



SENATE BILL 615: North Carolina Farm Act of 2017.

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

2017-2018 General Assembly

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| Committee: | Senate Agriculture/Environment/Natural Resources. If favorable, re-refer to Rules and Operations of the Senate | Date: | May 24, 2017 |
| Introduced by: | Sens. B. Jackson, Sanderson, Brock | Prepared by: | Jennifer McGinnis Committee Counsel |
| Analysis of: | PCS to First Edition S615-CSRIf-20 | | |

OVERVIEW: *The Proposed Committee Substitute (PCS) for Senate Bill 615 would make various changes to laws governing agricultural matters*

BILL ANALYSIS/ CURRENT LAW:

SECTION 1 -- AGRICULTURE AND FORESTRY AWARENESS STUDY COMMISSION STUDIES

- **Handlers Act Study:** Article 44 of Chapter 106 of the General Statutes ("the Handlers Act") governs unfair practices by handlers of fruits and vegetables. The Article authorizes the Board of Agriculture to make such rules and regulations as it deems necessary to protect producers of fruits and vegetables from loss caused by financial irresponsibility and unfair, harmful or unethical trade practices of handlers who incur financial liability for the purchase or production of fruits and vegetables. The Article prohibits a handler of fruits and vegetables from entering into a written contract with a producer until the handler obtains a written permit from the Commissioner of Agriculture (Commissioner), and provides that in order to receive a permit, a handler must furnish the Commissioner a bond in an amount of not less \$10,000.

The PCS would require the Agriculture and Forestry Awareness Study Commission (Commission) to study any updates it deems advisable to the Handlers Act, including applicable definitions and requirements under the Article.

- **Property tax abatement study for aging farm machinery:** The Commission would be directed to study the advisability of providing property tax abatement to aging farm machinery, including consideration of:
 - Whether farm machinery 10 years or older, or other time period the Commission deems appropriate, should be designated as a special class under Article V, Sec. 2(2), of the North Carolina Constitution and be excluded from property tax.
 - If such farm machinery should be excluded from property tax, whether an 80% property tax exclusion is an appropriate exclusion amount, or another amount the Commission deems appropriate.
 - The fiscal impact on local governments if such machinery were to be excluded from property tax.

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The Commission would be required to complete these studies, and report its findings and recommendations, including any legislative proposals, to the General Assembly by March 1, 2018.

SECTION 2 -- EXEMPT ADDITIONAL CLASS OF FACILITIES FROM RULE ON CONTROL AND PROHIBITION OF ODOROUS EMISSIONS

15A NCAC 02D .1806 (Control and Prohibition of Odorous Emissions), among other things, prohibits an owner or operator of a facility subject to the rule from operating the facility without implementing management practices or installing and operating odor control equipment sufficient to prevent odorous emissions from the facility from causing or contributing to objectionable odors beyond the facility's boundary. The rule applies to all operations that may produce odorous emissions that can cause or contribute to objectionable odors beyond the facility's boundaries, with the following specific exceptions:

- Certain processes at kraft pulp mills.
- Certain processes at facilities that produce feed-grade animal proteins or feed-grade animal fats and oils.
- Motor vehicles and transportation facilities.
- On-farm animal and agricultural operations, including dry litter operations.
- Municipal wastewater treatment plants and municipal wastewater handling systems.
- Restaurants and food preparation facilities that prepare and serve food on site.
- Single family dwellings not used for commercial purposes.
- Materials odorized for safety purposes.
- Painting operations that do not require a business license.
- All temporary activities or operations.

The PCS would require the Environmental Management Commission (EMC) to classify facilities that store products that are (i) grown, produced, or generated on one or more agricultural operations and (ii) that are "renewable energy resources" as defined in G.S. 62 133.8(a)(8), as agricultural operations that are exempt from the requirements of 15A NCAC 02D .1806. The EMC would also be required to amend the applicable rule accordingly.

SECTION 3 -- PRESENT USE-VALUE CHANGE

The General Statutes allow agricultural land, horticultural land, and forestland to be valued for property tax purposes based on its present use (i.e., not its highest and best use). To qualify as agricultural land, the land must be individually owned, must consist of at least 10 acres that are in actual production, and must meet certain income requirements as follows: the land must, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars (\$1,000). Currently, gross income includes income from the sale of the agricultural products produced from the land, any payments received under a governmental soil conservation or land retirement program, and the amount paid to the taxpayer during the taxable year pursuant to the Fair and Equitable Tobacco Reform Act of 2004.

The PCS would add grazing fees for livestock to the eligible categories for gross income, and the section would be effective for taxes imposed for taxable years beginning on or after July 1, 2017.

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SECTION 4 -- ABANDONED LIVESTOCK AMENDMENTS

The General Statutes provide that any person may take up livestock running at large or straying, impound the livestock, and recover the reasonable costs of impounding and maintaining the livestock as well as damages from the owner.

The PCS would clarify when livestock is deemed to be abandoned, and provide that if the owner has not retaken custody after a two-month period, and the custodian of the abandoned livestock is unable to collect past-due fees from the owner, the custodian may sell or transfer the livestock. Further, if the custodian is unable to sell or transfer the livestock, the custodian may humanely dispose of the abandoned livestock.

