



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 820

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S820-ARI-65 [v.3]

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Comm. Sub. [YES]
Amends Title [YES]
S820-PCS15242-RI-48

Date _____, 2012

Representative Harrison

1 moves to amend the bill on page 1, line 1, through page 30, line 31,
2 by rewriting those lines to read:

"A BILL TO BE ENTITLED

5 AN ACT TO (1) EXTEND THE STUDY OF OIL AND GAS EXPLORATION IN THE
6 STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC
7 FRACTURING FOR THAT PURPOSE; (2) TO DIRECT THE DEPARTMENT OF
8 ENVIRONMENT AND NATURAL RESOURCES TO FORMULATE SPECIFIC
9 LEGISLATIVE RECOMMENDATIONS FOR REGULATION OF THE USE OF
10 HORIZONTAL DRILLING AND HYDRAULIC FRACTURING; AND (3) REQUIRE
11 ENHANCED CONSUMER AND LANDOWNER PROTECTIONS IN CONNECTION
12 WITH LEASES EXECUTED FOR THE EXPLORATION AND EXTRACTION OF OIL
13 OR GAS.

PART I. DEVELOPMENT OF REGULATORY PROGRAM

17 Whereas, in S.L. 2011-276, the General Assembly directed the Department of
18 Environment and Natural Resources and other entities to study the issue of oil and gas
19 exploration in the State and the use of horizontal drilling and hydraulic fracturing for that
20 purpose, including study of (i) oil and gas resources present in the Triassic Basins and in any
21 other areas of the State; (ii) methods of exploration and extraction of oil and gas, including
22 directional and horizontal drilling and hydraulic fracturing; (iii) potential environmental,
23 economic, and social impacts arising from such activities, as well as impacts on infrastructure;
24 and (iv) appropriate regulatory requirements for management of oil and gas exploration
25 activities with particular attention to regulation of horizontal drilling and hydraulic fracturing
26 for that purpose; and

27 Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural
28 Resources (DENR), in conjunction with the Department of Commerce, the Department of
29 Justice, and the Rural Advancement Foundation International (RAFI-USA), issued a draft
30 report on oil and gas resources in March 2012; and

31 Whereas, that draft report states "[a]fter reviewing other studies and experiences in
32 oil and gas-producing states, DENR believes that hydraulic fracturing can be done safely as



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1 long as the right protections are in place. It will be important to have those measures in place
2 before issuing permits for hydraulic fracturing in North Carolina's shale formations."; and

3 Whereas, that draft report states "[a] number of states have experienced problems
4 associated with natural gas exploration and development because the appropriate measures
5 were not in place from the beginning—forcing both the state and the industry to react after
6 damage had already been done."; and

7 Whereas, that draft report states "[a] complete oil and gas permitting program will
8 require more detailed standards than it is possible to provide in this report and those standards
9 should be based on conditions in North Carolina. Conditions in the Triassic Basins of North
10 Carolina are not identical to those found in Pennsylvania or other gas-producing states."; and

11 Whereas, the draft report states "[a] comprehensive oil and gas regulatory program
12 requires such a broad range of standards—many of them technical—that DENR cannot make
13 specific recommendations on a full set of regulatory standards without further study."; and

14 Whereas, the draft report states "[t]he development of specific standards for gas
15 production and hydraulic fracturing (such as siting criteria, waste management guidelines and
16 well construction standards) will require a more detailed discussion of standards appropriate for
17 North Carolina conditions."; Now, therefore,

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.(a)** The Department of Environment and Natural Resources, and other
20 entities as specifically designated below, shall continue the study required by S.L. 2011-276
21 concerning the issue of oil and gas exploration in the State and the use of horizontal drilling
22 and hydraulic fracturing for that purpose. Specifically, the Department shall gather any
23 additional information and data necessary to formulate detailed standards and regulatory
24 requirements for management of natural gas exploration and development activities using
25 horizontal drilling and hydraulic fracturing that are appropriate to address the particular
26 conditions existing in North Carolina. At a minimum, the Department shall formulate specific
27 recommendations and submit draft legislation on all of the following:

28 (1) Development of a modern oil and gas regulatory program, taking into
29 consideration the processes involved in hydraulic fracturing and horizontal
30 drilling technologies, and long-term prevention of physical or economic
31 waste in developing oil and gas resources in the State. These
32 recommendations shall include necessary updates and enhancements to
33 existing oil and gas regulations, including, but not limited to, requirements
34 pertaining to:

35 a. Collection of baseline data, including groundwater, surface water,
36 and air quality in areas where oil and gas exploration and
37 development activities are proposed.

38 b. State stormwater regulatory controls for oil and gas drilling sites.

39 c. Water use associated with the process of hydraulic fracturing in light
40 of water supply in the areas of proposed activity, competing water
41 uses in those areas, and expected environmental impacts from such
42 water withdrawals, including, but not limited to, a requirement that
43 oil and gas operators prepare and have a water and wastewater

