

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

FILED SENATE
May 15, 2014
S.B. 786
PRINCIPAL CLERK

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SENATE DRS25123-RIxz-23 (01/22)

Short Title: Energy Modernization Act.

(Public)

Sponsors: Senators Rucho, Newton, and Brock (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO (1) EXTEND THE DEADLINE FOR DEVELOPMENT OF A MODERN REGULATORY PROGRAM FOR THE MANAGEMENT OF OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION IN THE STATE AND THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS FOR THAT PURPOSE; (2) ENACT OR MODIFY CERTAIN EXEMPTIONS FROM REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT APPLICABLE TO RULES FOR THE MANAGEMENT OF OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION IN THE STATE AND THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS FOR THAT PURPOSE; (3) CREATE THE NORTH CAROLINA OIL AND GAS COMMISSION AND RECONSTITUTE THE NORTH CAROLINA MINING COMMISSION; (4) AMEND MISCELLANEOUS STATUTES GOVERNING OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ACTIVITIES; (5) ESTABLISH A SEVERANCE TAX APPLICABLE TO OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ACTIVITIES; (6) AMEND MISCELLANEOUS STATUTES UNRELATED TO OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ACTIVITIES; AND (7) DIRECT STUDIES ON VARIOUS ISSUES, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY.

The General Assembly of North Carolina enacts:

PART I. EXTENSION OF RULE DEVELOPMENT DEADLINE

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

"SECTION 2.(m) All rules required to be adopted by the Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health pursuant to this act shall be adopted no later than ~~October 1, 2014~~ January 1, 2015. In order to provide for the orderly, efficient, and effective development and adoption of rules and to prevent the adoption of duplicative, inconsistent, or inadequate rules by these Commissions, the Department of Environment and Natural Resources shall coordinate the adoption of the rules. The Commissions and the Department shall develop the rules in an open and collaborative process that includes (i) input from scientific and technical advisory groups; (ii) consultation with the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the Division of Energy of the Department of Commerce, the Department of Transportation, the Division of Emergency Management of the Department of Public Safety, the Consumer Protection Division of the Department of Justice, the Department



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1 of Labor, the Department of Health and Human Services, the State Review of Oil and Natural
2 Gas Environmental Regulations (STRONGER), the American Petroleum Institute (API), and
3 the Rural Advancement Foundation (RAFI-USA); and (iii) broad public participation. During
4 the development of the rules, the Commissions and the Department shall identify changes
5 required to all existing rules and statutes necessary for the implementation of this act, including
6 repeal or modification of rules and statutes. Until such time as all of the rules are adopted
7 pursuant to this act, the Department shall submit quarterly reports to the Joint Legislative
8 Commission on Energy Policy, created under Section 6(a) of this act, and the Environmental
9 Review Commission on its progress in developing and adopting the rules. The quarterly reports
10 shall include recommendations on changes required to existing rules and statutes and any other
11 findings or recommendations necessary for the implementation of this act. The first report
12 required by this subsection is due January 1, 2013."
13

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

15 **SECTION 2.(a)** Notwithstanding G.S. 150B-21.3(b1) and Section 1(a) of S.L.
16 2013-365, all rules adopted pursuant to Section 2(m) of S.L. 2012-143 shall be subject to
17 legislative review during the next regular session of the General Assembly that begins after the
18 date the Rules Review Commission approved the rule or during the regular session that is
19 underway on the date the Commission approved the rule.

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

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

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

47 (2) If the Rules Review Commission approves all rules adopted pursuant to
48 Section 2(m) of S.L. 2012-143 during a legislative session, the earlier of: (i)
49 the 31st calendar day after the date the Commission approved all rules
50 adopted pursuant to Section 2(m) of S.L. 2012-143 if a bill that specifically
51 disapproves a rule has not been introduced in either house of the General

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

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

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

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

20 "**SECTION 1.(b)** The Mining and Energy Commission, the Environmental Management
21 Commission, and the Commission for Public Health are exempt from the provisions of
22 Chapter 150B of the General Statutes that require the preparation of fiscal ~~notes~~ notes,
23 including the requirement established by G.S. 150B-19.1(f), for any rule proposed for the
24 creation of a modern regulatory program for that pertains to the management of oil and gas
25 exploration and development activities in the State, including the use of horizontal drilling and
26 hydraulic fracturing for that purpose."

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

29 30 **PART III. CREATE OIL AND GAS COMMISSION AND RECONSTITUTE MINING** 31 **COMMISSION**

32 **SECTION 3.(a)** Part 6A of Article 7 of Chapter 143B of the General Statutes reads
33 as rewritten:

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

35 "**§ 143B-293.1. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – creation;**
36 **powers and duties.**

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

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

1 (c) The Commission shall submit ~~quarterly~~annual written reports as to its operation,
2 activities, programs, and progress to the Joint Legislative Commission on Energy Policy and
3 the Environmental Review Commission. The Commission shall supplement the written reports
4 required by this subsection with additional written and oral reports as may be requested by the
5 Joint Legislative Commission on Energy Policy and the Environmental Review Commission.
6 The Commission shall submit the written reports required by this subsection whether or not the
7 General Assembly is in session at the time the report is due.

8 **"§ 143B-293.2. North Carolina Mining and Energy Oil and Gas Commission – members;
9 selection; removal; compensation; quorum; services.**

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

- 12 (1) ~~The Chair of the North Carolina State University Minerals Research~~
13 ~~Laboratory Advisory Committee, or the Chair's designee, ex officio.~~
- 14 (2) ~~The State Geologist, or other designee of the Secretary of Environment and~~
15 ~~Natural Resources.~~
- 16 (3) ~~Repealed by Session Laws 2013-365, s. 3(a), effective July 29, 2013.~~
- 17 (3a) ~~One appointed by the Governor, at large.~~
- 18 (4) ~~One appointed by the General Assembly upon recommendation of the~~
19 ~~Speaker of the House of Representatives who is a member of a~~
20 ~~nongovernmental conservation interest.~~
- 21 (5) ~~One appointed by the General Assembly upon recommendation of the~~
22 ~~Speaker of the House of Representatives who, at the time of initial~~
23 ~~appointment, is an elected official of a municipal government located in a~~
24 ~~region of North Carolina that has oil and gas potential. A person serving in~~
25 ~~this seat may complete a term on the Commission even if the person is no~~
26 ~~longer serving as an elected official of a municipal government but may not~~
27 ~~be reappointed to a subsequent term.~~
- 28 (6) ~~One appointed by the General Assembly upon recommendation of the~~
29 ~~Speaker of the House of Representatives who is a representative of the~~
30 ~~mining industry.~~
- 31 (7) ~~One appointed by the General Assembly upon recommendation of the~~
32 ~~Speaker of the House of Representatives who shall be a geologist with~~
33 ~~experience in oil and gas exploration and development.~~
- 34 (8) ~~One appointed by the General Assembly upon recommendation of the~~
35 ~~President Pro Tempore of the Senate who is a member of a nongovernmental~~
36 ~~conservation interest.~~
- 37 (9) ~~One appointed by the General Assembly upon recommendation of the~~
38 ~~President Pro Tempore of the Senate who, at the time of initial appointment,~~
39 ~~is a member of a county board of commissioners of a county located in a~~
40 ~~region of North Carolina that has oil and gas potential. A person serving in~~
41 ~~this seat may complete a term on the Commission even if the person is no~~
42 ~~longer serving as county commissioner but may not be reappointed to a~~
43 ~~subsequent term.~~
- 44 (10) ~~One appointed by the General Assembly upon recommendation of the~~
45 ~~President Pro Tempore of the Senate who is a representative of the mining~~
46 ~~industry.~~
- 47 (11) ~~One appointed by the General Assembly upon recommendation of the~~
48 ~~President Pro Tempore of the Senate who shall be an engineer with~~
49 ~~experience in oil and gas exploration and development.~~
- 50 (12) ~~One appointed by the Governor who shall be a representative of a publicly~~
51 ~~traded natural gas company.~~

