

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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SENATE BILL 434

Short Title: Amend Environmental Laws 2. (Public)

Sponsors: Senators Sanderson, Cook, Wells (Primary Sponsors); and Brock.

Referred to: Rules and Operations of the Senate

March 29, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES  
3 LAWS.

4 The General Assembly of North Carolina enacts:

5  
6 **REPEAL YARD WASTE PERMITTING REQUIREMENTS**

7 **SECTION 1.(a)** G.S. 130A-290(a) reads as rewritten:

8 **"§ 130A-290. Definitions.**

9 (a) Unless a different meaning is required by the context, the following definitions shall  
10 apply throughout this Article:

11 ...

12 (45) "Yard trash" means solid waste ~~consisting solely of vegetative matter~~  
13 resulting from landscaping ~~maintenance~~ and yard maintenance, including  
14 brush, grass, tree limbs, and similar vegetative material.

15 (46) "Yard waste" means yard trash and land-clearing debris, including stumps,  
16 limbs, leaves, grass, and untreated wood."

17 **SECTION 1.(b)** G.S. 130A-294 is amended by adding a new subsection to read:

18 "(v) Yard waste diverted from the waste stream or collected as source separated material  
19 is not subject to a solid waste permit for transfer, treatment, processing, storage, or disposal in a  
20 permitted solid waste management facility. Operators of facilities where yard waste is subject  
21 to transfer, treatment, processing, storage, or disposal shall, however, comply with all other  
22 federal, State, or local laws, ordinances, rules, regulations, or orders, including zoning, flood  
23 plain, and wetland restrictions, sedimentation and erosion control requirements, and mining  
24 regulations. Nothing in this subsection shall be construed as limiting the authority of any local  
25 government to manage the transfer, treatment, processing, storage, or disposal of yard waste."

26 **SECTION 1.(c)** This section becomes effective July 1, 2017, and applies to the  
27 transfer, treatment, processing, storage, or disposal of yard waste occurring on or after that  
28 date.

29  
30 **LOCAL GOVERNMENT RIPARIAN BUFFER UNIFORMITY**

31 **SECTION 2.(a)** The General Assembly finds the following:

32 (1) The State has declared certain water bodies to be nutrient sensitive due to the  
33 high levels of nitrogen, phosphorus, sediment, or any combination of those  
34 pollutants.

35 (2) As a means for reducing the amount of nitrogen, phosphorous, and sediment  
36 that enters these nutrient-sensitive surface waters, the State has initiated a



1 program to maintain existing riparian buffers that is a part of a complete and  
2 integrated regulatory scheme for the protection and improvement of water  
3 quality that may be delegated for enforcement to qualifying units of local  
4 government.

- 5 (3) When the enforcement of the buffer program is delegated to qualifying units  
6 of local government, those units of local government should apply riparian  
7 buffer standards that do not exceed established State or federal standards in  
8 order to assure uniformity of regulation throughout the State.

9 **SECTION 2.(b)** G.S. 143-214.23A reads as rewritten:

10 **"§ 143-214.23A. Limitations on local government riparian buffer requirements.**

11 (a) As used in this section:

- 12 (1) "Local government ~~ordinance~~"action" means any action by a local  
13 government carrying the effect of law approved before or after October 1,  
14 2015, whether by ~~ordinance~~, ordinance, including, but not limited to, zoning,  
15 subdivision control, flood control, or water supply watershed protection  
16 ordinances, comprehensive plan, policy, resolution, condition of approval  
17 imposed on an applicant for approval of a development plan, or special or  
18 conditional permit, or other measure.  
19 (2) "Protection of water quality" means nutrient removal, pollutant removal,  
20 stream bank protection, or protection of an endangered species as required  
21 by federal law.  
22 (3) "Riparian buffer area" means an area subject to a riparian buffer  
23 requirement.  
24 (4) "Riparian buffer requirement" means a landward setback from surface  
25 ~~waters~~water bodies or any other hydrologic bodies to which a riparian  
26 buffer may be applied.

27 (a1) The provisions of this section apply to all enacted or proposed local government  
28 actions that include or impose riparian buffer requirements violating subsection (b) of this  
29 section, even if the local government action has been approved by the Commission, the  
30 Department, or other State agency.