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- 1 management plan approved by the Department, which, among other
2 things, limits water withdrawals during times of drought and periods
3 of low flows.
- 4 d. Management of oil and gas wastes, including storage, transportation,
5 and disposal of wastes that may contain radioactive materials or
6 wastes that may be toxic or have other hazardous wastes'
7 characteristics, that are not otherwise regulated as a hazardous waste
8 by the federal Resource Conservation and Recovery Act, such as
9 top-hole water, brines, drilling fluids, additives, drilling muds,
10 stimulation fluids, well servicing fluids, oil, production fluids, and
11 drill cuttings from the drilling, alteration, production, plugging, or
12 other activity associated with oil and gas wells.
- 13 e. Full disclosure of hydraulic fracturing chemicals and constituents to
14 regulatory agencies, and, with the exception of those items
15 constituting trade secrets, requirements for disclosure of hydraulic
16 fracturing chemicals and constituents to the public.
- 17 f. Prohibitions on use of certain chemicals and constituents in hydraulic
18 fracturing fluids, particularly diesel fuel.
- 19 g. State regulation of toxic air emissions from drilling operations. In
20 formulating appropriate standards, the Department shall assess
21 emissions from oil and gas exploration and development activities
22 that use horizontal drilling and hydraulic fracturing technologies,
23 including emissions from associated truck traffic in order to (i)
24 determine the adequacy of the State's current air toxics program to
25 protect landowners who lease their property to drilling operations,
26 and (ii) determine the impact on ozone levels in the area in order to
27 determine measures needed to maintain compliance with federal
28 ozone standards.
- 29 h. Information and data to be submitted in association with applications
30 for permits to conduct oil and gas exploration and development
31 activities using the processes of horizontal drilling and hydraulic
32 fracturing, which may include submission of hydrogeological
33 investigations and identification of mechanisms to prevent and
34 diagnose sources of groundwater contamination in the area of drilling
35 sites. In formulating these requirements, the Department shall
36 specifically examine (i) how North Carolina's geology differs from
37 other states where oil and gas exploration and development activities
38 using the processes of horizontal drilling and hydraulic fracturing are
39 common, and (ii) the routes of possible groundwater contamination
40 resulting from these activities and the potential role of vertical
41 geological structures such as dikes and faults as conduits for
42 groundwater contamination.

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- 1 i. Well construction standards to address the additional pressures of
2 horizontal drilling and hydraulic fracturing, such as standards for
3 casing and cementing sufficient to handle highly pressurized
4 injection of fluids into a well for purposes of fracturing bedrock and
5 extraction of gas, and construction standards for other gas production
6 infrastructure, such as storage pits and tanks.
- 7 j. Siting standards for wells and other gas production infrastructure,
8 such as storage pits and tanks, including appropriate setback
9 requirements and identification of areas, such as floodplains, where
10 oil and gas exploration and production activities should be
11 prohibited.
- 12 k. Installation of safety devices, such as blow-out preventers, and
13 actions to be taken in response to operational or mechanical
14 problems, including approved emergency response plans and
15 certified personnel to implement these plans as needed.
- 16 l. Notice, record keeping, and reporting.
- 17 m. Well closure, site reclamation, post-closure monitoring, and financial
18 assurance.
- 19 (2) Review and evaluate the advisability and efficacy of creation of a new board
20 or commission with jurisdiction over matters pertaining to oil and gas
21 exploration and development, which would withdraw jurisdiction over such
22 activities from existing entities such as the Environmental Management
23 Commission and the Mining Commission.
- 24 (3) Identification of appropriate levels of funding and potential sources for that
25 funding, including permit fees, bonds, taxes, and impact fees, necessary to
26 (i) support local governments impacted by the industry and associated
27 activities; (ii) address expected infrastructure impacts, including, but not
28 limited to, repair of roads damaged by truck traffic and heavy equipment;
29 (iii) cover any costs to the State for administering an oil and gas regulatory
30 program, including remediation and reclamation of drilling sites when
31 necessary due to abandonment or insolvency of an oil or gas operator or
32 other responsible party; and (iv) any other issues that may need to be
33 addressed in the Department's determination. The Department shall develop
34 recommendations on appropriate levels of funding in conjunction with the
35 Department of Transportation, the North Carolina League of Municipalities,
36 and the North Carolina Association of County Commissioners, as necessary.
- 37 (4) Identification of potential impacts on local governments and local
38 infrastructure, including, but not limited to, damage to roads by truck traffic
39 and heavy equipment, and recommendations on measures to mitigate those
40 impacts, as well as recommendations concerning the extent to which local
41 governments should have regulatory authority over oil and gas exploration
42 and development activities, including authority for adoption of reasonable
43 restrictions on such activity in order to protect public health, safety, welfare,

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1 and the environment. The Department of Environment and Natural
2 Resources, in conjunction with the Department of Transportation, the North
3 Carolina League of Municipalities and the North Carolina Association of
4 County Commissioners, shall identify these impacts and formulate
5 recommendations for inclusion in the study and recommendations required
6 by this act.

7 (5) Preparations necessary for appropriate response of State agencies, local first
8 responders, and industry to a well blowout, chemical spill, or other
9 emergency related to exploration and development activities, including
10 requirements for contingency planning and spill risk management
11 procedures. The Department shall develop these proposals in conjunction
12 with the Division of Emergency Management of the Department of Public
13 Safety.

14 (6) Development of proposals concerning an operator's liability for
15 environmental contamination caused by exploration and development
16 activities, particularly as it concerns groundwater contamination. The
17 Consumer Protection Division of the North Carolina Department of Justice
18 shall develop these proposals in consultation with the Department of
19 Environment and Natural Resources and the Rural Advancement Foundation
20 International (RAFI) for inclusion in the study and recommendations
21 required by this act.

22 (7) Development of a coordinated permitting process for oil and gas exploration
23 and development activities, which maintains the environmental permitting
24 program for such activities within the Department of Environment and
25 Natural Resources where it will benefit from the expertise of State
26 geological staff and the ability to coordinate air, land, and water quality
27 permitting. In developing a coordinated permitting process, the Department
28 shall also examine and make recommendations concerning an appropriate
29 fee structure applicable to oil and gas exploration and development activities
30 that will ensure adequate and sustainable staffing levels in the long term,
31 despite fluctuations in such activities and corresponding markets.

32 (8) Necessary data management capabilities and development of an electronic
33 permitting program.

34 (9) Identification of gaps in regulatory authority over the siting, construction,
35 and operation of gathering pipelines.

36 **SECTION 1.(b)** The Department shall identify all existing statutes and rules
37 governing all aspects of oil and gas exploration and development activities, identify all
38 statutory and rule changes necessary to implement the recommendations formulated pursuant to
39 Section 1(a) of this act, and provide draft legislative proposals accordingly.

