

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 638

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/8/13

Short Title: NC Farm Act of 2013.

(Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

1 AN ACT TO ENACT THE NORTH CAROLINA FARM ACT OF 2013 TO: (1) LIMIT THE
2 LIABILITY OF FARM ANIMAL ACTIVITY SPONSORS AND PROFESSIONALS AS
3 A RESULT OF INHERENT RISKS OF FARM ANIMAL ACTIVITIES; (2) ALLOW
4 THE COMMISSIONER OF AGRICULTURE TO ASSESS NONMONETARY
5 PENALTIES TO ADDRESS VIOLATIONS WHEN APPROPRIATE; (3) DECREASE
6 THE FREQUENCY OF THE AGRICULTURAL WATER USE SURVEY; (4) LIMIT
7 THE PERSONALLY IDENTIFYING INFORMATION THAT THE DEPARTMENT OF
8 AGRICULTURE AND CONSUMER SERVICES MAY DISCLOSE ABOUT ITS
9 ANIMAL HEALTH PROGRAMS; (5) REPEAL THE INTERSTATE PEST CONTROL
10 COMPACT; (6) REPEAL CERTAIN CLEANLINESS STANDARDS FOR
11 CREAMERIES AND DAIRY FACILITIES THAT ARE ADDRESSED BY THE NC
12 FOOD, DRUG, AND COSMETIC ACT; (7) CHANGE SETBACK DISTANCES AND
13 BURN TIMES FOR FLAMMABLE MATERIALS RESULTING FROM GROUND
14 CLEARING ACTIVITIES; (8) REPEAL THE STATE SULFUR CONTENT
15 STANDARDS FOR GASOLINE; (9) EXEMPT CERTAIN STRUCTURES FROM THE
16 SPRINKLER SYSTEM REQUIREMENTS OF THE NORTH CAROLINA BUILDING
17 CODE; (10) ALLOW A FARM BUILDING THAT IS USED FOR PUBLIC OR
18 PRIVATE EVENTS TO MAINTAIN ITS FARM BUILDING STATUS FOR PURPOSES
19 OF THE STATE BUILDING CODE; (11) PROVIDE THAT A WATER QUALITY
20 PERMIT IS NOT REQUIRED FOR ACTIVITIES IN WETLANDS THAT ARE NOT
21 WATERS OF THE UNITED STATES; (12) EXPAND THE AGRICULTURAL DAM
22 EXEMPTION TO THE DAM SAFETY ACT; (13) ALLOW A LANDOWNER TO
23 WITHDRAW WATER FOR AGRICULTURAL USE DURING WATER SHORTAGE
24 EMERGENCIES UNDER CERTAIN CONDITIONS; AND (14) DIRECT THE
25 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE
26 DEPARTMENT OF TRANSPORTATION TO JOINTLY PETITION THE
27 WILMINGTON DISTRICT OF THE UNITED STATES ARMY CORPS OF
28 ENGINEERS TO ALLOW FOR GREATER FLEXIBILITY AND OPPORTUNITY TO
29 PERFORM WETLANDS MITIGATION BEYOND THE IMMEDIATE WATERSHED
30 WHERE DEVELOPMENT WILL OCCUR.

31 The General Assembly of North Carolina enacts:

32
33
34 **PART I. TITLE**

35 **SECTION 1.** This act shall be known and may be cited as the "North Carolina
36 Farm Act of 2013."



1
2 **PART II. LIMIT THE LIABILITY OF FARM ANIMAL ACTIVITY SPONSORS AND**
3 **PROFESSIONALS AS A RESULT OF INHERENT RISKS OF FARM ANIMAL**
4 **ACTIVITIES**

5 **SECTION 2.** Article 1 of Chapter 99E of the General Statutes reads as rewritten:

6 "Article 1.

7 "Equine and Farm Animal Activity Liability.

8 "Part 1.Equine Activity Liability.

9 **"§ 99E-1. Definitions.**

10 As used in this ~~Article, Part~~, the term:

- 11 (1) "Engage in an equine activity" means participate in an equine activity, assist
12 a participant in an equine activity, or assist an equine activity sponsor or
13 equine professional. The term "engage in an equine activity" does not
14 include being a spectator at an equine activity, except in cases in which the
15 spectator places himself in an unauthorized area and in immediate proximity
16 to the equine activity.
- 17 (2) "Equine" means a horse, pony, mule, donkey, or hinny.
- 18 (3) "Equine activity" means any activity involving an equine.
- 19 (4) "Equine activity sponsor" means an individual, group, club, partnership, or
20 corporation, whether the sponsor is operating for profit or nonprofit, which
21 sponsors, organizes, or provides the facilities for an equine activity. The
22 term includes operators and promoters of equine facilities.
- 23 (5) "Equine professional" means a person engaged for compensation in any one
24 or more of the following:
- 25 a. Instructing a participant.
- 26 b. Renting an equine to a participant for the purpose of riding, driving,
27 or being a passenger upon the equine.
- 28 c. Renting equipment or tack to a participant.
- 29 d. Examining or administering medical treatment to an equine.
- 30 e. Hooftrimming or placing or replacing horseshoes on an equine.
- 31 (6) "Inherent risks of equine activities" means those dangers or conditions that
32 are an integral part of engaging in an equine activity, including any of the
33 following:
- 34 a. The possibility of an equine behaving in ways that may result in
35 injury, harm, or death to persons on or around them.
- 36 b. The unpredictability of an equine's reaction to such things as sounds,
37 sudden movement, unfamiliar objects, persons, or other animals.
- 38 Inherent risks of equine activities does not include a collision or accident
39 involving a motor vehicle.
- 40 (7) "Participant" means any person, whether amateur or professional, who
41 engages in an equine activity, whether or not a fee is paid to participate in
42 the equine activity.