31 (b) Except as provided in this section, a local government may not enact, implement, or  
32 enforce a local government ~~ordinance~~action or apply for or renew a permit issued by any State  
33 or federal agency that requires a local government action that establishes a riparian buffer  
34 requirement that exceeds riparian buffer requirements necessary to comply with or implement  
35 federal or State law or a condition of a permit, certificate, or other approval issued by a federal  
36 or State agency riparian buffer requirements directly imposed by State or federal law. This  
37 subsection shall not apply to a permit required by a federal agency as a condition of federal  
38 funding or of federal approval for a project initiated prior to the effective date of this section.

39 (c) Subsection (b) of this section shall not apply to any local government ~~ordinance~~  
40 action that establishes a riparian buffer requirement enacted prior to August 1, 1997, if (i) the  
41 ~~ordinance~~action included findings that the requirement was imposed for purposes that include  
42 the protection of aesthetics, fish and wildlife habitat, and recreational use by maintaining water  
43 temperature, healthy tree canopy and understory, and the protection of the natural shoreline  
44 through minimization of erosion and potential chemical pollution in addition to the protection  
45 of water quality and the prevention of excess nutrient runoff, and (ii) the ~~ordinance~~action  
46 would permit small or temporary structures within 50 feet of the water body and docks and  
47 piers within and along the edge of the water body under certain circumstances.

48 (d) ~~A local government may request from the Commission the authority to enact,~~  
49 ~~implement, and enforce a local government ordinance that establishes a riparian buffer~~  
50 ~~requirement for the protection of water quality that exceeds riparian buffer requirements for the~~  
51 ~~protection of water quality necessary to comply with or implement federal or State law or a~~

1 condition of a permit, certificate, or other approval issued by a federal or State agency. To do  
2 so, a local government shall submit to the Commission an application requesting this authority  
3 that includes the local government ordinance, including the riparian buffer requirement for the  
4 protection of water quality, scientific studies of the local environmental and physical conditions  
5 that support the necessity of the riparian buffer requirement for the protection of water quality,  
6 and any other information requested by the Commission. Within 90 days after the Commission  
7 receives a complete application, the Commission shall review the application and notify the  
8 local government whether the application has been approved, approved with modifications, or  
9 disapproved. The Commission shall not approve a local government ordinance that establishes  
10 a riparian buffer requirement for the protection of water quality unless the Commission finds  
11 that the scientific evidence presented by the local government supports the necessity of the  
12 riparian buffer requirement for the protection of water quality.

13 (d1) Local government actions violating subsection (b) of this section that are required  
14 by a permit issued by a State or federal agency, including, but not limited to, an NPDES or a  
15 permit condition imposed to meet a TMDL shall remain in place and may be enforced until the  
16 permit upon which they are based expires. Upon the expiration of the permit that is the basis for  
17 an existing local government action violating subsection (b) of this section, the existing local  
18 government action shall be unenforceable.

19 ...."

20 **SECTION 2.(c)** This section is effective when this act becomes law.

## 21 SHELLFISH ENTERPRISE AREAS

22 **SECTION 3.(a)** G.S. 113-201 is amended by adding a new subsection to read:

23 "(d) The Marine Fisheries Commission may adopt rules to establish Shellfish  
24 Aquaculture Enterprise Areas to facilitate shellfish aquaculture opportunities through advanced  
25 siting and preapprovals from relevant federal and State agencies. The Secretary shall only issue  
26 nontransferrable leases to residents of North Carolina within designated Shellfish Aquaculture  
27 Enterprise Areas. Any leased parcel within a Shellfish Aquaculture Enterprise Area that is  
28 relinquished or terminated shall revert to the State and be made available to other applicants."

29 **SECTION 3.(b)** G.S. 113-201.1 is amended by adding a new subdivision to read:

30 "(3a) "Shellfish Aquaculture Enterprise Area" means an area designated and  
31 permitted by the Department that is subdivided into parcels and made  
32 available for shellfish aquaculture leasing."

