



SENATE BILL 513: North Carolina Farm Act of 2015

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2015-2016 General Assembly

Committee:	Rules, Calendar, and Operations of the House	Date:	September 22, 2015
Introduced by:	Sens. Brock, B. Jackson	Prepared by:	Chris Saunders
Analysis of:	PCS to Fifth Edition S513-CSTQxf-27 [v.57]		Staff Attorney

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

The PCS makes the following changes from the Fifth Edition of the bill:

- In Section 3, relating to the definition of "sustainable agriculture," deletes a reference to "social goals."*
- In Section 11, relating to shellfish cultivation leases in areas containing submerged aquatic vegetation, adds a technical change to allow the Department of Environment and Natural Resources to stay in compliance with federal law.*
- In Section 13, relating to termination of conservation agreements, removes references to the Council of State so that the section applies to all conservation agreements to which the State is a party, and allows funds from the Agriculture Development and Farmland Preservation Trust Fund to be distributed to the Department of Agriculture and Consumer Services for the purchase of agricultural conservation easements or agreements to be held by the Department.*
- In Section 14, relating to the transfer of the captive cervid program from the Wildlife Resources Commission to the Department of Agriculture and Consumer Services, makes a technical change to allow the temporary rules adopted by the Commission related to captive cervids to remain in effect until the Department adopts permanent rules, and makes a technical change to delete a reference to federal rules that would not apply to the Commission.*
- In Section 15, relating to the burning of agricultural plastics, changes the effective date to January 1, 2015.*
- Adds Section 17, which would delay, from 2018 to 2024, the period by which 0.2% of total electric power in the State must be supplied by swine waste. This section would also require electric public utilities with more than 150,000 retail jurisdictional customers to meet no more than a combined 25% of the annual requirement for swine waste resources by purchasing renewable energy certificates from out-of-state new renewable energy facilities and generating electric power from swine waste derived biogas produced out-of-state.*
- Adds Section 18, which would modify the implementation of the Odor Control of Feed Ingredient Manufacturing Plants Rule to provide that raw material is considered in storage after it has been located at a facility for 36 hours rather than 24 hours, and to*

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extend the length of time a vehicle carrying certain raw materials may be parked outside an odor controlled area before the materials are unloaded for processing.

- *Adds Section 19, which would exempt from the Sedimentation Pollution Control Act any activities undertaken to restore wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the federal Clean Water Act.*
- *Adds Section 20, which would clarify reimbursement eligibility for third-party claims from the Commercial and Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Funds.*
- *Adds Section 21, which would establish a Renewable Energy Economic Development Study Committee and direct the Committee to evaluate and study the State's policies related to renewable energy and distributed generation.*
- *In Section 22, relating to the American Eel Aquaculture Plan, extends the date for interested parties to submit information to participate in the program until November 1, 2015.*
- *In Section 28, relating to the creation of a farm winery permit, eliminates the proposed on-premises farm winery unfortified wine permit and instead allows a farm winery to obtain an on-premises unfortified wine permit at a reduced cost.*
- *Adds Section 29, which would allow the Pesticide Board to accept continuing certification credits for license renewal of pesticide dealers, pesticide applicators, and pest control consultants.*
- *Adds Section 30, which would clarify that a project intended for the purpose of commercial resale of natural gas or propane gas is not an eligible project for the Expanded Gas Service to Agriculture Fund under the Department of Commerce.*
- *Adds Section 32, which would authorize the Department of Agriculture and Consumer Services to register facilities engaged in the compounding of sterile drugs that are registered as outsourcing facilities with the federal Food and Drug Administration.*
- *Adds Section 33, which would provide that emergency measures developed by the State Veterinarian during animal disease outbreaks related to composting dead domesticated animals are deemed permitted with respect to water quality, and that periodic testing of waste products from animal waste management systems may be suspended during animal disease outbreaks to the extent necessary to prevent the spread of the disease.*
- *Adds Section 34, which would clarify that a "farm building," for purposes of the State Building Code, includes any unoccupied structure built upon land owned by the State of North Carolina and administratively allocated to the North Carolina Department of Agriculture and Consumer Services or North Carolina State University which is used primarily for forestry production and research or agriculture production and research.*
- *Adds Section 35, which would make changes to the Wildlife Resources Commission's authority to conduct inspections of weapons, equipment, fish, and wildlife. This section would also require the Commission to report on complaints against Commission law enforcement officers.*

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- *In Section 36, making technical corrections to various Department of Agriculture and Consumer Services statutes, updates one correction to reflect language in the Appropriations Act.*

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 January 1, 2015.

Section 3 would establish a policy supporting sustainable agriculture in the State and define the term "sustainable agriculture."

Section 4 would direct the Department of Transportation (DOT) 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 DOT 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 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.