1 ~~(13) One appointed by the Governor who shall be a licensed attorney with~~
2 ~~experience in legal matters associated with oil and gas exploration and~~
3 ~~development.~~

4 ~~(14) One appointed by the Governor who is a member of the Environmental~~
5 ~~Management Commission.~~

6 ~~(15) One appointed by the Governor who is a member of the Commission for~~
7 ~~Public Health.~~

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

10 (1) One appointed by the General Assembly upon recommendation of the
11 Speaker of the House of Representatives who, at the time of initial
12 appointment, is an elected official of a municipal government located in a
13 region of North Carolina that has oil and gas potential. A person serving in
14 this seat may complete a term on the Commission even if the person is no
15 longer serving as an elected official of a municipal government but may not
16 be reappointed to a subsequent term.

17 (2) One appointed by the General Assembly upon recommendation of the
18 Speaker of the House of Representatives who shall be a geologist with
19 experience in oil and gas exploration and development.

20 (3) One appointed by the General Assembly upon recommendation of the
21 Speaker of the House of Representatives who is a member of a
22 nongovernmental conservation interest.

23 (4) One appointed by the General Assembly upon recommendation of the
24 President Pro Tempore of the Senate who, at the time of initial appointment,
25 is a member of a county board of commissioners of a county located in a
26 region of North Carolina that has oil and gas potential. A person serving in
27 this seat may complete a term on the Commission even if the person is no
28 longer serving as county commissioner but may not be reappointed to a
29 subsequent term.

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

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

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

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

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

43 (b) Terms. – The term of office of members of the Commission is three years. A
44 member may be reappointed to no more than two consecutive three-year terms. The term of a
45 member who no longer meets the qualifications of their respective appointment, as set forth in
46 subsection (a) of this section, shall terminate but the member may continue to serve until a new
47 member who meets the qualifications is appointed. The terms of members appointed under
48 subdivisions ~~(4), (6), (9), and (12)~~ (1), (4), and (7) of subsection ~~(a)~~ (a1) of this section shall
49 expire on June 30 of years evenly divisible by three. The terms of members appointed under
50 subdivisions ~~(7), (10), (13), and (14)~~ (2), (5), and (8) of subsection ~~(a)~~ (a1) of this section shall
51 expire on June 30 of years that precede by one year those years that are evenly divisible by

1 three. The terms of members appointed under subdivisions ~~(5), (8), (11), and (15)~~(3), (6), and
2 (9) of subsection ~~(a)~~(a1) of this section shall expire on June 30 of years that follow by one year
3 those years that are evenly divisible by three.

4 (c) Vacancies; Removal from Office. –

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

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

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

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

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

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

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

35 ~~(2) To adopt rules necessary to administer the Mining Act of 1971 pursuant to
36 G.S. 74-63.~~

37 ~~(3) To adopt rules necessary to administer the Control of Exploration for Uranium in
38 North Carolina Act of 1983 pursuant to G.S. 74-86.~~

39 ~~(4) To adopt rules, not inconsistent with the laws of this State, as may be required by
40 the federal government for grants in aid for mining resource purposes which may be made
41 available to the State by the federal government. This section is to be liberally construed in
42 order that the State and its citizens may benefit from such grants in aid.~~

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

47 **"§ 143B-293.3. Reserved for future codification purposes.**

48 **"§ 143B-293.4. North Carolina Mining and Energy-Oil and Gas Commission – officers.**

49 The Mining and Energy-Oil and Gas Commission shall have a chair and a vice-chair. The
50 Commission shall elect one of its members to serve as chair and one of its members to serve as
51 vice-chair. The chair and vice-chair shall serve one-year terms beginning August 1 and ending

1 July 31 of the following year. The chair and vice-chair may serve any number of terms, but not
2 more than two terms consecutively.

3 "**§ 143B-293.5.** North Carolina ~~Mining and Energy~~ Oil and Gas Commission – meetings.

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

7 "**§ 143B-293.6. North Carolina ~~Mining and Energy~~ Oil and Gas Commission –**
8 **quasi-judicial powers; procedures.**

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

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

- 17 (1) Whether one or more of the civil penalty assessment factors in subsection (b)
18 of this section were wrongly applied to the detriment of the petitioner.
- 19 (2) Whether the violator promptly abated continuing environmental damage
20 resulting from the violation.
- 21 (3) Whether the violation was inadvertent or a result of an accident.
- 22 (4) Whether the violator had been assessed civil penalties for any previous
23 violations.
- 24 (5) Whether payment of the civil penalty will prevent payment for the remaining
25 necessary remedial actions.

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

30 **SECTION 3.(b)** The terms of all members of the Mining and Energy Commission
31 serving on July 31, 2015, shall expire on that date. A new Oil and Gas Commission of nine
32 members shall be appointed in the manner provided by G.S. 143B-293.2(a1), as enacted by
33 Section 3(a) of this act, and this section. Members appointed in the manner provided by
34 G.S. 143B-293.2(a1), as enacted by Section 3(a) of this act, shall be appointed no later than
35 August 1, 2015.

36 **SECTION 3.(c)** The Revisor of Statutes shall make the conforming statutory
37 changes necessary to the General Statutes to reflect renaming of the Mining and Energy
38 Commission to the Oil and Gas Commission, effective August 1, 2015, as provided in this
39 section.

40 **SECTION 4.(a)** Part 6 of Article 7 of Chapter 143B of the General Statutes is
41 reenacted and reads as rewritten:

42 "Part 6. North Carolina Mining Commission.

