

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 366
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6/24/14
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Short Title: NC Farm Act of 2014.

(Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

1 AN ACT TO (1) MAINTAIN THE CONFIDENTIALITY OF ENVIRONMENTAL
2 INVESTIGATIONS FOR AGRICULTURAL OPERATIONS AND DIRECT THE
3 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ADOPT
4 RULES FOR A FORMAL COMPLAINT PROCEDURE; (2) CLARIFY THE
5 AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT ORDINANCES RELATED
6 TO FERTILIZER; (3) REWRITE THE LANDSCAPE CONTRACTOR LICENSING
7 STATUTES; (4) STUDY THE STATE'S PARTICIPATION IN THE COMMERCIAL
8 VEHICLE SAFETY ALLIANCE NORTH AMERICAN STANDARD INSPECTION
9 PROGRAM; (5) CLARIFY THE MEANING OF THE TERMS "PLANTING AND
10 HARVESTING SEASON" AND "PLANTING AND HARVESTING PERIOD" FOR
11 PURPOSES OF APPLYING FEDERAL LAWS OR REGULATIONS RELATING TO
12 HOURS OF SERVICE RULES FOR CERTAIN DRIVERS TRANSPORTING
13 AGRICULTURAL PRODUCTS; (6) AMEND THE CHAIRMANSHIP OF THE
14 AGRICULTURE AND FORESTRY AWARENESS STUDY COMMISSION; (7)
15 ALLOW THE COMMISSIONER OF AGRICULTURE TO APPOINT LAW
16 ENFORCEMENT OFFICERS TO CARRY OUT THE LAW ENFORCEMENT
17 RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER
18 SERVICES; (8) ALLOW THE USE OF PESTICIDES TO CONTROL MOLES; (9)
19 CLASSIFY TRESPASSING ON AN AGRICULTURAL FACILITY AS A FIRST
20 DEGREE TRESPASS; (10) REQUIRE WRITTEN CONSENT TO OPERATE AN
21 ALL-TERRAIN VEHICLE ON PROPERTY OWNED BY ANOTHER; (11) ALLOW
22 DRAINAGE DISTRICTS TO MAINTAIN DITCHES IN BUFFER ZONES; (12)
23 CLARIFY PERIODIC INSPECTIONS AUTHORITY OF THE NORTH CAROLINA
24 HOUSING FINANCE AGENCY; AND (13) PERMIT SECURITY GRILLES AT ALL
25 EXITS OF A BUILDING SUBJECT TO CERTAIN CONDITIONS.

26 The General Assembly of North Carolina enacts:

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28
29 **MAINTAIN THE CONFIDENTIALITY OF ENVIRONMENTAL INVESTIGATIONS**
30 **FOR AGRICULTURAL OPERATIONS AND DIRECT THE DEPARTMENT OF**
31 **ENVIRONMENT AND NATURAL RESOURCES TO ADOPT RULES FOR A**
32 **FORMAL COMPLAINT PROCEDURE**



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1 **SECTION 1.(a)** Article 21 of Chapter 143 of the General Statutes is amended by
2 adding two new sections to read:

3 **"§ 143-215.9D. Agricultural operation investigations confidential.**

4 Complaints of violations of this Article relating to an agricultural operation and all other
5 records accumulated in conjunction with the investigation of these complaints shall be
6 considered confidential records and may be released only by order of a court of competent
7 jurisdiction. If the Department determines that a violation has occurred, the complaint of the
8 violation and all records accumulated in conjunction with the investigation of the complaint
9 shall be considered public records pursuant to G.S. 132-6. Any information obtained by the
10 Department from any law enforcement agency, administrative agency, or regulatory
11 organization on a confidential or otherwise restricted basis in the course of an investigation
12 shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the
13 possession of the providing agency or organization.

14 **"§ 143-215.9E. Initial consideration of complaint.**

15 (a) When a complaint alleging a violation of this Article is filed with the Department,
16 the Department may, at its sole discretion, request additional information to be provided by the
17 complainant within a specified period of time of no less than seven business days.

18 (b) The Department may decline to accept or further investigate a complaint about an
19 agricultural operation if, after an initial assessment of the complaint, the Department finds
20 reasonable grounds to believe that the complaint is frivolous or was filed in bad faith."

21 **SECTION 1.(b)** The Department of Environment and Natural Resources shall
22 adopt rules developing a system for receiving, investigating, and responding to environmental
23 complaints about agricultural operations in accordance with Article 2A of Chapter 150B of the
24 General Statutes, the Administrative Procedure Act.

25
26 **CLARIFY THE AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT**
27 **ORDINANCES RELATED TO FERTILIZER**

28 **SECTION 2.(a)** If Senate Bill 38, 2013 Regular Session, becomes law, then
29 G.S. 106-678, as enacted by Senate Bill 38, reads as rewritten:

30 **"§ 106-678. Authority to regulate fertilizers.**

31 No county, city, or other political subdivision of the State shall adopt or continue in effect
32 any ordinance or resolution regulating the use, sale, distribution, storage, transportation,
33 disposal, formulation, labeling, registration, manufacture, or application of fertilizer. Nothing in
34 this section shall prohibit a county, city, or other political subdivision of the State from
35 exercising its planning and zoning authority under Article 19 of Chapter 160A of the General
36 Statutes or Article 18 of Chapter 153A of the General Statutes, or from exercising its fire
37 prevention or inspection authority. Nothing in this section shall limit the authority of the
38 Department of Environment and Natural Resources or the Environmental Management
39 Commission to enforce water quality standards. Nothing in this section shall prohibit a county,
40 city, or other political subdivision of the State from adopting ordinances regulating fertilizers to
41 protect water quality, provided that the ordinances have been approved by the Environmental
42 Management Commission or the Department of Environment and Natural Resources as part of
43 a local plan or National Pollutant Discharge Elimination System permit application and do not
44 exceed the State's minimum requirements to protect water quality as established by the
45 Environmental Management Commission under Part 1, Article 21 of Chapter 143 of the
46 General Statutes. Nothing in this section shall prohibit a county or city from exercising its
47 authority to regulate explosive, corrosive, inflammable, or radioactive substances pursuant to
48 G.S. 153A-128 or G.S. 160A-183."

