



## 2013 LEGISLATIVE UPDATE

Shawn Maier, Associate Attorney General  
Environmental Division, NCDOT

### 2013: What happened?

- Jordan Lake
- 40 foot sharks
- Blue Monday
- Fast-track permitting
- Whirligigs
- Gravel
- Dublin, NC
- Deceased permit holders

# 2013 Session Statistics

- 1748 bills introduced, 1022 from House, 726 from Senate
  - 438 Passed (25%)
  - 2 Vetoes, both overruled
- 2011 session: 1721 introduced, 405 enacted- 23%
- 1965- 1803 introduced, 1302 enacted- 72%

# H74 (SL 2013-413)

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

HOUSE BILL 74

Short Title: Periodic Review and Expiration of Rules. (Public)

Sponsors: Representatives Mary McMill, Samuelson, and Byrns (Primary Sponsors)

For a complete list of sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Regulatory Rules.

February 7, 2013

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE FOR THE PERIODIC REVIEW AND EXPIRATION OF RULES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.2(c) reads as verbatim:

(c) None of them - A notice of the proposed text of a rule must include all of the following:

- (1) The text of the proposed rule, unless the rule is a redaction without substantive changes to the existing rule proposed to keep a permanent rule from changing.
- (2) A short explanation of the reasons for the proposed rule and a link to the agency's Web site containing the information required by G.S. 150B-21.1(c).
- (3) A citation to the law that gives the agency the authority to adopt the rule.
- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (f) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the persons to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
- (9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.

SECTION 2. Part 2 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

150B-21.2A. Expiration date of permanent rules.

(a) Unless extended pursuant to the provisions of G.S. 150B-21.2 and approved by the Commission pursuant to the provisions of Part 1 of Article 2A of this Chapter, a permanent rule expires on the latest of any of the following:

- (1) December 31, 2015, for rules in Title 10A of the North Carolina Administrative Code.
- (2) December 31, 2017, for rules in Title 15A of the North Carolina Administrative Code.



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- 1 (1) December 31, 2015, for rules in Title 11 of the North Carolina
- 2 Administrative Code.
- 3 (2) December 31, 2017, for all remaining rules, unless and to the extent the
- 4 sponsor that adopted the rule, or, except from the rule-making
- 5 requirement in this Article.
- 6 (3) The date after its effective date.
- 7 (4) Ten years after its redacted effective date.
- 8 (5) Ten years from the effective date of the most recent amendment to the rule.
- 9 (6) The Commission shall establish a time limit for the submission of rules subject to
- 10 extension after consultation with the adopting agency.
- 11 (c) The Codes of Rules shall annually notify agencies of rules that will expire within
- 12 the next six years.
- 13 SECTION 3. This act is effective when it becomes law.

# H74 SL (2013-413)

- 59 Pages
- § 6.(a) "(k) A zoning or unified development ordinance may not differentiate in terms of the regulations applicable to fraternities or sororities between those fraternities or sororities that are approved or recognized by a college or university and those that are not."
- § 11.(a) Let bed and breakfasts offer three meals a day
- § 17.(a) Presumption that taxicab drivers are independent contractors

# H74 (SL 2013-413)

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SESSION 2013  
HOUSE BILL 74

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- (2) December 31, 2017, for rules in Title 15A of the North Carolina Administrative Code.

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(1) December 31, 2015, for rules in Title 11 of the North Carolina Administrative Code.

(2) December 31, 2017, for all remaining rules, unless and to the extent the sponsor that adopted the rule has elected from the rule-making requirements in this Article.

The text after its effective date.

The text after its redacted effective date.

The text from the effective date of the most recent amendment to the rule.

The Commission shall establish a time limit for the submission of rules subject to expiration after consultation with the adopting agency.

The Codes of Rules shall annually notify agencies of rules that will expire within the next six years.

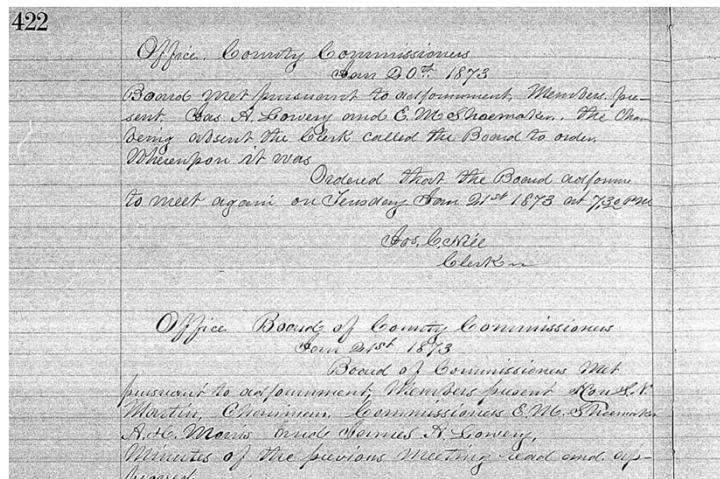
SECTION 3. This act is effective when it becomes law.