43 "**§ 143B-290. North Carolina Mining Commission – creation; powers and duties.**

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

- 47 (1) The North Carolina Mining Commission shall have the following powers
48 and duties:
 - 49 a. To act as the advisory body to the Governor pursuant to Article V(a)
50 of the Interstate Mining Compact, as set out in G.S. 74-37.

- 1 b. Repealed by Session Laws 2002-165, s. 1.10, effective October 23,
2 2002.
- 3 c. To hear permit appeals, conduct a full and complete hearing on such
4 controversies and affirm, modify, or overrule permit decisions made
5 by the Department pursuant to G.S. 74-61.
- 6 d. To promulgate rules necessary to administer the Mining Act of 1971,
7 pursuant to G.S. 74-63.
- 8 e. To promulgate rules necessary to administer the Control of
9 Exploration for Uranium in North Carolina Act of 1983, pursuant to
10 G.S. 74-86.
- 11 (2) The Commission is authorized to make such rules, not inconsistent with the
12 laws of this State, as may be required by the federal government for
13 grants-in-aid for mining resource purposes which may be made available to
14 the State by the federal government. This section is to be liberally construed
15 in order that the State and its citizens may benefit from such grants-in-aid.
- 16 (3) The Commission shall make such rules consistent with the provisions of this
17 Chapter. All rules adopted by the Commission shall be enforced by the
18 Department of Environment and Natural Resources.
- 19 (4) Recodified as § 74-54.1 by c. 1039, s. 16, effective July 24, 1992.

20 **"§ 143B-291. North Carolina Mining Commission – members; selection; removal;
21 compensation; quorum; services.**

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

- 25 ~~(1) One member who is the chair of the North Carolina State University
26 Minerals Research Laboratory Advisory Committee, ex officio.~~
- 27 ~~(2) One member who is a representative of the mining industry.~~
- 28 ~~(3) One member who is a representative of the mining industry.~~
- 29 ~~(4) One member who is a representative of the mining industry.~~
- 30 ~~(5) One member who is a representative of nongovernmental conservation
31 interests.~~
- 32 ~~(6) One member who is a representative of nongovernmental conservation
33 interests.~~
- 34 ~~(7) One member who is a representative of nongovernmental conservation
35 interests.~~
- 36 ~~(8) One who, at the time of the appointment to the Mining Commission, is a
37 member of the Environmental Management Commission and knowledgeable
38 in the principles of water and air resources management.~~
- 39 ~~(9) One who, at the time of the appointment to the Mining Commission, is a
40 member of the Environmental Management Commission and knowledgeable
41 in the principles of water and air resources management.~~

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

- 44 (1) One member who is the chair of the North Carolina State University
45 Minerals Research Laboratory Advisory Committee.
- 46 (2) The State Geologist.
- 47 (3) One member appointed by the Governor who is a representative of the
48 mining industry.
- 49 (4) One member appointed by the General Assembly upon recommendation of
50 the Speaker of the House of Representatives who is a representative of the
51 mining industry.

1 (5) One member appointed by the General Assembly upon recommendation of
2 the President Pro Tempore of the Senate who is a representative of the
3 mining industry.

4 (6) One member appointed by the General Assembly upon recommendation of
5 the Speaker of the House of Representatives who is a representative of
6 nongovernmental conservation interests.

7 (7) One member appointed by the General Assembly upon recommendation of
8 the President Pro Tempore of the Senate who is a representative of
9 nongovernmental conservation interests.

10 (b) Terms. – The term of office of a member of the Commission is six years. At the
11 expiration of each member's term, the ~~Governor~~appointing authority shall replace the member
12 with a new member of like qualifications for a term of six years. The term of ~~members~~the
13 ~~member~~ appointed under ~~subdivisions (2), (5), and (8)~~subdivision (5) of subsection ~~(a)-(a1)~~ of
14 this section shall expire on ~~30-June 30~~ of years that precede by one year those years that are
15 evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of
16 subsection ~~(a)-(a1)~~ of this section shall expire on ~~30-June 30~~ of years that follow by one year
17 those years that are evenly divisible by six. The term of members appointed under subdivisions
18 ~~(4), (7), and (9)~~(4) and (7) of subsection ~~(a)-(a1)~~ of this section shall expire on ~~30-June 30~~
19 of years that follow by three years those years that are evenly divisible by six. Upon the expiration
20 of a six-year term, a member may continue to serve until a successor is appointed and duly
21 qualified as provided by G.S. 128-7.

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

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

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

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

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

33 "**§ 143B-292. North Carolina Mining Commission – officers.**

34 The North Carolina Mining Commission shall have a chair and a vice-chair. The chair shall
35 be designated by the Governor from among the members of the Commission to serve as chair at
36 the pleasure of the Governor. The vice-chair shall be elected by and from the members of the
37 Commission and shall serve for a term of two years or until the expiration of the vice-chair's
38 regularly appointed term.

39 "**§ 143B-293. North Carolina Mining Commission – meetings.**

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

43 **SECTION 4.(b)** The terms of all members of the Mining and Energy Commission
44 serving on July 31, 2015, shall expire on that date. A new Mining Commission of seven
45 members shall be appointed in the manner provided by G.S. 143B-291(a1), as enacted by
46 Section 4(a) of this act, and this section. Members appointed in the manner provided by
47 G.S. 143B-291(a1), as enacted by Section 4(a) of this act, shall be appointed no later than
48 August 1, 2015.

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

1 SECTION 5. This Part becomes effective July 31, 2015.

2
3 **PART IV. MISCELLANEOUS STATUTORY AMENDMENTS RELATED TO SHALE**
4 **GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION**

5 SECTION 6.(a) G.S. 113-391(a2) reads as rewritten:

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

- 9 (1) ~~To require the operation of wells with efficient gas-oil ratios and to fix such~~
10 ~~ratios.~~
11 (2) To limit and prorate the production of oil or gas, or both, from any pool or
12 field for the prevention of waste as defined in this Article and rules adopted
13 thereunder.
14 (3) To require, either generally or in or from particular areas, certificates of
15 clearance or tenders in connection with the transportation of oil or gas.
16 (4) To prevent, so far as is practicable, reasonably avoidable drainage from each
17 developed unit which is not equalized by counter-drainage."

18 SECTION 6.(b) G.S. 143B-293.1(b) reads as rewritten:

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

26 SECTION 7.(a) Article 27 of Chapter 113 of the General Statutes is amended by
27 adding a new section to read:

28 **§ 113-391A. Trade secret and confidential information determination; protection;**
29 **retention; disclosure to emergency personnel.**

30 (a) Legislative Findings. – The General Assembly finds that while confidential
31 information must be maintained as such with the utmost care, for the protection of public
32 health, safety, and the environment, the information should be immediately accessible to first
33 responders and medical personnel in the event that the information is deemed necessary to
34 address an emergency.

