



SENATE BILL 605: North Carolina Farm Act of 2021.

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

2021-2022 General Assembly

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| Committee: | House Rules, Calendar, and Operations of the House | Date: | June 9, 2021 |
| Introduced by: | Sens. B. Jackson, Sanderson, Edwards | Prepared by: | Chris Saunders |
| Analysis of: | Fourth Edition | | Committee Counsel |

OVERVIEW: *Senate Bill 605 would make various changes to laws applicable to agriculture, forestry, and the Department of Agriculture and Consumer Services.*

CURRENT LAW AND BILL ANALYSIS:

Under current law, local governments may adopt an ordinance to establish a voluntary agricultural district or enhanced voluntary agricultural district, which offers recognition and public education about agricultural, increased protection from nuisance suits by giving notice of the presence of a farm, waiver of water and sewer assessments, required public hearings for proposed condemnation, and potential eligibility for farmland preservation funding. An ordinance establishing a voluntary agricultural district must provide for the establishment of an agricultural advisory board, to which the local government may delegate several powers concerning the agricultural districts.

VOLUNTARY AGRICULTURAL DISTRICT TECHNICAL CHANGES

Section 1 would do all of the following:

- Amends the requirements for an ordinance to establish a voluntary agricultural district.
- Clarify that a local government may either make decisions about establishment and modification of voluntary agricultural districts or delegate that authority to an agricultural advisory board.
- Allows local governments to grant agricultural advisory boards the authority to execute agreements with landowners necessary for enrollment of land in a voluntary agricultural district.
- Clarify the membership criteria for an agricultural advisory board.
- Require that land records include some form of notice to alert people that a tract is located within one half-mile of the property line of any tract of land enrolled in a voluntary agricultural district.
- Make several other technical changes.

ALLOW MAGISTRATES TO WAIVE TRIALS FOR STATE FOREST RULE OFFENSES

Section 2 would allow magistrates to accept waivers of trial or hearing for misdemeanor or infraction cases involving State forest rule offenses. The State forest rules include regulations on bathing and swimming, horses, bicycle trails, hunting, and camping, as well as certain criminal laws. Other waivable

Jeffrey Hudson
Director



Legislative Analysis
Division
919-733-2578

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offenses under current law include hunting, fishing, State park and recreation area rule offenses, open burning offenses, traffic offenses, and boating offenses.

This section would become effective December 1, 2021, and would apply to offenses committed on or after that date.

EXEMPT CERTAIN FIRES FROM OPEN BURNING LAWS

Section 3 would exempt fires started for cooking, warming, or ceremonial events from the open burning laws, if the fire is confined in an enclosure from which burning material may not escape or within a protected area upon which a watch is being maintained and which is provided with adequate fire protection equipment. This exemption would not apply in cases where the Commissioner of Agriculture has prohibited all open burning during periods of hazardous forest fire conditions or during declared air pollution episodes.

This section would become effective December 1, 2021, and would apply to offenses committed on or after that date.

FOREST SERVICE OVERTIME MODIFICATION

Section 4 would provide that the Department of Agriculture and Consumer Services (DACS) may provide either monetary overtime compensation or compensatory leave to employees of the North Carolina Forest Service who are exempt from the Fair Labor Standards Act and involved in fighting forest fires for overtime earned while conducting fire suppression duties. Under current law, overtime earned by professional employees of the Forest Service while conducting fire suppression duties must be provided in the form of monetary compensation.

This section would become effective when it becomes law, and would apply to overtime earned on or after that date.

INCREASE PUNISHMENT FOR TIMBER LARCENY AND INCREASE CIVIL PENALTIES FOR DAMAGING TIMBER OR AGRICULTURAL COMMODITIES

A person commits the offense of larceny if the person knowingly and willfully cuts down, injures, or removes any standing, growing or fallen tree from the property of another. (G.S. 14-135). Larceny is punishable as a Class 1 misdemeanor (less than \$1,000) or a Class H felony (greater than \$1,000) depending on the value of the property. (G.S. 14-72).

Section 5.(a) would make it a Class G felony to do either of the following:

- Knowingly and willfully cut down, injure, or remove timber owned by another person, without the consent of the owner of the land or timber, or other legal authority. There would be a good faith exception for employees or agents of an electric power supplier under certain circumstances.
- Buy timber directly from the owner of the timber and fail to pay by the date specified in the written agreement, or if there is no agreement, 60 days from the date the buyer removes the timber from the property.

A defendant convicted of larceny of timber would be required to pay restitution to the owner to the timber owner for three times the value of the timber. These provisions would not affect civil remedies that may be available.