## 33 MARINE FISHERIES CLARIFYING CHANGES

34 **SECTION 4.(a)** G.S. 113-203 reads as rewritten:

35 **"§ 113-203. Transplanting of oysters and clams.**

36 ...

37 (a2) It is unlawful to do any of the following:

- 38 (1) Transplant oysters or clams taken from public grounds to private beds except  
39 when lawfully taken during open season and transported directly to a private  
40 bed in accordance with rules of the Marine Fisheries Commission.
- 41 (2) Transplant oysters or clams taken from permitted aquaculture operations to  
42 private beds except from waters in the approved classification.
- 43 (3) Transplant oysters or clams from public grounds or permitted aquaculture  
44 operations utilizing waters in the prohibited, restricted or conditionally  
45 approved classification to private beds except when the transplanting is done  
46 in accordance with the provisions of this section and implementing rules.

47 (a3) ~~It~~ Unless the Secretary determines that the nursery of shellfish in an area will  
48 present a risk to public health, it is lawful to transplant seed oysters or seed clams taken from  
49 permitted aquaculture operations that use waters in the prohibited, restricted or conditionally  
50 approved classification to private beds except when the transplanting is done  
51 in accordance with the provisions of this section and implementing rules.

1 approved classification to private beds pursuant to an Aquaculture Seed Transplant Permit  
2 issued by the Secretary that sets times during which transplant is permissible and other  
3 reasonable restrictions imposed by the Secretary under either of the following circumstances:

- 4 (1) When transplanting seed clams less than 12 millimeters in their largest  
5 dimension.
- 6 (2) When transplanting seed oysters less than 25 millimeters in their largest  
7 dimension.

8 ...."

9 **SECTION 4.(b)** G.S. 113-168.4(b) reads as rewritten:

10 "(b) Except as otherwise provided in this section, it is unlawful for any person licensed  
11 under this Article to sell fish taken outside the territorial waters of the State or to sell fish taken  
12 from coastal fishing waters. A person licensed under this Article may sell fish taken outside the  
13 territorial waters of the State or sell fish taken from coastal fishing waters under any of the  
14 following circumstances:

- 15 (1) The sale is to a fish dealer licensed under G.S. 113-169.3.
- 16 (2) The sale is to the public and the seller is a licensed fish dealer under  
17 G.S. 113-169.3.
- 18 (3) The sale is of ~~oysters or clams from~~ fish reared in a hatchery or aquaculture  
19 operation to the holder of an Aquaculture Operation Permit, an Under Dock  
20 Culture Permit, or a shellfish cultivation lease for further grow out."

## 21 RIVER HERRING FISHERIES MANAGEMENT

22 **SECTION 5.(a)** The Division of Marine Fisheries shall review its Fishery  
23 Management Plan for river herring (blueback herring, *Alosa aestivalis*, and alewife, *Alosa*  
24 *pseudoharengus*) and report no later than December 15, 2017, to the Joint Legislative Oversight  
25 Committee on Agriculture and Natural and Economic Resources regarding the continuing  
26 validity and scientific basis for the continued status of both species as "overfished." If the  
27 Division does not have an adequate scientific basis to review the status of both species, then the  
28 report should include cost estimates for the restoration of spawning and nursery area surveys  
29 and age composition work for all coastal streams within the State that historically contained  
30 significant river herring fisheries.

31 **SECTION 5.(b)** There is appropriated from the General Fund to North Carolina  
32 Sea Grant at North Carolina State University (Sea Grant) the sum of one hundred thousand  
33 dollars (\$100,000) in nonrecurring funds to be used for a study of existing science regarding the  
34 current and projected future status of river herring populations in State waters. In its study, Sea  
35 Grant shall evaluate the sufficiency of the scientific evidence supporting the current  
36 moratorium on the river herring fishery and determine whether (i) the evidence supports a  
37 continued moratorium, (ii) the evidence supports ending the moratorium, or (iii) the evidence is  
38 insufficient to reach a conclusion regarding the moratorium and further study is needed. If the  
39 Sea Grant determines that further study is required, Sea Grant shall include in its report a  
40 research plan, time line, funding needs, and possible research partners that minimizes  
41 duplication with other public and private nonprofit organizations studying river herring  
42 fisheries issues in the State.

