



HOUSE BILL 168: DNCR Agency Bill.

2023-2024 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	March 28, 2023
Introduced by:	Reps. K. Hall, Wray	Prepared by:	Brad Krehely
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *House Bill 168 would make various changes to the statutes governing the Department of Natural and Cultural Resources, as recommended by the Department. The act would be effective when it becomes law.*

NORTH CAROLINA MUSEUM OF ART BOARD OF TRUSTEES

CURRENT LAW: G.S. 140-5.13(b) provides that the Board of Trustees of the North Carolina Museum of Art consists of 25 members, 13 of whom are appointed by the Governor from each congressional district.

BILL ANALYSIS: Section 1 would increase number of gubernatorial appointments to the Board of Trustees of the North Carolina Museum of Art to 14, and the total number of members to 26, reflecting the current number of congressional districts in the State.

CLARIFY SURPLUS PROPERTY PROCESS FOR MUSEUMS AND AQUARIUMS

CURRENT LAW: The powers and duties of the Department of Cultural and Natural Resources are set out in G.S. 121-4. With the approval of the Historical Commission, the Department may dispose of any accessioned records, artifacts, and furnishings in the custody of the Department that are determined to have no further use or value for official or administrative purposes or for research and reference purposes. G.S. 121-4(12). Other statutes govern the disposition of surplus property.

BILL ANALYSIS: Section 2 would authorize the Department to dispose of agricultural products that are determined to have no further use or value for official or administrative purposes or for research and reference purposes.

Section 2 also would authorize the following to be leased or donated:

- Artifacts owned by the State of North Carolina and in the custody of and curated by the Office of Archives and History unless the lease or donation would be contrary to the terms of acquisition.
- Artifacts from the collection of the North Carolina Maritime Museum unless the lease or donation would be contrary to the terms of acquisition.
- Artifacts and furnishings in the custody of the Tryon Palace Commission, or its appointed officers, that have no further value for official or administrative purposes or for research, reference, or interpretation. Monies the Commission receives from a sale or lease, after deducting expenses of

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the sale or lease, must be used for expenses associated with the purchase, maintenance, or conservation of artifacts and furnishings.

- Works of art owned by the North Carolina Museum of Art if the Board of Trustees of the North Carolina Museum of Art finds that it is in the best interest of the Museum to do so unless the lease or donation would be contrary to the terms of acquisition.

Section 2 would make the following other changes:

- Provide that if any property in the Executive Mansion is sold *or leased*, the net proceeds of each sale of lease and any interest is deposited in the State Treasury and must only be used for the purchase, conservation, restoration, or repair of other property for use in the Executive Mansion.
- Provide that exhibits, exhibit components, or objects from the collections of the North Carolina Aquariums may be donated in addition to being sold, leased, or traded.
- Permit the Department to sell, lease, donate, or trade any object from the collection of the Museum of Natural Sciences when it would be in the best interest of the Museum to do so.

TIME LIMITATION ON CONFIDENTIALITY OF CERTAIN PUBLIC RECORDS

CURRENT LAW: G.S. 132-11(a) provides that all restrictions on access to public records expire 100 years after the creation of the record. This does not require the opening of any record that meets the following criteria: (1) is ordered sealed by a state or federal court; (2) is prohibited from disclosure under federal law; (3) contains Social Security Numbers; (4) is a juvenile, probationer, parolee, post-release, or prison inmate record, including medical and mental health records; and (5) contains detailed plans and drawing of public buildings and infrastructure facilities. G.S. 132-11(c).

BILL ANALYSIS: Section 3 would authorize records related to probationers, parolees, post-release, and prison inmate records to be treated as public records after 100 years, subject to other prohibitions. Confidential juvenile court records would still be exempt from release.

STATE PARKS REPORT CONSOLIDATION

CURRENT LAW: G.S. 143B-135.48(a) requires the Secretary of Natural and Cultural Resources to prepare and adopt a State Parks System Plan. The Plan must: outline a method so the purposes of the State Parks System can be achieved in a timely, cost-effective manner; evaluate existing parks to determine their statewide significance; identify deficiencies and recommend corrections; describe the resources of the State Parks System, identify conflicts created by those uses, and propose solutions; describe anticipated trends and recommend methods to accommodate those trends successfully. The Secretary must revise the Plan at intervals not exceeding five years. G.S. 143B-135.48(c).

Subdivision (3) of Section 2 of S.L. 2012-93 requires DENR (now DEQ) to validate, no less frequently than every five years, the number of visitors per car used in the calculation of visitor counts at State parks.

BILL ANALYSIS: Section 4 would amend the State Park Systems Plan to require that the plan validate the number of visitors per car used in the calculation of visitor counts at units of the State Parks System. It would also remove a similar reporting requirement from Subdivision (3) of Section 2 of S.L. 2012-93.