43 **"§ 99E-2. Liability.**

44 (a) Except as provided in subsection (b) of this section, an equine activity sponsor, an
45 equine professional, or any other person engaged in an equine activity, including a corporation
46 or partnership, shall not be liable for an injury to or the death of a participant resulting from the
47 inherent risks of equine activities and, except as provided in subsection (b) of this section, no
48 participant or participant's representative shall maintain an action against or recover from an
49 equine activity sponsor, an equine professional, or any other person engaged in an equine
50 activity for injury, loss, damage, or death of the participant resulting exclusively from any of
51 the inherent risks of equine activities.

1 (b) Nothing in subsection (a) of this section shall prevent or limit the liability of an
2 equine activity sponsor, an equine professional, or any other person engaged in an equine
3 activity if the equine activity sponsor, equine professional, or person engaged in an equine
4 activity does any one or more of the following:

- 5 (1) Provides the equipment or tack, and knew or should have known that the
6 equipment or tack was faulty, and such faulty equipment or tack proximately
7 caused the injury, damage, or death.
- 8 (2) Provides the equine and failed to make reasonable and prudent efforts to
9 determine the ability of the participant to engage safely in the equine activity
10 or to safely manage the particular equine.
- 11 (3) Commits an act or omission that constitutes willful or wanton disregard for
12 the safety of the participant, and that act or omission proximately caused the
13 injury, damage, or death.
- 14 (4) Commits any other act of negligence or omission that proximately caused
15 the injury, damage, or death.

16 (c) Nothing in subsection (a) of this section shall prevent or limit the liability of an
17 equine activity sponsor, an equine professional, or any other person engaged in an equine
18 activity under liability provisions as set forth in the products liability laws.

19 **"§ 99E-3. Warning required.**

20 (a) Every equine professional and every equine activity sponsor shall post and maintain
21 signs which contain the warning notice specified in subsection (b) of this section. The signs
22 required by this section shall be placed in a clearly visible location on or near stables, corrals,
23 or arenas where the equine professional or the equine activity sponsor conducts equine
24 activities. The warning notice specified in subsection (b) of this section shall be designed by the
25 Department of Agriculture and Consumer Services and shall consist of a sign in black letters,
26 with each letter to be a minimum of one inch in height. Every written contract entered into by
27 an equine professional or by an equine activity sponsor for the providing of professional
28 services, instruction, or the rental of equipment or tack or an equine to a participant, whether or
29 not the contract involves equine activities on or off the location or site of the equine
30 professional's or the equine activity sponsor's business, shall contain in clearly readable print
31 the warning notice specified in subsection (b) of this section.

32 (b) The signs and contracts described in subsection (a) of this section shall contain the
33 following warning notice:

34 **"WARNING**

35
36 Under North Carolina law, an equine activity sponsor or equine professional is not liable
37 for an injury to or the death of a participant in equine activities resulting exclusively from the
38 inherent risks of equine activities. Chapter 99E of the North Carolina General Statutes."

39 (c) Failure to comply with the requirements concerning warning signs and notices
40 provided in this ~~Article~~Part shall prevent an equine activity sponsor or equine professional from
41 invoking the privileges of immunity provided by this ~~Article~~Part.

42 "Part 2. Farm Animal Activity Liability.

43 **"§ 99E-4. Definitions.**

44 As used in this Part, the term:

- 45 (1) "Engage in a farm animal activity" means participate in a farm animal
46 activity, assist a participant in a farm animal activity, or assist a farm animal
47 activity sponsor or farm animal activity professional. The term "engage in a
48 farm animal activity" does not include being a spectator at a farm animal
49 activity, except in cases in which the spectator voluntarily places himself or
50 herself in an unauthorized area and in immediate proximity to the farm
51 animal activity.

- 1 (2) "Equine" means a horse, pony, mule, donkey, or hinny.
- 2 (3) "Equine activity" means a farm animal activity involving only equines.
- 3 (4) "Farm animal" means one or more of the following domesticated animals:
4 cattle, oxen, bison, sheep, swine, goats, horses, ponies, mules, donkeys,
5 hinnies, llamas, alpacas, lagomorphs, ratites, and poultry.
- 6 (5) "Farm animal activity" means an activity in which participants observe,
7 engage with, or learn about one or more farm animals, including, but not
8 limited to, all of the following:
- 9 a. Shows, fairs, exhibits, competitions, performances, or parades that
10 involve farm animals.
- 11 b. Training or teaching activities, or both, involving farm animals.
- 12 c. Boarding farm animals, including normal daily care.
- 13 d. Rides, trips, shows, clinics, hunts, parades, games, exhibitions, or
14 other activities of any kind, however informal or impromptu, that are
15 sponsored by a farm animal activity sponsor.
- 16 e. Testing, riding, inspecting, or evaluating a farm animal belonging to
17 another, whether or not the owner has received some monetary
18 consideration or other thing of value for the use of the farm animal or
19 is permitting a prospective purchaser of the farm animal to ride,
20 inspect, or evaluate the farm animal.
- 21 f. Placing or repairing horseshoes, trimming the hooves on a farm
22 animal, or otherwise providing farrier services.
- 23 g. Examining or administering medical treatment to a farm animal by a
24 veterinarian.
- 25 (6) "Farm animal activity sponsor" means an individual, group, club,
26 partnership, corporation, educational organization, or other legally
27 constituted entity, whether the sponsor is operating for profit or nonprofit,
28 which sponsors, organizes, allows, or provides the facilities for a farm
29 animal activity, including, but not limited to, pony clubs; 4-H clubs; Future
30 Farmers of America organizations; hunt clubs; riding clubs; polo clubs;
31 school- and college-sponsored classes, programs, and activities; therapeutic
32 riding programs; and operators, instructors, and promoters of farm animal
33 facilities, including, but not limited to, stables, clubhouses, ponyride strings,
34 fairs, exhibitions, and arenas at which the activity is held.
- 35 (7) "Farm animal facility" means any area used for any farm animal activity,
36 including, but not limited to, farms, ranches, riding arenas, training stables or
37 barns, pastures, riding trails, show rings, polo fields, petting zoos, and other
38 areas or facilities used or provided by farm animal activity sponsors or
39 where participants engage in farm animal activities.
- 40 (8) "Farm animal professional" means a person engaged for compensation in
41 any of the following:
- 42 a. Instructing a participant.
- 43 b. Renting a farm animal to a participant for the purpose of riding,
44 driving, or being a passenger upon the farm animal.
- 45 c. Providing daily care of farm animals boarded at a farm animal
46 facility.
- 47 d. Renting equipment or tack to a participant.
- 48 e. Training a farm animal.
- 49 f. Examining or administering medical treatment to a farm animal.
- 50 g. Providing farrier services to a farm animal.
- 51 h. Hooftrimming or placing or replacing horseshoes on a farm animal.

