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

SENATE BILL 582:
North Carolina Farm Act of 2023.

2023-2024 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	**Date:**	June 6, 2023
Introduced by:	Sens. Jackson, Sanderson, B. Newton	**Prepared by:**	Chris Saunders Staff Attorney
Analysis of:	Fifth Edition		

OVERVIEW: Senate Bill 582 would make various changes to the agricultural and wastewater laws of this State.

CURRENT LAW, BACKGROUND, AND BILL ANALYSIS:

INCLUDE INCOME FROM THE SALE OF HONEY IN GROSS INCOME FOR PURPOSES OF PRESENT USE VALUE TAXATION

To qualify for present use value taxation as agricultural land, a tract must (i) consist of at least five acres in actual production and (ii) for the three years preceding January 1 of the year for which the benefit is claimed, have produced an average gross income of at least $1,000. Since 2017, income from the sale of bees or products derived from beehives other than honey has been allowed to be considered gross income for the purposes of present use value taxation.

Section 1 of the bill would allow income from the sale of honey to be considered gross income for the purposes of present use value taxation. This section would be effective for taxes imposed for taxable years beginning on or after July 1, 2023.

CLARIFY THAT TURKEY BROODER LITTER RECYCLING IS A BONA FIDE FARM PURPOSE WITH RESPECT TO COUNTY ZONING

Section 1.1 would clarify that a facility that receives used turkey brooder litter from brooder farms and recycles the used litter by means of a drying process to reduce the moisture content of the litter sufficient to send the recycled litter to a turkey grow-out farm for reuse is a bona fide farm purpose that is exempt from county zoning.

CORRECT REFERENCES TO NORTH CAROLINA TOBACCO FOUNDATION, INC.

Effective July 1, 2022, the North Carolina Agricultural Foundation, Inc. and the North Carolina Tobacco Foundation, Inc. completed a merger of their operations. Both foundations share the common mission of supporting and providing financial assistance to the College of Agriculture and Life Sciences at North Carolina State University.

Section 1.2 would change statutory references to the North Carolina Tobacco Foundation, Inc. to refer to the North Carolina Agricultural Foundation, Inc. to reflect this merger.

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ADD EQUINE INDUSTRY MEMBER TO THE BOARD OF AGRICULTURE

The Board of Agriculture currently has 11 members, all appointed by the Governor by and with the consent of the Senate. The members represent different specialties within the agriculture industry.

Section 1.3 would add a twelfth member to the Board of Agriculture, who must be actively involved in the equine industry to represent the equine industry of the State.

EXEMPT COMPOST FROM SALES TAX FOR QUALIFYING FARMERS

A qualifying farmer is a person who has an annual income from farming operations for the preceding taxable year of $10,000 or more or who has an average annual income from farming operations for the three preceding taxable years of $10,000 or more. Several enumerated items are exempt from sales and use tax when purchased by a qualifying farmer for use primarily in farming operations, including commercial fertilizer, lime, and potting soil.

Section 1.4 would provide that compost is exempt from sales and use tax when purchased by a qualifying farmer for use primarily in farming operations.

This section would become effective October 1, 2023.

AMEND THE DEFINITION OF AGRICULTURE

Section 1.5 would provide that:

- Pine orchards planted for the purpose of harvesting pine needles for sale, or the harvesting of pine needles for sale from land with a forest management plan, are covered under the planting and production of trees and timber in the statutory definition of agriculture.
- When performed on the farm, biofuel production for commercial sale is included in the statutory definition of agriculture.

AGRITOURISM ADVERTISING

Section 2 would allow placement of farm signs in the right-of-way of the State highway system during a farm's seasonal operation. The same placement rules that apply to political signs during the period when they are allowed to be placed in the right-of-way would apply to farm signs.

The Supreme Court held in Reed v. Town of Gilbert, Arizona, 576 U.S. 155 (2015) that "content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests."