Section 8 would allow any person to operate an all-terrain vehicle or utility vehicle on a public street or highway when engaged in farming operations.

Section 9 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,

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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 October 1, 2015.

Section 10 would require meteorological towers between 50 and 200 feet¹ 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 DOT, provide the location and height of the proposed tower, and pay a \$350 registration fee. DOT 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 11 would direct the Secretary of Environment and Natural Resources, except as prohibited by federal law, 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 amends its policy.

This section would become effective October 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 12 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 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 annually publish a present-use value program guide 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.

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

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Section 13 would provide that for any conservation agreement where at least one party to the agreement is a public body of the State, no request for termination or substantial modification shall be granted 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.

This section would also allow funds from the Agricultural Development and Farmland Preservation Trust Fund to be distributed to the Department of Agriculture and Consumer Services (DACS) for the purchase of agricultural conservation easements or agreements to be held by the Department.

Section 14 would transfer the captive cervid program (deer farming) from the jurisdiction of the Wildlife Resources Commission (WRC) to 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 (CWD). Until the USDA has adopted an approved method of testing for 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 the Article 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.

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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 15 would allow burning of polyethylene agricultural plastic without an air quality permit, provided that the burning:

- Does not violate State or federal ambient air quality standards.
- Is conducted between an hour after sunrise and an hour before sunset.
- Is set back at least 250 feet from a paved public roadway and at least 500 feet from an occupied structure outside the property where the burning is conducted.
- Is conducted in a manner such that it does not constitute a public nuisance.
- Is conducted by any of the following means:
 - By professionally manufactured equipment solely for the purpose of plastic mulch burning or incineration and approved by the Commissioner.
 - By a fire that is enclosed in a noncombustible container.
 - By a fire that is restricted to a pile no greater than eight feet in diameter on cleared ground.

DACS would be permitted to adopt rules to implement the provisions of this section.

This section would be retroactively effective on January 1, 2015.

Section 16 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 the Department of Environment and Natural Resources (DENR) 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.

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- 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 17 would delay, from 2018 to 2024, the period by which 0.2% of total electric power in the State must be supplied by swine waste, and delays other scheduled swine waste resource requirements by six years. This section would also require electric public utilities with more than 150,000 retail jurisdictional customers to meet no more than a combined 25% of the annual requirement for swine waste resources by purchasing renewable energy certificates from out-of-state new renewable energy facilities and generating electric power from swine waste derived biogas produced out-of-state.

Section 18 would modify implementation of the Odor Control of Feed Ingredient Manufacturing Plants Rule, 15A NCAC 02D .0539. The Rule requires that various odor control measures be implemented at any facility that produces feed-grade animal proteins or feed-grade animal fats and oils. The Rule specifically provides that a person at such facilities must not cause or permit any raw material to be handled, transported, or stored, or to undertake the preparation of any raw material without taking reasonable precautions to prevent odors from being discharged. For the purpose of the Rule, raw material is considered in storage after it has been unloaded at a facility or after it has been located at the facility for at least 24 hours.

Section 18 would modify the implementation of the Rule to provide that:

- Raw material is considered in storage after it has been unloaded at a facility or after it has been located at the facility for at least 36 hours.
- A vehicle or container holding raw material, which has not been unloaded inside or parked inside an odor controlled area within the facility, must be unloaded for processing of the raw material prior to the expiration of the following time limits:
 - For feathers with only trace amounts of blood, such as those obtained from slaughtering houses that separate blood from offal and feathers, no later than 48 hours after being weighed upon arrival at the facility.
 - For used cooking oil in sealed tankers, no later than 96 hours after being weighed upon arrival at the facility.

Section 19 would exempt from the Sedimentation Pollution Control Act activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the federal Clean Water Act. Under current law, sedimentation and erosion control plans approved by DENR or a local government are required for land-disturbing activities that affect more than one acre of land. There are several exemptions from these requirements, including activities related to agriculture and forestry.

Section 20 would provide guidance for the use of Commercial or Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Funds for payment of compensation to third parties for bodily injury and property damage in excess of \$100,000 per occurrence. There is, however, a rule (15A NCAC 02P .0403) that provides additional guidance:

- The term "third-party bodily injury" means specific physical bodily injury proximately resulting from exposure, explosion, or fire caused by the presence of a petroleum release and which is incurred by a person other than the owner or operator, or employees or agents of an owner or operator.

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- The term "third-party property damage" means actual physical damage or damage due to specific loss of normal use of property owned by a person other than the owner or operator of an underground storage tank from which a release has occurred.

This section would codify the limitations of 15A NCAC 02P .0403 into statute, and make other conforming changes.

These changes would be effective for claims for reimbursement pending or submitted on or after the effective date of this act.