1 (9) "Inherent risks of farm animal activities" means those dangers or conditions
2 that are an integral part of engaging in a farm animal activity, including any
3 of the following:

4 a. The possibility of a farm animal behaving in ways that may result in
5 injury, harm, or death to persons on or around them.

6 b. The unpredictability of a farm animal's reaction to such things as
7 sounds, sudden movement, unfamiliar objects, persons, or other
8 animals.

9 c. The risk of contracting an illness due to coming into contact with
10 animals, animal feed, animal waste, or surfaces that have been in
11 contact with animal waste.

12 Inherent risks of farm animal activities does not include a collision or
13 accident involving a motor vehicle.

14 (10) "Participant" means any person, whether amateur or professional, who
15 engages in a farm animal activity, whether or not a fee is paid to participate
16 in the farm animal activity.

17 **"§ 99E-5. Liability.**

18 (a) Except as provided in subsection (b) of this section, a farm animal activity sponsor,
19 a farm animal professional, or any other person engaged in a farm animal activity, including a
20 corporation or partnership, shall not be liable for an injury to or the death of a participant
21 resulting from the inherent risks of farm animal activities and, except as provided in subsection
22 (b) of this section, no participant or participant's representative shall maintain an action against
23 or recover from a farm animal sponsor, a farm animal professional, or any other person
24 engaged in a farm animal activity for injury, loss, damage, or death of the participant resulting
25 exclusively from any of the inherent risks of farm animal activities.

26 (b) Nothing in subsection (a) of this section shall prevent or limit the liability of a farm
27 animal activity sponsor, a farm animal professional, or any other person engaged in a farm
28 animal activity if the farm animal activity sponsor, professional, or person engaged in a farm
29 animal activity does any one or more of the following:

30 (1) Provides the equipment or tack and knew or should have known that the
31 equipment or tack was faulty, and such faulty equipment or tack proximately
32 caused the injury, damage, or death.

33 (2) Provides the farm animal and failed to make reasonable and prudent efforts
34 to determine the ability of the participant to engage safely in the farm animal
35 activity or to safely manage the particular farm animal.

36 (3) Commits an act or omission that constitutes willful or wanton disregard for
37 the safety of the participant, and that act or omission proximately caused the
38 injury, damage, or death.

39 (4) Commits any other act of negligence or omission that proximately caused
40 the injury, damage, or death.

41 (c) Nothing in subsection (a) of this section shall prevent or limit the liability of a farm
42 animal activity sponsor, a farm animal professional, or any other person engaged in a farm
43 animal activity under liability provisions as set forth in the products liability laws.

44 **"§ 99E-6. Warning required.**

45 (a) Every farm animal activity sponsor and every farm animal professional shall post
46 and maintain signs which contain the warning notices specified in subsections (b) or (c) of this
47 section. The signs required by this section shall be placed in a clearly visible location on or near
48 stables, corrals, arenas, or other farm animal facilities where the farm animal professional or
49 the farm animal activity sponsor conducts animal activities. The warning notices specified in
50 subsections (b) and (c) of this section shall be designed by the Department of Agriculture and
51 Consumer Services and shall consist of a sign in black letters, with each letter to be a minimum

1 of one inch in height. Every written contract entered into by a farm animal professional or by a
2 farm animal activity sponsor for the providing of professional services, instruction, or the rental
3 of equipment or tack or a farm animal to a participant, whether or not the contract involves
4 farm animal activities on or off the location or site of the farm animal professional's or farm
5 animal activity sponsor's business, shall contain in clearly readable print the warning notice
6 specified in subsections (b) or (c) of this section.

7 (b) The signs and contracts described in subsection (a) of this section shall contain the
8 following warning notice:

9 **"WARNING**

10
11 Under North Carolina law, a farm animal activity sponsor or farm animal professional is
12 not liable for an injury to or the death of a participant in farm animal activities resulting
13 exclusively from the inherent risks of farm animal activities. Chapter 99E of the North Carolina
14 General Statutes."

15 (c) If a farm animal activity sponsor or farm animal professional sponsors or engages in
16 farm animal activities only involving equines, the signs and contracts described in subsection
17 (a) of this section may contain the following warning notice:

18 **"WARNING**

19
20 Under North Carolina law, an equine activity sponsor or equine professional is not liable
21 for an injury to or the death of a participant in equine activities resulting exclusively from the
22 inherent risks of equine activities. Chapter 99E of the North Carolina General Statutes."