In that case, the Town of Gilbert, Arizona, had a sign code that generally required permits for signs but had exemptions for political signs, temporary directional signs, and ideological signs, among others. A local church that posted small directional signs to guide people to its services was cited for a violation of the rules for temporary directional signs and challenged the sign code as restricting their freedom of speech under the First Amendment. The Supreme Court held that the distinctions in the sign code were plainly content-based and therefore subject to strict scrutiny, because the distinctions in the exceptions (i.e. for political signs, temporary directional signs, and ideological signs) “depend[ed] on the communicative content of the sign.” In other words, there was no way to know if a sign complied with the sign code

without reading what it said. The decision also held that "a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints with that subject matter."

AMEND REQUIREMENTS ON AGRITOURISM WARNING SIGNS

Under current law, an operator of equine activities, farm animal activities, or agritourism activities is immune from liability for injury or death resulting exclusively from the inherent risks of such activities, provided that the operator posts clearly visible signage consisting of black letters at least one inch in height and warning guests that the operator of the activity is not liable for an injury to or the death of the participant in such activities resulting exclusively from the inherent risks of such activities.

Section 2.1 would reduce the size requirement of the letters on the required warning signage, such that the letters would have to be a minimum of three quarters of one inch high.

CLARIFY DEFINITION OF PROPERTY-HAULING VEHICLES

Property-hauling vehicles have different rates for taxation and registration than passenger vehicles. Law enforcement officers may seize and detain property-hauling vehicles in certain circumstances provided in G.S. 20-96, such as overloading or failing to have proper registration plates. Window tinting restrictions do not apply to the rear window of a property-hauling vehicle.

Section 3 would clarify that a fifth-wheel trailer, recreational vehicle, semitrailer, or trailer used exclusively or primarily to transport vehicles in connection with motorsports competition events is not considered a property-hauling vehicle.

FARM EQUIPMENT DEFENSE FOR STOP LIGHT INDUCTIVE LOOPS

Under current law, a motorcycle operator who runs a red light controlled by a vehicle-actuated traffic signal using an inductive loop to activate the traffic signal has a statutory defense if:

- The operator brought the motorcycle to a complete stop at the light.
- No other vehicle that was entitled to have the right-of-way was sitting at, traveling through, or approaching the intersection.
- No pedestrians were attempting to cross at or near the intersection.
- The motorcycle operator waited at least three minutes at the intersection before entering.

A vehicle-actuated traffic signal using an inductive loop may require the vehicle's tires to cross a sensor for the light to change, and motorcycles may not trigger the sensor.

Section 3.1 would grant the operator of farm equipment or machinery the same defense that is granted to the operator of a motorcycle under these conditions.

AMEND VETERINARY MEDICAL BOARD INSPECTION PROCESS AND GIVE VETERINARY MEDICAL BOARD RESPONSIBILITY FOR PERFORMING INSPECTIONS OF BOARDING KENNELS OPERATED BY VETERINARIANS

Under current law, boarding kennels are licensed and inspected by the Animal Welfare Section of the Department of Agriculture and Consumer Services.

Section 4.(a) would require that the Veterinary Medical Board (Board) provide written notice of an upcoming inspection of a veterinary practice facility at least one week prior to the inspection. The written notice would have to be accompanied by a checklist of all standards adopted by rule for which the inspector may issue a violation and, with as much specificity as possible, conditions that violate the standards. The veterinarian would be able to contact the Board to reschedule the inspection, but the inspection must be rescheduled no later than one week after the originally scheduled date of the inspection.

This subsection would become effective October 1, 2023.

Section 4.(b)-(f) would provide that the Board is responsible for the licensing and inspection of boarding kennels owned and operated by licensed veterinarians. Section 4.(d) would establish a $75 boarding kennel permit to be added to the veterinary facility permit fee. The Board would be required to adopt rules to establish minimum standards for boarding kennels no later than July 1, 2024. These standards would have to be at least as stringent as those adopted by the Board of Agriculture for the regulation of boarding kennels.

This section would become effective 60 days after the rules adopted by the Veterinary Medical Board become effective.