## H74 (SL 2013-413) §3.(d)

- “If G.S. 150B-21.3A, as enacted by subsection (b) of this section, becomes law, the Rules Review Commission shall subject rules adopted by the Environmental Management Commission related to surface water quality and wetlands to review in the first year that the Rules Review Commission establishes for the review of existing rules in accordance with G.S. 150B-21.3A.”

## H 74 (SL 2013-413) §10.(2)



## H 74 (SL 2013-413) §10.(2)(a)

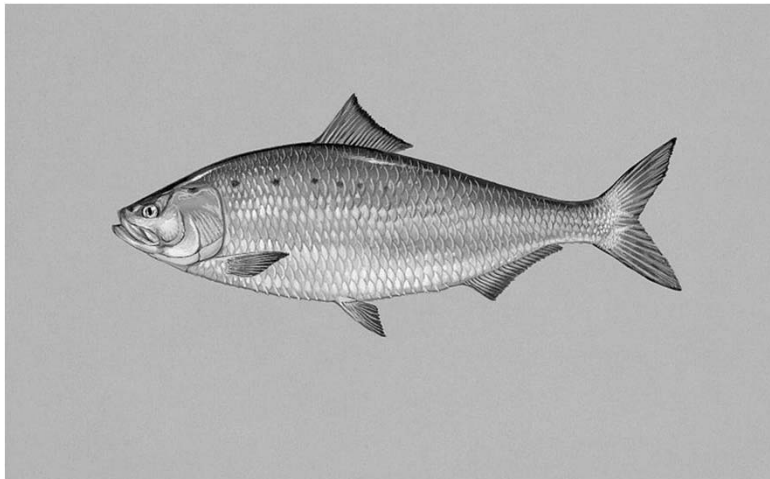
- Until October 1, 2014, “a city or county may not enact an ordinance that regulates a field that is also regulated by a State or federal statute enforced by an environmental agency or that regulates a field that is also regulated by a rule adopted by an environmental agency.”
- Exception: if the ordinance is approved by a unanimous vote of the members present and voting.

## H 74 (SL 2013-413) §10.(2)(c)

- “The Environmental Review Commission shall study the circumstances under which cities and counties should be authorized to enact ordinances (i) that regulate a field that is also regulated by a State or federal statute enforced by an environmental agency or that regulate a field that is also regulated by a rule adopted by an environmental agency and (ii) that are more stringent than the State or federal statute or State rule. The Environmental Review Commission shall report its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.”
- Stay Tuned

## H 241 SL-2013-282

### Blue Monday



## H 241 SL-2013-282

- East Arcadia has been holding an Annual Shad Fry on the Monday following Easter Sunday for more than 60 years
- Grifton Shad Festival is the official Shad Fry of the State of North Carolina.
- “The East Arcadia Monday Shad Fry is adopted as the official Blue Monday Shad Fry of the State of North Carolina.”

## H 74 (SL 2013-413) §33

- Clarify Local Government Authority Under the Sedimentation and Pollution Control Act
- Contested cases arising from civil penalties issued by a local program will be addressed by the local program.

## Permitting Changes

- H 74 SL 2013-413 §51.(a)
- H480 SL 2013-82
- H279 SL 2013-121
- S76 SL 2013-365

## H 74 (SL 2013-413) §51

### Gravel



## H 74 (SL 2013-413) §51.(a)

- "Built-upon area" means that portion of a project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material. SL 2006-246.



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## H 74 (SL 2013-413) §51.(a)

- §51.(a) Amends G.S. 143-214.7
- (b2) For purposes of implementing stormwater programs, "built-upon area" includes impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or gravel."

## H 74 (SL 2013-413) §51.(d)

- Applies to projects for which permit applications are received on or after 8/23/13
- The Environmental Management Commission shall amend its rules to be consistent with the definition of "built-upon area" set out in subsection (b2) of G.S. 143-214.7, as enacted by Section 51(a) of this act.

## H 74 (SL 2013-413) §51.(e)

- The Environmental Review Commission shall study State stormwater programs, including how partially impervious surfaces are treated in the calculation of built-upon area under those programs. The Environmental Review Commission shall report its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.
- Stay Tuned

## H 830 SL 2013-189

### 40 Foot Sharks



## H 830 SL 2013-189

- Megalodon shark- grew to over 40 feet in length, had teeth up to 7 inches long, weighed up to 100 tons-
- You're going to need a bigger boat.
- 145-41 "The fossilized teeth of the megalodon shark is adopted as the official fossil of the State of North Carolina."

## H480 SL 2013-82

### Fast-track Permitting



## H 480 SL 2013-82

- 143-214.7B “The [Environmental Review] Commission shall adopt rules to establish a fast-track permitting process that allows for the issuance of stormwater management system permits without a technical review when the permit applicant (i) complies with the Minimum Design Criteria for stormwater management developed by the Department and (ii) submits a permit application prepared by a qualified professional. In developing the rules, the Commission shall consult with a technical working group that consists of industry experts, engineers, environmental consultants, relevant faculty from The University of North Carolina, and other interested stakeholders.”