35 (b) Determination and Treatment of Confidential Information. – Information obtained
36 by the Commission and the Department pursuant to this Article, and rules adopted thereunder,
37 shall be available to the public except that, upon a showing satisfactory to the Commission by
38 any person that information to which the Commission and Department has access, if made
39 public, would divulge methods or processes entitled to protection as confidential information
40 pursuant to G.S. 132-1.2, the Commission shall consider the information confidential. In
41 accordance with subsection (b1) of G.S. 113-391, the State Geologist shall serve as the
42 custodian of the confidential information and shall ensure that it is maintained securely as
43 provided in G.S. 132-7.

44 (c) Exceptions to Disclosure Prohibitions. – Confidential information obtained by the
45 Commission and the Department pursuant to this Article, and rules adopted thereunder, may be
46 disclosed to any officer, employee, or authorized representative of any federal or state agency if
47 disclosure is necessary to carry out a proper function of the Department or other agency or
48 when relevant in any proceeding under this Article. Confidential information shall be disclosed
49 to the following:

- 50 (1) The Division of Emergency Management of the Department of Public
51 Safety. The Division shall maintain this information as confidential except if

1 disclosure is necessary to carry out a proper function of the Division,
2 including for the purposes of emergency planning and emergency response.
3 For purposes of this section, the term "emergency" is defined as provided in
4 G.S. 166A-19.3.

5 (2) A treating health care provider who determines that a medical emergency
6 exists and that the information is necessary for emergency or first-aid
7 treatment. Regardless of the existence of a written statement of need or a
8 confidentiality agreement, the Department shall immediately disclose the
9 confidential information to the treating health care provider upon request. If
10 confidential information is disclosed pursuant to this subdivision, the
11 Department shall notify the owner of the confidential information as soon as
12 practicable, but no later than 24 hours after disclosure. The owner of the
13 confidential information may require execution of a written statement of
14 need and a confidentiality agreement from the treating health care provider
15 as soon as circumstances permit. The confidentiality agreement (i) may
16 restrict the use of the information to the health purposes indicated in a
17 written statement of need; (ii) may provide for appropriate legal remedies in
18 the event of a breach of the agreement, including stipulation of a reasonable
19 pre-estimate of likely damages; and (iii) may not include requirements for
20 the posting of a penalty bond. The parties are not precluded from pursuing
21 noncontractual remedies to the extent permitted by law.

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

39 (d) Penalties for Unlawful Disclosure. – Except as provided in subsection (c) of this
40 section or as otherwise provided by law, any person who has access to confidential information
41 pursuant to this section and who discloses it knowing it to be confidential information to any
42 person not authorized to receive it shall be guilty of a Class I felony, and if knowingly or
43 negligently disclosed to any person not authorized, shall be subject to civil action for damages
44 and injunction by the owner of the confidential information, including, without limitation,
45 actions under Article 24 of Chapter 66 of the General Statutes.

46 (e) Appeal From Commission Decisions Concerning Confidentiality. – Within 10 days
47 of any decision made pursuant to subsection (b) of this section, the Commission shall provide
48 notice to any person who submits information asserted to be confidential (i) that the
49 information is not entitled to confidential treatment and (ii) of any decision to release such
50 information to any person who has requested the information. Notwithstanding the provisions
51 of G.S. 132-9, or procedures for appeal provided under Article 4 of Chapter 150B of the

1 General Statutes, any person who requests information and any person who submits
2 information who is dissatisfied with a decision of the Commission to withhold or release
3 information made pursuant to subsection (b) of this section shall have 30 days after receipt of
4 notification from the Commission to bring an action in Business Court to appeal the decision
5 in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and
6 the Business Court shall have exclusive jurisdiction over such actions. The information may not
7 be released by the Commission until the earlier of (i) the 30 day period for filing of an appeal
8 has expired without filing of an appeal or (ii) a final judicial determination has been made in an
9 action brought to appeal a decision of the Commission. In addition, the following shall apply to
10 actions brought pursuant to this section:

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

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

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

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

24 **SECTION 7.(b)** G.S. 113-391(b1) reads as rewritten:

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

40 **SECTION 8.** G.S. 113-391(a)(6) is repealed.

41 **SECTION 9.** G.S. 113-392(c) is repealed.

42 **SECTION 10.** G.S. 113-395(a) reads as rewritten:

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

49 **SECTION 11.** G.S. 113-420 reads as rewritten:

50 "§ 113-420. **Notice and entry to property.**

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

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

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

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

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

20 (1) A description of the exploration or development plan, including, but not
21 limited to (i) the proposed locations of any roads, drill pads, pipeline routes,
22 and other alterations to the surface estate and (ii) the proposed date on or
23 after which the proposed alterations will begin.

24 (2) An offer of the oil and gas developer or operator to consult with the surface
25 owner to review and discuss the location of the proposed alterations.

26 (3) The name, address, telephone number, and title of a contact person
27 employed by or representing the oil or gas developer or operator who the
28 surface owner may contact following the receipt of notice concerning the
29 location of the proposed alterations.

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

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

43 (1) A description of the exploration or development plan, including, the
44 proposed date on which the exploration or development will begin.

45 (2) The name, address, telephone number, and title of a contact person
46 employed by or representing the oil or gas developer or operator who the
47 lessor may contact following the receipt of notice.

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

1 **SECTION 12.(a)** G.S. 113-421 reads as rewritten:

2 "**§ 113-421. Presumptive liability for water contamination; compensation for other**
3 **damages; responsibility for reclamation.**

4 (a) Presumptive Liability for Water Contamination. – It shall be presumed that an oil or
5 gas developer or operator is responsible for contamination of all water supplies that are within
6 ~~5,000 feet~~ a one-half mile radius of a wellhead that is part of the oil or gas developer's or
7 operator's activities unless the presumption is rebutted by a defense established as set forth in
8 subsection (a1) of this subsection. If a contaminated water supply is located within ~~5,000 feet~~ a
9 one-half mile radius of a wellhead, in addition to any other remedy available at law or in
10 equity, including payment of compensation for damage to a water supply, the developer or
11 operator shall provide a replacement water supply to the surface owner and other persons using
12 the water supply at the time the oil or gas developer's activities were commenced on the
13 property, which water supply shall be adequate in quality and quantity for those persons' use.