REQUIRE CLEANUP OF ANIMAL WASTE SPILLS BY THE RESPONSIBLE PARTY

Section 4.1 would make it a Class 3 misdemeanor for the driver of any vehicle who knows or reasonably should know that animal waste, except for excreta from live animals; dead animals or animal parts, except for feathers from live birds; or animal byproducts have been blown, scattered, spilled, thrown or placed from the vehicle to leave the scene of the incident. There would be exceptions allowing the driver to leave the scene to call for a law enforcement officer, call for assistance in removing the materials that were blown, scattered, thrown, spilled, or placed from the vehicle, or to remove oneself or others from significant risk of injury. The court may also order restitution for the cost of removing the materials that were blown, scattered, thrown, spilled, or placed from the vehicle.

This section would become effective December 1, 2023, and would apply to offenses committed on or after that date.

ENCOURAGE PUBLIC SCHOOLS TO MAKE ONE HUNDRED PERCENT MUSCADINE GRAPE JUICE AVAILABLE TO STUDENTS

Section 5 would set an aspirational goal that muscadine grape juice be available in public schools, community colleges, and universities throughout the State as follows:

Public Schools: The State Board of Education must strive to ensure that 100% muscadine grape juice (juice) is available to students in the residential schools for the visually and hearing impaired as a part of the school's nutrition program or through the operation of vending facilities at the schools.

The following entities must strive to ensure that the juice is made available to all students as a part of the nutrition program or through vending facilities at each school under their governance:

- Local boards of education
- Charter schools
- Regional Schools
- Laboratory Schools operated by The University of North Carolina

NC Community Colleges: The board of trustees of each community college must make strive to make muscadine grape juice available as a beverage option in the operation of the community college's vending facilities.

Constituent Institutions of The University of North Carolina: Each constituent institution must strive to make muscadine grape juice available as a beverage option in the operation of the institution's vending facilities.

CONFORM PENALTIES FOR ASSAULT WITH A DEADLY WEAPON ON DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES INSPECTORS

The standard penalty for assault with a deadly weapon pursuant to G.S. 14-33(c)(1) is a Class A1 misdemeanor. The penalty for assault with a deadly weapon against an inspector from the Sleep Products Division of the Department or a poultry inspector from the Meat and Poultry Inspection Division is a Class 1 misdemeanor. For a first offense, a Class A1 misdemeanor is punishable by up to 60 days in jail, while a Class 1 misdemeanor is punishable by up to 45 days of community punishment.

Section 5.1 would make the penalty for assault with a deadly weapon on an inspector from the Sleep Products Division of the Department or a poultry inspector from the Meat and Poultry Inspection Division a Class A1 misdemeanor.

This section would become effective December 1, 2023, and would apply to offenses committed on or after that date.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AUTHORITY TO ADOPT RULES FOR DEPARTMENT-OPERATED MARKETS AND SET METROLOGY LABORATORY FEES

Section 5.2 would allow the Commissioner of Agriculture, with the advice and consent of the Board of Agriculture, to adopt rules related to markets operated by the Department and retain current rules relating to markets for which the statutory authority was repealed in 2021. This section would also allow the Commissioner to adopt rules to set reasonable fees for calibration services and adjustments performed by the Metrology Laboratory Section of the Standards Division.

CROSS-REFERENCE TECHNICAL CORRECTION

Section 5.3 would correct a cross reference to G.S. 153-340(b), which was recodified in G.S. 160D-903 in 2019.

ESTABLISH EQUINE STATE TRAIL

Section 6 would authorize the Department of Natural and Cultural Resources to add the Equine State Trail in Chatham, Cumberland, Harnett, Hoke, Lee, Montgomery, Moore, and Richmond Counties to the State Parks System as a State trail.

RENAME THE OFFICIAL STATE FRUIT TO THE MUSCADINE GRAPE

Under current law, the official State fruit is the Scuppernong grape, which is a variety of Muscadine grape.

Section 7 would rename the official State fruit to the Muscadine grape, which would include all varieties of Muscadine grape.

DESIGNATE THE LONGLEAF PINE AS THE EMBLEM REPRESENTING THE TREES OF NORTH CAROLINA

Under current law, the pine is the official State tree of North Carolina.

