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Environment and Natural Resources

The high-profile environmental bills in the 2005 session of the General Assembly concerned global warming and nutrients in Falls Lake, the drinking water supply for Raleigh. The legislation from this session with the largest impact, however, will likely be the environmental finance bills, notably the revision of the state's system for capital financing of water, wastewater, and stormwater infrastructure improvements. The forest products industry succeeded in getting legislation enacted that will restrict local government regulation of forestry activity. A bill to increase and diversify the enforcement authority of environmental regulators died on the House floor. At the same time, other bills strengthened provisions for water supply protection, sediment and erosion control, and regulation of particular watersheds in the mountains and piedmont.

Agriculture and Forestry

Voluntary Agricultural Districts

S.L. 2005-390 (H 607) creates a new category of agricultural district, the "Enhanced Voluntary Agricultural District." Cities and counties can, by ordinance, create these districts where landowners enter a ten-year conservation agreement as defined in G.S. 121-35. These agreements retain land or water predominantly in their natural, scenic, or open condition or in agricultural or forest use. Residents of an enhanced voluntary agricultural district can receive up to 25 percent of gross sales from nonfarm products while their property remains in bona fide farm status, which exempts them from zoning regulation under G.S. 153A-340(b). Cities or counties establishing these districts are also permitted to hold utility assessments in abeyance until utilities are actually connected to the farm property.

Forest Resources

S.L. 205-447 (S 681) prohibits cities and counties from regulating forestry activity on land taxed under the present-use value program as forestland and from regulating any forestry activity conducted in accordance with a forest management plan, except that

- development approval may be withheld for three years after an otherwise illegal clearcut,

- development approval may be withheld for five years after an otherwise illegal clearcut that was a “willful” violation of local government regulations,
- regulation under a local act by the General Assembly may continue,
- regulation necessary to comply with state or federal law is allowed,
- units of local government may exercise their planning and zoning jurisdiction, and
- cities may regulate and protect streets under their existing authority.

For purposes of the ban on local regulation, the bill also defines “forest management plan” as being aimed at commercial production of timber.

S.L. 2005-126 (H 698) rewrites portions of the Forest Development Act in Article 11 of G.S. Chapter 113A to add “insuring maximum growth potential of forest stands to commercial production levels” as an approved practice for cost sharing.

Air

Global Climate Change Study Commission

S.L. 2005-442 (S 1134) creates a thirty-four-member commission to study global climate change and to report to the legislature before November 1, 2006, when the commission terminates.

Low Sulfur Gas

S.L. 2005-196 (S 316) repeals the sunset provision of S.L. 2002-75, which had delayed the implementation of state standards for low sulfur gasoline originally enacted in 1999. Although these original more stringent state standards (an average of thirty parts per million of sulfur) have now been abandoned, the federal Tier II standards required of refiners by 2006 are very similar.

Contaminated Property Cleanup

MTBE Phase-Out Plan

Methyl tertiary butyl ether (MTBE) is an oxygenate sometimes added to unleaded gasoline to boost its octane rating. It has caused severe contamination problems with drinking water supplies across the United States due to its tendency to migrate very quickly through the water table. S.L. 2005-93 (H 1336) bans the intentional use of MTBE by the end of 2007. The act also directs the Secretary of the Department of Environment and Natural Resources (DENR) and the Commissioner of Agriculture to study the feasibility and advantages of a coordinated regional phase-out of MTBE across the southeastern United States.

DuPont Liability Relief

S.L. 2005-462 (S 629) purportedly creates a category of “manufacturing redevelopment districts” but in fact was written to give liability protection to DuPont for a facility in Transylvania County, in the middle of DuPont State Forest. Bill proponents hoped that passage of the act would facilitate transfer of the facility to Ilford, an imaging company. Ilford backed out of the deal, but the bill was passed nonetheless.

Underground Storage Tanks

S.L. 2005-365 (H 1385), the annual “tank bill,” clarifies the process and standards for the preapproval that is now required for reimbursement of cleanup expenditures for most spills from petroleum underground storage tanks. The act also codifies and removes the sunset from a special

provision that requires DENR to use risk assessment to decide whether and in what order to require tank cleanups.

Enforcement

The General Assembly debated, but did not pass, House Bill 1283, which would have increased some environmental fines and authorized DENR to require some violators to take educational courses and perform community service in lieu of paying fines. The bill failed on second reading in the House.