49 **SECTION 2.(b)** If Senate Bill 38, 2013 Regular Session, does not become law,
50 then Article 56 of Chapter 106 of the General Statutes is amended by adding a new section to
51 read:

1 **"§ 106-678. Authority to regulate fertilizers.**

2 No county, city, or other political subdivision of the State shall adopt or continue in effect
3 any ordinance or resolution regulating the use, sale, distribution, storage, transportation,
4 disposal, formulation, labeling, registration, manufacture, or application of fertilizer. Nothing in
5 this section shall prohibit a county, city, or other political subdivision of the State from
6 exercising its planning and zoning authority under Article 19 of Chapter 160A of the General
7 Statutes or Article 18 of Chapter 153A of the General Statutes or from exercising its fire
8 prevention or inspection authority. Nothing in this section shall limit the authority of the
9 Department of Environment and Natural Resources or the Environmental Management
10 Commission to enforce water quality standards. Nothing in this section shall prohibit a county,
11 city, or other political subdivision of the State from adopting ordinances regulating fertilizers to
12 protect water quality, provided that the ordinances have been approved by the Environmental
13 Management Commission or the Department of Environment and Natural Resources as part of
14 a local plan or National Pollutant Discharge Elimination System permit application and do not
15 exceed the State's minimum requirements to protect water quality as established by the
16 Environmental Management Commission under Part 1 of Article 21 of Chapter 143 of the
17 General Statutes. Nothing in this section shall prohibit a county or city from exercising its
18 authority to regulate explosive, corrosive, inflammable, or radioactive substances pursuant to
19 G.S. 153A-128 or G.S. 160A-183."

20
21 **REWRITE THE LANDSCAPE CONTRACTOR LICENSING STATUTES**

22 **SECTION 3.(a)** G.S. 89D-1 through G.S. 89D-10 are repealed.

23 **SECTION 3.(b)** Chapter 89D of the General Statutes is amended by adding the
24 following new sections to read:

25 **"§ 89D-11. Definitions.**

26 The following definitions apply in this Chapter:

- 27 (1) Board. – The North Carolina Landscape Contractors' Licensing Board.
28 (2) Landscape construction or contracting. – The act of providing services as a
29 landscape contractor, as defined in this section, for compensation or other
30 consideration.
31 (3) Landscape contractor. – Any person who, for compensation or other
32 consideration, does any of the following:
33 a. Engages in the business requiring the art, experience, ability,
34 knowledge, science, and skill to prepare contracts and bid for the
35 performance of landscape services, including installing, planting,
36 repairing, and managing gardens, lawns, shrubs, vines, trees, or other
37 decorative vegetation, including the finish grading and preparation of
38 plots and areas of land for decorative utilitarian treatment and
39 arrangement.
40 b. Practices the act of horticulture consultation or planting design for
41 employment purposes.
42 c. Constructs, installs, or maintains landscape drainage systems and
43 cisterns; provided the landscaping contractor makes no connection to
44 pipes, fixtures, apparatus, or appurtenances installed upon the
45 premises, or in a building, to supply water thereto or convey sewage
46 or other waste therefrom as defined in G.S. 87-21.
47 d. Designs, installs, or maintains low-voltage landscape lighting
48 systems; provided (i) the work does not exceed the scope of the
49 exception set forth in G.S. 87-43.1(7); and (ii) the low-voltage
50 lighting systems do not exceed 50 volts and constitute a Class II or
51 Class III cord and plug connected power system.

1 e. Engages in the construction of garden pools, retaining walls, walks,
2 patios, or other decorative landscape features.

3 (4) Person. – An individual, firm, partnership, association, corporation, or other
4 legal entity.

5 **"§ 89D-12. License required; use of seal; posting license.**

6 (a) Except as otherwise provided in this Chapter, no person shall engage in the practice
7 of landscape construction or contracting, use the designation "landscape contractor," or
8 advertise using any title or description that implies licensure as a landscape contractor unless
9 the person is licensed as a landscape contractor as provided by this Chapter. All landscape
10 construction or contracting performed by a partnership, association, corporation, firm, or other
11 group shall be performed under an individual who is readily available to exercise supervision
12 over the landscape construction and contracting work and who is licensed by the Board under
13 this Chapter.

14 (b) Nothing in this Chapter shall be construed to authorize a landscape contractor to
15 engage in any of the following:

16 (1) The practice of landscape architecture as defined in G.S. 89A-1.

17 (2) The practice of engineering as defined in G.S. 89C-3.

18 (3) Practice as a well contractor certified under Article 7A of Chapter 87 of the
19 General Statutes.

20 (4) The practice of irrigation contracting as defined in G.S. 89G-1.

21 (5) The practice of architecture as defined in G.S. 83A-1.

22 (6) The practice of plumbing, heating group number one, heating group number
23 two, heating group number three, fire sprinkler, or fuel piping contracting as
24 defined in G.S. 87-21; provided the landscaping contractor may install
25 piping, fittings, valves, and associated components for the purpose of
26 landscape contracting that is downstream of a potable water source,
27 groundwater source, or grey water source, and downstream of a backflow
28 prevention assembly.

29 (7) The practice of electrical contracting as defined in G.S. 87-43.

30 (c) A landscape contractor licensed under this Chapter is not required to be licensed as
31 a general contractor under Article 1 of Chapter 87 of the General Statutes if the licensed
32 landscape contractor is performing landscape construction or contracting work valued at an
33 amount greater than thirty thousand dollars (\$30,000).