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

- 17 (1) The contamination existed prior to the commencement of the drilling
18 activities of the oil or gas developer or operator, as evidenced by a
19 pre-drilling test of the water supply in question conducted in conformance
20 with G.S. 113-423(f).
- 21 (2) The surface owner or owner of the water supply in question refused the oil
22 or gas developer or operator access to conduct a pre-drilling test of the water
23 supply conducted in conformance with G.S. 113-423(f).
- 24 (3) The water supply in question is not within ~~5,000 feet~~ a one-half mile radius
25 of a wellhead that is part of the oil or gas developer's or operator's activities.
- 26 (4) The contamination occurred as the result of a cause other than activities of
27 the developer or operator.

28 ...

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

36 **SECTION 12.(b)** G.S. 113-423(f) reads as rewritten:

37 (f) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other
38 conveyance of any kind separating rights to oil or gas from the freehold estate of surface
39 property shall include a clause that requires the oil or gas developer or operator to conduct a
40 test of all water supplies within ~~5,000 feet~~ a one-half mile radius from a proposed wellhead that
41 is part of the oil or gas developer's or operator's activities at least 30 days prior to initial drilling
42 activities and at least two follow-up tests within a 24-month period after production has
43 commenced. The Department shall identify the location of all water supplies, including wells,
44 on a property on which drilling operations are proposed to occur. A surface owner may elect to
45 have an independent third party selected from a laboratory certified by the Department's
46 Wastewater/Groundwater Laboratory Certification program ~~the Department~~ sample wells
47 located on their property, in lieu of sampling conducted by the oil or gas developer or operator,
48 in which case the developer or operator shall pay ~~reimburse the Department~~ for the reasonable
49 costs involved in testing of the wells in question. Developers and operators (i) shall provide all
50 analytical results to the Department within 30 days of testing and (ii) may share analytical
51 results obtained with other developers and operators as necessary or advisable. Nothing in this

1 subsection shall be construed to preclude or impair the right of any surface owner to refuse
2 pre-drilling testing of wells located on their property."

3 **SECTION 13.** Article 27 of Chapter 113 of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 113-415A. Local ordinances prohibiting oil and gas exploration, development, and**
6 **production activities invalid; petition to preempt local ordinance.**

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

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

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

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

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

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

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

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

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

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

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

16 (f) A local zoning or land-use ordinance is presumed to be valid and enforceable to the
17 extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that
18 are generally applicable to development, including, but not limited to, setback, buffer, and
19 stormwater requirements, unless the Mining and Energy Commission makes a finding of fact to
20 the contrary. The Commission shall determine whether or to what extent to preempt local
21 ordinances so as to allow for the establishment and operation of the facility no later than 60
22 days after conclusion of the hearing. The Commission shall preempt a local ordinance only if
23 the Commission makes all of the following findings:

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

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

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

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

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

43 (h) The decision of the Mining and Energy Commission shall be final unless a party to
44 the action files a written appeal under Article 4 of Chapter 150B of the General Statutes, as
45 modified by this section, within 30 days of the date of the decision. The record on appeal shall
46 consist of all materials and information submitted to or considered by the Commission, the
47 Commission's written decision, a complete transcript of the hearing, all written material
48 presented to the Commission regarding the location of the oil and gas exploration,
49 development, and production activities, the specific findings required by subsection (f) of this
50 section, and any minority positions on the specific findings required by subsection (f) of this
51 section. The scope of judicial review shall be that the court may affirm the decision of the

1 Commission, or may remand the matter for further proceedings, or may reverse or modify the
2 decision if the substantial rights of the parties may have been prejudiced because the
3 Commission's findings, inferences, conclusions, or decisions are any of the following:

4 (1) In violation of constitutional provisions.

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

6 (3) Made upon unlawful procedure.

7 (4) Affected by other error of law.

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

10 (6) Arbitrary or capricious.

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

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

16 **SECTION 14.** Article 27 of Chapter 113 of the General Statutes is amended by
17 adding four new sections to read:

18 **"§ 113-395A. Miscellaneous permit requirements.**

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

21 **"§ 113-395B. Subsurface injection of waste prohibited.**

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

26 **"§ 113-395C. Environmental compliance review requirements for applicants and permit**
27 **holders.**

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

36 (b) The Department shall conduct an environmental compliance review of each
37 applicant for a new permit under this Article. The environmental compliance review shall
38 evaluate the environmental compliance history of the applicant for a period of five years prior
39 to the date of the application and may cover a longer period at the discretion of the Department.
40 The environmental compliance review of an applicant may include consideration of the
41 environmental compliance history of the parents, subsidiaries, or other affiliates of an applicant
42 or parent that is a business entity, including any business entity or joint venturer with a direct or
43 indirect interest in the applicant, and other facilities owned or operated by any of them. The
44 Department shall determine the scope of the review of the environmental compliance history of
45 the applicant, parents, subsidiaries, or other affiliates of the applicant or parent, including any
46 business entity or joint venturer with a direct or indirect interest in the applicant, and of other
47 facilities owned or operated by any of them. An applicant for a permit shall provide
48 environmental compliance history information for each facility, business entity, joint venture,
49 or other undertaking in which any of the persons listed in this subsection is or has been an
50 owner, operator, officer, director, manager, member, or partner, or in which any of the persons
51 listed in this subsection has had a direct or indirect interest as requested by the Department.

1 (c) The Department shall determine the extent to which the applicant, or a parent,
2 subsidiary, or other affiliate of the applicant or parent, or a joint venturer with a direct or
3 indirect interest in the applicant, has substantially complied with the requirements applicable to
4 any activity in which any of these entities previously engaged, and has substantially complied
5 with federal, North Carolina, and other states' laws, regulations, and rules for the protection of
6 the environment. The Department may deny an application for a permit if the applicant has a
7 history of significant or repeated violations of statutes, rules, orders, or permit terms or
8 conditions for the protection of the environment or for the conservation of natural resources as
9 evidenced by civil penalty assessments, administrative or judicial compliance orders, or
10 criminal penalties.

11 (d) A permit holder shall notify the Department of any significant change in its
12 environmental compliance history or any significant change in the (i) identity of any person or
13 structure of the business entity that holds the permit for the facility; (ii) identity of any person
14 or structure of the business entity that owns or operates the facility; or (iii) assets of the permit
15 holder, owner, or operator of the facility. The permit holder shall notify the Department within
16 30 days of a significant change. A change shall be considered significant if it would result in a
17 change in the identity of the permit holder, owner, or operator for purposes of environmental
18 compliance review. Based on its review of the changes, the Department may modify or revoke
19 a permit, or require issuance of a new permit.