23 (d) Failure to comply with the requirements concerning warning signs and notices
24 provided in this Part shall prevent a farm animal activity sponsor or farm animal professional
25 from invoking the privileges of immunity provided by this Part."

26 **SECTION 3.** G.S. 99E-31 reads as rewritten:

27 **"§ 99E-31. Liability.**

28 (a) Except as provided in subsection (b) of this section, an agritourism professional is
29 not liable for injury to or death of a participant resulting from the inherent risks of agritourism
30 activities, so long as the warning contained in G.S. 99E-32 is posted as required and, except as
31 provided in subsection (b) of this section, no participant or participant's representative can
32 maintain an action against or recover from an agritourism professional for injury, loss, damage,
33 or death of the participant resulting exclusively from any of the inherent risks of agritourism
34 activities. In any action for damages against an agritourism professional for agritourism
35 activity, the agritourism professional must plead the affirmative defense of assumption of the
36 risk of agritourism activity by the participant.

37 (b) Nothing in subsection (a) of this section prevents or limits the liability of an
38 agritourism professional if the agritourism professional does any one or more of the following:

- 39 (1) Commits an act or omission that constitutes gross negligence or willful or
40 wanton disregard for the safety of the participant, and that act or omission
41 proximately causes injury, damage, or death to the participant.
42 (2) Has actual knowledge or reasonably should have known of an existing
43 dangerous condition on the land, facilities, or equipment used in the activity
44 or the dangerous propensity of a particular animal used in such activity and
45 does not make the danger known to the participant, and the danger
46 proximately causes injury, damage, or death to the participant.

47 (c) Nothing in subsection (a) of this section prevents or limits the liability of an
48 agritourism professional under liability provisions as set forth in Chapter 99B of the General
49 Statutes.

50 (d) Any limitation on legal liability afforded by this section to an agritourism
51 professional is in addition to any other limitations of legal liability otherwise provided by law."

1
2 **PART III. ALLOW THE COMMISSIONER OF AGRICULTURE TO ASSESS**
3 **NONMONETARY PENALTIES TO ADDRESS VIOLATIONS WHEN APPROPRIATE**

4 **SECTION 4.** Chapter 106 of the General Statutes is amended by adding a new
5 section to read:

6 **"§ 106-22.6. Exercise of enforcement powers.**

7 When any board, commission, or official within the North Carolina Department of
8 Agriculture and Consumer Services has the authority to assess civil penalties, such authority
9 shall not be construed to require the issuance of a monetary penalty when the board,
10 commission, or official determines that nonmonetary sanctions, education, or training are
11 sufficient to address the underlying violation."
12

13 **PART IV. DECREASE THE FREQUENCY OF THE AGRICULTURAL WATER USE**
14 **SURVEY**

15 **SECTION 5.** G.S. 106-24 reads as rewritten:

16 **"§ 106-24. Collection and publication of information relating to agriculture; cooperation.**

17 (a) The Department of Agriculture and Consumer Services shall collect, compile,
18 systematize, tabulate, and publish statistical information relating to agriculture. The
19 Department is authorized to use sample surveys to collect primary data relating to agriculture.
20 The Department is authorized to cooperate with the United States Department of Agriculture
21 and the several boards of county commissioners of the State, to accomplish the purpose of this
22 Part.

23 (b) The Department of Agriculture and Consumer Services shall ~~annually~~ biennially
24 collect information on water use by persons who withdraw 10,000 gallons per day or more of
25 water from the surface or groundwater sources of the State for activities directly related or
26 incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy
27 products, livestock, poultry, and other agricultural products. The information shall be collected
28 by survey conducted pursuant to subsection (a) of this section and in accordance with Title 7
29 United States Code Section 2276 (Confidential Information Protection and Statistical
30 Efficiency Act). The Department shall develop the survey form in consultation with the
31 Department of Environment and Natural Resources. The Department shall report the results of
32 the water use survey to the Environmental Review Commission no later than July 1 of each
33 year in which the survey was collected and shall provide a copy of the report to the Department
34 of Environment and Natural Resources. The report shall include recommendations about
35 modifications to the survey, including changes in the gallons per day threshold for water use
36 data collection. The report shall provide agricultural water use data by county. If the county is
37 located in more than one river basin, the report shall separate the county data to show
38 agricultural water use by river basin within the county. If publication of county or watershed
39 data would result in disclosure of an individual operation's water use, the data will be combined
40 with data from another county or watershed."
41

42 **PART V. LIMIT THE PERSONALLY IDENTIFYING INFORMATION THAT THE**
43 **DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES MAY DISCLOSE**
44 **ABOUT ITS ANIMAL HEALTH PROGRAMS**

45 **SECTION 6.** G.S. 106-24.1 reads as rewritten:

46 **"§ 106-24.1. Confidentiality of information collected and published.**

47 All information published by the Department of Agriculture and Consumer Services
48 pursuant to this Part shall be classified so as to prevent the identification of information
49 received from individual farm operators. All information received pursuant to this Part from
50 individual farm operators shall be held confidential by the Department and its employees.
51 ~~Information~~ All information collected by the Department from individual farm operators for the

1 purposes of its animal health programs may be disclosed by the State Veterinarian when, in his
 2 judgment, the disclosure will assist in the implementation of these programs. Animal disease
 3 diagnostic tests that identify the owner of the animal programs, including, but not limited to,
 4 certificates of veterinary inspection, animal medical records, laboratory reports, or other
 5 records that may be used to identify a person or private business entity subject to regulation by
 6 the Department shall not be disclosed without the permission of the owner unless the State
 7 Veterinarian determines that disclosure is necessary to prevent the spread of an animal disease
 8 or to protect the public health, health, or the disclosure is necessary in the implementation of
 9 these animal health programs."

