SENATE BILL 513:
North Carolina Farm Act of 2015

2015-2016 General Assembly

Committee:	Senate Re-ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Transportation. If fav, re-ref to Finance	**Date:**	May 12, 2015
Introduced by:	Sens. Brock, B. Jackson	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to First Edition S513-CSTQf-16 [v.3]		

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 513 would make various changes to agricultural, transportation, and environmental laws.

CURRENT LAW AND BILL ANALYSIS:

Section 1 of the PCS would increase the North Carolina Horse Council assessment from $2.00 to $4.00 per ton of commercial horse feed, and provide that the assessment is levied for a period of ten years, up from three years. Under G.S. 106-825, the Council must use these funds to promote the interests of the horse industry.

Section 2 would provide that an employer does not have to withhold State income tax on compensation paid to an H-2A agricultural worker if the employer is not required to withhold federal income tax on that compensation. Since calendar year 2011, an employer must report compensation of $600 or more paid to an H-2A agricultural worker on Form W-2, but the employer is not required to withhold federal taxes on the compensation unless the worker fails to provide the employer with either a Social Security Number (SSN) or an Individual Taxpayer Identification Number (ITIN). In the case of an H-2A agricultural worker who fails to provide a SSN or ITIN, the employer must withhold and remit 28% of the compensation and continue withholding this amount until the worker furnishes the employer the SSN or ITIN.

This section is effective for taxable years beginning on or after July 1, 2015.

Section 3 would establish a policy supporting sustainable agriculture in the State. The term "sustainable agriculture" is defined in this section.

Section 4 would direct the Department of Transportation to amend its rules to allow permitted oversize vehicles to operate between sunset and sunrise, Monday through Sunday of each week. Current rules do not permit oversize vehicles to operate on Sundays. Additionally, this section would direct the Department to amend its rules to remove Labor Day, Memorial Day, and New Year's Day from the list of holidays during which an oversize vehicle may not operate from noon on the weekday preceding the holiday until noon of the weekday after the holiday.

Section 5 would provide that any vehicle carrying baled hay from place to place on the same farm, from one farm to another, from farm to market, or from market to farm, that does not exceed 12 feet in width may be operated on the highways of this State. Such vehicles exceeding 10 feet in width must operate

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only during daylight hours and must display a red flag or flashing warning light in the front and rear of the vehicle.

Section 6 would amend the right of center requirements to provide that farm equipment is not required to operate to the right of the center line when the combined width of the traveling lane and the accessible shoulder is less than the width of the equipment, and make a conforming change.

Section 7 would amend the definition of "agricultural spreader vehicle" to include vehicles designed for off-highway use on a farm to spread feed, and allow agricultural spreader vehicles that are exempt from the requirement of registration and certificate of title to travel at a speed of up to 45 miles per hour, up from 35 miles per hour. This section would also exempt all-terrain vehicles or utility vehicles used for agricultural purposes from the requirement of registration and certificate of title.

Section 8 would clarify that the weight limitation exceptions for transportation of agricultural products and supplies apply to vehicles carrying dairy products; vehicles carrying water, fertilizer, pesticides, seeds, fuel, or animal waste to or from a farm; and vehicles carrying feed ingredients from a storage or holding facility to a mill or farm. This section would become effective July 1, 2015.

Section 9 would require meteorological towers between 50 and 200 feet[1] high to be marked and painted such that they are visible during daylight hours from of a distance of at least 2,000 feet. The towers must be painted in alternating bands of orange and white, have a marker ball attached to the top third of each guy wire, and have a seven-foot long safety sleeve at each anchor point. Any person constructing a meteorological tower must also register with the Department of Transportation, provide the location and height of the proposed tower, and pay a $350 registration fee. The Department must develop and maintain a database of these towers by January 1, 2017, and make the database available on its Web site. The Secretary of Transportation would be permitted to assess a $10,000 penalty against any person who violates either the marking or notice requirements. Towers existing on January 1, 2017, would be grandfathered.

This section would become effective January 1, 2017, and would apply to meteorological towers erected on or after that date.

Section 10 would direct the Secretary of Environment and Natural Resources not to exclude any area from shellfish cultivation leases solely on the basis that the area contains submerged aquatic vegetation. However, the policy of the Army Corps of Engineers, Wilmington District, prohibits shellfish leasing in areas with submerged aquatic vegetation, and this section would not be enforceable until the Corps changes its policy.

This section would become effective July 1, 2015, and would apply to any new shellfish cultivation leases or renewals of existing shellfish cultivation leases issued on or after that date.

