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## Environment and Natural Resources

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The 2002 Session of the General Assembly enacted several important laws pertaining to environmental and natural resources.

- The most heralded piece of environmental legislation, the Clean Smokestacks Bill, was enacted very early in the session. A group of stakeholders produced a funding compromise that shifted the bill's costs in a manner that satisfied the electric utilities and their large industrial customers, both of whom had opposed the bill in 2001.
- A bill governing the recording of land use restrictions at partially cleaned petroleum underground storage tank sites passed after many months of debate and drafting.
- Despite more lengthy debate and numerous other drafts, a bill to allow pre-permit construction of facilities that would generate air pollution failed.
- The Coastal Area Management Act continued to receive a great deal of legislative scrutiny in the details of its application. The scrutiny included one of the first times the legislature has used the veto provisions in the Administrative Procedures Act to nullify a rule without also setting out a way to achieve a compromise on the subject of the rule making.
- Water quantity issues were much in the news, as the most serious drought in the state's recorded history continued through the session, but all proposed legislation in response to the drought was greatly diluted by the close.
- Despite the large budget deficit faced by legislators, the 2002 session succeeded in retaining most of the moneys in the Clean Water Management Trust Fund.

## **Agriculture**

### **Animal Waste Management**

S.L. 2002-176 (H 1537) extends through September 2003 the pilot program in Brunswick, Columbus, and Jones Counties in which the Department of Environment and Natural Resources (DENR) Division of Soil and Water Conservation, rather than the DENR Division of Water Quality, manages hog farm inspections. S.L. 2002-176 also requires that the DENR reports concerning the pilot program compare the cost of conducting operations reviews and inspections under the Division of Soil and Water Conservation pilot program to the cost of doing so under the Division of Water Quality program.

### **Soil and Water Conservation**

In S.L. 2002-176 the General Assembly exercises its constitutional and statutory power to allow the office of member of the Soil and Water Conservation Commission to be held concurrently with any other elected or appointed office. This enactment reinforces the general statutory provision in G.S. 128-1.1 that contemplates the same result for all public offices.

Many of the early Public Law 566 dams and structures are at least fifty years old and may need rehabilitation or repair. S.L. 2002-176 authorizes the Soil and Water Conservation Commission to make grants of up to 50 percent of the cost of rehabilitating and improving these structures, if funds are available.

### **Farmland Preservation Trust Fund**

Section 11.6 of S.L. 2002-126 (S 1115), the budget bill, limits the use of Farmland Trust Fund appropriations to the purchase of perpetual agricultural conservation easements that may not be reconveyed.

### **Off-Road Vehicles**

S.L. 2002-150 (S 589) allows off-road vehicles used in agricultural quarantine procedures to be operated on highways.

### **Tobacco Escrow Statute**

S.L. 2002-145 (H 348) seeks to improve compliance with tobacco escrow arrangements that require nonparticipating tobacco manufacturers to contribute specified amounts to an escrow fund, beginning in 1999. The statute authorizes the Attorney General to impose specified civil penalties on manufacturers that do not meet the act's disclosure requirements and declares that cigarettes found to be in violation of various packaging requirements can be seized as contraband.

## **Air Quality**

### **Clean Fuels**

While most attention was paid to the Clean Smokestacks bill, which will improve air quality by regulating large stationary sources of pollution, the legislature also took a step in the other direction for mobile sources of pollution by delaying the implementation of low-sulfur gasoline. S.L. 1999-328 had required that by January 1, 2004, the gasoline in the state have a reduced average sulfur content of thirty parts per million. S.L. 2002-75 (H 1308) delays this requirement

until 2006. In the two-year interim period, gasoline that meets federal requirements under tier 2 standards is allowed.

