

LEGAL TIDES

From the North Carolina Coastal Resources Law, Planning and Policy Center • Autumn 2013

Bills Passed During the 2013 General Session of the N.C. General Assembly Affecting Coastal Resource Use and Conservation

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AGRICULTURE

S 638 / S.L. 2013-265
North Carolina Farm Act of 2013
Senators Jackson and Brock

This Act, in part, directs the N.C. Department of Environment and Natural Resources (DENR) and the N.C. Department of Transportation (DOT) to petition the Wilmington District of the U.S. Army Corps of Engineers to allow for more flexibility in performing stream and wetland mitigation outside of the eight-digit Hydrologic Unit Code when development occurs that requires mitigation.

H 614 / S.L. 2013-314
North Carolina Agriculture and Forestry Act
Representatives Ramsey, Presnell and Waddell

This Act states that agricultural and forestry operations are not nuisances under certain circumstances. It also provides for the award of costs and expenses, including reasonable attorneys' fees, to: (1) the agricultural or forestry operation when the court finds the operation was not a nuisance and the nuisance action was frivolous or malicious; or (2) the plaintiff when the court finds the agricultural or forestry operation was a nuisance and the operation asserted an affirmative defense in the nuisance action that was frivolous and malicious.

H 505 / S.L. 2013-131
Extend DSWC Animal Waste Inspections
Representatives Waddell, Millis, Iler and McElraft

This Act codifies and makes permanent the program for inspections, to occur at least once a year, of certain animal operations that are subject to a permit under G.S. 143-215.10C by the N.C. Division of Soil and Water Conservation. The inspections will determine whether the operation is causing a violation of water quality standards and whether the facility is in compliance with its animal waste management plan or any other condition of the permit.

H 629 / S.L. 2013-135
Amend Definition of Special Purpose Project
Representatives S. Martin, R. Brawley and Lewis

This Act amends the definition of a "special purpose project" to include agricultural and forestry waste disposal facilities. It also allows county and state financing authorities to render financial assistance to waste disposal facilities that handle forestry and agricultural wastes.

S 205 / S.L. 2013-228
Eliminate Unnecessary Testing/Animal Waste
Senator Walters

This Act eliminates unnecessary soil-testing requirements in animal waste management plans.

ENERGY

S 76 / S.L. 2013-365
Domestic Energy Jobs Act
Senators Newton, Rucho and Brock

This Act addresses the various issues associated with oil and gas exploration, including fracking

and offshore development. The Act also establishes an Offshore Energy Management Fund, provides for revenue allocation resulting from offshore energy production, and encourages the Governor to negotiate with South Carolina and Virginia to create a regional energy compact that would develop a unified regional strategy to build offshore energy resources in federal waters. Additionally, this Act moves the Energy Policy Council and State Energy Office from the N.C. Department of Commerce to DENR.

H 484 / S.L. 2013-51
Permitting of Wind Energy Facilities
Representatives J. Bell, Dixon, McElraft and Whitmire

This Act establishes a permitting program for the siting and operation of wind energy facilities, requiring the developer of a "wind energy facility" to obtain a siting permit from DENR. This Act is intended to prevent interference with military training air space and to add environmental safeguards. This statute requires early consultation with DENR and detailed disclosures of wind facility plans.

SOLID WASTE

H 321 / S.L. 2013-409
Amend Local Solid Waste Planning
Representatives McGrady, McElraft, G. Graham and Speciale

This Act repeals the requirement that local governments develop and maintain a solid waste



management plan, a process that previously involved public meetings, education and enforcement programs, and DENR oversight.

H 135 / S.L. 2013-408
Adjust Landfill Permit Fee Timing
 Representatives Samuelson, McElraft and McGrady

This Act adjusts the fee schedule for permits for sanitary landfills and transfer stations to reflect the extension of the duration of these permits, as directed by S.L. 2012-187 and as recommended by the Environmental Review Commission.