34 (d) Upon licensure by the Board, each landscape contractor shall obtain a seal of the
35 design authorized by the Board and bearing the name of the licensee, the number of the license,
36 and the legend "N.C. Licensed Landscape Contractor." A landscape contractor may use the seal
37 only while the license is valid.

38 (e) Every landscape contractor issued a license under this Chapter shall display the
39 license conspicuously in the landscape contractor's place of business. Every landscape
40 contractor shall display the license number issued to the contractor by the Board on all business
41 cards, contracts, and vehicles used by the contractor in the landscape contracting business.

42 **"§ 89D-13. Exemptions.**

43 The provisions of this Chapter shall not apply to the following:

44 (1) Any federal, State, or local governmental agency performing landscaping on
45 public property.

46 (2) The North Carolina Department of Transportation (NCDOT). However, for
47 landscape installations or establishment periods for any project that exceeds
48 the current contract amount requiring performance and payment bonds
49 according to State law, NCDOT shall require a licensed landscape contractor
50 to perform the work. NCDOT, at its discretion, may require a licensed
51 landscape contractor for landscape projects of any cost.

- 1 (3) Any property owner performing landscape work on his or her own property.
2 (4) Any person or business owning or operating a golf course.
3 (5) Any landscaping work where the price of all contracts for labor, material,
4 and other items for a given job site during any consecutive 12-month period
5 is less than twenty-five thousand dollars (\$25,000). A local governmental
6 unit shall not enact a local ordinance or regulation requiring licensure for
7 landscaping work performed pursuant to this subdivision.
8 (6) A general contractor licensed under Article 1 of Chapter 87 of the General
9 Statutes who possesses a classification under G.S. 87-10(b) as a building
10 contractor, a residential contractor, or a public utilities contractor.
11 (7) Any person or business licensed as an electrical contractor under Article 4 of
12 Chapter 87 of the General Statutes who is designing, installing, or
13 maintaining any electric work, wiring, devices, appliances, or equipment.
14 (8) Any person or business licensed as a plumbing contractor under Article 2 of
15 Chapter 87 of the General Statutes who is installing pipes, fixtures,
16 apparatus, or appurtenances to supply water thereto or convey sewage or
17 other waste therefrom, including the installation, repair, or maintenance of
18 water mains, water taps, services lines, water meters, or backflow prevention
19 assemblies supplying water for irrigation systems or repairs to an irrigation
20 system.
21 (9) A professional engineer licensed pursuant to Chapter 89C of the General
22 Statutes.
23 (10) A professional landscape architect licensed under Chapter 89A of the
24 General Statutes.
25 (11) An individual or a business engaged in any of the following activities while
26 performing that activity:
27 a. Clearing and grading plots and areas of land.
28 b. Erosion control.
29 c. Arboriculture, including consultations on pruning and removal of
30 trees.
31 d. The installation of sod, seed, or plugs by sod producers certified by
32 the Plant Industry Division of the North Carolina Department of
33 Agriculture and Consumer Services.
34 e. Landscape construction performed by utilities contractors for the
35 purpose of grading and erosion control.
36 f. Lawn mowing, turf edging, and debris removal services.
37 g. Turf management or lawn care services only, including fertilization,
38 aeration, weed control, or other turf management or lawn care
39 practices other than mowing or edging.
40 h. Design, installation, and maintenance of on-site wastewater disposal
41 or reuse systems within the on-site wastewater permit specifications.
42 (12) Any person performing landscaping work on a farm for use in agriculture
43 production, farming, or ranching.

44 **§ 89D-14. The North Carolina Landscape Contractors' Licensing Board.**

45 (a) There is created the North Carolina Landscape Contractors' Licensing Board. The
46 Board shall consist of nine members appointed as follows:

- 47 (1) One member appointed by the Governor who is a member of the general
48 public.
49 (2) One member appointed by the Commissioner of Agriculture pursuant to
50 recommendations from The North Carolina Green Industry Council.

- 1 (3) One member appointed by the Board of Directors of the North Carolina
2 Nursery and Landscape Association, Inc., who is a practicing nurseryman
3 operating a nursery certified by the North Carolina Department of
4 Agriculture and Consumer Services Plant Industry Division.
- 5 (4) Four members who are licensed landscape contractors in the business of
6 landscape construction or contracting. One of the four members shall be
7 appointed by the General Assembly upon the recommendation of the
8 Speaker of the House of Representatives pursuant to recommendations from
9 The North Carolina Green Industry Council; one shall be appointed by the
10 General Assembly upon the recommendation of the President Pro Tempore
11 of the Senate pursuant to recommendations from the Carolinas Irrigation
12 Association, who is also a licensed irrigation contractor; and two shall be
13 appointed by the Board of Directors of the North Carolina Nursery and
14 Landscape Association, Inc.
- 15 (5) One member appointed by the Board of Directors of the North Carolina
16 Chapter of the American Society of Landscape Architects who is a
17 registered landscape architect.
- 18 (6) One member appointed by the President of The University of North Carolina
19 from within the land grant university community who is knowledgeable in
20 landscaping methods and practices.
- 21 (b) All appointments shall be for three-year terms. No member shall serve more than
22 two complete consecutive terms.
- 23 (c) A vacancy on the Board created by death, resignation, or otherwise shall be filled in
24 the same manner as the original appointment, except that all unexpired terms of Board
25 members appointed by the General Assembly shall be filled in accordance with G.S. 120-122.
26 Appointees to fill vacancies shall serve the remainder of the unexpired term and until their
27 successors are appointed and qualified.
- 28 (d) The Board shall elect annually a chair and other officers as it deems necessary to
29 carry out the purposes of this Chapter and shall hold meetings at least twice a year. A majority
30 of the Board shall constitute a quorum.
- 31 (e) Each member of the Board may receive per diem and reimbursement for travel and
32 subsistence as set forth in G.S. 93B-5.
- 33 (f) The Board shall be entitled to the services of the Attorney General in connection
34 with the affairs of the Board or may, in its discretion, employ an attorney to assist or represent
35 it in the enforcement of this Chapter.