40 **SECTION 1.(c)** In conducting the continuing study required by Section 1(a) of this
41 act, and in formulating the associated recommendations for legislative action by Section 1(b) of
42 this act, the Department of Environment and Natural Resources shall (i) do so using a process
43 involving scientific and technical advisory groups that allows for broad public participation and

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1 (ii) consult and coordinate with local governments, the North Carolina League of
2 Municipalities, the North Carolina Association of County Commissioners, the Department of
3 Commerce, the Department of Transportation, the Division of Emergency Management of the
4 Department of Public Safety, the Consumer Protection Division of the Department of Justice,
5 the State Review of Oil and Natural Gas Environmental Regulations (STRONGER), the
6 American Petroleum Institute (API), and the Rural Advancement Foundation International
7 (RAFI).

8 **SECTION 2.** The Department of Environment and Natural Resources shall submit
9 an interim report on the progress of the study and the development of recommendations
10 required by this act to the Environmental Review Commission on or before March 1, 2013. For
11 study and recommendations required by sub-subdivisions a. through f. of subdivision (1) of
12 Section 1(a) of this act, and subdivisions (2) through (6) of Section 1(a) of this act, the
13 Department shall submit a final report, including findings, recommendations, and specific
14 proposals for legislative action to the Environmental Review Commission on or before
15 December 1, 2013. For study and recommendations required by sub-subdivisions g. and h. of
16 subdivision (1) of Section 1(a) of this act, the Department shall submit a final report, including
17 findings, recommendations, and specific proposals for legislative action to the Environmental
18 Review Commission on or before July 1, 2014. For study and recommendations required by
19 sub-subdivisions i. through m. of subdivision (1) of Section 1(a) of this act, subdivisions (7)
20 through (9) of Section 1(a) of this act, and Section 12(b) of this act, the Department shall
21 submit a final report, including findings, recommendations, and specific proposals for
22 legislative action to the Environmental Review Commission on or before March 1, 2015.

23
24 **PART II. CONSUMER PROTECTION PROVISIONS**

25
26 **SECTION 3.** Part 3 of Article 27 of Chapter 113 of the General Statutes reads as
27 rewritten:

28
29 "Part 3. Landowner Protection.

30 **§ 113-420. Notice and entry to property.**

31 (a) Notice required for activities that do not disturb surface of property. — If an oil ~~and or~~
32 gas developer or operator is not the surface owner of the property on which oil and gas
33 operations are to occur, before entering the property for oil ~~and or~~ gas operations that do not
34 disturb the surface, including inspections, staking, surveys, measurements, and general
35 evaluation of proposed routes and sites for oil ~~and or~~ gas drilling operations, the developer or
36 operator shall give written notice to the surface owner at least ~~seven~~ 14 days before the
37 desired date of entry to the property. Notice shall be given by certified mail, return receipt
38 requested. The requirements of this subsection may not be waived by agreement of the
39 parties. The notice, at a minimum, shall include all of the following:

- 40 (1) The identity of person(s) requesting entry upon the property.
41 (2) The purpose for entry on the property.
42 (3) The dates, times, and location on which entry to the property will occur,
43 including the estimated number of entries.

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1 (a1) Other requirements concerning activities that do not disturb surface of property. –
2 Persons who enter land pursuant to subsection (a) of this section shall carry on their person
3 identification sufficient to identify themselves and their employer or principal and shall present
4 the identification to the surface owner upon request. In addition, activities for which notice is
5 required pursuant to subsection (a) of this section shall be subject to the following conditions:

6 (1) Vehicular access shall be limited to established roads and trails, unless
7 approval for other vehicular access is granted by the surface owner.

8 (2) Approval of the surface owner is required for the clearing of trees, brush, or
9 other vegetation.

10 (3) Entry upon land by a person to conduct or perform such activities creates a
11 rebuttable presumption that the surface owner properly protected the person
12 against personal injury or property damage while the person was on the land.

13 (4) A surveyor who enters land pursuant to subsection (a) of this section shall:
14 (i) supply the surface owner with information on located, established, or
15 reestablished corners that lie on the land or that may affect the boundaries of
16 the land; and, (ii) provide the surface owner with a copy of any relevant
17 survey filed or recorded, upon request of the surface owner.

18 (b) Notice required for land-disturbing activities. – If an oil and or gas developer or
19 operator is not the surface owner of the property on which oil and or gas operations are to
20 occur, before entering the property for oil and or gas operations that disturb the surface, the
21 developer or operator shall give written notice to the surface owner at least 14-60 days before
22 the desired date of entry to the property. Notice shall be given by certified mail, return receipt
23 requested. The notice, at a minimum, shall include all of the following:

24 (1) A sufficient description of the planned oil or gas operations to enable the
25 surface owner to evaluate the effect of the operations on the property.
26 exploration or development plan, including, but not limited to (i) the
27 proposed locations of any roads, drill pads, pipeline routes, and other
28 alterations to the surface estate and (ii) the proposed date on or after which
29 the proposed alterations will begin.

30 ~~(2) An offer of the oil and gas developer or operator to consult with the surface~~
31 ~~owner to review and discuss the location of the proposed alterations.~~

32 (3) The name, address, telephone number, and title of a contact person
33 employed by or representing the oil or gas developer or operator who the
34 surface owner may contact following the receipt of notice concerning the
35 location of the proposed alterations.

36 (4) A copy of this Part, and a publication produced by the Consumer Protection
37 Division of the North Carolina Department of Justice entitled "Oil & Gas
38 Leases: Landowners' Rights".

39 (5) A proposed surface use and compensation agreement addressing, at a
40 minimum and to the extent known, all of the following issues:

41 a. Placement, specifications, maintenance and design of well pads,
42 gathering pipelines and roads to be constructed for oil and gas
43 operations.

