



## 2013 LEGISLATIVE UPDATE

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## Applewood Properties, LLC v. New South Properties 366 N.C. 518 (2013)

- ❑ The Parties
- ❑ The Facts: Applewood owns the golf course, sold adjoining land to neighbors (New South & Apple Creek Village) for development as a residential community.
- ❑ New South & Apple Creek Village hire Urban Design Partners, Hunter Construction Group
- ❑ New South gets erosion and sedimentation control plan approved by Gaston County
- ❑ Hunter Construction clears, grades the parcel and builds erosion control structures and devices, including a silt collection basin

## Applewood Properties, LLC v. New South Properties 366 N.C. 518 (2013)

- June 27- dam on silt collection basin constructed by Hunter ruptures- mud, water and other debris flood the golf course
- GNRD inspects parcel, finds New South took insufficient measures to retain sediment on site & failed to take all reasonable measures
- December 4, Applewood files suit, claims of negligence, nuisance, trespass, violations of the SPCA, negligence per se, and intentional misconduct and gross negligence

## Applewood Properties, LLC v. New South Properties 366 N.C. 518 (2013)

- Judge grants summary judgment in favor of defendants on SPCA claim
- Jury finds defendants liable for negligence, plaintiffs entitled to \$675,000 in damages
- Plaintiffs appeal SPCA claim decision
- Statute at issue: G.S. §113A-66: “Any person injured by a violation of [the SPCA] ... may bring a civil action against the person alleged to be in violation ...” They can seek damages caused by the action and can recover attorneys fees.

## Applewood Properties, LLC v. New South Properties 366 N.C. 518 (2013)

- Supreme Court- “The legislature could have used the word “noncompliance,” or another broader term to describe the conduct necessary to trigger a private cause of action, but chose not to do so. ... As such, we conclude that the legislature intended to create a private cause of action only when the defendant has been cited for a violation pursuant to the SPCA.”
- “[T]he GNRD repeatedly informed New South that it would have the opportunity to take corrective actions within a specified time period before being subject to any penalties pursuant to the SPCA.”

## Applewood Properties, LLC v. New South Properties 366 N.C. 518 (2013)

- “Because Hunter was never cited for a violation, we must conclude that plaintiffs lacked standing to bring a civil action” under the SPCA against Hunter.
- Notice of non-compliance ≠ notice of violation

## 2013 Legislature: 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	
SESSION 2013		1	
HOUSE BILL 74			
Short Title: Periodic Review and Expiration of Rules.		(Public)	
Sponsors: Representatives Mitty, Moffitt, Sammons, and Bryan (Primary Sponsors).			
For a complete list of sponsors, refer to the North Carolina General Assembly Web Site.			
Referred to: Regulatory Affairs.			
February 7, 2013			
A BILL TO BE ENTITLED			
1 AN ACT TO PROVIDE FOR THE PERIODIC REVIEW AND EXPIRATION OF RULES.			
2 The General Assembly of North Carolina enacts:			
3 SECTION 1. G.S. 150B-21.2(a) reads as rewritten:			
4 "(a) Notice of Text -- A notice of the proposed text of a rule must include all of the			
5 following:			
6 (1) The text of the proposed rule, unless the rule is a regulation without			
7 substantive changes to the existing rule proposed to keep a permanent rule			
8 final pending;			
9 (2) A short explanation of the reasons for the proposed rule and a link to the			
10 agency's Web site containing the information required by G.S. 150B-21.2(c);			
11 (3) A citation to the law that gives the agency the authority to adopt the rule;			
12 (4) The proposed effective date of the rule;			
13 (5) The date, time, and place of any public hearing scheduled on the rule;			
14 (6) Instructions on how a person may demand a public hearing on a proposed			
15 rule if the notice does not schedule a public hearing on the proposed rule and			
16 subsection (c) of this section requires the agency to hold a public hearing on			
17 the proposed rule when requested to do so;			
18 (7) The period of time during which and the person to whom written comments			
19 may be submitted on the proposed rule;			
20 (8) If a fiscal note has been prepared for the rule, a statement that a copy of the			
21 fiscal note can be obtained from the agency;			
22 (9) The procedure by which a person can object to a proposed rule and the			
23 requirements for submitting a proposed rule to the legislative review			
24 process.			
25 SECTION 2. Part 2 of Article 2A of Chapter 150B of the General Statutes is			
26 amended by adding a new section to read:			
27 "150B-21.2A. Expiration date of permanent rules.			
28 (a) Unless adopted pursuant to the provisions of G.S. 150B-21.2 and approved by the			
29 Commission pursuant to the provisions of Part 1 of Article 2A of the Constitution, a permanent rule			
30 expires on the later of any of the following:			
31 (1) December 31, 2014, for rules in Title 10A of the North Carolina			
32 Administrative Code;			
33 (2) December 31, 2015, for rules in Title 11A of the North Carolina			
34 Administrative Code.			
35			