10
 11 **PART VI. REPEAL THE INTERSTATE PEST CONTROL COMPACT AND**
 12 **CERTAIN CLEANLINESS STANDARDS FOR CREAMERIES AND DAIRY**
 13 **FACILITIES THAT ARE ADDRESSED BY THE NC FOOD, DRUG, AND COSMETIC**
 14 **ACT**

15 SECTION 7. Article 4E of Chapter 106 of the General Statutes is repealed.

16 SECTION 8. G.S. 106-246 is repealed.

17 SECTION 9. G.S. 106-248 is repealed.

18
 19 **PART VII. CHANGE SETBACK DISTANCES AND BURN TIMES FOR**
 20 **FLAMMABLE MATERIALS RESULTING FROM GROUND CLEARING**
 21 **ACTIVITIES**

22 SECTION 10. G.S. 106-942 reads as rewritten:

23 "§ 106-942. High hazard counties; permits required; standards.

24 ...

25 (c) It is unlawful for any person to willfully burn any debris, stumps, brush or other
 26 flammable materials resulting from ground clearing activities and involving more than five
 27 contiguous acres, regardless of the proximity of the burning to woodland and on which such
 28 materials are placed in piles or windrows without first having obtained a special permit from
 29 the Department. Areas less than five acres in size will require a regular permit in accordance
 30 with G.S. 106-942(b).

31 ...

32 (2) The location of the burning must be at least ~~4,000~~500 feet from any dwelling
 33 or structure located in a predominately residential area other than a dwelling
 34 or structure located on the property on which the burning is conducted unless
 35 permission is granted by the occupants.

36 ...

37 (6) Initial burning may be commenced only between the hours of ~~9:00~~8:00 A.M.
 38 and ~~3:00~~4:00 P.M. and no combustible material may be added to the fire
 39 between ~~3:00~~4:00 P.M. on one day and ~~9:00~~8:00 A.M. on the following day,
 40 except that when favorable meteorological conditions exist, any forest ranger
 41 authorized to issue the permit may authorize in writing a deviation from the
 42 restrictions."
 43

44 **PART VIII. REPEAL THE STATE SULFUR CONTENT STANDARDS FOR**
 45 **GASOLINE**

46 SECTION 11. G.S. 119-26.2 is repealed.

47
 48 **PART IX. EXEMPT CERTAIN STRUCTURES FROM THE SPRINKLER SYSTEM**
 49 **REQUIREMENTS OF THE NORTH CAROLINA BUILDING CODE AND ALLOW**
 50 **FARM BUILDINGS THAT ARE USED FOR PUBLIC OR PRIVATE EVENTS TO**

1 **MAINTAIN THEIR FARM BUILDING STATUS FOR PURPOSES OF THE STATE**
2 **BUILDING CODE**

3 **SECTION 12.** G.S. 143-138 reads as rewritten:

4 **"§ 143-138. North Carolina State Building Code.**

5 ...

6 (b) Contents of the Code. – The North Carolina State Building Code, as adopted by the
7 Building Code Council, may include reasonable and suitable classifications of buildings and
8 structures, both as to use and occupancy; general building restrictions as to location, height, and
9 floor areas; rules for the lighting and ventilation of buildings and structures; requirements
10 concerning means of egress from buildings and structures; requirements concerning means of
11 ingress in buildings and structures; rules governing construction and precautions to be taken
12 during construction; rules as to permissible materials, loads, and stresses; rules governing
13 chimneys, heating appliances, elevators, and other facilities connected with the buildings and
14 structures; rules governing plumbing, heating, air conditioning for the purpose of comfort
15 cooling by the lowering of temperature, and electrical systems; and such other reasonable rules
16 pertaining to the construction of buildings and structures and the installation of particular
17 facilities therein as may be found reasonably necessary for the protection of the occupants of
18 the building or structure, its neighbors, and members of the public at large.

19 (b1) Fire Protection; Smoke Detectors. – The Code may regulate activities and
20 conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related
21 hazards. Such fire prevention code provisions shall be considered the minimum standards
22 necessary to preserve and protect public health and safety, subject to approval by the Council of
23 more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e).
24 These provisions may include regulations requiring the installation of either battery-operated or
25 electrical smoke detectors in every dwelling unit used as rental property, regardless of the date
26 of construction of the rental property. For dwelling units used as rental property constructed
27 prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other
28 equivalent national testing laboratory approval, and shall be installed in accordance with either
29 the standard of the National Fire Protection Association or the minimum protection designated
30 in the manufacturer's instructions, which the property owner shall retain or provide as proof of
31 compliance.

32 (b2) Carbon Monoxide Detectors. – The Code may contain provisions requiring the
33 installation of either battery-operated or electrical carbon monoxide detectors in every dwelling
34 unit having a fossil-fuel burning heater, appliance, or fireplace, and in any dwelling unit having
35 an attached garage. Carbon monoxide detectors shall be those listed by a nationally recognized
36 testing laboratory that is OSHA-approved to test and certify to American National Standards
37 Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be
38 installed in accordance with either the standard of the National Fire Protection Association or
39 the minimum protection designated in the manufacturer's instructions, which the property
40 owner shall retain or provide as proof of compliance. A carbon monoxide detector may be
41 combined with smoke detectors if the combined detector does both of the following: (i)
42 complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217
43 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between
44 detecting the presence of carbon monoxide and the presence of smoke.

45 (b3) Applicability of the Code. – Except as provided by ~~subsection (c1)~~ subsections (b4)
46 and (c1) of this section, the Code may contain provisions regulating every type of building or
47 structure, wherever it might be situated in the State.