## 43 STATE PARTICIPATION IN SITING OF ATLANTIC INTRACOASTAL 44 WATERWAY DREDGED MATERIAL DISPOSAL EASEMENTS

45 **SECTION 6.(a)** The Division of Coastal Management of the Department of  
46 Environmental Quality and the State Property Office are authorized to negotiate with  
47 appropriate agencies of the federal government an agreement for the State to assume  
48 responsibility for acquiring dredged material easement sites appropriate for maintenance  
49 dredging of the Atlantic Intracoastal Waterway between Beaufort Inlet and the border with the  
50  
51

1 Commonwealth of Virginia in exchange for the reduction in size and possible change in  
2 location of dredged material disposal easement sites currently held by the federal government.  
3 The agreement shall provide for the federal government to relinquish certain dredged material  
4 disposal easements that are excess to maintenance project needs in exchange for the acquisition  
5 and furnishing to the federal government other easements that are sited and permitted by the  
6 Division of Coastal Management and acquired by the State Property Office under its powers of  
7 condemnation or otherwise using such funds as may be appropriated by the General Assembly  
8 from the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund established  
9 under Part 8B of Article 21 of Chapter 143 of the General Statutes for that purpose.

10 **SECTION 6.(b)** G.S. 143-215.73F(b) is amended by adding a new subdivision to  
11 read:

12 "(4) To provide funding for siting and acquisition of dredged disposal easement  
13 sites associated with the maintenance of the Atlantic Intracoastal Waterway  
14 north of Beaufort Inlet and south of the border with the Commonwealth of  
15 Virginia, under a Memorandum of Agreement between the State and the  
16 federal government."

## 18 **INVASIVE SERIES MANAGEMENT TO PRESERVE ECOSYSTEM DIVERSITY**

19 **SECTION 7.(a)** G.S. 113-129(10a) is recodified as G.S. 113-129(10b).

20 **SECTION 7.(b)** G.S. 113-129, as amended by subsection (a) of this section, is  
21 amended by adding a new subdivision to read:

22 "(10a) Invasive species. – Any of the following:

- 23 a. Brown tree snake (*Boiga irregularis*).
- 24 b. Bullfrog (*Lithobates catesbeianus*).
- 25 c. Burmese python (*Python molurus bivittatus*).
- 26 d. Coyote (*Canis latrans*).
- 27 e. European starling (*Sturnus vulgaris*).
- 28 f. Feral swine (*Sus scrofa*).
- 29 g. House sparrow (*Passer domesticus*).
- 30 h. Nutria (*Myocastor coypus*).
- 31 i. Red fox (*Vulpes vulpes*)."

32 **SECTION 7.(c)** Article 22 of Chapter 113 of the General Statutes is amended by  
33 adding a new section to read:

### 34 **§ 113-292.1. Control of invasive species.**

35 (a) The General Assembly finds that invasive species present a significant threat to  
36 ecosystems, agriculture, and private property across the State and that the hunting and trapping  
37 of those species is a practical and cost-effective solution to controlling these populations.

38 (b) The Wildlife Resources Commission shall issue rules establishing open seasons and  
39 manner of take requirements in all 100 counties of the State for all invasive species that the  
40 Commission determines to be game animals or game birds. Seasons established under this  
41 subsection shall maximize opportunities for hunters and trappers to take invasive species.

42 (c) With respect to invasive species that the Wildlife Resources Commission finds are  
43 not game animals or game birds, the Commission shall develop programs to encourage control  
44 of those species by State agencies, local governments, private landowners, hunters, and  
45 trappers.

46 (d) Any local acts in conflict with the provisions of this section are repealed to the  
47 extent of the conflict."

## 49 **GENERAL PROVISIONS**

1           **SECTION 8.(a)** If any section or provision of this act is declared unconstitutional  
2 or invalid by the courts, it does not affect the validity of this act as a whole or any part other  
3 than the part declared to be unconstitutional or invalid.  
4           **SECTION 8.(b)** Except as otherwise provided, this act is effective when it  
5 becomes law.