20 **"§ 113-395D. Seismic or geophysical data collection.**

21 (a) Notwithstanding any other provision of law, no liability for trespass shall arise from
22 activities conducted for the purpose of seismic or geophysical data collection. Provided,
23 however (i) persons conducting seismic and geophysical data collection may only conduct such
24 activity by undershooting from an off-site location and without physical entry to private land,
25 unless the landowner's consent for such activity is obtained in writing and (ii) persons
26 conducting seismic or geophysical data collection shall be civilly liable for any physical or
27 property damage determined to be a direct result of their seismic or geophysical data collection
28 activities, whether or not the seismic or geophysical data collection was conducted by
29 undershooting the land at an off-site location or by physical entry to land as permitted by the
30 landowner.

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

33 **SECTION 15.** G.S. 87-98.4(b) is amended by adding a new subdivision to read:

34 **"§ 87-98.4. Well contractor certification required; exemptions.**

35 (a) Certification Required. – No person shall perform, manage, or supervise any well
36 contractor activity without being certified under this Article. A person who is not a certified
37 well contractor or who is not employed by a certified well contractor shall not offer to perform
38 any well contractor activity unless the person utilizes a certified well contractor to perform the
39 well contractor activity and, prior to the performance of the well contractor activity, the person
40 discloses to the landowner in writing the name of the certified well contractor who will perform
41 the well contractor activity, the certification number of the well contractor, and the name of the
42 company that employs the certified well contractor.

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

45 ...
46 (14) Construction, repair, or abandonment of a well used for the exploration or
47 development of oil or gas.

48 "

49 **PART V. ESTABLISH SEVERANCE TAX**

50 **SECTION 16.(a)** Chapter 105 of the General Statutes is amended by adding a new
51 Article to read:

"Article 5I."Severance Tax.**"§ 105-187.71. Definitions.**

The following definitions apply in this Article:

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

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

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

1 and production of natural gas and oil. The severance tax is imposed upon all energy minerals
2 severed when sold.

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

4 (1) Condensates. – The applicable percentage rate of the gross price paid.

5 (2) Gas. – The applicable percentage rate of the market value as determined in
6 G.S. 105-187.73.

7 (3) Oil. – The applicable percentage rate of the gross price paid.

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

10 (d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to
11 the Mining and Energy Commission for a determination that the well qualifies as a marginal
12 gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate.
13 For severance of gas from a marginal gas well the percentage rate is four-tenths of one percent
14 (.4%).

15 (e) Gas Rate. – The percentage rate for gas is nine-tenths of one percent (.9%).

16 **"§ 105-187.73. Delivered to Market Value.**

17 (a) Delivered to Market Value of Natural Gas. – The delivered to market value of
18 natural gas is the total actual gross price as adjusted in this section. The delivered to market
19 value of gas is determined by subtracting the producer's actual costs to deliver the gas to the
20 market from the producer's total gross cash receipts from the sale of the natural gas. A producer
21 receiving a cost reimbursement from the gas purchaser shall include the reimbursement in the
22 gross cash receipts and is entitled to deduct the actual costs of delivering the gas to market
23 incurred.

24 (b) Records. – In order to be eligible to subtract the actual costs to deliver the gas to the
25 market from the producer's gross receipts for purposes of calculating the delivered to market
26 value of natural gas, the producer shall provide any information required by the Secretary.
27 Every producer subtracting the costs to deliver the gas to the market as permitted under this
28 subsection shall maintain and make available for inspection by the Secretary any records the
29 Secretary considers necessary to determine and verify the amount of the costs to deliver the gas
30 to the market the producer is eligible to subtract. The burden of proving eligibility for
31 subtracting the costs to deliver the gas to the market and the amount of the costs to deliver the
32 gas to the market to be subtracted shall rest upon the producer, and no subtraction of costs to
33 deliver the gas to the market shall be allowed to a producer that fails to maintain adequate
34 records or to make them available for inspection.

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

43 (1) Costs for compressing the gas sold.

44 (2) Costs for dehydrating the gas sold.

45 (3) Costs for sweetening and treating the gas sold.

46 (4) Costs for delivering the gas to the purchaser.

47 (5) Reasonable charges for depreciation of the facility used to deliver the gas to
48 market being used, provided that, if the facility is rented, the actual rental fee
49 is added.

50 (6) Costs of direct or allocated labor associated with the facility used to deliver
51 the gas to market.

- 1 (7) Costs of materials, supplies, maintenance, repairs, and fuel associated with
2 the facility used to deliver the gas to market.
3 (8) Property taxes paid on the facility used to deliver the gas to market.
4 (9) Charges for fees paid by the producer to any provider of dehydration,
5 treating, compression, and delivery services.

6 **"§ 105-187.74. On-site use exemption from the tax.**

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

15 **"§ 105-187.75. Returns and payment of tax.**

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

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

23 (c) Quarterly. – A taxpayer who is consistently liable for less than one thousand dollars
24 (\$1,000) a month in severance taxes must file a return and pay the taxes due on a quarterly
25 basis. A quarterly return covers a calendar quarter and is due by the 25th day of the second
26 month following the end of the quarter.

27 (d) Monthly. – A taxpayer who is consistently liable for at least one thousand dollars
28 (\$1,000) a month in severance taxes must file a return and pay the taxes due on a monthly
29 basis. A monthly return is due by the 25th day of the second month following the calendar
30 month covered by the return.

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

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

- 42 (1) The gross amount of energy minerals produced that are subject to the tax
43 imposed by this Article.
44 (2) The leases from which the energy minerals were produced.
45 (3) The names and addresses of the first purchasers of the energy minerals.

46 (g) Additional Information. – To claim an exemption for on-site use, the producer or
47 taxpayer of a proposed or existing gas well shall apply to the Secretary for determination of
48 eligibility. The Secretary may require an applicant to provide any information required to
49 administer this provision. The Secretary shall make the determination within 15 calendar days
50 of the receipt of all information required by the Secretary from the producer or taxpayer, and
51 the producer or taxpayer shall attach the determination of eligibility to its severance tax form

1 next due, as applicable. The taxpayer shall provide any information required by the Secretary.
2 Every taxpayer claiming the exemption shall maintain and make available for inspection by the
3 Secretary of Revenue any records the Secretary considers necessary to determine and verify the
4 claim to which the taxpayer is entitled. The burden of proving eligibility shall rest upon the
5 taxpayer, and no exemption shall be allowed to a taxpayer who fails to maintain adequate
6 records or to make them available for inspection. The portion of the severance tax that is
7 required to be deducted from the royalty owner or other interest shall be calculated in the same
8 manner as the portion of the severance tax borne by the producer.

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

12 **"§ 105-187.76. Bond or letter of credit required.**

13 A producer must file with the Secretary a bond or an irrevocable letter of credit if the
14 producer fails to file a return required under this Article. A bond or an irrevocable letter of
15 credit must be conditioned upon compliance with the requirements of this Article, be payable to
16 the State, and be in the form required by the Secretary. The amount of the bond or irrevocable
17 letter of credit is two times the applicant's average expected monthly tax liability under this
18 Article, as determined by the Secretary. When notified to do so by the Secretary, a person who
19 is required to file a bond or an irrevocable letter of credit must file the bond or irrevocable letter
20 of credit in the amount required by the Secretary within 30 days after receiving the notice from
21 the Secretary.