48 (b4) Exclusion for Certain Farm Buildings. – Building rules do not apply to (i) farm
49 buildings that are located outside the building-rules jurisdiction of any municipality, or (ii) farm
50 buildings that are located inside the building-rules jurisdiction of any municipality if the farm
51 buildings are greenhouses. For the purposes of this subsection:

- 1 (1) A "farm building" shall include any structure used or associated with equine
2 activities, including, but not limited to, the care, management, boarding, or
3 training of horses and the instruction and training of riders. Structures that
4 are associated with equine activities include, but are not limited to, free
5 standing or attached sheds, barns, or other structures that are utilized to store
6 any equipment, tools, commodities, or other items that are maintained or
7 used in conjunction with equine activities. The specific types of equine
8 activities, structures, and uses set forth in this subdivision are for illustrative
9 purposes, and should not be construed to limit, in any manner, the types of
10 activities, structures, or uses that may be considered under this subsection as
11 exempted from building rules. A farm building that might otherwise qualify
12 for exemption from building rules shall remain subject only to an annual
13 safety inspection by the applicable city or county building inspection
14 department of any grandstand, bleachers, or other spectator-seating
15 structures in the farm building. An annual safety inspection shall include an
16 evaluation of the overall safety of spectator-seating structures as well as
17 ensuring the spectator-seating structure's compliance with any building
18 codes related to the construction of spectator-seating structures in effect at
19 the time of the construction of the spectator-seating.
- 20 (2) A "greenhouse" is a structure that has a glass or plastic roof, has one or more
21 glass or plastic walls, has an area over ninety-five percent (95%) of which is
22 used to grow or cultivate plants, is built in accordance with the National
23 Greenhouse Manufacturers Association Structural Design manual, and is not
24 used for retail sales. Additional provisions addressing distinct life safety
25 hazards shall be approved by the local building-rules jurisdiction.
- 26 (3) A "farm building" shall include any structure used for the display and sale of
27 produce, no more than 1,000 square feet in size, open to the public for no
28 more than 180 days per year, and certified by the Department of Agriculture
29 and Consumer Services as a Certified Roadside Farm Market.
- 30 (4) A "farm building" shall not lose its status as a farm building because it is
31 used for public or private events, including, but not limited to, weddings,
32 receptions, meetings, demonstrations of farm activities, meals, and other
33 events that are taking place on the farm because of its farm or rural setting.

34 (b5) Exclusion for Certain Minor Activities in Residential and Farm Structures. – No
35 building permit shall be required under the Code or any local variance thereof approved under
36 subsection (e) for any construction, installation, repair, replacement, or alteration costing five
37 thousand dollars (\$5,000) or less in any single family residence or farm building unless the
38 work involves: the addition, repair, or replacement of load bearing structures; the addition
39 (excluding replacement of same capacity) or change in the design of plumbing; the addition,
40 replacement or change in the design of heating, air conditioning, or electrical wiring, devices,
41 fixtures (excluding repair or replacement of electrical lighting devices and fixtures of the same
42 type), appliances (excluding replacement of water heaters, provided that the energy use rate or
43 thermal input is not greater than that of the water heater which is being replaced, and there is no
44 change in fuel, energy source, location, capacity, or routing or sizing of venting and piping), or
45 equipment, the use of materials not permitted by the North Carolina Uniform Residential
46 Building Code; or the addition (excluding replacement of like grade of fire resistance) of
47 roofing. The exclusions from building permit requirements set forth in this paragraph for
48 electrical lighting devices and fixtures and water heaters shall apply only to work performed on
49 a one- or two-family dwelling. In addition, exclusions for electrical lighting devices and
50 fixtures and electric water heaters shall apply only to work performed by a person licensed

1 under G.S. 87-43 and exclusions for water heaters, generally, to work performed by a person
2 licensed under G.S. 87-21.

3 (b6) No State Agency Permit. – No building permit shall be required under such Code
4 from any State agency for the construction of any building or structure, the total cost of which
5 is less than twenty thousand dollars (\$20,000), except public or institutional buildings.

6 (b7) Appendices. – For the information of users thereof, the Code shall include as
7 appendices the following:

8 (1) Any rules governing boilers adopted by the Board of Boiler and Pressure
9 Vessels Rules,

10 (2) Any rules relating to the safe operation of elevators adopted by the
11 Commissioner of Labor, and

12 (3) Any rules relating to sanitation adopted by the Commission for Public
13 Health which the Building Code Council believes pertinent.

14 ~~(b7)~~ The Code may include references to such other rules of special types, such as those
15 of the Medical Care Commission and the Department of Public Instruction as may be useful to
16 persons using the Code. No rule issued by any agency other than the Building Code Council
17 shall be construed as a part of the Code, nor supersede that Code, it being intended that they be
18 presented with the Code for information only.

19 (b8) Exclusion for Certain Utilities. – Nothing in this Article shall extend to or be
20 construed as being applicable to the regulation of the design, construction, location, installation,
21 or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied
22 petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for
23 liquefied petroleum gas from the outlet of the first stage pressure regulator to and including
24 each liquefied petroleum gas utilization device within a building or structure covered by the
25 Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in
26 G.S. 62-3, or an electric or telephone membership corporation, including without limitation
27 poles, towers, and other structures supporting electric or communication lines.

28 (b9) Exclusion for Industrial Machinery. – Nothing in this Article shall extend to or be
29 construed as being applicable to the regulation of the design, construction, location, installation,
30 or operation of industrial machinery. However, if during the building code inspection process,
31 an electrical inspector has any concerns about the electrical safety of a piece of industrial
32 machinery, the electrical inspector may refer that concern to the Occupational Safety and
33 Health Division in the North Carolina Department of Labor but shall not withhold the
34 certificate of occupancy nor mandate third-party testing of the industrial machinery based
35 solely on this concern. For the purposes of this paragraph, "industrial machinery" means
36 equipment and machinery used in a system of operations for the explicit purpose of producing a
37 product or acquired by a State-supported center providing testing, research, and development
38 services to manufacturing clients. The term does not include equipment that is permanently
39 attached to or a component part of a building and related to general building services such as
40 ventilation, heating and cooling, plumbing, fire suppression or prevention, and general
41 electrical transmission.

