



# HOUSE BILL 56: Amend Environmental Laws.

2017-2018 General Assembly

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<b>Committee:</b>		<b>Date:</b>	November 14, 2017
<b>Introduced by:</b>		<b>Prepared by:</b>	Jennifer McGinnis and Jeff Hudson
<b>Analysis of:</b>	S.L. 2017-209		Staff Attorneys

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**OVERVIEW:** *Session Law 2017-209 amends various environmental laws, including provisions involving the following:*

- *Modifications to financial assurance requirements for risk-based cleanups*
- *Repeal of obsolete hazardous waste provisions*
- *Establishment of requirements for imposition of land use restrictions for property contaminated by a petroleum discharge or release from a non-underground storage tank*
- *Consolidation of various water resources and water quality reports*
- *Modification of certain Coastal Area Management Act provisions*
- *Establishment of the Coastal Storm Damage Mitigation Fund*
- *Modification of the rule for pool lighting*
- *Modification of the rules for protection of existing buffers to exempt certain applicability requirements for public safety*
- *Modification of the rule for protection and maintenance of existing buffers in the Catawba River Basin to exempt certain applicability requirements for public walking trails*
- *A study of riparian buffer tax exclusions*
- *Establish additional requirements for water quality testing in the Catawba River*
- *Modifications to mining permit requirements*
- *Modifications to mitigation services law*
- *Clarification to the Energy Policy Council*
- *Modifications to certain laws governing solid waste management*
- *Clarification to the roles of geologists and soil scientists in wastewater system site evaluations*
- *Repeal of the plastic bag ban*
- *GenX response measures*

*This act has various effective dates. Please see the full summary for more detail.*

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## **BACKGROUND AND BILL ANALYSIS:**

### **FINANCIAL ASSURANCE MODIFICATIONS FOR RISK-BASED CLEANUPS**

**Prior law** required persons conducting risk-based<sup>1</sup> remediation of a contaminated site to establish financial assurance that will ensure that sufficient funds are available to implement and maintain the actions or controls specified in the remedial action plan for the site.

**Section 1** modifies financial assurance requirements for persons conducting risk-based remediation by allowing the Department of Environmental Quality (DEQ) to waive the financial assurance requirement if DEQ finds that the only actions or controls to be implemented or maintained as part of the remedial action plan for the site include either or both of the following:

- Annual reporting of land use controls.
- The maintenance of durable or low-maintenance covers for contaminated soil.

### **REPEAL OBSOLETE HAZARDOUS WASTE PROVISIONS**

**Under prior law**, G.S. 130A-294(k) required generators of hazardous waste and operators of hazardous waste facilities to submit, in association with payment of required fees, a written description of any program to minimize or reduce the volume and quantity or toxicity of such waste.

**Section 2.(a)** repeals this requirement upon recommendation of DEQ, which reports that the requirement is not enforced, and that generators meet the waste minimization criteria through other requirements.

**Under prior law**, G.S. 130A-309.17 required registration of persons transporting, collecting, or recycling specific amounts of used oil, and imposes reporting requirements. Associated fees for these activities were repealed in 2015, but the registration and reporting requirement was left intact.

**Section 2.(b)** repeals this requirement upon recommendation of DEQ, which reports that the requirement is not enforced.

### **LAND USE RESTRICTIONS FOR PROPERTY CONTAMINATED BY A NON-UST PETROLEUM DISCHARGE OR RELEASE**

**Prior law** required that a remedial action plan for cleanup of environmental damage from a discharge or release of petroleum from an underground storage tank (UST) include an agreement by the person responsible for the discharge or release to record a notice of any applicable land-use restrictions on the current or future use of the contaminated real property when soil or groundwater contamination will remain in excess of unrestricted use standards after a risk-based cleanup<sup>2</sup>.

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<sup>1</sup> Cleanup using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site, which are generally not as stringent as the applicable unrestricted use standards.

<sup>2</sup> Generally, cleanup of environmental contamination must be performed to meet unrestricted use standards, meaning contaminant concentrations present at a location are acceptable for all uses; are protective of public health, safety, and welfare and the environment; and comply with an applicable program's standards established by statute or rule adopted by the Environmental Management Commission, the Commission for Public Health, or the Department of Environmental Quality

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**Section 3.(a)** adds discharges or releases of petroleum from aboveground storage tanks (AST) and other sources (discharges or releases not from an UST or AST) to the requirement that a remedial action plan for cleanup of the contamination or release from these sources include an agreement to record a notice of any applicable land-use restrictions. However, sites at which contamination has migrated to off-site properties must be cleaned up to unrestricted use standards (thus eliminating the need for land-use restrictions) unless the person responsible for the release or discharge of petroleum has obtained the informed consent of the owner of the off-site property to conduct a risk-based remediation.