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- 1 a. The contamination existed prior to the commencement of the drilling
2 activities of the oil or gas developer or operator, as evidenced by a
3 pre-drilling test of the water supply in question conducted in
4 conformance with G.S. 113-423(e).
- 5 b. The surface owner or owner of the water supply in question refused
6 the oil or gas developer or operator access to conduct a pre-drilling
7 test of the water supply conducted in conformance with
8 G.S. 113-423(c).
- 9 c. The water supply in question is not within 5,000 feet of a wellhead
10 that is part of the oil or gas developer or operator's activities.
- 11 d. The contamination occurred as the result of a cause other than
12 drilling activities of the developer or operator.
- 13 (a1) Compensation for other damages required. – The oil and or gas developer or
14 operator shall be obligated to pay the surface owner compensation for all damages incurred by
15 a surface owner, including, but not limited to all of the following:
- 16 ~~(1) Any damage to a water supply in use prior to the commencement of the~~
17 ~~activities of the developer or operator which is due to those activities.~~
- 18 (2) The cost of repair of personal property of the surface owner, which personal
19 property is damaged due to activities of the developer or operator, up to the
20 value of replacement by personal property of like age, wear, and quality.
- 21 (3) Lost income or expenses incurred as a result of being unable to dedicate
22 surface property actually occupied by the oil or gas developer or operator's
23 activities or to which access is prevented by such activities to the uses to
24 which the property was dedicated prior to commencement of the activities
25 measured from the date the activity was initiated until the date reclamation
26 of the surface property is completed. This shall include lost income from
27 agricultural production activities involving livestock, crops, or timber
28 occurring prior to commencement of the activities of the oil or gas developer
29 or operator.
- 30 (4) Damage to any livestock, crops, or timber determined according to the
31 market value of the resources destroyed, damaged, or prevented from
32 reaching market due to the oil or gas developer or operator's activities.
- 33 (5) The diminution in value, if any, of the surface property and other property
34 after completion of the activities and reclamation conducted as required by
35 subsection (a2) of this section determined according to the actual use made
36 thereof by the surface owner immediately prior to the commencement of the
37 activities of the oil or gas developer on the property.
- 38 (6) Reimbursement for any additional taxes or assessments levied against the
39 property due to the developer or operator's activities.
- 40 (a2) Reclamation of Surface Property Required. – An oil or gas developer or operator
41 shall reclaim all surface areas affected by its operations no later than two years following
42 completion of the operations. If the developer or operator is not the surface owner of the
43 property, prior to commencement of activities on the property, the oil or gas developer or

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1 operator shall provide a bond running to the surface owner sufficient to cover reclamation of
2 the surface owner's property.

3 (a3) Remediation Required. – Nothing in this Article shall be construed to obviate or
4 affect the obligation of a developer or operator to comply with any other requirement under law
5 to remediate contamination caused by its activities.

6 (a4) Replacement Water Supply Required. – If a water supply belonging to the surface
7 owner or third parties is contaminated due to the activities of the developer or operator, in
8 addition to any other remedy available at law or in equity, the developer or operator shall
9 provide a replacement water supply to persons using the water supply at the time the oil or gas
10 developer's activities were commenced on the property, which water supply shall be adequate
11 in quality and quantity for those persons' use.

12 (b) Time-frame for compensation. – When compensation is required, the surface owner
13 shall have the option of accepting a one-time payment or annual payments for a period of time
14 not less than 10 years.

15 (c) Venue. – The surface owner has the right to seek damages pursuant to this section in
16 the superior court for the county in which the oil or gas well is located. The superior court for
17 the county in which the oil or gas well is located has jurisdiction over all proceedings brought
18 pursuant to this section. If the surface owner or the surface owner's assignee is the prevailing
19 party in an action to recover unpaid ~~royalties, royalties~~ or other damages owed due to activities
20 of the developer or operator, the court shall award any court costs and reasonable attorneys'
21 fees to the surface owner or the surface owner's assignee.

22 (d) Conditions precedent, notice provisions, or arbitration clauses included in lease
23 documents that have the effect of limiting access to the superior court in the county in which
24 the oil or gas well is located are void and unenforceable.

25 **§ 113-422. Indemnification.**

26 An oil or gas developer or operator shall indemnify and hold harmless a surface owner
27 against any claims related to the developer or operator's activities on the surface owner's
28 property, including, but not limited to: (i) claims of injury or death to any person; (ii) ~~for~~
29 damage to impacted infrastructure or water supplies; (iii) damage to a third party's ~~property that~~
30 ~~is adjacent to property on which drilling occurs, as well as real or personal property; adjacent~~
31 ~~infrastructure, and wells; and (iv) violations of any federal, State, or local law, rule, regulation~~
32 or ordinance, including those for protection of the environment.

33 **§ 113-423. ~~Maximum Required~~ lease terms.**

34 (a) Required Information to be Provided to Potential Lessors and Surface Owners. –
35 Prior to executing a lease for oil and gas rights or any other conveyance of any kind separating
36 rights to oil or gas from the freehold estate of surface property, an oil or gas developer or
37 operator, or any agent thereof, shall provide the lessor with a copy of this Part and a publication
38 produced by the Consumer Protection Division of the North Carolina Department of Justice
39 entitled "Oil & Gas Leases: Landowners' Rights." If the lessor is not the surface owner of the
40 property, the oil or gas developer or operator shall also provide the surface owner with a copy
41 of this Part and the publication prior to execution of a lease for oil and gas rights.

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1 (b) Maximum duration. – Any lease of oil or gas rights or any other conveyance of any
2 kind separating rights to oil or gas from the freehold estate of surface property shall expire at
3 the end of ~~40~~ 5 years from the date the lease is executed, unless, at the end of the ~~40-year~~ 5-year
4 period, oil or gas is being produced for commercial purposes from the land to which the lease
5 applies. If, at any time after the ~~40-year~~ 5-year period, commercial production of oil or gas in
6 paying quantities is terminated for a period of six months or more, all rights to the oil or gas
7 shall revert to the surface owner of the property to which the lease pertains. No assignment or
8 agreement to waive the provisions of this subsection shall be valid or enforceable. As used in
9 this subsection, the term "production" includes the actual production of oil or gas by a lessee, or
10 when activities are being conducted by the lessee for injection, withdrawal, storage, or disposal
11 of water, gas, or other fluids, or when rentals or royalties are being paid by the lessee. No force
12 majeure clause shall operate to extend a lease beyond the time frames set forth in this
13 subsection.