S 24 / S.L. 2013-25
Construction/Demolition Landfill Siting
 Senator H. Brown

This Act amends the gameland buffer requirement applicable to sanitary landfills for the disposal of construction and demolition debris under certain conditions. Siting requirements for construction and demolition debris landfills in counties with populations of less than 15,000 people require a setback of only 500 feet (previously one mile) from state gamelands.

S 372 / S.L. 2013-340
Omnibus County Legislation
 Senator J. Davis

This Act requires notice and an opportunity for comment from county boards when permits for land application of waste within that county are issued by the Environmental Management Commission (EMC); an increase in the threshold for DOT informal bid procedures and a clarification that DOT's policy concerning participation by disadvantaged minority-owned and women-owned businesses applies to contracts let using those procedures; and a study of state payments in lieu of taxes of public lands.

TRANSPORTATION

H 817 / S.L. 2013-183
Strategic Transportation Investments
 Representatives W. Brawley, Torbett, Iler and Shepard

The purpose of this Act is to strengthen North Carolina's economy through strategic transportation investments. The Act abolished funding for the proposed Mid-Currituck Bridge and removed from statute the requirements that the N.C. Turnpike Authority study, plan, develop and undertake preliminary design work on the Mid-Currituck Bridge and the Cape Fear Skyway. It also placed ferry funding in the Regional tier. As a result, North Carolina ferries now compete with other regional and divisional needs for funding support that is supplied by 60 percent of the N.C. Highway Trust Fund.

WATER, DREDGING, WETLANDS, COAST

H 229 / S.L. 2013-179
Holden Beach/Canal Dredging District Fee
 Representative Iler

This Act authorizes the Towns of Holden Beach and Ocean Isle Beach to accumulate funds in a capital reserve fund for canal dredging and maintenance for a period of 10 years.

S 151 / S.L. 2013-384
Coastal Policy Reform Act of 2013
 Senator Rabon

This Act amends marine fisheries laws, amends the laws governing the construction of terminal groins, and clarifies that cities may enforce ordinances within the State's public trust areas. To construct a terminal groin, an applicant must now show only that "structures or infrastructure are threatened by erosion." An applicant is no longer required to demonstrate that the threat is "imminent" or that "nonstructural approaches to erosion control, including relocation of the threatened structures, are impractical." Additionally, the Act compels that the monitoring and mitigation requirements of the mandated management plan for the inlet and the estuarine and ocean shorelines immediately adjacent to and under the influence of the inlet "be reasonable and not impose requirements whose costs outweigh the benefits." Thus, the inlet management plan is not required to address sea level rise. In addition, the financial assurances are not compelled to fund "restoration of public, private, or public

trust property if the groin has an adverse impact on the environment or property." Lastly, local municipalities are granted more flexibility to provide financial assurances. Currently, the Coastal Resources Commission may issue no more than a total of four permits for terminal groin construction.

The Coastal Policy Reform Act also necessitates change regarding municipal protection of public trust areas. Cities now have the authority, based on ordinances, to regulate ocean beachfront in the state's public trust area.

The Act also, in effect, reverses the holding in *Town of Nags Head v. Cherry, Inc.* (summarized in the Spring/Summer 2012 issue of *Legal Tides*). In this case, the town sought to abate a nuisance, where storms and erosion resulted in beachfront houses being without power, water or sewer. The Act strikes down the Court of Appeals ruling, which held that only the State has the authority to act to protect public trust interests.

S 515 / S.L. 2013-395
Jordan Lake Water Quality Act
 Senators Gunn and Wade

This Act delays additional implementation of the Jordan Lake Rules and Jordan Lake Session Laws, and provides for alternative implementation of the protection of existing buffers rule. The current water quality rules are designed to decrease nutrient input into Jordan Lake from tributaries contained in its watershed.