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CONFORMING CHANGE TO NATURE PRESERVES ACT

CURRENT LAW: G.S. 143B-135.272(a)(2) allows the Secretary to defray the costs of activities including an inventory of natural areas conducted under the Natural Heritage Program, conservation and protection planning, and informational programs for owners of natural areas.

BILL ANALYSIS: Section 5 would amend G.S. 143B-135.272(a)(2) to remove a reference to a statute that was previously repealed.

UMSTEAD ACT EXEMPTION FOR LODGING FACILITIES AT STATE PARKS

CURRENT LAW: The Umstead Act generally prohibits North Carolina government agencies from competing with the private commercial activities of North Carolina citizens. G.S. 66-58. The Department of Cultural and Natural Resources currently has an exception for sale of food, the sale of books, gifts, and other tourism-related items and revenues from public and private special events, activities, and programming at State parks, State aquariums, historic sites and museums administered by the Department, provided that the resulting profits are used to support the operation of those sites. G.S. 66-58(b)(9b). This exemption does not allow the Department to construct, maintain, operate, or lease a hotel or tourist inn in any site or facility over which it has jurisdiction, except that the North Carolina Zoological Park may lease a portion of the Park on which a private entity may construct and operate a hotel and related facilities *Id.*

BILL ANALYSIS: Section 6 expressly would exempt the following from the Umstead Act:

- Existing lodging facilities located at Haw River State Park, Hanging Rock State Park, and Pisgah View State Park.
- A hotel and related facilities constructed and operated by a private entity on land leased from the North Carolina Zoological Park.
- Rentals of rustic cabins and recreational vehicle or tent sites in State parks.

CLARIFY ZOOLOGICAL PARK STATUTES

CURRENT LAW: Part 39 of Article 2 of Chapter 143B of the General Statutes addresses the North Carolina Zoological Park.

BILL ANALYSIS: Section 7 would amend the zoological park statutes in the following ways:

- Provide that the North Carolina Zoological Park Council may advise the Secretary on concepts for the zoological park and recommend admission fees for approval by the Secretary.
- Specify that the Secretary may approve the use of the North Carolina Zoo Fund under certain circumstances and would not require the recommendation of the North Carolina Zoological Park Council.
- Allow the Council *and* the Secretary to receive gifts for the zoo.
- Provide that the Secretary may receive and expend funds for the operation and maintenance of the zoo.
- Provide that the Secretary may set admission fees as recommended by the Council.
- Authorize the Secretary to donate any exhibit, exhibit component, or object from the collections of the North Carolina Zoological park.

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- Provide that the Department, not the Council, has powers regarding fee negotiations, contracts, and capital improvements under G.S. 143B-135.214.

NC LAND AND WATER FUND CLARIFICATION OF CONSTRUCTION CONTRACT REQUIREMENT

CURRENT LAW: G.S. 143B-135.238 sets out requirements for the North Carolina Land and Water Fund. An award of a grant is withdrawn if the grant recipient fails to enter into a construction contract for the project within one year after the date of the award, unless the Trustees find that the applicant has good cause for the failure. If the Trustees find good cause for a recipient's failure, the Trustees must set a date by which the recipient must act or forfeit the grant. G.S. 143B-135.238(e).

BILL ANALYSIS: Section 8 would clarify that G.S. 143B-135.238(e) applies to grants that require construction contracts and would clarify that the award would be withdrawn if the grant recipient fails to enter into a construction contract within one year after the date of the execution of the grant contract unless there is good cause for the failure.

CONFORMING CHANGES FOR RENAMING OF CLEAN WATER MANAGEMENT TRUST FUND AS NORTH CAROLINA LAND AND WATER FUND

CURRENT LAW: In 2019, the Clean Water Management Trust Fund became known as the Land and Water Fund. (S.L. 2019-32). However, some statutes use the former name of the fund.

BILL ANALYSIS: Section 9 would make conforming changes in State law to rename the Clean Water Management Trust Fund the North Carolina Land and Water Fund.

STATE NATURE AND HISTORIC PRESERVE ADDITION

CURRENT LAW: Section 5 of Article XIV of the Constitution of North Carolina provides for addition of properties to and removal of properties from the State Nature and Historic Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly. The Preserve is intended to ensure that lands and waters acquired and preserved for public park, recreation, conservation, and historic preservation purposes continue to be used for these purposes. Upon inclusion in the Preserve, these lands may not be used for other purposes except as authorized by a law enacted by a vote of three fifths of the members of each house. G.S. 143B-135.54 provides conditions and procedures for additions to, and deletions from, the State Parks System that must be authorized by the General Assembly. G.S. 143-260.10 lists the current components of the Preserve.

BILL ANALYSIS: Section 10 would add approximately 189.84 acres identified within the State Property Office file complexes designated as Bethania Walnut Bluffs and Bethabara Park to the State Nature and Historic Preserve.

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

*Brian Gwyn, Staff Attorney for the Legislative Analysis Division, contributed to this summary.