42 (b10) Replacement Water Heaters. – The Code may contain rules concerning minimum
43 efficiency requirements for replacement water heaters, which shall consider reasonable
44 availability from manufacturers to meet installation space requirements and may contain rules
45 concerning energy efficiency that require all hot water plumbing pipes that are larger than
46 one-fourth of an inch to be insulated.

47 (b11) School Seclusion Rooms. – No State, county, or local building code or regulation
48 shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools
49 approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be
50 constructed so that it will engage only when a key, knob, handle, button, or other similar device
51 is being held in position by a person, and provided further that, if the mechanism is electrically

1 or electronically controlled, it automatically disengages when the building's fire alarm is
2 activated. Upon release of the locking mechanism by a supervising adult, the door must be able
3 to be opened readily.

4 (b12) Cisterns. – The Code may include rules pertaining to the construction or renovation
5 of residential or commercial buildings and structures that permit the use of cisterns to provide
6 water for flushing toilets and for outdoor irrigation. No State, county, or local building code or
7 regulation shall prohibit the use of cisterns to provide water for flushing toilets and for outdoor
8 irrigation. As used in this subsection, "cistern" means a storage tank that is watertight; has
9 smooth interior surfaces and enclosed lids; is fabricated from nonreactive materials such as
10 reinforced concrete, galvanized steel, or plastic; is designed to collect rainfall from a catchment
11 area; may be installed indoors or outdoors; and is located underground, at ground level, or on
12 elevated stands.

13 (b13) Migrant Housing. – The Council shall provide for an exemption from any
14 requirements in the fire prevention code for installation of an automatic sprinkler system
15 applicable to buildings meeting all of the following:

16 (1) Has one floor.

17 (2) Meets all requirements of 29 C.F.R. § 1910.142, as amended.

18 (3) Meets all requirements of Article 19 of Chapter 95 of the General Statutes
19 and rules implementing that Article.

20 For purposes of this subsection, "migrant housing" and "migrant" shall be defined as in
21 G.S. 95-223.

22 "...."

23

24 **PART X. WATER QUALITY PERMIT IS NOT REQUIRED FOR ACTIVITIES IN**

25 **WETLANDS THAT ARE NOT WATERS OF THE UNITED STATES**

26 **SECTION 13.1.** G.S. 143-212 reads as rewritten:

27 "**§ 143-212. Definitions.**

28 ...

29 (6) "Waters" means any stream, river, brook, swamp, lake, sound, tidal estuary,
30 bay, creek, reservoir, waterway, or other body or accumulation of water,
31 whether surface or underground, public or private, or natural or artificial,
32 that is contained in, flows through, or borders upon any portion of this State,
33 including any portion of the Atlantic Ocean over which the State has
34 jurisdiction. Wetlands classified as waters are restricted to waters of the
35 United States."

36 **SECTION 13.2.** G.S. 143-215.1 reads as rewritten:

37 "**§ 143-215.1. Control of sources of water pollution; permits required.**

38 (a) Activities for Which Permits Required. – Except as provided in ~~subsection~~
39 ~~(a6)~~ subsections (a6) and (a7) of this section, no person shall do any of the following things or
40 carry out any of the following activities unless that person has received a permit from the
41 Commission and has complied with all conditions set forth in the permit:

42 (1) Make any outlets into the waters of the State.

43 (2) Construct or operate any sewer system, treatment works, or disposal system
44 within the State.

45 (3) Alter, extend, or change the construction or method of operation of any
46 sewer system, treatment works, or disposal system within the State.

47 (4) Increase the quantity of waste discharged through any outlet or processed in
48 any treatment works or disposal system to any extent that would result in
49 any violation of the effluent standards or limitations established for any
50 point source or that would adversely affect the condition of the receiving
51 waters to the extent of violating any applicable standard.

- 1 (5) Change the nature of the waste discharged through any disposal system in
- 2 any way that would exceed the effluent standards or limitations established
- 3 for any point source or that would adversely affect the condition of the
- 4 receiving waters in relation to any applicable standards.
- 5 (6) Cause or permit any waste, directly or indirectly, to be discharged to or in
- 6 any manner intermixed with the waters of the State in violation of the water
- 7 quality standards applicable to the assigned classifications or in violation of
- 8 any effluent standards or limitations established for any point source, unless
- 9 allowed as a condition of any permit, special order or other appropriate
- 10 instrument issued or entered into by the Commission under the provisions of
- 11 this Article.
- 12 (7) Cause or permit any wastes for which pretreatment is required by
- 13 pretreatment standards to be discharged, directly or indirectly, from a
- 14 pretreatment facility to any disposal system or to alter, extend or change the
- 15 construction or method of operation or increase the quantity or change the
- 16 nature of the waste discharged from or processed in that facility.
- 17 (8) Enter into a contract for the construction and installation of any outlet, sewer
- 18 system, treatment works, pretreatment facility or disposal system or for the
- 19 alteration or extension of any such facility.
- 20 (9) Dispose of sludge resulting from the operation of a treatment works,
- 21 including the removal of in-place sewage sludge from one location and its
- 22 deposit at another location, consistent with the requirement of the Resource
- 23 Conservation and Recovery Act and regulations promulgated pursuant
- 24 thereto.
- 25 (10) Cause or permit any pollutant to enter into a defined managed area of the
- 26 State's waters for the maintenance or production of harvestable freshwater,
- 27 estuarine, or marine plants or animals.
- 28 (11) Cause or permit discharges regulated under G.S. 143-214.7 that result in
- 29 water pollution.
- 30 (12) Construct or operate an animal waste management system, as defined in
- 31 G.S. 143-215.10B, without obtaining a permit under either this Part or Part
- 32 1A of this Article.