### **Clean Smokestacks**

Large coal-fired electrical generating facilities have become the state's major stationary sources of nitrogen oxide (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) emissions. These facilities were grandfathered by the federal Clean Air Act and thus had previously avoided having to install NO<sub>x</sub> and SO<sub>2</sub> pollution control equipment. The most celebrated environmental bill of the session, S.L. 2002-4 (S 1078), the Clean Smokestacks Bill, limits the emissions of these pollutants from such facilities in North Carolina. This bill was originally introduced in 2001. It failed to pass when major industrial customers of the state's electric power utilities objected to the rate increases necessary to fund the bill's pollution reduction requirements. In 2002 legislators quickly reached consensus on a new bill that addresses the customers' concerns by (1) funding provisions that distribute pollution control costs to the rate base as a whole, (2) accelerating amortization of pollution control costs, and (3) not requiring utilities that install the pollution control equipment to reduce rates. The bill caps overall electric utility emissions, allowing the utilities to distribute the pollution reductions among their facilities as they see fit. The reductions must begin by January 1, 2007, and be fully in place by January 1, 2013. The legislation authorizes transfer of emissions trading credits under the federal program for SO<sub>2</sub> to be transferred to the state. By the time the reductions are completely implemented, NO<sub>x</sub> and SO<sub>2</sub> emissions are expected to be reduced by as much as 70 percent.

Because it is increasingly apparent that air emissions are the major cause of mercury contamination in state waters and because of the role carbon dioxide (CO<sub>2</sub>) plays in global warming, S.L. 2002-4 requires DENR to study how the NO<sub>x</sub> and SO<sub>2</sub> reductions mandated in the bill affect mercury and CO<sub>2</sub> emissions.

### **Municipal Waste Combustion**

S.L. 2002-24 (H 1584) extends the date for air quality compliance by small municipal waste combustion units to December 1, 2004.

## **Coastal Resources**

### **Beach Nourishment and Shoreline Hardening**

S.L. 2002-126, the budget bill, prohibits the permanent removal of beach quality material dredged from navigational channels within the active nearshore, beach, or inlet shoal systems and requires that this material be placed on the beach or in a shallow active nearshore area where environmentally acceptable and compatible with beach use. The budget bill also directs the Coastal Resources Commission to allow the use of riprap in the construction of groins in estuarine and public trust waters on the same basis that wood is allowed.

### **Swimming Pool Rules**

S.L. 2002-116 (H 1540) nullifies a Coastal Resources Commission rule-making proceeding that would have disallowed the construction of swimming pools in ocean hazard areas. The legislation also expressly authorizes a city or county to order the removal of a swimming pool under its existing public health nuisance authority. This bill represents one of the first times the legislature formally disapproved a state agency rule without subsequently setting up a means to resolve the policy problem that led to the original rule-making proceeding.

### **Office Location**

A provision requiring the office of the DENR Division of Coastal Management to be moved to the coast was included in the budget bill passed by the Senate but was deleted in conference.

### **Variances**

S.L. 2002-68 (H 1544) changes the legal requirements for obtaining a variance from Coastal Resources Commission rules. The changes eliminate the possibility of claiming “practical difficulties” instead of “unnecessary hardships” in petitions and require that such hardships not be the result of petitioner action rather than simply being unanticipated. The changes were made, at least in part, in response to the North Carolina Court of Appeals opinion in *Williams v. DENR*, 144 N.C. App. 479, 548 S.E.2d 793 (2001).

## **Environmental Finance**

### **Dam and Reservoir Rehabilitation**

S.L. 2002-176 (H 1537) authorizes the Soil and Water Commission to make grants of up to 50 percent of the cost of rehabilitation and improvement of dams and reservoirs built with federal funding under the Watershed Protection and Flood Prevention Act of 1954, as amended.

### **Dedicated Funds**

S.L. 2002-126 appropriates \$66.5 million to the Clean Water Management Trust Fund for the 2002–2003 fiscal year, a reduction of \$3.5 million from 2001–2002. The House version of the budget had reduced Clean Water Management Trust funding for the period to \$40 million. S.L. 2002-176 gives the Eastern Band of Cherokee Indians in North Carolina access to the Clean Water Management Trust Fund.

S.L. 2002-155 (S 1252) makes changes in the Conservation Grant Fund in G.S. 113A-232 that, among other things, require DENR to retain a property interest in conservation property it conveys to ensure that the property is utilized for conservation purposes.

### **Electronics Recycling Advance Recovery Fee**

House Bill 1565 and Senate Bill 1255 were introduced to create an advance recovery fee for electronic equipment, modeled on the White Goods and Scrap Tire Fee Programs. The proposed fee would have paid local governments to conduct electronics recycling programs, which are prohibitively expensive for most local government units to operate using only general revenues or present waste disposal fees. The advance recovery fee legislation was the focus of a stakeholder negotiation that proceeded throughout the session, but no consensus or legislative action emerged.