22 **"§ 105-187.77. Liability of producer for tax.**

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

29 **"§ 105-187.78. Royalty owner's records.**

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

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

37 **"§ 105-187.79. Permits suspended for failure to report.**

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

45 **"§ 105-187.80. No local taxation.**

46 A city or county may not impose a franchise, privilege, license, income, or excise tax on the
47 severing, production, treating, processing, ownership, sale, storage, purchase, marketing, or
48 transportation on any energy minerals produced in the State, or upon the business of severing,
49 producing, treating, processing, owning, selling, buying, storing, marketing, or transporting
50 such energy minerals, or upon the ownership, operation, or maintenance of plants, facilities,
51 machinery, pipelines, and gathering lines related to the severing, production, treating,

1 processing, ownership, storage, sale, purchase, marketing, or transportation of energy minerals.
 2 This section does not preclude the taxation of the property in accordance with Article 11 of this
 3 Chapter."

4 **SECTION 16.(b)** G.S. 105-259(b) is amended by adding a new subdivision to
 5 read:

6 "(44) To furnish to the Department of Environment and Natural Resources the
 7 name, address, tax year end, and account and identification numbers of an
 8 entity liable for severance tax to enable the Secretary of Environment and
 9 Natural Resources to notify the entity that the Department of Environment
 10 and Natural Resources shall suspend permits of the entity for oil and gas
 11 exploration using horizontal drilling and hydraulic fracturing under
 12 G.S. 113-395."

13 **SECTION 16.(c)** G.S. 113-387 and G.S. 113-388 are repealed.

14 **SECTION 16.(d)** G.S. 105-187.72, as enacted by Section 16(a) of this act, reads as
 15 rewritten:

16 **"§ 105-187.72. Tax on severance of energy minerals.**

17 ...

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

20 (d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to
 21 the Mining and Energy Commission for a determination that the well qualifies as a marginal
 22 gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate.
 23 For severance of gas from a marginal gas well the percentage rate is six-tenths of one percent
 24 (.6%).~~four-tenths of one percent (.4%).~~

25 (e) Gas Rate. – The percentage rate for gas is ~~nine tenths of one percent (.9%).~~is set in
 26 the table below. The tax rate is applied to the delivered to market value of the gas sold.

<u>Over</u>	<u>Up to</u>	<u>Rate</u>
<u>-0-</u>	<u>\$3.00 per mcf</u>	<u>0.9%</u>
<u>\$3.01 per mcf</u>	<u>\$4.00</u>	<u>1.9%</u>
<u>\$4.01</u>	<u>N/A</u>	<u>2.9%</u>

31 **SECTION 16.(e)** G.S. 105-187.72, as enacted by Section 16(a) of this act, and
 32 amended by Section 16(d) of this act, reads as rewritten:

33 **"§ 105-187.72. Tax on severance of energy minerals.**

34 ...

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

37 (d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to
 38 the Mining and Energy Commission for a determination that the well qualifies as a marginal
 39 gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate.
 40 For severance of gas from a marginal gas well the percentage rate is eight-tenths of one percent
 41 (.8%).

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

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

1 **SECTION 16.(f)** G.S. 105-187.72(e), as enacted by Section 16(a) of this act, and
 2 amended by Sections 16(d) and 16(e) of this act, reads as rewritten:

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

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

15 **SECTION 17.** G.S. 105-275 is amended by adding a new subdivision to read:

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

19 **SECTION 18.** G.S. 153A-149 reads as rewritten:

20 "**§ 153A-149. Property taxes; authorized purposes; rate limitation.**

21 (a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General
 22 Assembly confers upon each county in this State the power to levy, within the limitations set
 23 out in this section, taxes on property having a situs within the county under the rules and
 24 according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).
 25 County property tax revenues for a fiscal year may increase no more than eight percent (8%)
 26 from the county property tax revenues for the prior fiscal year.

27 (b) ~~Each~~ Other than the restriction in subsection (a) of this section, each county may
 28 levy property taxes without restriction as to rate or amount for the following purposes:

- 29 (1) Courts. – To provide adequate facilities for and the county's share of the cost
 30 of operating the General Court of Justice in the county.
- 31 (2) Debt Service. – To pay the principal of and interest on all general obligation
 32 bonds and notes of the county.
- 33 (3) Deficits. – To supply an unforeseen deficiency in the revenue (other than
 34 revenues of public enterprises), when revenues actually collected or received
 35 fall below revenue estimates made in good faith and in accordance with the
 36 Local Government Budget and Fiscal Control Act.
- 37 (4) Elections. – To provide for all federal, State, district and county elections.
- 38 (5) Jails. – To provide for the operation of a jail and other local confinement
 39 facilities.
- 40 (6) Joint Undertakings. – To cooperate with any other county, city, or political
 41 subdivision in providing any of the functions, services, or activities listed in
 42 this subsection.
- 43 (7) Schools. – To provide for the county's share of the cost of kindergarten,
 44 elementary, secondary, and post-secondary public education.
- 45 (8) Social Services. – To provide for public assistance required by Chapters
 46 108A and 111 of the General Statutes.

47 "

48 **SECTION 19.** G.S. 160A-209 reads as rewritten:

49 "**§ 160A-209. Property taxes.**

50 (a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General
 51 Assembly confers upon each city in this State the power to levy, within the limitations set out

1 in this section, taxes on property having a situs within the city under the rules and according to
2 the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II). City property tax
3 revenues for a fiscal year may increase no more than eight percent (8%) from the city property
4 tax revenues for the prior fiscal year.

5 (b) ~~Each~~ Other than the restriction in subsection (a) of this section, each city may levy
6 property taxes without restriction as to rate or amount for the following purposes:

- 7 (1) Debt Service. – To pay the principal of and interest on all general obligation
8 bonds and notes of the city.
- 9 (2) Deficits. – To supply an unforeseen deficiency in the revenue (other than
10 revenues of any of the enterprises listed in G.S. 160A-311), when revenues
11 actually collected or received fall below revenue estimates made in good
12 faith in accordance with the Local Government Budget and Fiscal Control
13 Act.
- 14 (3) Civil Disorders. – To meet the cost of additional law-enforcement personnel
15 and equipment that may be required to suppress riots or other civil disorders
16 involving an extraordinary breach of law and order within the jurisdiction of
17 the city.