## H 480 2013-82

- The rules shall, at a minimum, provide for all of the following:
  - (1) A process for permit application, review, and determination.
  - (2) The types of professionals that are qualified to prepare a permit application submitted pursuant to this section and the types of qualifications such professionals must have.
  - (3) A process for ensuring compliance with the Minimum Design Criteria.
  - (4) That permits issued pursuant to the fast-track permitting process comply with State water quality standards adopted pursuant to G.S. 143-214.1, 143-214.7, and 143-215.3(a)(1).
  - (5) A process for establishing the liability of a qualified professional who prepares a permit application for a stormwater management system that fails to comply with the Minimum Design Criteria.”

## H480 (SL 2013-82)

- EMC has until July 1, 2016 to adopt rules implementing fast-track process
- Earlier drafts of H480 included a similar fast-track for approval of erosion control plans

## H 279 (SL 2013-121)

### Deceased Permit Holders



## H279 (SL 2013-121)

- Transfer of Environmental Permits
  - Transfer stormwater permit or erosion control plan to a successor-property owner without the consent of the original permit holder
  - Available when original permit holder has ceased to exist (death, dissolution of LLC, etc) or been divested of title (sale or foreclosure)

## H279 (SL 2013-121)

- The Department may transfer a permit issued pursuant to this section without the consent of the permit holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection. (1) The Department may transfer a permit if all of the following conditions are met:
  - a. The successor-owner of the property submits to the Department a written request for the transfer of the permit.

## H279 (SL 2013-121)

- b. The Department finds all of the following:
  - 1. The permit holder is one of the following:
    - I. A natural person who is deceased.
    - II. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
    - III. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
    - IV. A person who has sold the property on which the permitted activity is occurring or will occur.
  - 2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
  - 3. The successor-owner is the sole claimant of the right to engage in the permitted activity.
  - 4. There will be no substantial change in the permitted activity.

## H279 (SL 2013-121)

- (2) The permit holder shall comply with all terms and conditions of the permit until such time as the permit is transferred.
- (3) The successor-owner shall comply with all terms and conditions of the permit once the permit has been transferred.
- (4) Notwithstanding changes to law made after the original issuance of the permit, the Department may not impose new or different terms and conditions in the permit without the prior express consent of the successor-owner.

## S76 SL 2013-365

- Stay Tuned
- Mining and Energy Commission will study the development of a coordinated permitting program for fracking in order that a single comprehensive environmental permit may be issued to an applicant to govern: well construction & siting, water quality including stormwater control.
- MEC will report its findings and recommendations to the ERC and Joint Legislative Commission on Energy Policy on or before March 1, 2014.



## H917 SL 2013-313

Dublin, NC



## S 515 (SL 2013-295)

Delay Jordan Lake Rules



## S 525 (SL 2013-295)

- Delay Jordan Lake Rules for 3 years
- "Jordan Lake Rules" means all of the following rules:
  - d. 15A NCAC 02B .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development)
  - e. 15A NCAC 02B .0266 (Jordan Water Supply Nutrient Strategy: Stormwater Management for Existing Development)
  - h. 15A NCAC 02B .0271 (Jordan Water Supply Nutrient Strategy: Stormwater Requirements for State and Federal Entities)

## Short Session begins May 14

- Matters eligible for consideration in the Short Session:

Budget bills	Bills authorized by joint resolution
Bills amending the Constitution	Election law bills
Crossover bills	Redistricting bills
Study bills	
Local bills	
Appointments	

## Follow along at NCLEG.NET

The screenshot shows the official website of the North Carolina General Assembly (NCGA). At the top, there is a search bar with the text "FULL SITE SEARCH: type search criteria" and a "Go" button. Below it are two more search bars: "SEARCH BILL TEXT: 2013-2014 Session" and "FIND A BILL: 2013-2014 Session", both with "Go" buttons. A "VIEW MEMBER INFO: Select a member" dropdown menu is also present. The navigation menu includes links for HOME, HOUSE, SENATE, ABOUT NCGA, AUDIO, CALENDARS, COMMITTEES, LEGISLATION/BILLS, REDISTRICTING, WHO REPRESENTS ME?, and CITIZEN GUIDE. The main content area features a welcome message, a notice about the 2013 Regular Session, and sections for the House of Representatives and the Senate, each with a "Convenes Wed, May 14, 2014 12:00PM" announcement and links to calendars and audio. A "News & Information" section lists bills eligible for consideration during the 2014 Session. On the right side, there are "NCGA DIVISION LINKS" and "SHORTCUTS" sections, along with logos for "NC.gov" and "HOMESCHOOL ASSISTANCE".

Questions? (No, I cannot help you with that speeding ticket)

## Vollis Simpson Whirligigs