### **Land Conservation/Use-Value Tax Program**

S.L. 2002-184 (S 1161) enacted many changes to the Present-Use Value Tax Program. One of these is designed to ease the effects of conservation status on properties qualifying for use-value taxation. The legislation allows property that is subject to a conservation easement and that would qualify for the conservation tax credit in G.S. 105-130.34 to remain qualified for use-value taxation even if it does not meet the use-value program’s production or income requirements. It also extends an existing study commission charged with reviewing and proposing reforms to the use-value program.

### **PCB Landfill Detoxification**

Section 12.6(a) of S.L. 2002-126 authorizes DENR to use \$2.5 million from the Inactive Sites Fund and \$500,000 from water quality permit fees to complete the detoxification of the PCB landfill in Warren County.

### **Scrap Tire Cleanup Fund**

S.L. 2002-10 (H 1578) removes the sunset on the Scrap Tire Disposal Tax. S.L. 2002-126, section 12.5(a) (S 1115), the budget bill, allows DENR to use the Scrap Tire Cleanup Fund to maintain a position that provides regulatory assistance to local government in dealing with scrap tires.

### **Tax Credits**

S.L. 2002-104 (S 1253) limits the special property classification and property tax exclusion granted to animal waste management systems to those systems determined by the Environmental Management System to

- eliminate discharges to water,
- substantially eliminate atmospheric emissions of ammonia,
- substantially eliminate odor detectable beyond property boundaries,
- substantially eliminate the release of disease-transmitting vectors and pathogens, and
- substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

### **Water Supply Funding for Droughts**

S.L. 2002-176 allows the Secretary of DENR to authorize use of the Emergency Water Supply Revolving Loan Account for drought emergencies and to transfer funds into the Emergency Account from the General Water Supply Revolving Loan and Grant Account in the event of a drought emergency.

## **Environmental Health**

### **Institutional Sanitary Rules**

S.L. 2002-160 (H 1777) delays until March 1, 2003, the effective date of a number of institutional sanitation rules adopted by the Commission for Health Services and approved by the Rules Review Commission on October 18 and November 15, 2001. The statute directs the Division of Environmental Health to field-test these rules with the assistance of local health departments to determine (1) what costs facilities will incur as they implement the new rules, (2) whether lower sanitation grades will result from the new rules, and (3) whether the new rules will duplicate or conflict with other applicable rules.

### **Radiation Protection**

S.L. 2002-70 (S 1251) merges the Division of Radiation Protection into the DENR Division of Environmental Health.

### **Food and Lodging Fees**

S.L. 2002-126, the budget bill, makes the following changes in regulatory fees for food and lodging establishments:

- It increases the annual fee for regulated food and lodging establishments from \$25 to \$50. It also authorizes the Legislative Research Commission to study whether this \$50 fee adequately supports state and local food, lodging, and institutional sanitation programs and requires the commission to report its findings no later than the convening of the 2004 Regular Session.
- It authorizes a new state fee of \$200 for plan review of prototype franchised or chain food facilities and a new fee of \$200 for plan review by local health departments of other food establishments.

## **Forestry**

S.L. 2002-132 (H 1623) adds Brunswick County to the list of eighteen eastern counties that are classified as high hazard counties under the open burning laws because of the special problems the typical organic soils of these counties pose for forest fire control.

## **Growth/Planning**

### **Toll Roads**

S.L. 2002-133 (H 644) creates the North Carolina Turnpike Authority, an agency authorized to build and operate three toll roads in the state, using the power of eminent domain. The Turnpike Authority will be located administratively within the Department of Transportation but is directed to act independently for most purposes, an arrangement similar to the relationship between the Wildlife Resources Commission and DENR. Governance of the agency is placed in a nine-member board (two members are appointed by the President Pro Tempore of the Senate and two by the Speaker of the House, four members are appointed by the Governor, and one member is appointed by the Secretary of Transportation). One of the toll roads is to be located in Mecklenburg County, another must be outside Mecklenburg County, and the third is not restricted as to location. The new agency is also authorized to study and begin preliminary design work on three additional projects. The statute prohibits the authority from converting any segment of the nontolled state highway system to a toll facility.

