



SENATE BILL 615: North Carolina Farm Act of 2017.

2017-2018 General Assembly

Committee:		Date:	July 27, 2017
Introduced by:		Prepared by:	Jennifer McGinnis
Analysis of:	S.L. 2017-108		Staff Attorney

OVERVIEW: *S.L. 2017-108 made various changes to laws governing agricultural matters, including provisions involving the following:*

- *Agriculture and forestry awareness study commission studies*
- *Expand facilities exempt from EMC rule*
- *Present use-value change*
- *Abandoned livestock amendments*
- *Authority of the Department of Agriculture and Consumer Services to adopt and administer forest practice guidelines for purposes of the sedimentation pollution control act*
- *Assent to mutual aid provisions of the Great Plains Wildland Protection Compact*
- *Clarify activities incident to the farm and agritourism*
- *Eliminate county authority to adopt zoning regulations governing swine farms*
- *Allow food compliance inspectors to drive state vehicles without state tags and bumper stickers*
- *Meat and poultry technical corrections*
- *Modernize forest ranger statutes*
- *Allow emergency workers to receive worker's compensation when responding to non-fire emergencies*
- *Create exception from conservation benefit analysis for certain easements*
- *Exempt farm trucks that stay in State from having a USDOT identification number*
- *Exempt closure of hog lagoons from requiring the use of a professional engineer*
- *Exempt farm vehicles engaged in intrastate commerce from certain federal motor carrier safety regulations*
- *Authorize wine sales at farmers markets*
- *Allow extension of conditional exemption from sales and use tax for certain farmers*
- *Amend conditions that may be applied to agreements for the purchase of agricultural products*

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

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Director



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BILL ANALYSIS/ BACKGROUND:

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 act requires 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 is 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.
- **Agritourism activities study:** The Commission is directed to study the type of activities that constitute agritourism when conducted on a bona fide farm, and other relevant matters relating to agritourism activities.

The Commission is 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 -- EXPAND FACILITIES EXEMPT FROM EMC RULE

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.

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- 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 act requires 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 is also 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 act adds grazing fees for livestock and income from the sale of bees or products derived from beehives other than honey to the eligible categories for gross income.

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 act clarifies when livestock is deemed to be abandoned, and provides 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 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

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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 act moves the authority over development and adoption of the Forest Practice Guidelines Related to Water Quality (best management practices) from DEQ to DACS, and gives DACS 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 several Forest Fire Protection Compacts, the purpose of which is to promote effective prevention and control of forest fires by providing for mutual aid in fighting forest fires among the compacting states and states which are party to other regional forest fire protection compacts or agreements.

The act adds the Plains Wildland Fire Protection Compact to compacts to which the State assents to mutual aid provisions.

SECTION 8 -- CLARIFY ACTIVITIES INCIDENT TO THE FARM AND 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 act:

- Provides that for bona fide farm purposes, activities incident to the farm include existing or new residences constructed to the applicable residential building code situated on the farm occupied by the owner, lessee, or operator of the farm and other buildings or structures sheltering or supporting the farm use and operation.
- Provides that 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" means 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.

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- Modifies the definition for the term "farm building" under the North Carolina State Building Code to: (i) mean "any nonresidential building or structure that is used for a bona fide farm purpose"; and (ii) clarify that equine facilities included under the definition of "farm building" include "therapeutic equine facility", which is a facility operated by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code that provides therapeutic equine related activities for persons who are physically, intellectually, or emotionally challenged.

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 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 act eliminates 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 act also exempts 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

Corrects 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

Makes 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 act, the various positions are 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

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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

Makes 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 response activities for the North Carolina Forest Service) under the definition of "employee" for purposes of eligibility to receive worker's compensation when such individuals are injured in the course of those duties. In addition, the act provides 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 act exempts voluntary termination or modification of conservation agreements, where the termination or modification affects 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 act also exempts 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.

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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.

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 act adds 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 act explicitly provides that the exemption, however, does not apply to the design or installation of a spillway.