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This section would become effective December 1, 2021, and would apply to offenses committed on or after that date.

A person, firm, or corporation who without permission enters the land of another and injures, cuts or removes any valuable wood, timber, shrub or tree, or who willfully and intentionally sets fire to any wood, timber, tree or shrub on the property of another, is liable to the owner for *double* the value of the wood, timber shrub or tree. (G.S. 1-539.1).

Section 5.(b) would allow the owner to recover *triple* the value of the wood, timber, shrub or tree from a person who violates this section.

This section would become effective December 1, 2021, and would apply to civil actions filed on or after that date.

Any person who willfully injures or destroys another person's agricultural commodities or production system is liable to the owner for *double* the value of the commodities or system injured or destroyed.

Section 5.(c) would allow the owner to recover *triple* the value of commodities or systems injured or destroyed under this section.

This section would become effective December 1, 2021, and would apply to civil actions filed on or after that date.

REQUIRE TIMBER BUYERS AND TIMBER OPERATORS TO PROVIDE A WOOD LOAD TICKET TO SELLERS OF CERTAIN WOOD PRODUCTS

Section 6 would require a timber buyer or operator to provide a wood load ticket to a timber grower or seller. At a minimum, the wood load ticket would be required to contain the name of the timber grower or seller, the county from which the wood product was severed, the amount of wood product severed, and the date the wood product was delivered to the timber buyer or operator. This would not apply to sales of firewood, a landowner harvesting and processing the landowner's own timber, or bulk or lump-sum sales for an agreed total price for all timber purchased and sold in one transaction. A violation of this section would be a Class 2 misdemeanor.

This section would become effective December 1, 2021, and would apply to offenses committed on or after that date.

EXPAND THE LAWS ENFORCED BY THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES LAW ENFORCEMENT OFFICERS

Section 7 would add G.S. 14-135, "Cutting, injuring, or removing another's timber" and G.S. 14-140.1, "Certain fire to be guarded by watchman," to the definition of "Forest Laws" enforced by the North Carolina Forest Service under G.S. 106-897.

This section would become effective December 1, 2021, and would apply to offenses committed on or after that date.

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REQUIRE PRODUCTION OF ELECTRONIC RECORDS FOR DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES RECORD AUDITS

Section 8 would require that electronic records must be available to the Commissioner or the Commissioner's authorized representative for record audits regarding tonnage statements for the sale of agricultural liming materials, sale of agricultural or vegetable seeds under the North Carolina Seed Law, tonnage statements for the distribution of commercial animal feed, and tonnage statements for the sale of commercial fertilizers.

TOBACCO TRUST FUND COMMISSION ADMIN EXPENSES

Section 9 would increase the amount that the Tobacco Trust Fund Commission may use from the Fund for its operating expenses each fiscal year from \$350,000 to \$375,000.

WORKER'S COMPENSATION DEFINITION CLARIFICATION

Section 10 would clarify that for purposes of the definition of "employment" in the worker's compensation statutes, "agriculture" has the same meaning as in G.S. 106-581.1.

CREATE A NEW GENERAL PERMIT FOR FARMS WITH FARM DIGESTER SYSTEMS

Section 11 would direct the Environmental Management Commission (Commission) to develop a new general permit for animal operations that includes authorization for the permittee to construct and operate a farm digester system.

Section 11.(a) would define the terms "animal waste," "animal waste management system," "farm digester system," "lagoon cover," and "renewable animal biomass energy resource."

Section 11.(b) would provide the general instruction to the Commission to develop the general permit. This section would also provide that after the issuance of the new general permit, the decision to require an individual permit must not be based solely on the fact that the animal waste management system utilizes a farm digester system. This section would also set forth process when the Commission does not make a final permitting decision involving a notice of intent to be covered under the new general permit as follows:

- If the Commission does not make a final permitting decision within 90 days of the Commission's receipt of a completed notice of intent, the certificate of coverage is deemed approved.
- The Commission's failure to make a final permitting decision within 90 days is also a basis for a contested case. The administrative law judge may either direct the Commission to issue a written certificate of coverage under the general permit or deny the petition. The administrative law judge must issue a final decision within 120 days after its commencement, though there are provisions for extension of the deadline.

Section 11.(c) would provide additional definitions for the terms "certificate of coverage," "Commission," and "notice of intent" for purposes of this section.