### **Transit**

In early 2002 a new type of two-wheeled mobility device was introduced in a major nationwide marketing campaign under the mysterious code name of “Ginger” (the device is now known by its trade name, “Segway”). S.L. 2002-98 (S 1114) permits the use, without vehicle registration, of these “electric self-balancing nontandem two-wheeled” transit devices at maximum speeds of 15 mph, both on streets with posted speed limits of 25 mph or less and on sidewalks and bicycle paths.

## **Marine Fisheries Licensing**

S.L. 2002-15 (H 1557) extends the moratorium on new shellfish leases in Core Sound for another year. The moratorium has been in place since 1995.

House Bill 1121, another legislative attempt to establish a coastal recreational fishing license, was introduced but not passed.

## Natural and Protected Areas

S.L. 1999-268 authorized a statewide referendum on a constitutional amendment allowing dedication of property into the State Nature and Historic Preserve by bill instead of by joint resolution. S.L. 2001-217 scheduled the referendum for the “next statewide primary.” The 2002 primaries, however, were delayed as a result of the redistricting dispute. S.L. 2002-3 Extra Session (H 3) moved the referendum to the fall general election. The referendum subsequently passed.

Two other bills make changes in the State Parks System. S.L. 2002-149 (S 1211) removes Boone’s Cave State Natural Area from the system and makes modifications to the Mount Jefferson State Natural Area. S.L. 2002-89 (H 1545) adds Elk Knob State Natural Area and Beech Creek Bog State Natural Area to the State Parks System.

## Permitting

A hotly debated bill, S 1037, would have allowed construction or modification of new facilities that would ultimately require an air permit before the permit was issued. An amendment in the House limited this allowable construction to grading and peripheral buildings. The bill passed both chambers, but Senate conferees were unwilling to accept the limitations in the House amendment, and the bill thus failed to emerge from conference.

## Scrap Tires

The scrap tire tax, levied by G.S. 105-187.16, was to expire on June 30, 2002. S.L. 2002-10 (H 1578) removed this sunset provision and did not replace it with another expiration date.

S.L. 2002-126 made two significant amendments to G.S. 130A-309.63, which governs expenditures from the Scrap Tire Disposal Account. New subsection (b)(3) authorizes DENR to use revenue from the account to support a position to assist local governments with the development and implementation of scrap tire management programs, and new subsection (b)(4) specifies that DENR may only use the remaining revenue in the account to clean up scrap tire sites it determines are a nuisance and only if no other funds are available for the cleanup.

## Superfund and Inactive Sites Cleanup

### Petroleum Discharges and Land Use Restrictions

S.L. 2002-90 (H 1575) clarifies requirements for recording land-use restrictions at leaking underground storage tank sites. Occasionally the party responsible for cleaning up such a site is someone other than the person who owns the property. Questions had arisen as to whether prior statutory language required non-owner responsible parties to record land use restrictions despite the fact that the parties lacked legal interests in the property. S.L. 2002-90 (H 1575) clarifies that responsible parties are required only to *record* a notice of land use restrictions; the Secretary of DENR *imposes* the restrictions. The legislation also clarifies that responsible parties are required to record this notice even in the absence of agreement from the landowner. In addition, the legislation subjects persons responsible for recording these notices to the civil and injunctive enforcement provisions of the underground storage tank program. The legislation is effective retroactively to September 1, 2001.

### **Risk-Based Cleanup Standards**

House Bill 1009, a bill to establish consistent risk-based cleanup standards across several DENR programs, was debated at length in the 2001 session and reintroduced in the 2002 session, but failed to pass.

### **Voluntary Cleanup Enforcement Authority and Permit Waivers**

S.L. 2002-154 (H 1564) extends civil penalty authority of up to \$25,000 per day to violations of voluntary remedial action orders taken under the state Inactive Hazardous Sites program. This enhanced enforcement was designed to allay concerns about the increasing use of private contractors and the essentially privatized oversight of cleanups under the state's registered environmental consultant program. The legislation also expands the types of cleanups that may receive waivers from environmental permits to include cleanups conducted under designated state statutes.