SECTION 5 -- ESTABLISH REBUTTABLE PRESUMPTION FOR ZONING, UDO, AND OTHER APPEALS BEFORE BOARDS OF ADJUSTMENT

Municipal boards of adjustment (BOA) are given authority to hear and decide appeals from decisions of administrative officials charged with enforcement of the zoning or unified development ordinances and appeals arising out of any other ordinance that regulates land use or development. Under current law, the hearing before a BOA is based on the record below, and references a scope of review, which allows matters to be reviewed de novo, but directs a court to consider the interpretation of the decision-making board below, however the reviewing court is not bound by that interpretation, and may freely substitute its judgment as appropriate.

The PCS would eliminate the language that provides that the hearing for an appeal must be based on the record below, and language concerning the scope of review, and would provide instead that the appeal must be heard de novo. In addition, the PCS would add a rebuttable presumption that the actual or proposed use of the property that is the subject of the appeal is valid or consistent with the ordinance. The presumption of validity or consistency may be rebutted by clear and convincing evidence to the contrary if presented by the city or the official who made the decision.

SECTION 6 -- CLARIFY THE AUTHORITY OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO ADOPT AND ADMINISTER FOREST PRACTICE GUIDELINES FOR PURPOSES OF THE SEDIMENTATION POLLUTION CONTROL ACT

The State's Sedimentation Pollution Control Act ((SPCA) Article 4 of Chapter 113A of the General Statutes currently requires the Department of Environmental Quality (DEQ) to develop and adopt Forest Practice Guidelines Related to Water Quality (best management practices), and establish of a Technical Advisory Committee to assist in the development and periodic review of these Guidelines. In addition, the SPCA requires the Sedimentation Pollution Control Commission, or a delegated local government, to inspect land disturbing activities to ensure compliance with the act, and to determine whether the measures required in an erosion and sedimentation control plan are effective in controlling erosion and sedimentation resulting from the land disturbing activity. In 2013 responsibility for forestry matters was transferred from the Division of Forest Resources in the Department of Environmental Quality to the North Carolina Forest Service of the Department of Agriculture and Consumer Services (DACS).

The PCS would move the authority over development and adoption of the Forest Practice Guidelines Related to Water Quality (best management practices) from DEQ to DACS, and would give DACS

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authority to inspect land disturbing activities undertaken on forestland for the production and harvesting of timber and timber products to determine compliance with the Guidelines

SECTION 7 -- ASSENT TO MUTUAL AID PROVISIONS OF THE GREAT PLAINS WILDLAND PROTECTION COMPACT

Article 77 of Chapter 106 of the General Statutes authorizes execution of the Southeastern Interstate Forest Fire Protection Compact, with any one or more of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina, Tennessee, Virginia, and West Virginia. The purpose of which is "to promote effective prevention and control of forest fires in the Southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member states, by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other regional forest fire protection compacts or agreements, and for more adequate forest protection." In addition, the Article currently assents to mutual aid provisions in other compacts, including the South Central Interstate Forest Fire Protection Compact, and the Middle Atlantic Interstate Forest Fire Protection Compact.

The PCS would add the Plains Wildland Fire Protection Compact to compacts to which the State assents to mutual aid provisions.

SECTION 8 -- CLARIFY AGRITOURISM

The General Statutes authorize counties to adopt zoning and development regulation ordinances for the purpose of promoting health, safety, morals, or the general welfare. Property used for bona fide farm purposes are, however, generally exempt from these regulations. Bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in the statutes.

The PCS would add a building or structure that is used for agritourism as a bona fide farm purpose if it is located on a property that has: (i) a qualifying farmer sales tax exemption certificate from the Department of Revenue; or, (ii) is eligible for participation in the present use value program. For purposes of the section, "agritourism" would mean any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.

In addition, the PCS would modify the definition for the term "farm building" under the North Carolina State Building Code to mean "any nonresidential building or structure that is used for a bona fide farm purpose."

SECTION 9 -- ELIMINATE COUNTY AUTHORITY TO ADOPT ZONING REGULATIONS GOVERNING SWINE FARMS

The General Statutes authorize counties to adopt zoning and development regulation ordinances for the purpose of promoting health, safety, morals, or the general welfare. Property used for bona fide farm

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purposes are, however, generally exempt from these regulations, except that the statutes reserved authority for counties to adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight or greater provided that the zoning regulations may not have the effect of excluding operations from the entire zoning jurisdiction.

This section of the PCS would eliminate the exemption that allows counties to adopt zoning regulations governing swine farms.

SECTION 10 -- ALLOW FOOD COMPLIANCE INSPECTORS TO DRIVE STATE VEHICLES WITHOUT STATE TAGS AND BUMPER STICKERS

The statutes generally require publicly owned vehicles to be marked as such with certain exceptions (such as motor vehicles used by any State or county officer or official for transporting, apprehending, or arresting persons charged with violations of the laws of the United States or the laws of this, and motor vehicles used by a county for transporting day or residential facility clients of area mental health, developmental disabilities, and substance abuse).