Section 8 would designate the longleaf pine as the emblem representing the trees of North Carolina.

DESIGNATE THE SECOND WEDNESDAY IN NOVEMBER OF EACH YEAR AS NORTH CAROLINA FARMERS APPRECIATION DAY

Several special days are currently recognized in Chapter 103 of the General Statutes, including American Family Day, Prisoner of War Day, Pearl Harbor Remembrance Day, Fragile X Awareness Day, Lineman Awareness Day, and Wounded Heroes Day.

Section 8.1 would designate the second Wednesday in November of each year as North Carolina Farmers Appreciation Day, beginning in 2024. This section would also designate the North Carolina Grange as the lead organization for recognition of North Carolina Famers Appreciation Day and direct them to develop a plan to raise awareness of and promote the first annual North Carolina Famers Appreciation Day. In developing he plan, the Grange would be directed to consult with the North Carolina Department of Agriculture and Consumer Services; North Carolina Cooperative Extension, including representatives from NC State University Extension and NC A&T State University Extension; the University of Mt. Olive School of Agricultural and Biological Sciences; North Carolina Farm Bureau Federation, Inc.; commodity groups and associations including the North Carolina Pork Council, the North Carolina Poultry Federation, and the North Carolina Cattlemen's Association; and any other organizations the Grange deems appropriate. The Grange would be required to report on its plan to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources no later than June 30, 2024.

PRESCRIBED BURNING ACT AMENDMENTS

Section 9.(a) would amend the definitions of "prescribed burning" and "prescription" in the Prescribed Burning Act.

Section 9.(b) would:

- Specify that a landowner or landowner's agent who conducts a prescribed burn in compliance with the statute is not liable for injury caused by reignition of a smoldering, previously contained burn.
- Provide that a landowner or landowner's agent who conducts a prescribed burn is not immune from liability if a nuisance or damage results from gross negligence, as opposed to "negligently or improperly conducted prescribed burning" in existing law.
- Provide that the liability limitation for prescribed burning does not apply to claims by public utilities resulting from damage to their equipment or facilities, where a prescribed burn proximately causes such damage.

Section 9.(c) would:

- Make clarifying changes specifying that a certified prescribed burner must prepare a prescription for a prescribed burning and file the prescription with the North Carolina Forest Service.
- Require the landowner, in addition to the certified prescribed burner on site, to retain a copy of the prescription for the duration of the prescribed burn.
- Require that the summary of the methods for the prescribed burn contained in the prescription must include firebreaks and sufficient personnel and firefighting equipment to contain the fire within the burn area.
- Provide that fire spreading outside the authorized burn area on the day of the prescribed burn ignition does not constitute conclusive proof of inadequate firebreaks, insufficient personnel, or a lack of firefighting equipment. This would be a fact-based determination.
- Provide that if the prescribed burn is contained within the authorized burn area during the authorized period, there is a rebuttable presumption that adequate firebreaks, sufficient personnel, and sufficient firefighting equipment were present.
- Provide that continued smoldering of a prescribed burn resulting in a subsequent wildfire does not in itself constitute evidence of gross negligence.
- Specify that reasonable notice of the prescribed burn must be provided to homes and businesses located adjacent to the burn site, rather than "nearby."

PROHIBIT USE OF AN UNMANNED AIRCRAFT NEAR A FOREST FIRE

Under current law, there are several restrictions on uses of an unmanned aircraft system (colloquially known as a drone). It is generally prohibited to use an unmanned aircraft system to conduct surveillance of a person or a dwelling occupied by a person without the person's consent or to photograph an individual for the purpose of publishing or disseminating the photograph without the individual's consent.

G.S. 15A-300.3 prohibits the use of an unmanned aircraft system within either a horizontal distance of 500 feet, or a vertical distance of 250 feet from any local confinement facility, or a State or federal correctional facility. A person who delivers or attempts to deliver a weapon to a local confinement facility or State or federal correctional facility using an unmanned aircraft system is guilty of a Class H felony and is subject to a $1,500 fine. A person who delivers or attempts to deliver contraband to a local confinement facility or State or federal correctional facility using an unmanned aircraft system is guilty of a Class I felony and is subject to a $1,000 fine. A person who violates that section for any other reason is guilty of a Class I misdemeanor and is subject to a $500 fine.