36 **"§ 89D-15. Powers and duties.**

37 The Board shall have the following powers and duties:

- 38 (1) Administer and enforce the provisions of this Chapter.
- 39 (2) Adopt, amend, or repeal rules to carry out the provisions of this Chapter.
- 40 (3) Examine and determine the qualifications and fitness of applicants for
41 licensure and licensure renewal.
- 42 (4) Issue, renew, deny, restrict, suspend, or revoke licenses.
- 43 (5) Reprimand or otherwise discipline licensees under this Chapter.
- 44 (6) Receive and investigate complaints from members of the public.
- 45 (7) Conduct investigations to determine whether violations of this Chapter exist
46 or constitute grounds for disciplinary action against licensees under this
47 Chapter.
- 48 (8) Conduct administrative hearings in accordance with Article 3A of Chapter
49 150B of the General Statutes.
- 50 (9) Seek injunctive relief through any court of competent jurisdiction for
51 violations of this Chapter.

- 1 (10) Collect fees required by G.S. 89D-21 and any other moneys permitted by
2 law to be paid to the Board.
- 3 (11) Require licensees to file and maintain an adequate surety bond.
- 4 (12) Establish and approve continuing education requirements for persons
5 licensed under this Chapter.
- 6 (13) Employ a secretary-treasurer and any other clerical personnel the Board
7 deems necessary to carry out the provisions of this Chapter and to fix
8 compensation for employees.
- 9 (14) Maintain a record of all proceedings conducted by the Board and make
10 available to licensees and other concerned parties an annual report of all
11 Board action.
- 12 (15) Adopt and publish a code of professional conduct for all persons licensed
13 under this Chapter.
- 14 (16) Adopt and publish a code of minimum practice standards for landscape
15 construction and contracting.
- 16 (17) Adopt a seal containing the name of the Board for use on licenses and
17 official reports issued by the Board.

18 **§ 89D-16. Application for license; qualifications; examination; issuance.**

19 (a) Upon application to the Board and payment of the required fees, an applicant for
20 licensure as a landscape contractor may sit for the examination if the applicant submits
21 evidence demonstrating the applicant's qualifications for licensure under this Chapter as
22 prescribed in rules adopted by the Board and meets all of the following qualifications:

- 23 (1) Is at least 18 years of age.
- 24 (2) Is of good moral character as determined by the Board.
- 25 (3) Provides evidence of business identification as required by the Board.
- 26 (4) Files with the Board and maintains a corporate surety bond executed by a
27 company authorized to do business in this State or an irrevocable letter of
28 credit issued by an insured institution. The surety bond or the letter of credit
29 shall be in the amount of ten thousand dollars (\$10,000). The surety bond or
30 letter of credit shall be approved by the Board as to form and shall be
31 conditioned upon the obligor faithfully conforming to and abiding by the
32 provisions of this Chapter. Any person claiming to be injured by an act of a
33 licensed landscape contractor that constitutes a violation of this Chapter may
34 institute an action to recover against the licensee and the surety.

35 (b) If the applicant meets all the qualifications in subsection (a) of this section, the
36 applicant shall be required to pass an examination administered by the Board before the Board
37 may issue the license. The Board shall establish the scope and subject matter of the
38 examination to be administered. The Board shall administer examinations at least twice a year
39 at a time and place to be determined by the Board.

40 (c) When the Board determines that an applicant has met all the qualifications for
41 licensure, submitted the required fee, and passed the examination, the Board shall issue a
42 license to the applicant.

43 **§ 89D-17. Corporations; partnerships; persons doing business under trade name.**

44 (a) The Board may issue a license in the name of a corporation if the corporation
45 complies with the following:

- 46 (1) One or more officers or full-time employees, or both, empowered to act for
47 the corporation are individuals licensed under this Chapter.
- 48 (2) Only the officers or employees described in subdivision (1) of this
49 subsection execute contracts for landscape construction or contracting in the
50 name of a corporation and are readily available to exercise supervision over
51 the work performed pursuant to the contract.