H 553 / S.L. 2013-223
Amend Carteret Co. Occupancy Tax
 Representative McElraft

This Act limits Carteret County's authority to levy an additional 1 percent room occupancy and tourism development tax. The County may levy the additional 1 percent tax only when it levies a tax pursuant to G.S. 105-164.4(a)(3) (tax imposed on retailers). However, the room occupancy and tourism development tax does not apply to accommodations provided by nonprofit charitable, educational or religious organizations when furnished in furtherance of their nonprofit purpose. The Act also modifies the distribution of the proceeds of the tax so that the funds are equally split between tourism promotion and beach nourishment on Bogue Banks.

H 294 / S.L. 2013-182
Authority to Remove Abandoned Vessels
 Representative Tine

This Act allows certain counties [Brunswick and Dare] to remove abandoned vessels from navigable waters.

S 268 / S.L. 2013-69

Sunset Beach/Canal Dredging/Maintenance Fee

Senator Rabon

This Act allows the Town of Sunset Beach to impose a canal dredging and maintenance fee.

H 707 / S.L. 2013-138

Ensure Safe Navigation Channels

Representatives Millis, McElraft, Warren and Tine

This Act directs DENR to pursue various strategies to ensure that the State's shallow draft navigation channels are safe and navigable by entering into agreements with the U.S. Army Corps of Engineers and aiding local governments with the attainment of Corps and Coastal Area Management Act permits for channel dredging and beach disposal of dredged materials.

Additionally, this Act creates the Oregon Inlet Land Acquisition Task Force to study and report to the General Assembly by May 1, 2014, on the State's options for obtaining the federal government's interest in the Oregon Inlet and the lands surrounding the inlet.

S 341 / S.L. 2013-388

Amend Interbasin Transfer Law

Senator Rabon

This Act authorizes an expedited process to modify interbasin transfer certificates and to issue interbasin transfer certificates in the central coastal plain capacity use area and the coastal area counties. It also amends S.L. 2013-50, an Act to promote the provision of regional water and sewer services by transferring ownership and operation of certain public water and sewer systems to a metropolitan water and sewerage district, by: (1) repealing Section 1(a)(2); and (2) adding a new section. The new section, Section 1.(g), reads: "For purposes of this section, a public water system shall not include any system that is operated simultaneously with a sewer system by the same public body, in conjunction with the provision of other utility services for its customers."

WILDLIFE

S 229 / S.L. 2013-269

Ocean Isle Beach/Sea Turtle Sanctuary

Senator Rabon

This Act authorizes the Town of Ocean Isle Beach to create a sea turtle sanctuary and to exchange a parcel of real property for services.

H 296 / S.L. 2013-283

Omnibus Wildlife Resources Commission Act

Representatives J. Bell, Moffitt, S. Martin and Wray

This Act: (1) adjusts the fees charged for certain hunting and fishing licenses issued by the Wildlife Resources Commission (WRC) and repeals county hunting, fishing and trapping licenses and noncommercial special device licenses; (2) establishes a black bear management stamp that must be procured before taking bear within the state and amends the law restricting the taking of black bear with bait; (3) adjusts the age for discounted special licenses from age 65 to age 70; (4) provides that effective Jan. 1, 2015, those hunting and fishing license fees in effect shall remain at the existing levels until the WRC establishes new fees through rule making, and authorizes the WRC to establish license fees through rule making beginning in 2015; (5) replaces the current 6 percent wildlife service agent commission fee with a \$2 transaction fee; (6) provides that no more than 25 percent of the WRC's authorized operating budget shall be kept in reserve; and (7) provides an annual target for utilization of the annual expendable interest of the Wildlife Endowment Fund.