Environmental Finance

Infrastructure Financing

When the General Assembly last enacted major legislation for water and sewer infrastructure funding in 1998, it created a Water Infrastructure Council to coordinate and oversee grants and loans made under that legislation. The council, however, was never able to move much beyond debates over the geographically appropriate split of funding. S.L. 2005-454 (H 1095) provides a broader mandate for water, stormwater, and sewer funding coordination and creates a Water Infrastructure Commission to carry out the mandate. The act provides common criteria for water, stormwater, quality, and wastewater loans or grants from state sources, including the Clean Water Management Trust Fund. The criteria include a showing of public necessity; higher priority for improvement of impaired waters, for regional systems, for conservation or reuse of water, for units with comprehensive land use plans, for units with a flood hazard prevention ordinance, for ten-year or greater capital improvement plans, and for coastal habitat protection. The act also sets out common process requirements for state water, stormwater, quality, and wastewater funding. The act's criteria and process requirements explicitly exclude federal funding under the clean water and drinking water revolving loan programs. The new Water Infrastructure Commission is established in the Office of the Governor and is directed to meet at least four times annually to make recommendations on the state's role in infrastructure funding, the adequacy of projected funding, and the priorities for future state funding.

Energy Credit Banking

S.L. 2005-413 (S 1149) provides a mechanism administered by the State Energy Office for state agencies to buy and sell federal energy credits. These credits are currently provided for purchases of vehicles that use alternative fuels (such as biodiesel, ethanol, and compressed natural gas) or that are hybrid gasoline-electric vehicles.

Farmland Preservation Fund

S.L. 2005-390 renames the Farmland Preservation Fund the North Carolina Agricultural Development and Farmland Preservation Trust Fund and broadens its coverage to include farm operation subsidies.

Noxious Aquatic Weed Control Service Districts

S.L. 2005-440 (H 1281) allows counties to create service districts for riparian areas where invasive aquatic plants are a problem. The service districts allow special assessments for use in fighting the weeds to be made on property within the district.

Pesticide Disposal

The Current Operations and Capital Improvements Appropriations Act of 2005, S.L. 2005-276 (S 622), includes administrative funding of the Department of Agriculture's pesticide disposal program among the uses of the Pesticide Environmental Trust Fund.

Randleman Reservoir (Water and Sewer Authority) Bonds

To facilitate the completion of water treatment facilities for the Greensboro area at Randleman Reservoir, S.L. 2005-249 (S 1011) permits municipalities to finance water treatment facilities and distribution lines on land leased from a water and sewer authority, even though the financed assets are owned and operated by the authority.

Riparian Buffer Funding

S.L. 2005-443 (S 998) implements a provision of the Coastal Habitat Protection Plan by broadening the permitted use of funds from the Riparian Buffer Restoration Fund to include construction of alternative means that reduce nutrient loading as well as or better than a typical buffer. The fund is also to be administered by DENR rather than the Division of Water Quality within DENR.

Sludge Management

S.L. 2005-176 (H 1097) adds sludge management to the list of environmental services for which local governments can enter into contracts based on factors other than cost alone, as provided in G.S. 143-129.2.

Water and Sewer District Property Transfers and Per Diems

S.L. 2005-127 (S 15) allows a board of county commissioners to transfer state-owned property received from the county and located in a water and sewer district to another water and sewer district. It also raises the maximum annual per diem paid to members of a water and sewer district authority from \$2,000 to \$4,000.

Water Resources and Water Quality Funding Special Provisions

Section 45 of S.L. 2005-345 (H 320) provides water project funding to twenty-eight projects, including \$3.6 million to the Neuse Regional Water and Sewer Authority.

Marine Fisheries

In 2004, after a decade of bills, the General Assembly passed a coastal recreational fishing license (CRFL) requirement. The effective date was deferred to 2006 in light of unresolved controversy about the amount and administration of license fees. S.L. 2005-455 (S 1126) addresses these issues by creating a new series of licenses and associated fees, including annual and short-term CRFLs for residents and nonresidents and lifetime CRFLs for young, middle-aged and elderly persons and for totally disabled persons and disabled veterans. The act also provides exemptions for those who held various lifetime fishing and hunting licenses prior to January 1, 2006, and waivers for subsistence fisherfolk. The act also provides a license structure for "for hire" boat operators and for commercial fishing piers. The act restricts personal information collected by the Division of Marine Fisheries and the Wildlife Resources Commission in connection with licensure from disclosure under the Public Records Act. Finally, the act creates a Marine Resources Fund and a Marine Resources Endowment

Fund to hold license revenues and other funds dedicated to marine resource enhancement. The funds will be administered jointly by the Division of Marine Resources and the Wildlife Resources Commission.

Permits

S.L. 2005-276 expands DENR's pilot program for express permitting, under which permit applicants can pay higher fees for faster review, to a statewide program covering erosion and sedimentation control plan approvals, coastal management act permits, water quality certifications under Section 401 of the federal Clean Water Act, and stormwater management.

Solid Waste

Landfill Disposal Ban

S.L. 2005-362 (H 1465) prohibits the disposal of motor vehicle oil filters, recyclable rigid plastic containers, wooden pallets, and oyster shells in landfills. Local governments may petition DENR for a waiver from these prohibitions if they can demonstrate the prohibition creates an economic hardship.