**Prior law** required a person responsible for the discharge or release of petroleum from an UST to record a "NOTICE OF RESIDUAL PETROLEUM" if residual petroleum is left on a property after a risk-based cleanup has occurred and record a notice of any applicable land-use restrictions on the current or future use of the contaminated real property when soil or groundwater contamination will remain in excess of unrestricted use standards after a risk-based cleanup. This notice must be filed in the register of deeds office in the county or counties in which the real property is located (i) before the property is conveyed or (ii) within 30 days after the owner, operator, or other person responsible for the discharge or release receives notice from DEQ that no further action is required under the remedial action plan, whichever occurs first.

**Section 3.(b)** adds discharges or releases of petroleum from ASTs and other sources (discharges or releases not from an UST or AST) to the requirement for recordation of such a notice. Provided, however, that sites at which contamination has migrated to off-site properties must be cleaned up to unrestricted use standards (thus eliminating the need for recording a notice of residual petroleum) unless the person responsible for the release or discharge of petroleum has obtained the informed consent of the owner of the off-site property to conduct a risk-based remediation.

## **CONSOLIDATE VARIOUS WATER RESOURCES AND WATER QUALITY REPORTS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

**Prior law** required DEQ to develop a State water supply plan, with the stated purpose of assuring "the availability of adequate supplies of good quality water to protect the public health and to support desirable economic growth..."

**Section 4.(a)** repeals this provision at the request of DEQ, to reflect an approach of combined water quality and quantity planning into a consolidated plan for water resources.

**Prior law** required DEQ to report to the Environmental Review Commission (ERC) on the implementation of DEQ's powers and duties as it relates to its management of water resources, including information on the development of the State water supply plan and the development of basinwide hydrologic models.

**Section 4.(b)** repeals the reference to the State water supply plan, at the request of DEQ, to reflect an approach of combined water quality and quantity into a consolidated plan for water resources.

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(DEQ). Risk-based cleanup, however, allows cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards.

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## COASTAL AREA MANAGEMENT ACT MODIFICATIONS

**Under prior law**, the Coastal Area Management Act (CAMA) required each coastal-area county<sup>3</sup> to prepare a land-use plan<sup>4</sup>, which must be approved by the Coastal Resources Commission (CRC).

**Section 5.(a)** allows the CRC to delegate approval of county land-use plans to any qualified employee of DEQ.

**Under prior law**, CAMA requires the Secretary of Environmental Quality to issue public notice of a development permit application, upon receipt of the application. Notice must be made by:

- Mail to persons who have requested notice and interested State agencies.
- Posting a notice at the location of the proposed development.
- And, with the exception of a permit application for minor development<sup>5</sup>, by publishing notice of the application at least once in one newspaper of general circulation in the county or counties where the development would be located.

**Section 5.(b)** excepts minor permit applications from the requirement for notice by posting at the location of the proposed development.

## ESTABLISH COASTAL STORM DAMAGE MITIGATION FUND

**Section 6** establishes the Coastal Storm Damage Mitigation Fund that would consist of General Fund appropriations, gifts, grants, devises, monies from non-State entities, and any other revenues allocated to the Fund by the General Assembly. Revenues in the Fund could only be used for beach nourishment, artificial dunes, and other projects to mitigate or remediate coastal storm damage to ocean beaches and dune systems. Funding for projects in tier one areas would require a non-State match of one dollar for every three dollars from the Fund and funding for projects not located in tier one areas would require a non-State match of one dollar for every two dollars from the Fund. Non-State entities that contribute to the Fund may request the return of funds that haven't been spent or encumbered within two years of receipt by the Fund.

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<sup>3</sup> Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.

<sup>4</sup> Under CAMA, land-use plans must consist of statements of objectives, policies, and standards to be followed in public and private use of land within the county, and must give special attention to the protection and appropriate development of areas of environmental concern designated under CAMA.

<sup>5</sup> A "major development" is any development which requires permission, licensing, approval, certification or authorization in any form from the Environmental Management Commission (EMC), the Department, the Department of Administration, the North Carolina Oil and Gas Commission, the North Carolina Pesticides Board, the North Carolina Sedimentation Control Commission, or any federal agency or authority; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet. A "minor development" is any development other than a "major development."