Section 11 would make three changes to present-use value taxation:

- This section would provide that, for purposes of present use value, the commercial production or growing of animals includes the rearing, feeding, training, caring, and managing of horses.
- This section would provide that when a tax assessor is determining whether a business entity applicant for present use value has farming as its principal business, there is a rebuttable presumption that farming is the business entity's primary business if the applicant has been approved for present value taxation for a qualifying property in another county. Any determination about the applicant's eligibility would not affect the determination of whether the individual parcel of land meets the classifications for agricultural, horticultural, or forest land

[1] Towers above 200 feet tall are regulated by the Federal Aviation Administration.

pursuant to G.S. 105-277.3. Further, if the assessor is able to rebut the presumption, this would not invalidate a determination that the applicant's principal business is farming agricultural land, horticultural land, or forestland in the other county.

- This section would direct the Department of Revenue to publish a present-use value program guide annually and make the guide available on its Web site. Tax assessors would be required to adhere to the Department's guide when making decisions regarding the qualifications or appraisal of property for the present-use value taxation program.

This section would become effective July 1, 2015, and applies to taxes imposed for taxable years beginning on or after that date. The requirement to publish a present-use value guide would be effective when it becomes law.

Section 12 would provide that for any conservation agreement subject to Council of State approval for termination or substantial modification, the Council must deny any request for termination or substantial modification that is made for the purpose of economic development. This section would apply only to perpetual conservation agreements or term conservation agreements terminated or substantially modified before the end of the term, to which the State or a subdivision of the State is a party. However, this section would not apply to condemnation actions initiated by a public condemnor.

This section would clarify that parties to a conservation agreement may include a provision in the agreement requiring the consent of the grantor or the grantor's successors in interest to terminate or substantially modify the agreement for any purpose.

Any agency that manages a conservation agreement program would be permitted to adopt rules governing its procedure for termination or substantial modification of a conservation agreement, provided that the rules must be at least as stringent as the requirements of this section.

Section 13 would transfer the captive cervid program (deer farming) from the jurisdiction of the Wildlife Resources Commission (WRC) to the Department of Agriculture and Consumer Services (DACS). DACS would be responsible for regulating the production, sale, possession, and transportation, including importation and exportation, of farmed cervids. This would include any cervid species that is held in captivity and produced, bought, or sold for commercial purposes, including white-tailed deer, elk, fallow deer, and red deer.

DACS would be authorized to issue new captivity licenses and permits for farmed cervid facilities that will hold cervids that are not susceptible to Chronic Wasting Disease. Until the USDA has adopted an approved method of testing for Chronic Wasting Disease (CWD) in living cervids, CWD-susceptible deer would not be allowed to be imported into this State. At such time as a live CWD test is developed, DACS would be authorized to issue new captivity licenses or permits for farmed cervid facilities that will hold cervids susceptible to CWD only if the CWD-susceptible source animals are from a certified herd in accordance with USDA Standards from an existing licensed facility. However, DACS would not be authorized to issue an importation permit for any farmed cervid from a CWD-positive, -exposed, or -suspect farmed cervid facility.

All free-ranging cervids would be required to be removed from any new captive cervid facility before stocking the facility with farmed cervids. Further, hunt facilities would be prohibited, and only the licensee, the owner or an employee of the facility, or a qualified veterinarian administering euthanasia would be permitted to kill a farmed cervid on the premises of a licensed facility.

Local governments would be prohibited from adopting any ordinances inconsistent with or more restrictive than the provisions of this section. Farmed cervids would not be subject to the provisions of G.S. 113-129, setting forth definitions related to wildlife resources.

Live farmed cervids would only be able to be transported on a public road if the cervid has an official form of identification and the appropriate transportation, importation, or exportation permit issued by DACS. Any live farmed cervid transported on a public road would be subject to inspection by a wildlife law enforcement officer to ensure that the farmed cervid has the required official identification and permits.

Violation of any requirement of this section would be punishable by a civil penalty of not more than $5,000 per animal, issued by DACS. In determining the amount of the penalty, the Commissioner of Agriculture would consider the degree and extent of harm caused by the violation.

WRC would retain jurisdiction over the possession and transportation, including importation and exportation, of non-farmed cervids, including game carcasses and parts of game carcasses extracted by hunters and carcasses and parts of carcasses imported from hunt facilities as defined by USDA Standards.

Section 14 would allow burning of polyethylene agricultural plastic without an air quality permit, provided that the burning is conducted as quickly as possible and in a manner that will minimize total emissions.