Mercury Switches

S.L. 2005-384 (H 1136) requires DENR to develop a plan, in consultation with vehicle manufacturers, to recycle or otherwise capture at least 90 percent of the mercury switches in junked cars and trucks. The act requires vehicle recyclers or scrap metal facility owners to remove all mercury switches before crushing or shredding vehicles, unless the switch is inaccessible. The act creates a fund to reimburse recyclers at the rate of \$5 per mercury switch removed and properly disposed of. To fund the reimbursement system, the act raises various motor vehicle title fees by \$1.

Recycling by ABC Permit Holders

S.L. 2005-348 (H 1518) requires holders of on-premises ABC permits to separate, store, and provide for collection of all recyclable containers they sell. The ABC Commission is required to develop a model program for recycling by its permittees.

State Parks, Natural Areas, and Land Conservation

Federal Jurisdiction over Land

S.L. 2005-69 (H 236) amends North Carolina's early twentieth century statute granting exclusive jurisdiction to federal agencies over land they acquire in the state. Effective May 27, 2005, jurisdiction does not automatically and fully vest in the federal government unless the land is twenty-five acres or less or is contiguous to a military base. The bill arose out of concerns over the Navy's proposed outlying landing field for military aircraft to be located in northeastern North Carolina.

New Parks

S.L. 2005-26 (S 586) authorizes two new state parks: one in the Hickory Nut Gorge/Chimney Rock area (at the intersection of Rutherford, Polk, Henderson, and Buncombe counties) and one at Carvers Creek in the Sandhills Region of Cumberland County.

Conservation Lands Near Military Facilities

S.L. 2005-445 (S 1117), the Soldier, Sailor, Marine, Airmen, and Guardsmen Support Act, appropriates \$1 million to the Conservation Grant Fund for acquisition of easements and similar interests to provide buffers for military installations and flyways.

Water

Drinking Water Reservoir Protection Act

S.L. 2005-190 (S 981) blocks increased nutrient loading allocations for Falls Lake pending a required statewide survey of water quality in drinking water reservoirs. The Environmental Management Commission (EMC) must develop a nutrient management strategy and adopt permanent rules for Falls Lake by July 1, 2008, with specific mandatory measures to achieve water quality standards (the primary standard of concern being chlorophyll A). The act also directs the EMC to study the water quality in all the state's drinking water reservoirs and identify nutrient control criteria needed to prevent excess nutrient loading in each reservoir by January 1, 2009.

Floodplain and Landslide Mapping

S.L. 2005-1 (S 7) provided \$247 million in relief for hurricanes Francis and Ivan, which caused major flooding and landslides in western North Carolina. The act also provided \$7 million to update flood maps and begin landslide hazard mapping in the western part of the state. Coupled with the ongoing flood elevation mapping in eastern and piedmont North Carolina that resulted from hurricanes in the mid-1990s, this effort should greatly improve base maps of North Carolina. These maps have many environmental uses, including stormwater and watershed design.

Lake Fontana Tributary Classification

In order to protect Lake Fontana, which serves as a drinking water supply, S.L. 2005-97 (H 1189) requires the EMC to classify all creeks between Forney and Eagle creeks on the north side of the lake as "outstanding resource waters."

Sedimentation Pollution Control

S.L. 2005-443 sets the time for establishing temporary or permanent ground cover on graded slopes and fills at twenty-one calendar days.

Section 7.1 of S.L. 2005-386 (H 1096) specifies that applicants for erosion control plan approval who are not owners of the land to be disturbed must include the owner's written consent for the plan submission and the land-disturbing activity. It also allows approval of an erosion control plan in less than thirty days if the plan is submitted under DENR's express permitting program.

Stream Clearing Liability

S.L. 2005-441 (H 1029) allows cities and counties to clear natural and man-made obstructions from streams without thereby increasing city or county responsibility for stream maintenance or liability for flooding problems, unless the actions of the city or county are negligent.

Swift Creek Management Plan Enforcement

S.L. 2005-89 (H 1054) confers standing to sue on any local government that is a party to the 1988 Swift Creek Management Plan and on residents of the Swift Creek watershed who live in a jurisdiction that is a party to the plan. These parties are authorized to contest, by filing a petition in Wake County

Superior Court, any action of another party to the plan believed to violate the standards and provisions of the plan. The petition must be filed within sixty days of whatever action is believed to violate the plan and must state with specificity the alleged violation.

Well Contractor Certification

Section 9 of S.L. 2005-386 clarifies the permitted activities of uncertified well contractors as regards construction of a particular well. It also adds a series of exemptions from the certification requirement.

Yadkin/Pee Dee Basin Commission Members

S.L. 2005-37 (H 908) expands the types of members eligible to serve on the Yadkin/Pee Dee River Basin Advisory Commission to include an official from a water and sewer “utility” as opposed to an official from a water and sewer “authority.”

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