14 (c) Minimum royalty payments. – Any lease of oil or gas rights or any other
15 conveyance of any kind separating rights to oil or gas from the freehold estate of surface
16 property shall provide that the lessor shall receive a royalty payment of not less than 15.0% of
17 the proceeds of sale of all oil or gas produced from the lessor's just and equitable share of the
18 oil and gas in the pool, which sum shall not be diminished by pre-production or post-production
19 costs, fees, or other charges assessed by the oil or gas developer or operator against the
20 property owner. Royalty payments shall commence no later than six (6) months after the date
21 of first sale of product from the drilling operations subject to the lease and thereafter no later
22 than sixty (60) days after the end of the calendar month within which subsequent production is
23 sold. At the time each royalty payment is made, the oil or gas developer or operator shall
24 provide documentation on the time-period for which the royalty payment is made, the quantity
25 of product sold within that period, and the price received, at a minimum. If royalty payments
26 have not been made within the required timeframes, the owner of the property to which the
27 lease pertains shall be entitled to interest on the unpaid royalties commencing on the payment
28 due date at the rate of 10% per annum on the unpaid amounts. Upon written request, the lessor
29 shall be entitled to inspect and copy records of the oil or gas developer or operator related to
30 production and royalty payments associated with the lease.

31 (d) Bonus payments. – Any bonus payments, or other initial payments, due under a
32 lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas
33 from the freehold estate of surface property shall be paid by the lessee to the lessor within
34 30-days of execution of a lease. If a bonus payment or other initial payment has not been made
35 within the required timeframe, the lessor shall be entitled to interest on the unpaid amount
36 commencing on the payment due date at the rate of 10% per annum on the unpaid amount.

37 (e) Agreements for use of other resources; associated payments. – Any lease of oil or
38 gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold
39 estate of surface property shall clearly state if the oil or gas developer or operator shall use
40 groundwater or surface water supplies located on the property, and if so, shall clearly state the
41 estimated amount of water to be withdrawn from the supplies on the property, and shall require
42 permission of the surface owner therefore. At a minimum, water used by the developer or
43 operator shall not restrict the supply of water for domestic uses by the surface owner. The lease

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1 shall provide for full compensation to the surface owner for water used from the property by
2 the developer or operator in amount not less than the fair market value of the water consumed
3 based on water sales in the area at the time of use.

4 (f) Pre-drilling testing of water supplies. – Any lease of oil or gas rights or any other
5 conveyance of any kind separating rights to oil or gas from the freehold estate of surface
6 property shall include a clause that requires the oil or gas developer or operator to conduct a
7 test of water supplies within 5,000 feet of a wellhead that is part of the oil or gas developer or
8 operator's activities at least 30 days prior to initial drilling activities, and, at least two follow-up
9 tests within a 24 month period after production has commenced. The Department shall identify
10 the location of all such wells on a property on which drilling operations are proposed to occur.
11 A surface owner may elect to have the Department sample wells located on their property, in
12 lieu of sampling conducted by the oil or gas developer or operator, in which case the developer
13 or operator shall reimburse the Department for the reasonable costs involved in testing of the
14 wells in question. Nothing in this subsection shall be construed to preclude or impair the right
15 of any surface owner to refuse pre-drilling testing of wells located on their property.

16 (g) Recordation of leases. – Any lease of oil or gas rights or any other conveyance of
17 any kind separating rights to oil or gas from the freehold estate of surface property, including
18 assignments of such leases, shall be recorded within 30 days of execution in the register of
19 deeds office in the county where the land which is subject to the lease is located.

20 (h) Notice of assignment required. – Notice of assignment of any lease of oil or gas
21 rights or any other conveyance of any kind separating rights to oil or gas from the freehold
22 estate of surface property shall be provided to the owner of the property to which the lease
23 pertains within 30 days of such assignment.

24 (i) Approval required from lenders. – Prior to executing a lease for oil or gas rights or
25 any other conveyance of any kind separating rights to oil or gas from the freehold estate of
26 surface property with a surface owner, an oil or gas developer or operator shall obtain written
27 approval from any lender who holds a mortgage or deed of trust on any portion of the surface
28 property involved in the proposed lease. Such approval shall include a confirmation from that
29 lender that execution of a lease for oil or gas rights or any other conveyance of any kind
30 separating rights to oil or gas from the freehold estate of the surface property will not violate
31 any provision associated with the mortgage or deed of trust.

32 (j) 30-day right of rescission. – Any lease of oil or gas rights or any other conveyance
33 of any kind separating rights to oil or gas from the freehold estate of surface property, shall be
34 subject to a 30-day right of rescission in which the lessor may cancel the lease. In order to
35 cancel the lease, the lessor shall notify the lessee in writing within 30 calendar days of
36 execution of the lease, and return any sums paid by the lessee to the lessor under the terms of
37 the lease.

38 **§ 113-424. Applicability; effect.**

39 This Part applies to leases or contracts, and amendments to leases or contracts, entered into
40 on or after June 15, 2011.

41 **"§ 113-423.1. Surface activities.**

42 (a) Agreements on Rights and Obligations of Parties. – The developer or operator and
43 the surface owner may enter into a mutually acceptable agreement that sets forth the rights and

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1 obligations of the parties with respect to the surface activities conducted by the developer or
2 operator.