Section 10 would prohibit the use of an unmanned aircraft system within either a horizontal distance of 3,000 feet or a vertical distance of 3,000 feet from any forest fire within the jurisdiction of the North Carolina Forest Service, with exceptions for law enforcement and employees of the North Carolina Forest Service.

There would be a range of penalties for violation of this section. A person who operates an unmanned aerial system in violation of this section would be fined at least $1,000 and otherwise punished as follows:

- If the person is the proximate cause of death of another person, the person is guilty of a Class D felony.
- If the person is the proximate cause of serious bodily injury to another person, the person is guilty of a Class E felony.

- If the person is the proximate cause of serious mental or physical injury to another person, the person is guilty of a Class F felony.
- If the person interferes with emergency operations and such interference proximately causes damage to any real or personal property or any tree, wood, underwood, timber, garden, crops, vegetables, plants, lands, springs, or any other matter or thing growing or being on the land, the person is guilty of a Class G felony.
- If the person interferes with emergency operations, the person is guilty of a Class H felony.
- If the person is the proximate cause of mental or physical injury to another person, the person is guilty of a Class I felony.
- If the person does not cause any of the injuries specified in this list, the person is guilty of a Class A1 misdemeanor.

The levels of injuries in this section are defined as follows:

- Physical or mental injury. – Cuts, scrapes, bruises, or other physical or mental injury that does not constitute serious bodily injury or serious physical or mental injury.
- Serious physical or mental injury. – Physical or mental injury that causes great pain and suffering.
- Serious bodily injury. – Bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

A law enforcement agency would be authorized to seize an unmanned aircraft system operating in violation of this section.

This section would become effective December 1, 2023, and would apply to offenses committed on or after that date.

AMEND TIMBER LARCENY STATUTE

Under current law, it is a Class G felony for a person to commit larceny of timber, which includes the following acts:

- Knowingly and willfully cutting down, injuring, or removing any timber owned by another person, without the consent of the owner of the land or the owner of the timber, or without a lawful easement running with the land.
- Buying timber directly from the owner of the timber and failing to make payment in full to the owner by (i) the date specified in the written timber sales agreement or (ii) if there is no such agreement, 60 days from the date that the buyer removes the timber from the property.

Section 11 would add two other acts that would constitute the offense of larceny of timber:

- Knowingly and willfully aiding, hiring, or counseling an individual to cut down, injure, or remove any timber owned by another person without the consent of the owner of the land or the owner of the timber, or without a lawful easement running with the land. There would be an exception for electric power suppliers who believe in good faith that either (i) consent of the owner had been obtained prior to aiding, hiring, or counseling the individual to cut down, injure, or remove the

timber, or (ii) the cutting down, injuring, or removing of the timber was permitted by a utility easement or was necessary to remove a tree hazard.

- Knowingly and willfully transporting forest products that have been cut down, removed, obtained, or acquired from the property of a landowner without the consent of the owner of the land or the owner of the timber, or without a lawful easement running with the land.

This section would become effective December 1, 2023, and would apply to offenses committed on or after that date.

LIMIT CIVIL PENALTIES FOR REMOVAL OF TIMBER IN A RIPARIAN BUFFER TO THE VALUE OF THE TIMBER

Under current law, civil penalties issued by the Department of Environmental Quality (DEQ) for violations of riparian buffer rules are capped at $25,000 per violation. DEQ may assess a civil penalty of more than ten thousand dollars ($10,000) or, in the case of a continuing violation, more than ten thousand dollars ($10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the five years preceding the violation.

DEQ has adopted riparian buffer rules for the Neuse River Basin, Tar-Pamlico River Basin, Goose Creek Watershed, Randleman Lake Watershed, Catawba River Basin, and Jordan Lake Watershed.