## **Water Resources**

### **Roanoke River Basin Bi-State Commission and Advisory Committee**

S.L. 2002-177 (S 204) establishes the Roanoke River Basin Bi-State Commission and the Roanoke River Basin Advisory Committee. This nonregulatory commission, to be composed of nine members each from North Carolina and Virginia, is to provide guidance and make recommendations on water and other natural resource issues pertaining to the Roanoke River Basin. North Carolina's commission delegation will include six members of the General Assembly, who will also serve on the Roanoke River Basin Advisory Committee, and three nonlegislators appointed by the Governor to represent different geographic areas within the basin. The Advisory Committee is a twenty-one-person body of North Carolinians who are appointed in large part by the regional councils of government within the basin.

### **Water Conservation**

In 2002 North Carolina was in the fourth year of its worst drought on record. The legislature responded with S.L. 2002-167 (H 1215), a subtle redirection of existing state water supply planning efforts. The legislation grants additional authority to the Environmental Management Commission to create water conservation and reuse rules and directs that "current and future water conservation" and "water reuse" be addressed by mandatory local and state water supply plans. The Environmental Management Commission is directed to include within its rules minimum water conservation and reuse standards and practices for all major classes of water users, other than facilities that generate electricity. The bill as originally introduced would have authorized these rules to be in effect permanently, but as enacted the legislation restricts them to periods of drought and water emergencies. This rule making is required to be completed in time for the 2005 Regular Session of the General Assembly legislative rules review.

S.L. 2002-167 also creates a goal for state agencies, including the courts and the university system, to reduce water consumption by 10 percent, legislatively endorsing an executive order issued during the summer of 2002. The act also directs DENR to study water conservation and reuse and submit an interim report by March 2003 and a final report by February 2004 to the Environmental Review Commission and the Environmental Management Commission.

### **Water and Sewer Authorities**

S.L. 2002-76 (H 148) amends the Water and Sewer Authorities Law to allow water and sewer authorities formed by three or more political jurisdictions to include more than two nonprofit

water corporations in their organization. Previously, no more than two nonprofits could be included in the organization.

## Utilities and Energy

### Telecommunications

The Utilities Law (G.S. Chapter 62) authorizes the Utilities Commission to develop and encourage universally available telephone service at reasonable rates. S.L. 2002-14 (S 641) authorizes the commission, in defining *universal service*, to consider evolving trends in telecommunications and consumer need to access high-speed communications networks, the Internet, and other resources that provide social benefits at reasonable cost.

S.L. 2002-16 (H 1521) adopts a number of amendments to conform mobile telecommunications services in the state to the Federal Mobile Telecommunications Sourcing Act. It sets forth detailed sourcing principles for

- flat rates,
- call-by-call service,
- postpaid calling service,
- mobile service,
- prepaid calling service, and
- private service.

### Electric Power

S.L. 2002-120 (H 1490) provides that an electric company that collects the franchise or privilege license tax and remits it to the Secretary of Revenue is not subject to any additional franchise or privilege license taxes imposed by a city or county.

### Railroads

S.L. 2002-78 (S 759) limits to \$200 million the liability of railroad companies (including a state-owned railroad company), regional transportation authorities, and cities and counties for claims arising from single accidents or incidents related to passenger rail service.

### Green Power

S.L. 2002-167, the water conservation legislation, also directs the Utilities Commission to identify the following in an ongoing study entitled “Green Power and Public Benefit Fund Voluntary Check-Off Programs”:

- funding mechanisms other than voluntary purchases of green power blocks that would stimulate green power production,
- incentives for and barriers to green power production,
- ways to promote the purchase of green power, and
- concerns about the impact of green power production on environmental quality.

The report is due to the Commission on the Future of Electric Service in North Carolina and the Environmental Review Commission by March 15, 2003.

### Energy

S.L. 2002-12 (S 1111) makes block grant appropriations totaling \$19.8 million for low-income energy services for fiscal year 2002–2003. These appropriations include

- \$8.1 million for energy assistance;

- \$5.8 million for crisis intervention;
- \$2.7 million for weatherization;
- \$39,765 for Indian Affairs;
- \$1.3 million for heating and air conditioning repair and replacement; and
- \$2 million for administration.

S.L. 2002-161 (H 623) extends the guaranteed energy savings contracts law (G.S. Chapter 183, Part 2, Article 3B) so that it includes state government as well as local governments. It also includes a new State Energy Conservation Finance Act that is applicable to state government units.

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