18"

19 **SECTION 20.** Sections 16(a), 16(b), and 16(c) become effective July 1, 2015, and
20 apply to energy minerals severed on or after that date. Section 16(d) becomes effective January
21 1, 2019, and applies to energy minerals severed on or after that date. Section 16(e) becomes
22 effective January 1, 2021, and applies to energy minerals severed on or after that date. Section
23 16(f) becomes effective January 1, 2023, and applies to energy minerals severed on or after that
24 date. Sections 18 and 19 become effective for taxable years beginning on or after July 1, 2015.
25 The remainder of this Part is effective when it becomes law.

26 **PART VI. STUDIES**

27 **SECTION 21.** The Local Government Division of the Department of Revenue
28 shall study how other states value energy minerals for the purpose of property taxation. The
29 Division shall establish guidelines for counties to ensure the consistent and fair taxation of
30 energy minerals throughout the State. The Local Government Division shall report its findings
31 to the Joint Legislative Commission on Energy Policy by January 1, 2015.

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

- 37 (1) Identify the State, federal, and local regulatory programs under which LNG
38 export terminals are permitted and approved.
- 39 (2) Identify any State statutory or regulatory barriers to siting, constructing, or
40 operating a LNG export terminal in the State.
- 41 (3) Evaluate infrastructure needs and impacts as follows:
 - 42 a. Identify the infrastructure that is necessary to support a LNG export
43 terminal.
 - 44 b. Identify any idle publicly-owned infrastructure that may be utilized
45 to support LNG export terminal operations.
 - 46 c. Identify publicly-owned unutilized or underutilized lands that may be
47 used to support LNG export terminal operations.
 - 48 d. Identify potential impacts on infrastructure, including roads,
49 pipelines, and water and wastewater services, and other provision of
50

1 services by local governments including schools, law enforcement,
2 and development.

- 3 (4) Conduct a cost-benefit analysis for the construction and operation of an
4 LNG export terminal. The analysis shall evaluate scenarios in which the
5 State is the primary producer of the exported natural gas and scenarios in
6 which the State is not the primary producer of the exported natural gas.
7 (5) Examine potential economic impacts, including:
8 a. Possible sources of revenue that could accrue to the benefit of the
9 State if LNG is exported from a terminal in North Carolina.
10 b. The number of jobs that may be expected as a result from the
11 construction and operation of a LNG export terminal.
12 (6) Identify and evaluate potential environmental impacts of construction and
13 operation of a LNG export terminal. In examining this issue, the agencies
14 shall gather information on regulatory programs in other states where LNG
15 export terminals are in operation.
16 (7) Identify potential social impacts, including impacts of construction and
17 operation of a LNG export terminal on nearby communities and quality of
18 life within those communities, recreational activities, and commercial and
19 residential development.
20 (8) Examine any other pertinent issues that the agencies deem relevant to the
21 construction and operation of a LNG export facility in the State.

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

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

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

49 **SECTION 23.(b)** The Department of Transportation shall report its finding and
50 recommendations, including any legislative proposals, to the Joint Legislative Energy Policy

1 Commission and the Joint Legislative Transportation Oversight Committee on or before
2 January 1, 2015.

3 **SECTION 24.(a)** The State Board of Community Colleges shall study the
4 feasibility and desirability of developing a program to prepare students with a general
5 education foundation and technical competencies for employment opportunities in the oil and
6 natural gas drilling, gathering, and field operations industry. In particular, the State Board shall
7 consider developing such a program at one or more of the community colleges located where
8 the potential for shale gas resources is highest. In the conduct of its study, the State Board shall
9 evaluate similar education programs in community college systems in other states.

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

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

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

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

- 43 (1) Examine the Mining and Energy Commission's rules, once adopted, related
44 to oil and gas exploration, including, but not limited to, rules concerning
45 drilling units, spacing requirements, and setbacks, and all rules the
46 Department determines will affect the regulation of compulsory pooling in
47 the State.
- 48 (2) Study, in conjunction with the Mining and Energy Commission and the
49 Consumer Protection Division of the North Carolina Department of Justice,
50 the issue of amending current dormant mineral statutes regarding
51 extinguishment and other consumer protection issues related to split estates.

- 1 (3) Issue specific recommendations for legislative action related to compulsory
2 pooling and dormant mineral statutes and report the findings of their study,
3 including specific proposals for legislative action, to the Joint Legislative
4 Commission on Energy Policy and the Environmental Review Commission
5 on or before October 1, 2015.

6 **SECTION 26.** The Mining and Energy Commission and the Department of
7 Environment and Natural Resources shall study the development of midstream infrastructure in
8 North Carolina, which is necessary or advisable to facilitate the exploration, development, and
9 production of the State's oil and gas resources. Infrastructure examined shall include
10 development of pipelines, gathering systems, compressor stations, pumping systems, on-site
11 and near-site storage tanks, and natural gas liquids processing systems. All State agencies,
12 including the constituent institutions of The University of North Carolina, shall provide
13 information and support to the Commission and the Department in the conduct of this study.
14 The Commission shall report the findings of this study, including specific proposals for
15 legislative action, to the Joint Legislative Commission on Energy Policy on or before March 1,
16 2015.

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

- 21 (1) The long-term environmental impact of base load power generation of
22 electric public utilities.
23 (2) The use of all forms of energy, including renewable and alternative sources
24 of energy.
25 (3) The implementation of S.L. 2007-397, including recommendations on any
26 changes to the law as necessary.
27 (4) The impact of the elimination of natural gas franchise areas in order to allow
28 competition in the provision of piped natural gas service in the State.

29 The State Energy Office shall report its findings to the Joint Legislative
30 Commission on Energy Policy on or before January 1, 2015.

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

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

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

44 **PART VII. MISCELLANEOUS PROVISIONS UNRELATED TO SHALE GAS**

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

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

47 "(e) Staff support required by the Council shall be supplied by the Division of Energy,
48 Mineral, and Land Resources of the Department of Environment and Natural Resources. The
49 Department of Environment and Natural Resources shall provide legal support to the Council
50 as needed from the Department's staff. The Department of Commerce and the Utilities
51

1 Commission are hereby authorized to make their staff available to the Council to assist in the
2 development of a State energy policy."

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

5 "(1f) Diesel gallon equivalent of liquefied natural gas. – The energy equivalent of
6 6.06 pounds of liquefied natural gas."

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

9 "(1g) Gas gallon equivalent of compressed natural gas. – The energy equivalent of
10 5.66 pounds of compressed natural gas."

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

12 "**§ 105-449.136. Tax on alternative fuel.**

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

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

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

27 **PART VIII. SEVERABILITY AND EFFECTIVE DATE**

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

31 **SECTION 31.(b)** Except as otherwise provided, this act is effective when it
32 becomes law.
33