The PCS would also exempt motor vehicles used by DACS exclusively for Meat and Poultry compliance officers to conduct investigations from this requirement.

SECTION 11 -- MEAT AND POULTRY TECHNICAL CORRECTIONS

Would correct a citation to the Federal Food, Drug, and Cosmetic Act, which concerns listing and certification of color additives for foods, drugs, devices, and cosmetics.

SECTION 12 -- MODERNIZE FOREST RANGER STATUTES

Would make changes to various statutes referencing forest rangers to distinguish between forest rangers, deputy rangers, and emergency workers, and authorize the Commissioner of Agriculture to authorize as many of each category as the Commissioner deems necessary and available. Under the PCS, the various positions would be defined as follows:

- "Deputy ranger" means a highly trained emergency worker hired on a temporary basis to respond to a given emergency or condition, who must be sworn or affirmed to the terms of "General Oath" as provided in G.S. 11-11, with powers and duties as outlined under existing law.
- "Emergency worker" means a person who is not an employee of the NC Forest Service, but is an individual serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency. Generally, an emergency worker need not be sworn or affirmed to the terms of "General Oath" provided in G.S. 11-11.
- "Forest ranger" means an employee of the North Carolina Forest Service who has been sworn or affirmed to the terms of "General Oath" provided in G.S. 11-11, with powers and duties as outlined under existing law.

SECTION 13 -- ALLOW EMERGENCY WORKERS TO RECEIVE WORKER'S COMPENSATION WHEN RESPONDING TO NON FIRE EMERGENCIES

Would make changes to the Workers Compensation Act (Chapter 97 of the General Statutes), to replace the terms "pickup firefighter" and "wildland firefighter" and substitute the term "emergency worker" (engaged in emergency fire suppression activities for the North Carolina Forest Service) under the definition of "employee" for purposes of eligibility to receive worker's compensation when such

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individuals are injured in the course of those duties. In addition, the PCS would provide that an emergency worker is considered an employee when engaged in emergency activities for snow events, hurricanes, earthquakes, floods, or other emergencies (in addition to fire suppression activities outlined under existing law).

SECTION 14 -- CREATE EXCEPTION FROM CONSERVATION BENEFIT ANALYSIS FOR CERTAIN EASEMENTS

Existing law provides that for easements secured by the Agricultural Development and Farmland Preservation Trust Fund, where at least one party to the agreement is a public body of the State, no request for termination or substantial modification may be granted that is made for the purpose of economic development. In addition, prior to any modification or termination of a conservation agreement where at least one party to the agreement is a public body of this State, the agency requesting the conservation agreement modification or termination shall conduct a conservation benefit analysis, and an agreement may only be modified or terminated if the conservation benefit analysis concludes that the modification or termination results in a greater benefit to conservation purposes. These requirements only apply 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. The prohibition does not apply to condemnation actions initiated by a public condemnor.

In addition to the exemption for condemnation actions by public condemnors under existing law, the PCS would exempt voluntary termination or modification of conservation agreements, where the termination or modification would affect no more than the lesser of two percent or one acre of the total easement area of the conservation agreement when requested by a public utility, the Department of Transportation, or a government entity having eminent domain authority under the General Statutes.

SECTION 15 -- EXEMPT FARM TRUCKS THAT STAY IN STATE FROM HAVING A USDOT IDENTIFICATION NUMBER

Existing law requires that motor vehicles with a gross vehicle weight rating of more than 26,000 pounds that is used in intrastate commerce shall have (i) the name of the owner and (ii) the motor carrier's identification number preceded by the letters "USDOT" and followed by the letters "NC" printed on each side of the vehicle in letters not less than three inches in height. Certain vehicles subject to regulation under federal law, however, are exempt from this requirement.

The PCS would also exempt motor vehicles licensed under a "farmer rate" under Chapter 20 of the General Statutes (Motor Vehicles), which may include trucks and truck tractors that are operated for the primary purpose of carrying or transporting farm products and farm supplies.

SECTION 16 -- EXEMPT CLOSURE OF HOG LAGOONS FROM REQUIRING THE USE OF A PROFESSIONAL ENGINEER

Chapter 89C of the General Statutes (Engineering and Land Surveying) makes it unlawful for any person to practice or to offer to practice engineering in this State unless the person has been duly licensed. The Chapter defines the practice of engineering as follows:

- Any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as

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consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

- A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents the person to be a professional engineer, or through the use of some other title implies that the person is a professional engineer or that the person is licensed under this Chapter; or who holds the person out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.
- The term "practice of engineering" shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance. The term does not include the assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank.

A number of activities are specifically exempt from the requirements of the Chapter, however, including the design of land application irrigation systems for an animal waste management plan by a designer who exhibits, by at least three years of relevant experience, proficiency in soil science and basic hydraulics, and who is thereby listed as an Irrigation Design Technical Specialist by the North Carolina Soil and Water Conservation Commission.

The PCS would add an exemption for the closure of waste impoundments for animal waste management systems by a person who is designated a Lagoon Closure Technical Specialist by the North Carolina Soil and Water Conservation Commission. The PCS explicitly provides that the exemption, however, would not apply to the design or installation of a spillway.

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