MISCELLANEOUS

S 402 / S.L. 2013-360

Appropriations Act of 2013

Senators Brunstetter, Brown and Hunt

This Act makes budget appropriations for current operations of state departments, institutions and agencies, and for other purposes. This Act guides the N.C. Division of Marine Fisheries to involve North Carolina's commercial fishing industry in the "development of a plan to determine a source of funding necessary to support the Marine Fisheries At-Sea Observer Program," an important program related to commercial fishers' ability to maintain compliance with the Endangered Species Act. Additionally, this Act creates a new division within DENR, the Division of Water Infrastructure, consolidating the water infrastructure roles previously carried out by the Division of Water Quality and the Division of Water Resources. It also eliminates the State Water



Spencer Rogers

Infrastructure Commission and creates a new Water Infrastructure Authority. This new body will be tasked with making grants for local water infrastructure projects and producing a master plan for the water infrastructure needs of the state.

H 74 / S.L. 2013-413

Regulatory Reform Act of 2013

Representatives Murry, Moffitt, Samuelson and Bryan

The goals of this Act are to improve and streamline the regulatory process in order to stimulate job creation, to eliminate unnecessary regulation, to make various other statutory changes, and to amend certain environmental and natural resources laws. For example, this Act amends the definition of "built-upon" area for stormwater programs to exclude some surfaces, including wooden slatted decks. It also provides for local governments to enter into development agreements for brownfields properties of less than 25 acres. Additionally, the Act: (1) requires applicants for proposed sanitary landfills to hire third parties to review permit applications and study the associated environmental impacts; (2) adjusts buffer requirements; (3) lowers cleaning frequency of leachate collection systems; and (4) modifies some hauling requirements from "leak-proof" to "leak-resistant" equipment. Finally, it lists mandatory factors that DENR must consider in calculating penalties for solid waste violations.

H 120 / S.L. 2013-118

Building Codes: Local Consistency/Exempt Cable

Senators Hager, W. Brawley, Cotham and Arp

This Act requires approval from the N.C. Building Code Council before a unit of local government may require building inspections in addition to those required by the building code; specifies the frequency and effective dates of code updates; and exempts cable television equipment installation from building code requirements.

H 628 / S.L. 2013-242
Protect / Promote Locally Sourced Building
Materials
Representatives Presnell and Catlin

This Act: (1) requires net savings in association with major facility construction and renovation projects and (2) protects use of North Carolina products (N.C.-grown timber) in major facility construction and renovations projects under the sustainable energy-efficient buildings program.

H 279 / S.L. 2013-121
Transfer Environmental Permits
Representatives Millis, Hager, McElraft and Moffitt

This Act authorizes DENR (or a local government with the proper permitting authority) to transfer certain environmental permits associated with property development when the original property owner is unwilling or unable to agree to the permit transfer. Transferrable permits include stormwater permits, erosion control plans, permits for sewer

systems, sewer system extensions, disposal systems or land application of waste.

H 480 / S.L. 2013-82
Environmental Permitting Reform
Representatives Millis, Moffitt, Catlin and Hardister

The goals of this Act are to provide regulatory certainty for North Carolina by requiring the development of minimum design criteria for stormwater permits to guide DENR in permit issuance and to reform the permitting process to allow fast-track permitting for applications certified by a qualified professional to be in compliance with the minimum design criteria. The Act also directs DENR to develop "Minimum Design Criteria" by Sept. 1, 2014, by consulting "a technical working group that consists of industry experts, engineers, environmental consultants, relevant faculty from the University of North Carolina, and other interested stakeholders." The EMC is instructed to adopt implementation rules for the stormwater fast-track permitting system by July 1, 2016.

To receive *Legal Tides*, comment on articles, or suggest topics, contact Lisa Schiavinato at lisa_schiavinato@ncsu.edu or 919-515-1895. Or write to: *Legal Tides*, North Carolina Sea Grant, NC State University, Box 8605, Raleigh, NC 27695-8605. Let us know if you want to receive *Legal Tides* electronically, or be sent an e-mail alert when a new issue is available online.

Save the Date: Shape of the Coast

The 2014 Shape of the Coast is scheduled for **Feb. 14, 2014**, from 8 a.m. to noon at the William and Ida Friday Center for Continuing Education in Chapel Hill. This event will be a part of the UNC School of Law's Festival of Learning. Visit www.nccoastallaw.org for more information.

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