3 (b) Minimization of Intrusion Required. – An oil or gas developer or operator shall
4 conduct oil and gas operations in a manner that accommodates the surface owner by
5 minimizing intrusion upon and damage to the surface of the land. As used in this subsection,
6 "minimizing intrusion upon and damage to the surface" means selecting alternative locations
7 for wells, roads, pipelines, or production facilities, or employing alternative means of
8 operation, that prevent, reduce, or mitigate the impacts of the oil and gas operations on the
9 surface, where such alternatives are technologically sound, economically practicable, and
10 reasonably available to the operator. The standard of conduct set forth in this subsection shall
11 not be construed to (i) prevent an operator from entering upon and using that amount of the
12 surface as is reasonable and necessary to explore for, develop, and produce oil and gas and (ii)
13 abrogate or impair a contractual provision binding on the parties that expressly provides for the
14 use of the surface for the conduct of oil and gas operations or that releases the operator from
15 liability for the use of the surface. Failure of an oil or gas developer or operator to comply with
16 the requirements of this subsection shall give rise to a cause of action by the surface owner.
17 Upon a determination by the trier of fact that such failure has occurred, a surface owner may
18 seek compensatory damages and equitable relief. In any litigation or arbitration based upon this
19 subsection, the surface owner shall present evidence that the developer or operator's use of the
20 surface materially interfered with the surface owner's use of the surface of the land. After such
21 showing, the developer or operator shall bear the burden of proof of showing that it minimized
22 intrusion upon and damage to the surface of the land in accordance with the provisions of this
23 subsection. If a developer or operator makes that showing, the surface owner may present
24 rebuttal evidence. A developer or operator may assert, as an affirmative defense, that it has
25 conducted oil or gas operations in accordance with a regulatory requirement, contractual
26 obligation, or land-use plan provision that is specifically applicable to the alleged intrusion or
27 damage. Nothing in this subsection shall do any of the following:

- 28 (1) Preclude or impair any person from obtaining any and all other remedies
29 allowed by law.
30 (2) Prevent a developer or operator and a surface owner from addressing the use
31 of the surface for oil and gas operations in a lease, surface use agreement, or
32 other written contract.
33 (3) Establish, alter, impair, or negate the authority of local governments to
34 regulate land use related to oil and gas operations.

35 **§ 113-425. Registry of landmen required.**

36 (a) Establishment of registry. – The Department of Environment and Natural Resources
37 shall establish and maintain a registry of landmen operating in this State. As used in this
38 section, "landman" means a person that, in the course and scope of the person's business:

- 39 (1) Acquires or manages oil, gas, or mineral interests;
40 (2) Performs title or contract functions related to the exploration, exploitation, or
41 disposition of oil, gas, or mineral interests;

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- 1 (3) Negotiates for the acquisition or divestiture of oil, gas, or mineral rights,
2 including the acquisition or divestiture of land or oil, gas, or mineral rights
3 for a pipeline; or
4 (4) Negotiates business agreements that provide for the exploration for or
5 development of oil, gas, or minerals.

6 (b) Registration required. – A person shall not act, offer to act, or hold oneself out as a
7 landman in this State unless the person is registered with the Department in accordance with
8 this section. To apply for registration as a landman, a person shall submit an application to the
9 Department on a form to be provided by the Department, which shall include, at a minimum,
10 all of the following information:

- 11 (1) The name of the applicant or, if the applicant is not an individual, the names
12 and addresses of all principals of the applicant.
13 (2) The business address, telephone number, and electronic mail address of the
14 applicant.
15 (3) The social security number of the applicant or, if the applicant is not an
16 individual, the federal employer identification number of the applicant.
17 (4) A list of all states and other jurisdictions in which the applicant holds or has
18 held a similar registration or license;
19 (5) A list of all states and other jurisdictions in which the applicant has had a
20 similar registration or license suspended or revoked.
21 (6) A statement whether any pending judgments or tax liens exist against the
22 applicant.

23 (c) The Department may deny registration to an applicant, reprimand a registrant,
24 suspend or revoke a registration, or impose a civil penalty on a registrant if the Department
25 determines that the applicant or registrant:

- 26 (1) Fraudulently or deceptively obtains, attempts to obtain, or a registration;
27 (2) Uses or attempts to use an expired, suspended, or revoked registration;
28 (3) Falsely represents oneself as a registered landman;
29 (4) Engages in any other fraud, deception, misrepresentation, or knowing
30 omission of material facts related to oil, gas, or mineral interests;
31 (5) Had a similar registration or license denied, suspended, or revoked in
32 another state or jurisdiction; or
33 (6) Otherwise violates this section.

34 (d) An applicant may challenge a denial, suspension, or revocation of a registration, or a
35 reprimand issued pursuant to subsection (c) of this section as provided in Chapter 150B of the
36 General Statutes.

37 (e) The Department shall adopt rules as necessary to implement the provisions of this
38 section.

39 **"§ 113-426. Additional Remedies.**

40 The remedies provided by this Part are not exclusive and do not preclude any other
41 remedies that may be allowed by law."

42 **SECTION 4.(a)** G.S.113-380 reads as rewritten:

43 **"§ 113-380. Violation a misdemeanor.**

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1 Any Except as otherwise provided, any person, firm or officer of a corporation
2 violating any of the provisions of G.S. 113-378 or 113-379, this Article, shall upon conviction
3 thereof be guilty of a Class 1 misdemeanor."

4 **SECTION 4.(b)** G.S.113-410 reads as rewritten:

5 "**§ 113-410. Penalties for other violations.**

6 Any person who knowingly and willfully violates any provision of this ~~law, Article,~~ or any
7 rule or order of the Department made hereunder, shall, in the event a penalty for such violation
8 is not otherwise provided for herein, be subject to a penalty of not to exceed ~~one~~ twenty-five
9 thousand dollars (\$1,000)(\$25,000) a day for each and every day of such violation, and for each
10 and every act of violation, such penalty to be recovered in a suit in the superior court of the
11 county where the defendant resides, or in the county of the residence of any defendant if there
12 be more than one defendant, or in the superior court of the county where the violation took
13 place. The place of suit shall be selected by the Department, and such suit, by direction of the
14 Department, shall be instituted and conducted in the name of the Department by the Attorney
15 General. The payment of any penalty as provided for herein shall not have the effect of
16 changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product,
17 nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the
18 transportation, refining, processing, or handling in any other way, of such illegal oil, illegal gas
19 or illegal product, but, to the contrary, penalty shall be imposed for each prohibited transaction
20 relating to such illegal oil, illegal gas or illegal product.

21 Any person knowingly and willfully aiding or abetting any other person in the violation of
22 any statute of this State relating to the conservation of oil or gas, or the violation of any
23 provisions of this law, or any rule or order made thereunder, shall be subject to the same
24 penalties as prescribed herein for the violation by such other person.