Section 15 would alter the implementation of animal waste management system regulations to provide that:

- A "new animal waste management system" does not include a system that has been abandoned or unused for a period of four years or more and is then put back into service.
- Certain swine waste management system performance standards will not apply to any facility that meets all the following conditions:
    - Has had no animals on site for five continuous years or more.
    - Notifies the Division of Water Resources in writing at least 60 days prior to bringing any animals back onto the site.
    - The system depopulated after January 1, 2005, and the system ceased operation no longer than 10 years prior to the current date.
    - At the time the system ceased operation, it was in compliance with an individual permit or a general permit.
    - The Division of Water Resources issues an individual permit or a certificate of coverage under a general permit for operation of the system before any animals are brought on the facility.
    - The permit for the animal waste management system does not allow production to exceed the greatest steady state live weight previously permitted for the system.
    - No component of the animal waste management system and swine farm, other than an existing swine house or land application site, may be constructed in the 100-year floodplain.
    - The inactive animal waste management system was not closed using the expenditure of public funds and was not closed pursuant to a settlement agreement, court order, cost-share agreement, or grant condition.

Section 16 would require the Department of Environment and Natural Resources to certify an animal waste management system as an *energy-producing animal operation* if: (i) the operation is an animal operation or dry litter poultry facility subject to a permit for an animal waste management system, (ii) the operation is a renewable energy facility that generates energy through the use of swine or poultry

waste resources, (iii) the energy produced is used to comply with the Renewable Energy Portfolio Standards, and (iv) the animal waste management system decreases waste volumes by anaerobic digestion, or shipment of waste offsite for energy generation, or closes off waste lagoons to the open atmosphere by an impervious lagoon cover. Additionally, this section would provide than a certified energy-producing animal operation is not and cannot become a public or private nuisance due to odor.

This section would become effective December 1, 2015.

Section 16.1 would direct the Environmental Management Commission to amend its rules for Control of Odors for Animal Operations such that an odor from a certified energy-producing animal operation will not be found to be objectionable.

Section 17 would amend the definition of mining to provide that mining does not include excavation or grading when conducted solely for activities undertaken on agricultural land that are exempt from the requirements of the Sedimentation Pollution Control Act.

Section 18 would reduce the holding and advertising period for unclaimed livestock to allow the sale of unclaimed livestock within 13 days, rather than 50 days under current law. This section would also replace archaic language in the notification procedure. This section would be effective when it becomes law and would apply to livestock impounded on or after that date.

Section 19 would repeal DACS's reporting requirement for the North Carolina Dairy Stabilization and Growth Program and change the reporting date for revenues and expenditures of the Spay/Neuter Account from February to March of each year.

Section 20 would allow the Forest Service to accept a prescribed burner certification from another State or other entity. Prescribed burning is defined as "the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather and safe environmental and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives."

Section 21 would reduce the penalty for failure to guard a fire by watchman from a Class 3 misdemeanor to an infraction. Article 22 of Chapter 14 of the General Statutes contains several similar violations with more severe penalties:

- G.S. 14-136, Setting fire to grass and brushlands and woodlands, punishable as a Class 2 misdemeanor or a Class I felony.
- G.S. 14-137, Willfully or negligently setting fire to woods and fields, punishable as a Class 2 misdemeanor.
- G.S. 14-138.1, Setting fire to grassland, brushland, or woodland, punishable as a Class 3 misdemeanor.

Section 22 would establish a farm winery permit and farm winery unfortified wine permit. Any winery that produces at least 75% of its wine from honey, grapes, or other fruit or grain grown within the State would be able to obtain a farm winery permit, which would cost $150. The holder of a farm winery permit could obtain a farm winery on-premises unfortified wine permit, which would be substantially equivalent to the existing on-premises unfortified wine permit, but would cost $100 rather than $400 for a standard on-premises unfortified wine permit.

The holder of a farm winery permit would have all the privileges of an unfortified winery permittee, plus the ability to sell their wine for on-premises or off-premises consumption at twice as many retail locations (three versus six), give visitors free tasting samples of the wine manufactured at the farm

winery without obtaining a limited winery permit, and affix a label to the bottle certifying that the wine originates from a permitted farm winery.

This section would also make conforming changes and direct DACS to study ways to promote farm wineries within the State, including the development of a "passport" program where customers visiting a given number of farm wineries may receive a form of special recognition, such as a special sticker for their car. The report would be due to the Agriculture and Forestry Awareness Study Commission no later than February 1, 2016.

This section would become effective July 1, 2016, and would apply to permits issued on or after that date.

Section 23 would make a conforming change to clarify that all USDA-generated information received by DACS that is confidential under federal law must be held confidential. This section would also provide that all information collected by DACS from farm owners or animal owners, including laboratory reports received or generated from samples submitted for analysis, that may be used to identify an individual or business subject to regulation by DACS may not be disclosed without the permission of the owner, unless necessary to prevent the spread of animal disease or implement animal health programs.

Section 24 would make technical corrections overlooked in the transfer of the Forest Service from the Department of Environment and Natural Resources to DACS.

EFFECTIVE DATE: Except as otherwise provided, this act would be effective when it becomes law.