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## CLARIFY SETBACK DETERMINATION FOR PERMITTED DISPOSAL SYSTEMS

**Section 7** amends a provision under prior law that (i) required disposal systems permitted under the water quality or solid waste statutes to have a compliance boundary beyond which groundwater quality standards may not be exceeded and (ii) provided that multiple contiguous properties under common ownership and permitted for use as a disposal system must be treated as a single property with regard to determination of such a boundary. Section 7 specifically modifies the provision governing multiple contiguous properties under common ownership, to provide that they would also be treated as a single property for the purposes of establishing setbacks to property lines.

## AMEND THE RULE FOR POOL LIGHTING

**Prior law** established certain lighting requirements for pools, including:

- Artificial lighting must be provided at all pools that are to be used at night, or when natural lighting is insufficient to provide visibility in the pool area.
- Lighting fixtures must be of such number and design as to illuminate all parts of the pool, the water, the depth markers, signs, entrances, restrooms, safety equipment and the required deck area and walkways.
- Fixtures must be installed so as not to create hazards such as burning, electrical shock, mechanical injury, or temporary blinding by glare to the bathers, and so that lifeguards, when provided, can see every part of the pool area without being blinded by glare. The illumination must be sufficient so that the floor of the pool can be seen at all times the pool is in use.
- If underwater lighting is used, it must provide at least 0.5 watts or 8.35 lumens per square foot of water surface and deck lighting must provide not less than 10 foot candles of light measured at 6 inches above the deck surface.
- Where underwater lighting is not used, and night swimming is permitted, area and pool lighting combined must provide not less than 10 foot candles of light to all parts of the pool and required deck area.

**Section 8** directs the Commission for Public Health to amend the rule governing pool lighting to require pool illumination sufficient to illuminate the main drains of a pool, and the deck area of a pool so that it is visible at all times the pool is in use. The Commission, however, is prohibited from requiring specific foot candles of illumination for the deck area.

## AMEND THE RULES FOR PROTECTION OF EXISTING BUFFERS TO EXEMPT CERTAIN APPLICABILITY REQUIREMENTS FOR PUBLIC SAFETY

**Prior law** required certain measures for protection of existing riparian buffers in certain river basins in order to maintain the buffers' nutrient removal and stream protection functions. The requirements of the applicable rules apply to all landowners and other persons conducting activities in the river basins, including State and federal entities, and to all local governments in the river basins. Generally, vegetated areas in buffer areas must remain undisturbed with limited exceptions.

**Section 9** directs the Environmental Management Commission (EMC) to modify the applicable rules governing protection of existing riparian buffers to exempt from the requirements of the rules buffers

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that are located in any publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the buffers pose a risk to public safety.

## **AMEND THE RULE FOR PROTECTION AND MAINTENANCE OF EXISTING BUFFERS IN THE CATAWBA RIVER BASIN TO EXEMPT CERTAIN APPLICABILITY REQUIREMENTS FOR PUBLIC WALKING TRAILS**

**Prior law** required certain measures for protection of existing riparian buffers along the Catawba River in the mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin in order to maintain their pollutant removal functions as an aid in protecting the water quality of the lakes and connecting river segments.

**Section 10** directs the EMC to modify the applicable rule governing protection of existing riparian buffers along the Catawba River in the mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin to exempt from the requirements of the rule any publicly owned property that will be used for walking trails.

## **RIPARIAN BUFFER TAX EXCLUSION STUDY**

**Section 11** directs the Fiscal Research Division to estimate the value of property that is subject to State riparian buffer protection rules and that is being used as a riparian buffer for each county in a river basin to which the rules apply. The Fiscal Research Division must report its estimates and analysis to the ERC and the Revenue Laws Study Committee no later than May 1, 2018.

## **WATER QUALITY TESTING**

**Section 12** requires DEQ's Division of Water Resources to conduct a water quality sampling program for nutrients along the mainstem of the Catawba River, and require sampling for nutrients above, in, and below each major tributary of the Catawba River. The Division must report the results of the study to the ERC no later than October 1, 2018.

## **MINING PERMITTING REVISIONS**

**Prior law** provided that an operating permit for a mining operation may be granted for a period not to exceed 10 years. Each applicant for an operating permit must, among other things: (i) pay a fee associated with applications for a new permit, permit modifications, or permit transfers; and (ii) following the approval of the application, file and maintain in force a bond in favor of the State, in an amount based upon the area of affected land to be reclaimed under the reclamation plan approved for the mining operation in question. The amount of the bond associated with a particular permit is set by DEQ based upon a schedule established by the Mining Commission.