Section 11.1 would provide that a civil penalty for removal of timber in a riparian buffer in violation of rules applicable to that riparian buffer may not exceed the value of the timber removed from the riparian buffer.

This section would become effective July 1, 2023, and would apply to acts committed on or after that date.

ESTABLISH FORESTRY SERVICES AND ADVICE FUND

Under current law, moneys paid to the Commissioner of Agriculture for the provision of forestry services and advice for landowners are deposited into the State treasury to the credit of the Department of Agriculture and Consumer Services. These services include:

- Designating, upon request, forest trees of forest landowners and forest operators for sale or removal.
- Measuring and estimating the volume of forest trees for sale or removal.
- Making available forestry services consisting of specialized equipment and operators, or by renting such equipment.
- Performing such labor and services as may be necessary to carry out approved forestry practices, including site preparation, forest planting, prescribed burning, and other appropriate forestry practices.

S**ection 12** would establish the Forestry Services and Advice Fund (Fund) as a special fund within the North Carolina Forest Service. Moneys paid to the Commissioner for the provision of forestry services and advice for landowners would be deposited into the Fund. The Fund would be used to develop, improve, repair, maintain, operate, and otherwise invest in providing forestry services and advice to owners and operators of forestland.

CLARIFY POWERS OF FOREST RANGERS

Section 12.1 would clarify that a forest ranger or deputy ranger may use all necessary means to confine and extinguish a forest fire whether or not the fire occurs during a season of drought.

WELL CONTRACTOR EXAMINATION EXEMPTION

Section 13 would exempt a person who meets the following criteria from the examination requirements of the Well Contractors Certification Commission:

- 70 years of age or older.
- Has engaged in well contractor activity for more than 20 years.
- Has no record of having violated any provision of the North Carolina Well Construction Act, the North Carolina Well Contractors Certification Act, or any order issued or rule adopted pursuant to those acts in the previous 10 years.
- Meets all other requirements for certification (submission of an application, payment of the application fee).

A similar exception from continuing education requirements existed for well contractors over 70 years of age from 2001 to 2008.

ALIGN ANIMAL WASTE MANAGEMENT SYSTEM OPERATOR FEES WITH WATER POLLUTION CONTROL SYSTEM OPERATOR FEES

Under current law, the fee for examination including certificate for Water Pollution Control System Operators is $85.00. The renewal fee for a certificate is $50.00. Late payment of the annual renewal has a $50.00 penalty plus a $100.00 penalty per year for each year for which annual renewal fees were not paid prior to the current year. Re-examination is not required if the annual renewal fees are not submitted on time.

The corresponding fees for Animal Waste Management System Operators are $25.00 and $10.00, respectively. A certificate holder who fails to renew the certificate and pay the renewal fee within 30 days of its expiration shall be required to take and pass the examination for certification in order to renew the certificate.

Section 13.1 would increase the examination including certificate fee for Animal Waste Management System Operators from $25.00 to $85.00 and raise the renewal fee from $10.00 to $25.00. Additionally, this section would eliminate the requirement to re-take the examination if the certificate renewal fee is not paid within 30 days of its expiration, and instead impose a late application penalty equivalent to twice the annual renewal fee ($50.00).

DIGESTER GENERAL PERMIT CLARIFICATION

In 2021, the General Assembly directed the Department of Environmental Quality (DEQ) to develop a general permit for animal operations that includes authorization for the permittee to construct and operate a farm digester system.

Section 14 would amend the definition of "farm digester system" to clarify that "associated equipment" refers to "animal waste management equipment" and that collected gases must be used as a renewable

energy resource as quickly as feasible, but within six months of the collection of the gases, and during that period the gas must be flared rather than vented.

DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO WITHDRAW THE 2021 NPDES GENERAL PERMIT FOR AQUACULTURE AND REVISE IT TO BE SUBSTANTIVELY IDENTICAL TO THE PREVIOUS GENERAL PERMIT

Section 14.1 would require the Environmental Management Commission (EMC) and DEQ to reopen and modify National Pollutant Discharge Elimination System (NPDES) General Permit NCG530000 issued for discharges from seafood packing and rinsing, aquatic animal operations, and similarly designated wastewaters that took effect on December 1, 2021.