Section 21 would create the Renewable Energy Economic Development Study Committee to study renewable energy issues. The Committee would consist of 17 members, including four members of the General Assembly and thirteen representatives from stakeholder groups. The Committee would make its final report to the 2016 General Assembly when the General Assembly reconvenes in May 2016.

Section 22 would direct the Division of Marine Fisheries (Division) of DENR and the WRC to jointly develop a pilot American Eel Aquaculture Plan for the harvest and aquaculture of American eels. The pilot project would be limited to a maximum annual harvest of 200 pounds of the glass eel stage of the American eel for use in domestic aquaculture facilities. The plan would also require that the eels be harvested only in watersheds that minimally contribute to the spawning stock of the American eel. The pilot plan would require the approval of the Atlantic States Marine Fisheries Commission. The Division and WRC would be required to make every effort to have the plan approved for implementation by 2016, and persons interested in participating in the pilot program must submit all required information no later than November 1, 2015. The Division and the North Carolina Marine Fisheries Commission would not be permitted to issue permits for the harvest and aquaculture of the glass eel stage of American eels until the pilot plan is approved by the Atlantic States Marine Fisheries Commission.

Section 23 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 24 would reduce the holding and advertising period for unclaimed livestock to allow the sale of unclaimed livestock within 13 days, rather than the 50 days required 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 25 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 26 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 27 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.

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- 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 28 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, versus \$300 for an unfortified winery permit. A winery that produces at least 10,000 gallons of wine per year from honey, grapes, or other fruit or grown within the State would also be eligible for a farm winery permit. This section would also allow the holder of a farm winery permit to obtain an on-premises unfortified wine permit, for a cost of \$100 rather than \$400.

The holder of a farm winery permit would have all the privileges of an unfortified winery permittee, plus the ability to give visitors free tasting samples of the wine manufactured at the farm winery without obtaining a limited winery permit, and to affix a label to the bottle certifying that the wine originates from a permitted farm winery. A large farm winery could only label bottles of wine with a North Carolina appellation of origin as originating from a permitted farm winery.

This section would also make conforming changes and direct DACS to study and report on 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 29 would allow the Pesticide Board to grant license renewal for pesticide dealers, pesticide applicators, and pest control consultants by completion of continuing certification credit requirements. Under current law, license renewals may only be issued by re-examination.

Section 30 would clarify that a project intended for the purpose of commercial resale of natural gas or propane gas is not an eligible project for the Expanded Gas Service to Agriculture Fund under the Department of Commerce.

Section 31 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 32 would authorize DACS to register facilities engaged in the compounding of sterile drugs that are registered as outsourcing facilities with the federal Food and Drug Administration to ensure consistency with current registration practices for drug wholesalers, manufacturers, and repackagers.

Section 33 would clarify the powers of the State Veterinarian to develop emergency measures to prevent and control the spread of a contagious animal disease by providing that emergency measures relating to the composting of dead domesticated animals are deemed permitted with respect to DENR water quality permits, and DENR is not required to issue permits. This section would also provide that the State Veterinarian may temporarily suspend periodic testing of waste products from animal waste

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management systems and dry litter poultry facilities, in consultation with the Commissioner of Agriculture and the approval of the Governor, to the extent necessary to prevent and control an animal disease. During the suspension of waste analysis, the 1217 Interagency Committee must establish waste product nutrient content to be used for application of waste at no greater than agronomic rates.

Section 34 would clarify that a "farm building," for purposes of the State Building Code, includes any unoccupied structure built upon land owned by the State of North Carolina and administratively allocated to the North Carolina Department of Agriculture and Consumer Services or North Carolina State University which is used primarily for forestry production and research or agriculture production and research. This section also makes technical changes to the farm building subsection in the Building Code statute.

Section 35 would provide that a wildlife inspector, protector, or other law enforcement officer may not inspect weapons or equipment possessed incident to an activity under the officer's jurisdiction unless the officer has a reasonable suspicion that a violation has been committed, except to check whether a shotgun is plugged or unplugged. This section would clarify that it is unlawful to refuse to allow inspectors, protectors, or other law enforcement officers to inspect fish or wildlife for the purpose of ensuring compliance with bag limits and size limits. This section also prohibits officers from inspecting weapons, equipment, fish, or wildlife in the absence of a person in apparent control of the item to be inspected, with some exceptions.

This section would also require WRC to report to the Joint Legislative Oversight Committee on Justice and Public Safety by March 1, 2016, and annually thereafter, on the number of complaints received against WRC officers, the subject matter of the complaints, and the geographic areas in which the complaints were filed.

Section 36 would make technical corrections overlooked in the transfer of the Forest Service from DENR to DACS in 2011.

Section 37 contains a severability clause and effective date.

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

Jeff Hudson, Jennifer McGinnis, and Heather Fennell, staff attorneys, substantially contributed to this summary.