### **Section 13:**

- Requires DEQ to issue permits for a mining operation for the operation's "life-of-site" for mining operations occurring on property leased from a public entity. "Life-of-site" is defined under the act to mean the period from the initial receipt of a permit from the operation until the mining operation terminates and the reclamation required under the approved reclamation plan is

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completed. For mining operations conducted on real property that is leased from a public entity, DEQ must issue a permit for the operation's "life-of-lease," which is defined under the Act to mean the duration of the lease between the owner or operator of the mining operation and a public entity. The term "public entity" includes the State, any State agency, State college or university, county, municipal corporation, local board of education, community college, special district, or other political subdivision of the State. A public hearing will not be required for a modification of a mining permit to extend the duration of the permit to a life-of-site, or life-of-lease.

- Limits the amount of the bond an applicant must file and maintain in force to an amount not to exceed \$1,000,000.
- Adds an annual operating fee of \$400.00 per permit for a mining operation.

## AMEND MITIGATION SERVICES LAW

**Section 14** allows direct transfers of conservation easements or interests in real property related to compensatory mitigation to a federal or State agency, a local government, or a private, nonprofit conservation organization, rather than have the transfer go through the Division of Mitigation Services of DEQ as an intermediate step.

## ENERGY POLICY COUNCIL CLARIFICATION

**Under prior law**, the Lieutenant Governor serves as the chair of the Energy Policy Council.

**Section 15** provides that the Lieutenant Governor's designee could also serve as the chair of the Council.

## SOLID WASTE MODIFICATIONS

**Section 16** provides that if a provision included in Senate Bill 16, 2017 Regular Session, became law, which addresses the duration of franchise agreements for sanitary landfills, that change would only apply to valid and operative franchise agreements in effect on October 1, 2015. Senate Bill 16 became law on October 5, 2017 (see Session Law 2017-211).

**Prior law** authorized units of local government, by ordinance, to require that all solid waste generated within the geographic area and placed in the waste stream for disposal, be delivered to a permitted solid waste management facility or facilities serving the geographic area. Such ordinances are often called "flow control" ordinances, which are provisions that allow state and local governments to designate the places where solid waste must be taken for processing, treatment, or disposal. Flow control ordinances are tools sometimes used by local governments to plan and fund solid waste management systems.

**Section 17** limits local governments' authority to enact such ordinances to the following circumstances:

- If the unit of local government has debt associated with solid waste management facilities and equipment outstanding on September 1, 2017, the unit of local government may adopt and enforce such an ordinance until the date that such debt has matured.
- If the unit of local government incurs debt after September 1, 2017, and the issuance of the debt will be conditioned upon the unit of local government requiring that all waste collected within the county be disposed of within the landfill, for expansion of a landfill or construction of a new

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landfill after all necessary approvals for issuance of the debt have been obtained from the Local Government Commission (LGC), including a demonstration of need and cost (as described later in this summary), the unit of local government may adopt and enforce such an ordinance until the date the debt associated with expansion of the landfill, or construction of the new landfill, has matured.

- If the unit of local government is a party to an exclusive franchise agreement with a private entity governing the management or disposal of waste within the jurisdiction in effect on September 1, 2017, the unit of local government may adopt and enforce such an ordinance until the date that such franchise has expired.

Regional solid waste management authorities, and the units of local governments that are members of such authorities, are exempt from the limitations on flow control.

Notwithstanding these exemptions allowing flow control in certain circumstances, however, all local governments are banned from prohibiting the disposal of construction and demolition debris in any properly permitted sanitary landfill.

The act also establishes additional requirements for units of local government applying to the LGC to enter debt for the purpose of expansion of an existing landfill, or construction of a new landfill, within their jurisdiction<sup>6</sup>. In cases where a local government has, at the time it submits an application to the LGC for approval to enter such debt, adopted a "flow control" ordinance, the unit of local government would be required to demonstrate both of the following to the satisfaction of the LGC:

- The proposed expansion of the existing landfill, or construction of the new landfill, for which debt is to be incurred is necessary to ensure reliable, convenient, and affordable solid waste disposal service is provided consistently to all citizens under its jurisdiction for the protection of public health, safety, and welfare.
- The proposed expansion of the existing landfill, or construction of the new landfill, will result in lower overall costs per ton of waste disposed for the jurisdiction's citizens and businesses within the jurisdiction than would be available through privately funded and operated disposal facilities. The analysis must take into account all direct, indirect, asset retirement, closure, post-closure, and capital costs divided by tons disposed per year to establish a "tip fee" required to support the operation and repayment of the debt. State or federal subsidies must be disregarded for purposes of this analysis.

These requirements must be confirmed by way of a bid or request for proposals process in which private businesses have been invited to compete for the right to provide the services subject only to compliance with State and federal law.