25 The clear proceeds of penalties provided for in this section shall be remitted to the Civil
26 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

27 **SECTION 5.** G.S. 113-393 reads as rewritten:

28 "**§ 113-393. Development of lands as drilling unit by agreement or order of Department.**

29 (a) Integration of Interests and Shares in Drilling Unit. – When two or more separately
30 owned tracts of land are embraced within an established drilling unit, the owners thereof may
31 agree validly to integrate their interests and to develop their lands as a drilling unit. ~~Where,~~
32 ~~however, such owners have not agreed to integrate their interests, the Department shall, for the~~
33 ~~prevention of waste or to avoid drilling of unnecessary wells, require such owners to do so and~~
34 ~~to develop their lands as a drilling unit. All orders requiring such integration shall be made after~~
35 ~~notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will~~
36 ~~afford to the owner of each tract the opportunity to recover or receive his just and equitable~~
37 ~~share of the oil and gas in the pool without unnecessary expense, and will prevent or minimize~~
38 ~~reasonably avoidable drainage from each developed unit which is not equalized by~~
39 ~~counter drainage. The portion of the production allocated to the owner of each tract included in~~
40 ~~a drilling unit formed by an integration order shall, when produced, be considered as if it had~~
41 ~~been produced from such tract by a well drilled thereon.~~

42 ~~In the event such integration is required, and provided also that after due notice to all the~~
43 ~~owners of tracts within such drilling unit of the creation of such drilling unit, and provided~~

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1 further that the Department has received no protest thereto, or request for hearing thereon,
2 whether or not 10 days have elapsed after notice has been given of the creation of the drilling
3 unit, the operator designated by the Department to develop and operate the integrated unit shall
4 have the right to charge to each other interested owner the actual expenditures required for such
5 purpose not in excess of what are reasonable, including a reasonable charge for supervision,
6 and the operator shall have the right to receive the first production from the well drilled by him
7 thereon, which otherwise would be delivered or paid to the other parties jointly interested in the
8 drilling of the well, so that the amount due by each of them for his shares of the expense of
9 drilling, equipping, and operating the well may be paid to the operator of the well out of
10 production; with the value of the production calculated at the market price in the field at the
11 time such production is received by the operator or placed to his credit. After being reimbursed
12 for the actual expenditures for drilling and equipping and operating expenses incurred during
13 the drilling operations and until the operator is reimbursed, the operator shall thereafter pay to
14 the owner of each tract within the pool his ratable share of the production calculated at the
15 market price in the field at the time of such production less the reasonable expense of operating
16 the well. In the event of any dispute relative to such costs, the Department shall determine the
17 proper costs.

18 (b) When Each Owner May Drill. – Should the owners of separate tracts embraced
19 within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on
20 the unit, and should it be established that the Department is without authority to require
21 integration as provided for in subsection (a) of this section, then, subject to all other applicable
22 provisions of this law, the owner of each tract embraced within the drilling unit may drill on his
23 tract, but the allowable production from each tract shall be such proportion of the allowable for
24 the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

25 (c) Cooperative Development Not in Restraint of Trade. – Agreements made in the
26 interests of conservation of oil or gas, or both, or for the prevention of waste, between and
27 among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in
28 any area that appears from geological or other data to be underlaid by a common accumulation
29 of oil or gas, or both, or between and among such owners or operators, or both, and royalty
30 owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out
31 a plan for the cooperative development and operation thereof, when such agreements are
32 approved by the Department, are hereby authorized and shall not be held or construed to violate
33 any of the statutes of this State relating to trusts, monopolies, or contracts and combinations in
34 restraining of trade.

35 (d) Variation from Vertical. – Whenever the Department fixes the location of any well
36 or wells on the surface, the point at which the maximum penetration of such wells into the
37 producing formation is reached shall not unreasonably vary from the vertical drawn from the
38 center of the hole at the surface, provided, that the Department shall prescribe rules and orders
39 governing the reasonableness of such variation.

40 (e) No owner of land in this State shall be required to allow activities for the
41 exploration or extraction of oil or gas on the owner's property, nor shall an owner of oil or gas
42 interests be required to allow activities for the exploration or extraction of the oil or gas
43 resources owned by them."

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1 **SECTION 6.** G.S. 47E-4 reads as rewritten:
2 "**§ 47E-4. Required disclosures.**

3 (a) With regard to transfers described in G.S. 47E-1, the owner of the real property
4 shall furnish to a purchaser a residential property disclosure statement. The disclosure
5 statement shall:

- 6 (1) Disclose those items which are required to be disclosed relative to the
7 characteristics and condition of the property and of which the owner has
8 actual knowledge; or
9 (2) State that the owner makes no representations as to the characteristics and
10 condition of the real property or any improvements to the real property
11 except as otherwise provided in the real estate contract.

12 (b) The North Carolina Real Estate Commission shall develop and require the use of a
13 standard disclosure statement to comply with the requirements of this section. The disclosure
14 statement shall specify that certain transfers of residential property are excluded from this
15 requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease
16 with an option to purchase where the lessee occupies or intends to occupy the dwelling, and
17 shall include at least the following characteristics and conditions of the property:

- 18 (1) The water supply and sanitary sewage disposal system;
19 (2) The roof, chimneys, floors, foundation, basement, and other structural
20 components and any modifications of these structural components;
21 (3) The plumbing, electrical, heating, cooling, and other mechanical systems;
22 (4) Present infestation of wood-destroying insects or organisms or past
23 infestation the damage for which has not been repaired;
24 (5) The zoning laws, restrictive covenants, building codes, and other land-use
25 restrictions affecting the real property, any encroachment of the real property
26 from or to adjacent real property, and notice from any governmental agency
27 affecting this real property; and
28 (6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground
29 storage tank, hazardous material or toxic material (whether buried or
30 covered), and other environmental contamination.

31 The disclosure statement shall provide the owner with the option to indicate whether the
32 owner has actual knowledge of the specified characteristics or conditions, or the owner is
33 making no representations as to any characteristic or condition.