DEQ reissued NPDES General Permit NCG530000 for discharges from seafood packing and rinsing, aquatic animal operations, and similarly designated wastewaters that took effect on December 1, 2021. USEPA submitted comments on a draft version of this permit prior to reissuance concerning inclusion of Best Management Practices, and increased monitoring frequencies for pollutants. DEQ has been delegated authority from the United States Environmental Protection Agency (USEPA) to administer the NPDES program within North Carolina, including permits for concentrated aquatic animal production facilities. Section IV, Paragraph B. of the Memorandum of Agreement (MOA) between DEQ and EPA to administer the NPDES program, entitled "EPA Review of Draft and Proposed Permits, Permit Modifications, and Permit Revocations and Reissuances," states in part:

> "All EPA comments and objections must be considered by the State along with any other public comments received on the draft permit."

The MOA further provides:

> "EPA acknowledges that the State has no veto authority over acts of the State legislature and, therefore, reserves the right to initiate procedures for withdrawal of the State NPDES program approval in the event that the State legislature enacts any legislation or issues any directive which substantially impairs the State ability to administer the NPDES program or to otherwise maintain compliance with NPDES program requirements."

This section would be effective when it becomes law and expire when the EMC revises the permit and notifies the Revisor of Statutes that it has done so.

CLARIFY DEFINITION OF WETLANDS

Prior to an amendment in 2019, 15A NCAC 02B .0202 restricted the definition of "wetlands" to only those "waters of the United States as defined by 33 C.F.R. § 328.3 and 40 C.F.R. § 230.3." That restriction was removed during the Environmental Management Commission's (Commission) rule readoption process in 2019.

Section 15 would direct the Commission to implement 15A NCAC 02B .0202 consistent with the pre-2019 definition of "wetlands" restricting those waters to only those waters of the United Stated as defined by 33 C.F.R. § 328.2 and 40 C.F.R. § 230.2, and readopt its rule consistent with that implementation. The rule would also specify that wetlands do not include prior converted cropland, consistent with the existing rule.

WASTEWATER AMENDMENTS

The 18E on-site wastewater rules suite becomes effective January 1, 2024. 15A NCAC 18E .0905 will require that prefabricated permeable block panel systems (PPBPS) trenches shall be located the greater of either a minimum of eight feet on center or three times the trench width, and that when used in sand lined trench systems, PPBPS shall use an equivalent trench width of three feet to calculate minimum trench length. PPBPS may only be used in domestic strength wastewater systems.

Section 16 would direct the Commission for Public Health (Commission) to implement 15A NCAC 18E .0905 as follows, and readopt its rule consistent with that implementation:

- PPBPS trenches may be located a minimum of eight feet on center or three times the trench width.
- When used in a sand lined trench, PPBPS shall use an equivalent trench width of six feet.

The Commission and the Department of Health and Human Services (Department) are responsible for evaluating and approving on-site wastewater systems and designating those systems as Provisional, Innovative, or Accepted. The Commission may impose conditions on the installation and use of those systems at each designation. The Commission may designate a nonproprietary wastewater system as Accepted without having received a petition from a manufacturer.

Section 17 would provide that Accepted system approvals would be limited to the manufacturer who submitted the petition and received Accepted status and the Commission, Department, or local health department cannot condition, delay, or deny the approval based on the location of nitrification lines. The section also removes the Commission's authority to designate nonproprietary wastewater systems as Accepted without a manufacturer petition, and prohibits the Commission or Department from conditioning, delaying, or denying the approval of a subsurface trench dispersal product based on a non-native backfill material requirement without prior approval of the manufacturer.

This section would be effective when it becomes law and would apply retroactively to any wastewater system approvals issued by the Commission or Department.

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

Kyle Evans and Jennifer McGinnis, counsel to the Senate Agriculture, Energy, and Environment Committee, substantially contributed to this summary.