The provision also includes explicit language providing that nothing in the section could be construed to impact the terms of a contract, franchise agreement, or other agreement between a unit of local government and another entity concerning the management of solid waste, or the financing of such services or related facilities or equipment, in effect on the date this section becomes law.

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<sup>6</sup> In cases where such debt is approved and the requirements of this section have not been satisfied, a unit of local government that later seeks to adopt a "flow control" ordinance would also be required to meet the requirements of this section prior to adopting and enforcing such an ordinance.



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## CLARIFY ROLES OF GEOLOGISTS AND SOIL SCIENTISTS IN WASTEWATER SYSTEM SITE EVALUATIONS

**Section 18** provides that for purposes wastewater system site evaluations, soil and site condition evaluations must be conducted by licensed soil scientists and geologic and hydrogeologic condition evaluations must be conducted by licensed geologists.

## REPEAL PLASTIC BAG BAN

**Under prior law**, retailers in certain areas of the State are prohibited from providing customers with plastic bags unless the bag (1) is reusable, or (2) is used solely to hold sales of otherwise unpacked portions of fresh fish or fish products, meat or meat products, poultry or poultry products, or produce. Substitution of paper bags is permitted if the bag is a recycled paper bag and the retailer offers one of the following incentives to any customer who uses the customer's own reusable bags instead of the bags provided by the retailer: (1) a cash refund; (2) a store coupon or credit for general store use; or (3) a value or reward under the retailer's customer loyalty or rewards program for general store use.

The prohibition only applies to islands or peninsulas bounded on the east by the Atlantic Ocean and on the west by a coastal sound, which are within counties that have a barrier island or barrier peninsula that both: (1) has permanent inhabitation of 200 or more residents and is separated from the mainland by a sound; and (2) contains either a National Wildlife Refuge or a portion of a National Seashore (Dare, Currituck, and Hyde Counties).

**Section 19** repeals the prohibition on providing customers with plastic bags. The repeal became effective September 1, 2017.

## GENX RESPONSE MEASURES

**Section 20** establishes a General Assembly finding that the discharge of the poly-fluoroalkyl chemical known as "GenX" (CAS registry number 62037-80-3 or 13252-13-6) into the Cape Fear River demonstrates the need for supplemental funding for impacted local public utilities for the monitoring and treatment of GenX and to support the identification and characterization by scientists, engineers, and other professionals of GenX in the Cape Fear River, and makes the following appropriations from the Contingency and Emergency Fund:

- \$100,000 to the Cape Fear Public Utility Authority (CFPUA), who must, in coordination with Brunswick County Public Utilities, Pender County Utilities, and other entities that withdraw, treat, and subsequently distribute water originating from the Cape Fear River, study the identification and deployment of water treatment technology to remove GenX from the public water supply. In addition, \$85,000 is appropriated to the CFPUA for ongoing monitoring of water supplies withdrawn from the Cape Fear River. The CFPUA must provide an interim report to the ERC no later than December 1, 2017, regarding the progress in implementing this section, and a final report on or before April 1, 2018, to include any findings and recommendations for legislative action.
- \$250,000 to the University of North Carolina at Wilmington to identify and quantify GenX and measure the concentration of the chemicals in the sediments of the Cape Fear River, the extent to which the chemical biodegrades over time or bioaccumulates within local ecosystems, and what risk the contaminant poses to human health. The University must provide an interim report to the ERC no later than December 1, 2017, regarding the progress in implementing this section, and a

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final report on or before April 1, 2018, to include any findings and recommendations for legislative action.

In addition, Section 20:

- Requires the North Carolina Policy Collaboratory at The University of North Carolina at Chapel Hill to develop a proposal for the creation of an online database to provide National Pollutant Discharge Elimination System (NPDES) and other water quality permits, permit applications, and relevant supporting documents to the public in a searchable and user friendly format, as well as creation of a system for electronic filing of applications for such permits and relevant supporting documents. The Collaboratory must provide an interim report to the ERC, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the Fiscal Research Division no later than December 1, 2017, regarding the progress in implementing this section, and must provide its proposal no later than April 1, 2018, to these entities.
- Provides that, if by September 8, 2017, DEQ has yet to issue a Notice of Violation to any company or person for the discharge of the chemical known as "GenX" (CAS registry number 62037-80-3 or 13252-13-6) to the Cape Fear River, and for the resulting contamination of the Cape Fear River, and public water supplies withdrawing water therefrom, DEQ must provide a detailed report, in writing, to the ERC on that date setting forth the reasons why a Notice of Violation has not been issued to a company or person that has discharged GenX to the Cape Fear River.

**EFFECTIVE DATE:** Except as otherwise provided, this act became effective October 4, 2017.