SECTION 17 -- EXEMPT FARM VEHICLES ENGAGED IN INTRASTATE COMMERCE FROM CERTAIN FEDERAL MOTOR CARRIER SAFETY REGULATIONS

(i) Modifies the powers and duties of the Department of Public Safety applicable to motor carriers, to provide that covered farm vehicles engaged in intrastate commerce would be exempt from the marking requirements for self-propelled vehicles and intermodal equipment (trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, mainly chassis, but also including trailers) under federal law; and, (ii) requires the State Highway Patrol to amend one of its rules (14B NCAC 07C .0101 (Safety of Operation and Equipment)) to exempt covered farm vehicles engaged in intrastate commerce from the federal marking requirements previously described.

SECTION 19 -- AUTHORIZE WINE SALES AT FARMERS MARKETS

Adds farmers markets to the venues at which the holder of an unfortified winery permit, a limited winery permit, a viticulture/enology course authorization, or a wine producer permit may obtain a winery special event permit allowing the winery or wine producer to give free tastings of its wine, and to sell its wine by the glass or in closed containers. Under current law, such permits may be obtained for trade shows, conventions, shopping malls, wine festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Alcoholic Beverage Control Commission.

SECTION 20 -- ALLOW EXTENSION OF CONDITIONAL EXEMPTION FROM SALES AND USE TAX FOR CERTAIN FARMERS

Under current law, qualifying farmers (persons having an average annual income from farming operations of \$10,000 or more for three years) are exempt from sales and use tax for items purchased by the farmer for use in farming operations. The exemption expires when a person fails to meet the income threshold for three consecutive taxable years or ceases to engage in farming operations, whichever comes first. Certain persons who do not meet the definition of a qualifying farmer but satisfy certain criteria may be eligible for a conditional exemption that exempts them from sales and use tax to the same extent as a qualifying farmer. To receive a conditional exemption the person must certify that the person intends to engage in farming operations, and they will timely file State and federal income tax returns that reflect income and expenses incurred from farming operations during the taxable years that

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the conditional exemption certificate applies. A conditional exemption certificate is valid for the taxable year in which the certificate is issued and the following two taxable years, provided the person to whom the certificate is issued is engaged in farming and provides copies of applicable State and federal income tax returns to the Department of Revenue. Under current law a conditional exemption certificate may not be extended or renewed beyond the original three-year period.

The act allows a person to apply for a one-year extension of their conditional exemption certificate beyond the original three-year period; if the person satisfies all of the following conditions.

- The person holds a conditional exemption certificate that is scheduled to expire within 30 days of an extension request.
- The person suffers a weather-related disaster that prevents the person from becoming eligible for a qualifying exemption certificate.
- The person provides the Department of Revenue all of the following:
 - Documents showing that, but for the disaster, the person would have earned ten thousand (\$10,000) or more in gross sales for the year in which the disaster occurred.
 - Documentation of revenues and expenses relating to the damaged crop.
 - An affidavit from a county extension director or FSA county committee that the disaster occurred in the area of the county in which the person farms.

The provision is effective for taxes imposed for taxable years beginning on or after July 1, 2017.

SECTION 20.5 - AMEND G.S. 95-79-CERTAIN AGREEMENTS DECLARED ILLEGAL.

Under current law, agreements that condition the purchase of agricultural products upon an agricultural producer's status as a union or nonunion employer or entry into or refusal to enter into an agreement with a labor union or labor organization are invalid and unenforceable.

The act would provide that agreements that condition the terms of an agreement not to sue or settle litigation upon an agricultural producer's status as a union or nonunion employer or entry into or refusal to enter into an agreement with a labor union or labor organization, and agreements requiring an agricultural producer to transfer funds to a labor union or labor organization for the purpose of paying an employee's membership fee or dues, are also invalid and unenforceable against public policy in restraint of trade or commerce in the State of North Carolina.

This section is effective when it becomes law and applies to agreements and settlements entered into, renewed, or extended on or after that date.

EFFECTIVE DATE: Except as otherwise provided, the act became effective July 12, 2017.