- 1 **(b)** The Board may issue a license in the name of a limited liability company if the
2 company complies with the following:
- 3 **(1)** One or more managers, as defined in G.S. 57D-1-03, executives, or full-time
4 employees, or a combination thereof, are individuals licensed under this
5 Chapter.
- 6 **(2)** Only the managers, executives, or employees described in subdivision (1) of
7 this subsection execute contracts for landscape construction or contracting in
8 the name of the limited liability company and are readily available to
9 exercise supervision over the work performed pursuant to the contract.
- 10 **(c)** The Board may issue a license in the name of a partnership if the partnership
11 complies with the following:
- 12 **(1)** One or more general partners or full-time employees empowered to act for
13 the partnership are individuals licensed under this Chapter.
- 14 **(2)** Only the partners or employees described in subdivision (1) of this
15 subsection execute contracts for landscape construction or contracting in the
16 name of the partnership and are readily available to exercise supervision
17 over the work performed pursuant to the contract.
- 18 **(d)** The Board may issue a license in an assumed or designated trade name if the owner
19 of the business complies with the following:
- 20 **(1)** The owner or one or more full-time employees empowered to act for the
21 owner is an individual licensed under this Chapter.
- 22 **(2)** Only the persons described in subdivision (1) of this subsection execute
23 contracts for landscape construction or contracting in the assumed or
24 designated trade name of the business and are readily available to exercise
25 supervision over the work performed pursuant to the contract.
- 26 **(e)** When the Board issues a license under this section, the Board shall indicate on the
27 license the name and license number of the individual licensee connected to the corporation,
28 partnership, or business conducted under an assumed or designated trade name.
- 29 **(f)** A person licensed pursuant to this section shall be readily available to exercise
30 supervision over a contract for landscape construction or contracting until the contract is
31 completed.
- 32 **(g)** When a licensee executes a contract for landscape construction or contracting in any
33 capacity other than as a sole proprietor contracting on the licensee's own behalf, the person on
34 whose behalf the licensee is executing the contract shall be licensed under this section.
- 35 **(h)** A corporation, partnership, or person doing business under an assumed or
36 designated trade name shall notify the Board in accordance with rules adopted by the Board if
37 an individual licensee who is indicated in the license issued under this section ceases to be an
38 officer, partner, owner, or employee of the corporation, partnership, or person doing business
39 under the assumed or designated trade name. If the corporation, partnership, or person no
40 longer has an officer, general partner, owner, or employee described in subdivision (a)(1),
41 (b)(1), or (c)(1) of this section, the corporation, partnership, or person shall have 120 days from
42 the date the officer, general partner, owner, or employee ceases the relationship with the
43 corporation, partnership, or person to satisfy the requirements described in subdivision (a)(1),
44 (b)(1), or (c)(1) of this section. The Board may, in its discretion, grant the corporation,
45 partnership, or person a period greater than 120 days to satisfy the requirements described in
46 subdivision (a)(1), (b)(1), or (c)(1) of this section as it deems appropriate. After 120 days, or a
47 time period greater than 120 days as approved by the Board, if the corporation, partnership, or
48 person does not have an officer, general partner, owner, or employee as described in
49 subdivision (a)(1), (b)(1), or (c)(1) of this section, the license issued under this section is
50 automatically suspended and the corporation, partnership, or person shall cease practicing
51 landscape construction or contracting.

"§ 89D-18. Licensing of nonresidents.

(a) Definitions. – The following definitions apply in this section:

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – A corporation as defined in G.S. 55-1-40.

(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. – A company as defined in G.S. 57D-1-03.

(5) Foreign partnership. – One of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – Except as provided in this section, the Board may issue a license to a nonresident individual or a foreign entity that meets the requirements for licensure under this Chapter.

(c) Certificate of Authority Required. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57D of the General Statutes.

(d) Information. – The Board, upon request, shall provide the Secretary of Revenue the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information to be provided under this section shall be in a form required by the Secretary of Revenue.

(e) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign entity licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of the nonresident individual or foreign entity and instruct the Board not to renew the nonresident individual or foreign entity's license. The Board shall not renew the license of a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that (i) the debt has been paid or (ii) the debt is being paid pursuant to an installment agreement.

"§ 89D-19. Reciprocity.

The Board may issue a license, without examination, to any person who is a landscape contractor licensed, certified, or registered in another state or country if the requirements for licensure, certification, or registration in the other state or country are substantially equivalent to the requirements for licensure in this State.

"§ 89D-20. License renewal and continuing education.

(a) Every license issued under this Chapter shall be renewed on or before the first day of August of each year. Any person who desires to continue to practice shall apply for a license renewal and shall submit the required fee. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration if (i) the applicant pays the required renewal fee and late renewal fee, (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of landscape construction or contracting after notice of revocation, and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter. When necessary, the Board may require licensees to demonstrate continued competence as a condition of license renewal.

(b) As a condition of license renewal, a licensee shall meet the continuing education requirements set by the Board. Each licensee shall complete seven continuing education units per year. The Board may suspend a licensee's license for 30 days for failure to obtain continuing education units required by this subsection. Upon payment of a reinstatement fee, submission to the Board of proof of the continuing education units required by this subsection, and payment of the license renewal fee and late renewal fee, the licensee's license shall be reinstated. Failure to request a reinstatement of the license and failure to pay the reinstatement fee, renewal fee, and late renewal fee shall result in the forfeiture of a license. Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter.

"§ 89D-21. Expenses and fees.

(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	<u>Application fee</u>	<u>\$100.00</u>
(2)	<u>Examination fee</u>	<u>250.00</u>
(3)	<u>Individual license fee and individual license renewal</u>	<u>100.00</u>
(4)	<u>Initial corporate, limited liability company, partnership, or trade name license</u>	<u>100.00</u>
(5)	<u>Corporate, limited liability company, partnership, or trade-name license renewal</u>	<u>100.00</u>
(6)	<u>Late renewal fee</u>	<u>50.00</u>
(7)	<u>Reinstatement fee</u>	<u>250.00</u>
(8)	<u>License by reciprocity</u>	<u>250.00</u>
(9)	<u>Duplicate license</u>	<u>25.00</u>

(b) When the Board uses a testing service for the preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services and a prorated portion of the examination fee.

"§ 89D-22. Disciplinary action.

(a) The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant does any of the following:

- (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.
- (2) Practices or attempts to practice landscape construction or contracting by fraudulent misrepresentation.
- (3) Commits an act of gross malpractice or incompetence as determined by the Board.
- (4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a landscape contractor or that indicates that the person has deceived or defrauded the public.
- (5) Has been declared incompetent by a court of competent jurisdiction.
- (6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.
- (7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.
- (8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

(b) The Board may assess costs, including reasonable attorneys' fees and investigatory costs, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter.

"§ 89D-23. Civil penalties.

(a) In addition to taking any of the actions permitted under G.S. 89D-22, the Board may assess a civil penalty not in excess of two thousand dollars (\$2,000) for each violation of any section of this Chapter or the violation of any rules adopted by the Board. The clear proceeds of

1 any civil penalty assessed under this section shall be remitted to the Civil Penalty and
2 Forfeiture Fund in accordance with G.S. 115C-457.2.