33 ...
 34 (a7) No permit shall be required under this section for activities in wetlands that are not
 35 waters of the United States.

36"
 37

38 **PART XI. EXPAND THE AGRICULTURAL DAM EXEMPTION TO THE DAM**
 39 **SAFETY ACT**

40 **SECTION 14.** G.S. 143-215.25A reads as rewritten:

41 **"§ 143-215.25A. Exempt dams.**

- 42 (a) Except as otherwise provided in this Part, this Part does not apply to any dam:
- 43 (1) Constructed by the United States Army Corps of Engineers, the Tennessee
- 44 Valley Authority, or another agency of the United States government, when
- 45 the agency designed or approved plans for the dam and supervised its
- 46 construction.
- 47 (2) Constructed with financial assistance from the United States ~~Soil~~Natural
- 48 Resources Conservation Service, when that agency designed or approved
- 49 plans for the dam and supervised its construction.

- 1 (3) Licensed by the Federal Energy Regulatory Commission, or for which a
 2 license application is pending with the Federal Energy Regulatory
 3 Commission.
 4 (4) For use in connection with electric generating facilities regulated by the
 5 Nuclear Regulatory Commission.
 6 (5) Under a single private ownership that provides protection only to land or
 7 other property under the same ownership and that does not pose a threat to
 8 human life or property below the dam.
 9 (6) That is less than 25 feet in height or that has an impoundment capacity of
 10 less than 50 acre-feet, unless the Department determines that failure of the
 11 dam could result in loss of human life or significant damage to property
 12 below the dam.
 13 (7) Constructed for and maintains the purpose of providing water for
 14 agricultural use, when a person who is licensed as a professional engineer or
 15 is employed by the Natural Resources Conservation Service, county, or local
 16 Soil and Water Conservation District, and has federal engineering job
 17 approval authority under Chapter 89C of the General Statutes designed or
 18 approved plans for the dam, supervised its construction, and registered the
 19 dam with the Division of Energy, Mineral, and Land Resources of the
 20 ~~Department~~Department prior to construction of the dam. This exemption
 21 shall not apply to dams that are determined to be high-hazard by the
 22 Department.

23"

24
 25 **PART XII. ALLOW A LANDOWNER TO WITHDRAW WATER FOR**
 26 **AGRICULTURAL USE DURING WATER SHORTAGE EMERGENCIES UNDER**
 27 **CERTAIN CONDITIONS**

28 **SECTION 15.** G.S. 143-355.3 reads as rewritten:

29 **"§ 143-355.3. Water shortage emergency powers.**

30 (a) Declaration of Water Shortage Emergency. – If, after consultation with the affected
 31 water system and the unit of local government with jurisdiction over the area served by the
 32 water system, the Secretary determines that the needs of human consumption, necessary
 33 sanitation, and public safety require emergency action, the Secretary shall provide the Governor
 34 with written findings setting out the basis for declaration of a water shortage emergency. The
 35 Governor shall have the authority to declare a water shortage emergency in the area affected by
 36 the water shortage emergency, which may include both the water system experiencing a water
 37 shortage emergency and the area served by a water system required under subdivision (1) of
 38 subsection (b) of this section to provide water in response to the water shortage emergency. No
 39 emergency period shall exceed 30 days, but the Governor may declare successive emergencies
 40 based upon the written findings of the Secretary.

41 ...

42 (f) Nothing in this section shall limit a landowner from withdrawing water for use in
 43 agricultural activities, as described in G.S. 106-581.1, when the water is withdrawn from any of
 44 the following:

- 45 (1) Surface water sources located wholly on the landowner's property, including,
 46 but not limited to, impoundments constructed by or owned by the landowner
 47 and captured stormwater.
 48 (2) Groundwater sources, including, but not limited to, wells constructed on the
 49 landowner's property, springs, and artesian wells."

50

1 **PART XIII. DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL**
2 **RESOURCES AND THE DEPARTMENT OF TRANSPORTATION TO JOINTLY**
3 **PETITION THE WILMINGTON DISTRICT OF THE UNITED STATES ARMY**
4 **CORPS OF ENGINEERS TO ALLOW FOR GREATER FLEXIBILITY AND**
5 **OPPORTUNITY TO PERFORM WETLANDS MITIGATION BEYOND THE**
6 **IMMEDIATE WATERSHED WHERE DEVELOPMENT WILL OCCUR**

7 **SECTION 16.1.** No later than October 1, 2013, the Department of Environment
8 and Natural Resources and the Department of Transportation shall jointly petition the
9 Wilmington District of the United States Army Corps of Engineers (Wilmington District) to
10 allow for greater flexibility and opportunity to perform wetlands mitigation outside of the
11 eight-digit Hydrologic Unit Code (HUC) where development will occur. The Departments shall
12 seek this greater flexibility and opportunity for mitigation for both public and private
13 development. The Departments shall request that the Wilmington District review the flexibility
14 and opportunities for mitigation allowed by other Districts of the United States Army Corps of
15 Engineers.

16 **SECTION 16.2.** The Departments shall jointly report on their progress in
17 petitioning the Wilmington District as required by Section 16.1 of this act to the Environmental
18 Review Commission no later than January 1, 2014.

19 **SECTION 17.** Sections 2 and 3 of this act become effective July 1, 2013. The
20 remainder of this act is effective when it becomes law.