# 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

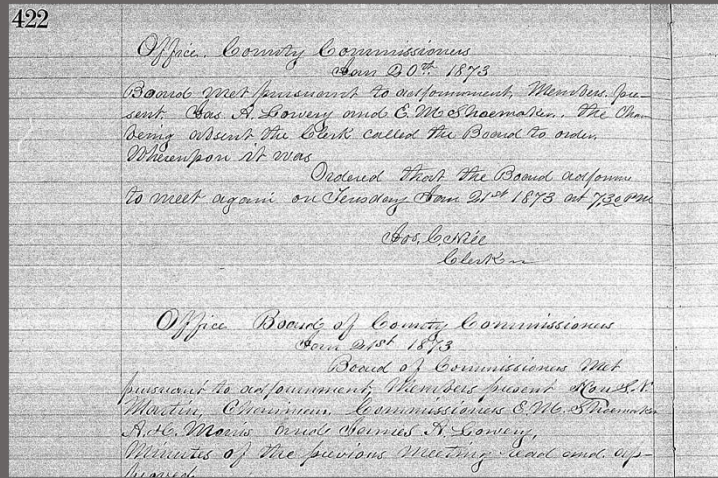
# H74 (SL 2013-413)

<p style="text-align: center;">GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2013 HOUSE BILL 74</p> <p>Short Title: Periodic Review and Expiration of Rules. (Public)</p> <p>Sponsors: Representatives Mitty, Moffitt, Samelsson, and Bryson (Primary Sponsors) For a complete list of sponsors, refer to the North Carolina General Assembly Web Site</p> <p>Referred to: Regulatory Reform</p> <p style="text-align: center;">February 7, 2013</p> <p>A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE PERIODIC REVIEW AND EXPIRATION OF RULES</p> <p>The General Assembly of North Carolina enacts:</p> <p>SECTION 1. G.S. 150B-21.3(a) reads as rewritten:</p> <p>(a) Notice of Text -- A notice of the proposed text of a rule must include all of the following:</p> <ol style="list-style-type: none"> <li>(1) The text of the proposed rule, unless the rule is a regulation without substantive changes to the existing rule proposed to keep a permanent rule final.</li> <li>(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-21.3(c).</li> <li>(3) A citation to the law that gives the agency the authority to adopt the rule.</li> <li>(4) The proposed effective date of the rule.</li> <li>(5) The date, time, and place of any public hearing scheduled on the rule.</li> <li>(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 (c) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.</li> <li>(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.</li> <li>(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.</li> <li>(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.</li> </ol> <p>SECTION 2. Part 2 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:</p> <p>§ 150B-21.3A. Expiration date of permanent rules.</p> <p>(a) Unless adopted 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 the Charter, a permanent rule expires on the later of any of the following:</p> <ol style="list-style-type: none"> <li>(1) December 31, 2016, for rules in Title 10A of the North Carolina Administrative Code.</li> <li>(2) December 31, 2017, for rules in Title 15A of the North Carolina Administrative Code.</li> </ol>	<p style="text-align: right;">Session 2013</p> <p>General Assembly of North Carolina</p> <ol style="list-style-type: none"> <li>1 (1) December 31, 2016, for rules in Title 10 of the North Carolina</li> <li>2 Administrative Code.</li> <li>3 (2) December 31, 2017, for all remaining rules, unless and to the extent the</li> <li>4 Governor, after consulting the rules review commission, determines</li> <li>5 implementation in this Article.</li> <li>6 (3) The rules expire on the effective date.</li> <li>7 (4) The rules expire on the adopted effective date.</li> <li>8 (5) The rules expire on the effective date of the first sunset determined by the rule.</li> <li>9 (b) The Commission shall establish a time for the submission of rules subject to</li> <li>10 expiration after consultation with the relevant agency.</li> <li>11 (c) The Governor, after consulting the rules review commission, shall establish a time for</li> <li>12 the sunset process.</li> <li>13</li> </ol> <p>SECTION 3. This act is effective when it becomes law.</p> <p style="text-align: center;">Page 2</p> <p style="text-align: right;">H74 (Edious 1)</p>
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# 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.”
- <http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=12>
- 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- Changes to G.S. §113A-64 (Civil Penalties)
- “A notice of assessment by a local government shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for hearing with the local government as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program.”

## H 74 (SL 2013-413) §33

- “(3) In determining the amount of the penalty, the Secretary or a local government shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government.
- Administrative Procedure Act, G.S. §150B Article 3-Administrative Hearings

## H 74 (SL 2013-413) §33

- (5) The clear proceeds of civil penalties collected by the Department or other State agency or a local government under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. ~~Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue.~~

## H 74 (SL 2013-413) §58

- DENR, ERC and Others to Study Review of Engineering Work
  - 1) role of professional engineers in direct review and supervision of environmental permitting programs
  - 2) mechanisms in place to prevent non PEs from unauthorized practice of engineering
  - 3) standard scope of review including any revisions beyond the statutory/regulatory requirements
  - 4) opportunities to eliminate unnecessary revisions
- Stay Tuned

## 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.

## 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.~~

## 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, the NCGA logo is displayed with the text "NORTH CAROLINA GENERAL ASSEMBLY". To the right of the logo is a search bar with fields for "FULL SITE SEARCH", "SEARCH BILL TEXT: 2013-2014 Session", "FIND A BILL: 2013-2014 Session", and "VIEW MEMBER INFO: Select a member". Below the search bar is a navigation menu with 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 chamber audio. On the right side, there are sections for "NCGA DIVISION LINKS" and "SHORTCUTS". At the bottom, there is a "News & Information" section and a "Legislative Calendar" for October 28, 2013, and October 29, 2013.

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

## Vollis Simpson Whirligigs