3 (b) Before imposing and assessing a civil penalty and fixing the amount of the penalty,
4 the Board shall, as a part of its deliberations, take into consideration the following factors:

5 (1) The nature, gravity, and persistence of the particular violation.

6 (2) The appropriateness of the imposition of a civil penalty when considered
7 alone or in combination with other punishment.

8 (3) Whether the violation was willful and malicious.

9 (4) Any other factors that would tend to mitigate or aggravate the violations
10 found to exist.

11 **"§ 89D-24. Injunction to prevent violation; notification of complaints.**

12 (a) If the Board finds that a person who does not have a license issued under this
13 Chapter is engaging in the practice of landscape construction or contracting, the Board may
14 appear in its own name in superior court in actions for injunctive relief to prevent any person
15 from violating the provisions of this Chapter or the rules adopted by the Board.

16 (b) A licensed landscape contractor shall notify the Board of any written complaints
17 filed against the landscape contractor not resolved within 30 days from the date the complaint
18 was filed by registered mail to the Board."

19 **SECTION 3.(c)** Members serving on the North Carolina Landscape Contractors'
20 Registration Board on the effective date of this act shall continue to serve until members of the
21 North Carolina Landscape Contractors' Licensing Board, newly structured under
22 G.S. 89D-14(a), as enacted by Section 3(b) of this act, are appointed.

23 **SECTION 3.(d)** Once the term of one of the current public members appointed by
24 the Governor expires, the General Assembly, upon the recommendation of the Speaker of the
25 House of Representatives, shall appoint a licensed landscape contractor in the business of
26 landscape construction and contracting. Once the term of one of the current members appointed
27 by the Commissioner of Agriculture expires, the General Assembly, upon the recommendation
28 of the President Pro Tempore of the Senate, shall appoint a licensed landscape contractor in the
29 business of landscape construction and contracting. All records, staff, funds, and other items of
30 the North Carolina Landscape Contractors' Registration Board are transferred to and made the
31 property of the North Carolina Landscape Contractors' Licensing Board.

32 **SECTION 3.(e)** Any person who, on or before December 31, 2014, meets at least
33 one of the following criteria shall be issued a landscape contractor's license by the North
34 Carolina Landscape Contractors' Licensing Board, without the requirement of examination,
35 upon submission of a completed application and payment of the application fee on or before
36 August 1, 2015:

37 (1) Is registered as a landscape contractor.

38 (2) Is licensed as an irrigation contractor.

39 (3) Is certified as a turf grass professional.

40 (4) Has three years of documented experience in the person's own business as a
41 landscape contractor or three years of documented experience as an
42 employee in a landscape contracting business and meets all other
43 requirements and qualifications for licensure as a landscape contractor.
44 Educational experience can be applied towards the three-year experience
45 requirement as follows:

46 a. One year of credit for a two-year degree in related educational
47 training.

48 b. Two years of credit for a four-year degree in related educational
49 training.

50 c. Up to two years of credit for education or business experience in
51 general business management.

1 Landscape contractors currently registered under Chapter 89D of the General Statutes shall not
2 be required to renew the registration for the 2015 calendar year to qualify for the landscape
3 contractor's license, as enacted by Section 3(b) of this act.

4 **SECTION 3.(f)** This section becomes effective August 1, 2015.
5

6 **STUDY THE STATE'S PARTICIPATION IN THE COMMERCIAL VEHICLE**
7 **SAFETY ALLIANCE NORTH AMERICAN STANDARD INSPECTION PROGRAM**

8 **SECTION 4.** The Department of Public Safety shall study the State's participation
9 in the Commercial Vehicle Safety Alliance North American Standard Inspection Program for
10 roadside commercial vehicle safety inspections. The study shall include (i) a history of when
11 North Carolina joined the program; (ii) an explanation of how the program is currently being
12 implemented; (iii) data on how many safety inspection decals are issued annually; and (iv) a
13 geographic analysis of where safety inspection decals are issued within the State. The
14 Department shall report the results of its study to the Agriculture and Forestry Awareness Study
15 Commission on or before November 1, 2014.
16

17 **CLARIFY THE MEANING OF THE TERMS "PLANTING AND HARVESTING**
18 **SEASON" AND "PLANTING AND HARVESTING PERIOD" FOR PURPOSES OF**
19 **APPLYING FEDERAL LAWS OR REGULATIONS RELATING TO HOURS OF**
20 **SERVICE RULES FOR CERTAIN DRIVERS TRANSPORTING AGRICULTURAL**
21 **PRODUCTS**

22 **SECTION 5.** G.S. 20-381 is amended by adding a new subsection to read:

23 "**§ 20-381. Specific powers and duties of Department of Public Safety applicable to motor**
24 **carriers; agricultural exemption.**

25 ...

26 (c) For purposes of 49 C.F.R. § 395.1(k) and any other federal law or regulation
27 relating to hours-of-service rules for drivers engaged in the transportation of agricultural
28 commodities and farm supplies for agricultural purposes, the terms "planting and harvesting
29 season" and "planting and harvesting period" refer to the period from January 1 through
30 December 31 of each year."
31

32 **AMEND THE CHAIRMANSHIP OF THE AGRICULTURE AND FORESTRY**
33 **AWARENESS STUDY COMMISSION**

34 **SECTION 6.** G.S. 120-150 reads as rewritten:

35 "**§ 120-150. Creation; appointment of members.**

36 There is created an Agriculture and Forestry Awareness Study Commission. Members of
37 the Commission shall be citizens of North Carolina who are interested in the vitality of the
38 agriculture and forestry sectors of the State's economy. Members shall be as follows:

- 39 (1) Three appointed by the Governor.
- 40 (2) Three appointed by the President Pro Tempore of the Senate.
- 41 (3) Three appointed by the Speaker of the ~~House~~ House of Representatives.
- 42 (4) ~~The chairs of the House Agriculture Committee.~~ Two members of the House
43 of Representatives appointed by the Speaker of the House of
44 Representatives.
- 45 (5) ~~The chairs of the Senate Committee on Agriculture, Environment, and~~
46 ~~Natural Resources.~~ Two members of the Senate appointed by the President
47 Pro Tempore of the Senate.
- 48 (6) The Commissioner of Agriculture or the Commissioner's designee.
- 49 (7) A member of the Board of Agriculture designated by the chair of the Board
50 of Agriculture.

