwise violates this section.
- 31 (d) An applicant may challenge a denial, suspension, or revocation of a registration or a
32 reprimand issued pursuant to subsection (c) of this section, as provided in Chapter 150B of the
33 General Statutes.
- 34 (e) The Department shall adopt rules as necessary to implement the provisions of this
35 section."

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

38 **"§ 113-426. Publication of information for landowners.**

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

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

49 **"§ 113-427. Additional remedies.**

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

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

2 "**§ 47E-4. Required disclosures.**

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

6 (1) Disclose those items which are required to be disclosed relative to the
7 characteristics and condition of the property and of which the owner has
8 actual knowledge; or

9 (2) State that the owner makes no representations as to the characteristics and
10 condition of the real property or any improvements to the real property
11 except as otherwise provided in the real estate contract.

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

18 (1) The water supply and sanitary sewage disposal system;

19 (2) The roof, chimneys, floors, foundation, basement, and other structural
20 components and any modifications of these structural components;

21 (3) The plumbing, electrical, heating, cooling, and other mechanical systems;

22 (4) Present infestation of wood-destroying insects or organisms or past
23 infestation the damage for which has not been repaired;

24 (5) The zoning laws, restrictive covenants, building codes, and other land-use
25 restrictions affecting the real property, any encroachment of the real property
26 from or to adjacent real property, and notice from any governmental agency
27 affecting this real property; and

28 (6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground
29 storage tank, hazardous material or toxic material (whether buried or
30 covered), and other environmental contamination.

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

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

37 (1) The North Carolina Real Estate Commission shall develop and require the
38 use of a standard disclosure statement to comply with the requirements of
39 this subsection. The disclosure statement shall specify that certain transfers
40 of residential property are excluded from this requirement by G.S. 47E-2,
41 including transfers of residential property made pursuant to a lease with an
42 option to purchase where the lessee occupies or intends to occupy the
43 dwelling. The standard disclosure statement shall require disclosure of
44 whether or not the property to be conveyed is subject to regulation by one or
45 more owners' association(s) and governing documents which impose various
46 mandatory covenants, conditions, and restrictions upon the property,
47 including, but not limited to, obligations to pay regular assessments or dues
48 and special assessments. The statement required by this subsection shall
49 include information on all of the following:

50 a. The name, address, telephone number, or e-mail address for the
51 president or manager of the association to which the lot is subject.

1
2 **PART VI. CREATE ENERGY POLICY OVERSIGHT COMMISSION**

3 **SECTION 6.(a)** Chapter 120 of the General Statutes is amended by adding a new
4 Article to read:

5 "Article 33.

6 "Joint Legislative Commission on Energy Policy.

7 **"§ 120-285. Creation and membership of Joint Legislative Commission on Energy Policy.**

8 (a) The Joint Legislative Commission on Energy Policy is established.

9 (b) The Commission shall consist of 10 members as follows:

10 (1) Five members of the Senate appointed by the President Pro Tempore of the
11 Senate, at least one of whom is a member of the minority party.

12 (2) Five members of the House of Representatives appointed by the Speaker of
13 the House of Representatives, at least one of whom is a member of the
14 minority party.

15 (c) Terms on the Commission are for two years and begin on the convening of the
16 General Assembly in each odd-numbered year. Members may complete a term of service on
17 the Commission even if they do not seek reelection or are not reelected to the General
18 Assembly, but resignation or removal from service in the General Assembly constitutes
19 resignation or removal from service on the Commission. A member continues to serve until the
20 member's successor is appointed.

21 **"§ 120-286. Purpose and powers and duties of Commission.**

22 (a) The Joint Legislative Commission on Energy Policy shall exercise legislative
23 oversight over energy policy in the State. In the exercise of this oversight, the Commission may
24 do any of the following:

25 (1) Monitor and evaluate the programs, policies, and actions of the Mining and
26 Energy Commission established pursuant to G.S. 143B-293.1, the Energy
27 Policy Council established pursuant to G.S. 113B-2, the Energy Division in
28 the Department of Commerce, the Utilities Commission and Public Staff
29 established pursuant to Chapter 62 of the General Statutes, and of any other
30 board, commission, department, or agency of the State or local government
31 with jurisdiction over energy policy in the State.

32 (2) Review and evaluate existing and proposed State statutes and rules affecting
33 energy policy and determine whether any modification of these statutes or
34 rules is in the public interest.

35 (3) Monitor changes in federal law and court decisions affecting energy policy.

36 (4) Monitor and evaluate energy-related industries in the State and study
37 measures to promote these industries.

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

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

43 **"§ 120-287. Organization of Commission.**

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

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

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

1 (d) From funds available to the General Assembly, the Legislative Services
2 Commission shall allocate monies to fund the Joint Legislative Commission on Energy Policy.
3 Members of the Commission receive subsistence and travel expenses as provided in
4 G.S. 120-3.1. The Legislative Services Commission, through the Legislative Services Officer,
5 shall assign professional staff to assist the Commission in its work. Upon the direction of the
6 Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of
7 Representatives shall assign clerical staff to the Commission. The expenses for clerical
8 employees shall be borne by the Commission."

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

17

18 **PART VII. EFFECTIVE DATE**

19 **SECTION 7.** Sections 4(a) through 4(f), 4(h), and 4(i) of this act are effective
20 when this act becomes law and apply to wells drilled and leases or contracts entered into on or
21 after that date. Sections 1(a) through 1(h), Sections 2(a) through 2(n), Sections 3(a) through
22 3(d), and Sections 6(a) and 6(b) of this act become effective August 1, 2012. Section 4(g) and
23 Section 5 become effective October 1, 2012, and Section 5 applies to real estate transfers or
24 dispositions occurring on or after that date. All other sections of this act are effective when this
25 act becomes law.