Section 11.(d) would direct the Commission to immediately begin the process of developing and issuing a general permit for animal operations that includes authorization for the permittee to construct, monitor, and properly operate a farm digester system. The general permit would be required to contain the same conditions that are included in the currently existing general permits for animal operations. The permit

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would become effective no later than 12 months after this section becomes law, and would expire on the later of September 30, 2024, or the effective date of the next version of the currently existing general permit for animal operations.

Section 11.(e) would provide that until the new general permit is issued, any animal operation that holds a general or individual permit that (i) is in effect on the effective date of this section and (ii) authorizes the construction and operation of a farm digester system, may construct and continue to operate the farm digester system as authorized by that permit. Animal operations that do not hold a permit authorizing the construction and operation of a farm digester system would be allowed to submit a notice of intent to be covered under the new general permit. If the submitted notice of intent is incomplete, the Commission must notify the applicant of the deficiency. Within 90 days of receipt of a completed notice of intent, the Commission would be required to either issue a certificate of coverage allowing the operator to construct and operate the farm digester system or notify the operator of the basis for the denial of the certificate of coverage. If the Commission does not take action on the notice of intent within 90 days, authorization to construct and operate a farm digester system under the existing general permit is deemed approved.

Section 11.(f) would provide that this section does not apply to permits for facilities that are required to have an NPDES permit under federal law.

Section 11.(g) would clarify that a farm digester system that is a component of a preexisting swine farm may be constructed or renovated if the construction or renovation of the farm digester system meets all the following requirements:

- The construction or renovation of the farm digester system does not result in an increase in the permitted capacity of the swine farm, as measured by the annual steady state live weight capacity of the swine farm.
- The construction or renovation of the farm digester system does not result in requiring an increase in the total permitted capacity of the animal waste management system or systems located at the swine farm.
- The construction or renovation of the farm digester system must comply with the siting requirements for swine houses and lagoons set out in G.S. 106-803 to the maximum extent practicable. For any portion of a farm digester system that fails to meet any siting requirement for a lagoon under G.S. 106-803, the construction or renovation of the farm digester system must not result in any portion of the constructed or renovated farm digester system being located any closer to the building, property, or well that is the object of the siting requirement that the farm digester system fails to meet, unless the owner of the affected property gives written permission.
- Renovation or construction of a farm digester system is not allowed in the 100-year floodplain.

These requirements are the same as those enacted in 2011 for construction or renovation of a swine house that is a component of a preexisting swine farm.

Section 11.(h) would exempt farm digester systems from property tax. Under current law, animal waste management systems are not exempt from property tax unless the Commission determines that they comply with all the requirements for siting of a new swine farm.

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CLARIFY THE DURATION OF DRIVERS LICENSES FOR H-2A WORKERS

Section 12 would provide that a drivers license issued to an H-2A worker expires three years after the date of issuance of the H-2A worker's visa, except that if the H-2A worker's visa is not extended then the license expires on the date that the H-2A worker's visa expires.

RETALIATORY EMPLOYMENT DISCRIMINATION ACT AMENDMENT

Under current law, G.S. 95-242, part of the Retaliatory Employment Discrimination Act (REDA), provides that an employee who alleges that an employer has discriminated or taken retaliatory action against him or her for engaging in protected activities may file a written complaint with the Commissioner of Labor. Protected activities include filing a claim or complaint, initiating any inquiry, investigation, inspection, proceeding or other action, or testifying or providing information to any person with respect to the Worker's Compensation Act, the Wage and Hour Act, the Occupational Safety and Health Act of North Carolina, the Mine Safety and Health Act, the prohibition on discrimination for possessing sickle cell trait or hemoglobin C trait, the prohibition on discrimination against persons based on genetic testing or genetic information, among other provisions. G.S. 95-243 requires an employee to be issued a right-to-sue letter by the Commissioner to bring a civil action under REDA.

If the Commissioner of Labor determines after an investigation that there is reasonable cause to believe the allegation is true, the Commissioner must first try to resolve the violation by informal methods. If informal methods are unsuccessful, the Commissioner must either bring a civil action on behalf of the employee or issue a right-to-sue letter enabling the employee to bring a civil action.

If the Commissioner of Labor determines after an investigation that there is not reasonable cause to believe the allegation is true, under current law, the Commissioner must dismiss the complaint, notify the employee and respondent, and issue a right-to-sue letter.

Section 13 would provide that if the Commissioner of Labor determines after an investigation that there is not reasonable cause to believe an allegation is true, then the right-to-sue letter must state that the Commissioner has investigated the complaint and concluded that there is not reasonable cause to believe the allegation is true. This letter may be used as evidence in a subsequent court proceeding under REDA.

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