- 1 (8) The President of the North Carolina Farm Bureau Federation, Inc., or the
 2 President's designee.
 3 (9) The President of the North Carolina State Grange or the President's designee.
 4 (10) The Secretary of Environment and Natural Resources or the Secretary's
 5 designee.
 6 (11) The President of the North Carolina Forestry Association, Inc., or the
 7 President's designee.

8 Members shall be appointed for two-year terms beginning October 1 of each odd-numbered
 9 year. ~~The Chairs of the House Agriculture Committee and the Chairs of the Senate Committee~~
 10 ~~on Agriculture, Environment, and Natural Resources shall serve as cochairs.~~ The President Pro
 11 Tempore of the Senate and the Speaker of the House of Representatives shall each designate
 12 two members to serve as cochairs of the Commission."

13
 14 **ALLOW THE COMMISSIONER OF AGRICULTURE TO APPOINT LAW**
 15 **ENFORCEMENT OFFICERS TO CARRY OUT THE LAW ENFORCEMENT**
 16 **RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE**

17 **SECTION 7.** G.S. 106-900 reads as rewritten:

18 "**§ 106-900. Powers of forest** ~~Department of Agriculture and Consumer Services~~
 19 **law-enforcement officers.**

20 The Commissioner is authorized to appoint as many ~~forest law-enforcement~~ Department of
 21 Agriculture and Consumer Services law enforcement officers as he or she deems necessary to
 22 carry out the forest law-enforcement responsibilities of the Department investigate and enforce
 23 any violation of the laws within the authority of the Department or which occur on Department
 24 property. Such officers shall meet the requirements of Chapter 17C of the General Statutes and
 25 shall take the oath of office prescribed by Article VI, Section 7 of the North Carolina
 26 Constitution. Forest law-enforcement officers shall Of these officers, the Commissioner may
 27 designate certain officers to also have all the powers and the duties of a forest ranger
 28 enumerated in G.S. 106-898 and G.S. 106-899. G.S. 106-899 and the power to enforce the
 29 forest laws. Forest law-enforcement officers shall, in addition to their other duties, have the
 30 powers of peace officers to enforce the forest laws. Any forest A Department
 31 law-enforcement law enforcement officer may arrest, without warrant, any person or persons
 32 committing any crime in his the officer's presence or whom who such officer has probable
 33 cause for believing has committed a crime in his the officer's presence and bring such person or
 34 persons forthwith before a district court or other officer having jurisdiction. ~~Forest~~ Department
 35 law-enforcement law enforcement officers shall also have authority to obtain and serve warrants
 36 including warrants for violation of any duly promulgated rule of the Department.

37
 38 **PESTICIDE USE FOR MOLES**

39 **SECTION 8.** G.S. 113-300.2 is amended by adding a new subsection to read:

40 "(g) Notwithstanding any other provision of law, it is lawful to use any pesticide
 41 registered by the Pesticide Board to control any species of mole other than the Star-Nosed Mole
 42 (Condylura cristata parva), provided that (i) all rules regulating the application of pesticides
 43 adopted by the Pesticide Board are followed, and (ii) pesticides used to control these species
 44 are applied in a manner that minimizes hazards to nontarget species."

45
 46 **ADD AGRICULTURAL FACILITIES TO FIRST DEGREE TRESPASS**

47 **SECTION 9.(a)** G.S. 14-159.12(c)(1) is amended by adding a new sub-subdivision
 48 to read:

49 "**§ 14-159.12. First degree trespass.**

50 ...

1 (c) Except as otherwise provided in subsection (d) of this section, a violation of
2 subsection (a) of this section is a Class A1 misdemeanor if all of the following circumstances
3 exist:

4 (1) The offense is committed on the premises of any of the following:

- 5 a. A facility that is owned or operated by an electric power supplier as
6 defined in G.S. 62-133.8(a)(3) and that is either an electric
7 generation facility, a transmission substation, a transmission
8 switching station, a transmission switching structure, or a control
9 center used to manage transmission operations or electrical power
10 generating at multiple plant locations.
- 11 b. Any facility used or available for use in the collection, treatment,
12 testing, storing, pumping, or distribution of water for a public water
13 system.
- 14 c. Any facility, including any liquefied natural gas storage facility or
15 propane air facility, that is owned or operated by a natural gas local
16 distribution company, natural gas pipeline carrier operating under a
17 certificate of public convenience and necessity from the Utilities
18 Commission, municipal corporation operating a municipally owned
19 gas distribution system, or regional natural gas district organized and
20 operated pursuant to Article 28 of Chapter 160A of the General
21 Statutes used for transmission, distribution, measurement, testing,
22 regulating, compression, control, or storage of natural gas.
- 23 d. Any facility used or operated for agricultural activities, as that term is
24 defined in G.S. 106-581.1."

25 **SECTION 9.(b)** This section becomes effective December 1, 2014, and applies to
26 offenses committed on or after that date.

27 28 **REQUIRE WRITTEN CONSENT TO OPERATE ALL TERRAIN VEHICLES ON** 29 **PRIVATE PROPERTY**

30 **SECTION 10.(a)** G.S. 14-159.3 reads as rewritten:

31 **"§ 14-159.3. Trespass to land on motorized all terrain vehicle.**

32 (a) No person shall operate any motorized all terrain vehicle:

- 33 (1) On any private property not owned by the operator, without the written
34 consent of the owner; or
- 35 (2) Within the banks of any stream or waterway, but excluding a sound or the
36 Atlantic Ocean, the adjacent lands of which are not owned by the operator,
37 without the consent of the owner or outside the restrictions imposed by the
38 owner.