34 (b1) With regard to transfers described in G.S. 47E-1, the owner of the real property
35 shall furnish to a purchaser an owners' association and mandatory covenants disclosure
36 statement.

- 37 (1) The North Carolina Real Estate Commission shall develop and require the
38 use of a standard disclosure statement to comply with the requirements of
39 this subsection. The disclosure statement shall specify that certain transfers
40 of residential property are excluded from this requirement by G.S. 47E-2,
41 including transfers of residential property made pursuant to a lease with an
42 option to purchase where the lessee occupies or intends to occupy the
43 dwelling. The standard disclosure statement shall require disclosure of

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1 whether or not the property to be conveyed is subject to regulation by one or
2 more owners' association(s) and governing documents which impose various
3 mandatory covenants, conditions, and restrictions upon the property,
4 including, but not limited to, obligations to pay regular assessments or dues
5 and special assessments. The statement required by this subsection shall
6 include information on all of the following:

- 7 a. The name, address, telephone number, or e-mail address for the
8 president or manager of the association to which the lot is subject.
9 b. The amount of any regular assessments or dues to which the lot is
10 subject.
11 c. Whether there are any services that are paid for by regular
12 assessments or dues to which the lot is subject.
13 d. Whether, as of the date the disclosure is signed, there are any
14 assessments, dues, fees, or special assessments which have been duly
15 approved as required by the applicable declaration or bylaws,
16 payable to an association to which the lot is subject.
17 e. Whether, as of the date the disclosure is signed, there are any
18 unsatisfied judgments against or pending lawsuits involving the lot,
19 the planned community or the association to which the lot is subject,
20 with the exception of any action filed by the association for the
21 collection of delinquent assessments on lots other than the lot to be
22 sold.
23 f. Any fees charged by an association or management company to
24 which the lot is subject in connection with the conveyance or transfer
25 of the lot to a new owner.

- 26 (2) The owners' association and mandatory covenants disclosure statement shall
27 provide the owner with the option to indicate whether the owner has actual
28 knowledge of the specified characteristics, or conditions or the owner is
29 making no representations as to any characteristic or condition contained in
30 the statement.

31 **(b2) With regard to transfers described in G.S. 47E-1, the owner of the real property**
32 **shall include in any real estate contract an oil, gas, and mineral rights mandatory disclosure as**
33 **provided in this subsection.**

- 34 (1) Transfers of residential property set forth in G.S.47E-2 are excluded from
35 this requirement, except that the exemptions provided under subdivisions (9)
36 and (11) of G.S. 47E-2 specifically are not excluded from this requirement.
37 (2) The disclosure shall be conspicuous, shall be in boldface type and shall be as
38 follows:

39
40 **OIL, GAS AND MINERAL RIGHTS DISCLOSURE**

41
42 Oil, gas, and mineral rights (hereinafter "mineral rights") can be severed
43 from the title to real property by conveyance (deed) of the mineral rights

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from the owner or by reservation of the mineral rights by the owner. If mineral rights are or will be severed from the property, the owner of those rights may have the perpetual right to drill, mine, explore, and remove any of the subsurface resources on or from the property either directly from the surface of the property or from a nearby location. With regard to the severance of mineral rights, Seller makes the following disclosures:

	<u>Yes</u>	<u>No</u>	<u>No Representation</u>
8 _____ 9 <u>Buyer Initials</u>	1. <u>Mineral rights were severed from</u>	—	—
	<u>the property by a previous owner.</u>	—	—
11 _____	2. <u>Seller has severed the mineral rights</u>	<u>Yes</u>	<u>No</u>
12 <u>Buyer Initials</u>	<u>from the property.</u>	—	—
14 _____	3. <u>Seller intends to sever the mineral</u>	<u>Yes</u>	<u>No</u>
15 <u>Buyer Initials</u>	<u>rights from the property prior to</u>	—	—
	<u>transfer of title to Buyer"</u>		

SECTION 7. In order to effect the pre-lease publication distribution requirement as set forth in G.S. 113-420(b) and G.S. 113-423(a), and to otherwise inform the public, the Consumer Protection Division of the North Carolina Department of Justice in consultation with the North Carolina Real Estate Commission shall develop and make available a publication entitled "Oil & Gas Leases: Landowners' Rights" to provide general information on consumer protection issues and landowner rights, including information on mineral leases, applicable to exploration and extraction of gas or oil. The publication shall be made available by October 1, 2012.

PART IV. SEVERANCE TAX

SECTION 8. G.S. 113-387 reads as rewritten:

"§ 113-387. Production of crude oil and gas regulated; tax assessments.

All common sources of supply of crude oil discovered after January 1, 1945, if so found necessary by the Department, shall have the production of oil therefrom controlled or regulated in accordance with the provisions of this law, and the Department is hereby authorized to assess from time to time against each barrel of oil produced and saved a tax not to exceed five mills on each barrel. All moneys so collected shall be used solely to pay the expenses and other costs in connection with the administration of this law.

All common sources of supply of natural gas discovered after January 1, 1945, if so found necessary by the Department, shall have the production of gas therefrom controlled or regulated in accordance with the provisions of this law, and the Department is hereby authorized to assess from time to time against each 1000 cubic feet of gas produced and saved from a gas well a tax not to exceed ~~one-half mill~~ twenty-six cents (26¢) on each 1000 cubic feet of gas. All moneys so collected shall be used solely to pay the expenses and other costs in connection with the administration of this law."

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1 **PART V. EFFECTIVE DATE**

2

3 **SECTION 9.** Except as otherwise provided, this act is effective when it becomes
4 law and applies to leases or contracts, or amendments to leases or contracts, entered into on or
5 after that date. The publication required pursuant to G.S. 113-423, as enacted by Section 3 of
6 this act, shall be made available by October 1, 2012. Section 6 becomes effective October 1,
7 2012, and applies to real estate transfers or dispositions occurring on or after that date. Section
8 8 is effective for taxes imposed for taxable years beginning on or after July 1, 2012."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____