39 (a1) A landowner who gives a person written consent to operate an all terrain vehicle on
40 his or her property owes the person the same duty of care that he owes a trespasser.

41 (b) A "motorized all terrain vehicle", as used in this section, is a two or more wheeled
42 vehicle designed for recreational off-road use.

43 (c) A violation of this section shall be a Class 2 misdemeanor."

44 **SECTION 10.(b)** This section becomes effective December 1, 2014, and applies to
45 offenses committed on or after that date.

46 47 **ALLOW DRAINAGE DISTRICTS TO MAINTAIN DITCHES IN BUFFER ZONES**

48 **SECTION 11.** G.S. 156-82.1 is amended by adding a new subsection to read:

49 **"§ 156-82.1. Duties and powers of the board of drainage commissioners.**

50 (a) The board of drainage commissioners shall proceed with the levying of assessments,
51 issuance of bonds and construction of canals, water retardant structures and other

1 improvements and acquisition of equipment as approved by the court in the adjudication upon
2 the final report of the board of viewers, either in the creation of the district or in subsequent
3 proceedings authorized by Article 7B.

4 (b) The commissioners shall maintain the canals, water retardant structures, and all
5 other improvements and equipment of the district.

6 (b1) No State statute or rule or local government ordinance for the establishment,
7 preservation, or maintenance of riparian buffers for the protection of water quality shall apply
8 to the construction, operation, maintenance, or repair of canals, water retardant structures, or
9 other improvements under the control and supervision of a board of drainage commissioners.

10"

11
12 **CLARIFY PERIODIC INSPECTIONS AUTHORITY OF HOUSING FINANCE**
13 **AGENCY**

14 **SECTION 12.(a)** G.S. 153A-364 reads as rewritten:

15 **"§ 153A-364. Periodic inspections for hazardous or unlawful conditions.**

16 ...

17 (b) A county may require periodic inspections as part of a targeted effort within a
18 geographic area that has been designated by the county commissioners. The county shall not
19 discriminate in its selection of areas or housing types to be targeted and shall (i) provide notice
20 to all owners and residents of properties in the affected area about the periodic inspections plan
21 and information regarding a public hearing regarding the plan; (ii) hold a public hearing
22 regarding the plan; and (iii) establish a plan to address the ability of low-income residential
23 property owners to comply with minimum housing code standards. A residential building or
24 structure that is subject to periodic inspections by the North Carolina Housing Finance Agency
25 (hereinafter "Agency") shall not be subject to periodic inspections under this subsection if the
26 Agency has issued a finding that the building or structure is in compliance with federal
27 standards established by the United States Department of Housing and Urban Development to
28 assess the physical condition of residential property. The owner or manager of a residential
29 building or structure subject to periodic inspections by the Agency shall, within 10 days of
30 receipt, submit to the inspection department a copy of the Compliance Results Letter issued by
31 the Agency showing that the residential building or structure is in compliance with federal
32 housing inspection standards. If the owner or manager fails to submit a copy of the Compliance
33 Results Letter as provided in this subsection, the residential building or structure shall be
34 subject to periodic inspections as provided in this subsection until the Compliance Results
35 Letter is submitted to the inspection department.

36"

37 **SECTION 12.(b)** G.S. 160A-424 reads as rewritten:

38 **"§ 160A-424. Periodic inspections.**

39 ...

40 (b) A city may require periodic inspections as part of a targeted effort within a
41 geographic area that has been designated by the city council. The municipality shall not
42 discriminate in its selection of areas or housing types to be targeted and shall (i) provide notice
43 to all owners and residents of properties in the affected area about the periodic inspections plan
44 and information regarding a public hearing regarding the plan; (ii) hold a public hearing
45 regarding the plan; and (iii) establish a plan to address the ability of low-income residential
46 property owners to comply with minimum housing code standards. A residential building or
47 structure that is subject to periodic inspections by the North Carolina Housing Finance Agency
48 (hereinafter "Agency") shall not be subject to periodic inspections under this subsection if the
49 Agency has issued a finding that the building or structure is in compliance with federal
50 standards established by the United States Department of Housing and Urban Development to
51 assess the physical condition of residential property. The owner or manager of a residential

1 building or structure subject to periodic inspections by the Agency shall, within 10 days of
2 receipt, submit to the inspection department a copy of the Compliance Results Letter issued by
3 the Agency showing that the residential building or structure is in compliance with federal
4 housing inspection standards. If the owner or manager fails to submit a copy of the Compliance
5 Results Letter as provided in this subsection, the residential building or structure shall be
6 subject to periodic inspections as provided in this subsection until the Compliance Results
7 Letter is submitted to the inspection department.

8"

10 SECURITY GRILLES

11 **SECTION 13.(a)** Notwithstanding Section 1008.1.4.5 of the 2012 NC State
12 Building Code (Fire Code), horizontal sliding or vertical security grilles shall be permitted at
13 all exits or exit access doorways, provided that the grilles are openable from the inside without
14 the use of a key or special knowledge or effort during periods that the space is occupied by
15 authorized persons and that the grilles remain secured in the full-open position during the
16 period of occupancy by the general public.

17 **SECTION 13.(b)** The Building Code Council shall adopt a rule to amend Section
18 1008.1.4.5 of the 2012 NC State Building Code (Fire Code) consistent with Section 13(a) of
19 this section.

20 **SECTION 13.(c)** Section 13(a) of this section expires on the date that the rule
21 adopted pursuant to Section 13(b) of this section becomes effective.

23 EFFECTIVE DATE

24 **SECTION 14.** Except as otherwise provided, this act is effective when it becomes
25 law.