

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 810*
PROPOSED COMMITTEE SUBSTITUTE S810-PCS15231-RO-33

Short Title: Regulatory Reform Act of 2012.

(Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

1 AN ACT TO (1) REESTABLISH THE JOINT LEGISLATIVE ADMINISTRATIVE
2 PROCEDURE OVERSIGHT COMMITTEE; (2) MAKE VARIOUS TECHNICAL AND
3 CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURES ACT; (3)
4 EXTEND THE EFFECTIVE DATE FOR CHANGES TO FINAL DECISION-MAKING
5 AUTHORITY IN CERTAIN CONTESTED CASES; (4) LIMIT THE PERIOD DURING
6 WHICH RECORDS OF UNCLAIMED PROPERTY MUST BE MAINTAINED; (5)
7 DIRECT AGENCIES TO SUBMIT A REPORT ON NOTICE GIVEN BEFORE
8 AUDITING OR EXAMINING A BUSINESS TO THE JOINT LEGISLATIVE
9 ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE; (6) CLARIFY THAT
10 THE DISCHARGE OF WASTE INTO WATERS OF THE STATE DOES NOT
11 INCLUDE THE RELEASE OF AIR CONTAMINANTS INTO THE OUTDOOR
12 ATMOSPHERE; (7) AUTHORIZE RATHER THAN REQUIRE THE COMMISSION
13 FOR PUBLIC HEALTH TO ADOPT RULES FOR THE TESTING OF WATER FROM
14 NEW DRINKING WATER WELLS FOR CERTAIN VOLATILE ORGANIC
15 COMPOUNDS; (8) DIRECT THE DEPARTMENT OF ENVIRONMENT AND
16 NATURAL RESOURCES TO TRACK AND REPORT ON PERMIT PROCESSING
17 TIMES; (9) DELAY THE EFFECTIVE DATE FOR COMPLIANCE WITH WADING
18 POOL FENCING REQUIREMENTS FROM JULY 1, 2012, TO JANUARY 1, 2013; AND
19 (10) DIRECT THE COMMISSION FOR PUBLIC HEALTH TO AMEND THE RULES
20 GOVERNING THE DURATION OF PERMITS FOR SANITARY LANDFILLS AND
21 THE PERIOD IN WHICH THOSE PERMITS ARE REVIEWED, AS RECOMMENDED
22 BY THE JOINT REGULATORY REFORM COMMITTEE.
23

24 The General Assembly of North Carolina enacts:

25 **SECTION 1.** Section 1.3 of S.L. 2011-291 is repealed.

26 **SECTION 2.** G.S. 150B-18 reads as rewritten:

27 **"§ 150B-18. Scope and effect.**

28 This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not
29 valid unless it is adopted in substantial compliance with this Article. An agency shall not seek
30 to implement or enforce against any person a policy, guideline, or other ~~nonbinding~~ interpretive
31 statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy,
32 guideline, or other ~~nonbinding~~ interpretive statement has not been adopted as a rule in
33 accordance with this Article."

34 **SECTION 3.** G.S. 150B-19.1 reads as rewritten:



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1 **"§ 150B-19.1. Requirements for agencies in the rule-making process.**

2 (a) In developing and drafting rules for adoption in accordance with this Article,
3 agencies shall adhere to the following principles:

4 (1) An agency may adopt only rules that are expressly authorized by federal or
5 State law and that are necessary to serve the public interest.

6 (2) An agency shall seek to reduce the burden upon those persons or entities
7 who must comply with the rule.

8 (3) Rules shall be written in a clear and unambiguous manner and must be
9 reasonably necessary to implement or interpret federal or State law.

10 (4) An agency shall consider the cumulative effect of all rules adopted by the
11 agency related to the specific purpose for which the rule is proposed. The
12 agency shall not adopt a rule that is unnecessary or redundant.

13 (5) When appropriate, rules shall be based on sound, reasonably available
14 scientific, technical, economic, and other relevant information. Agencies
15 shall include a reference to this information in the notice of text required by
16 G.S. 150B-21.2(c).

17 (6) Rules shall be designed to achieve the regulatory objective in a
18 cost-effective and timely manner.

19 (b) Each agency subject to this Article shall conduct an annual review of its rules to
20 identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the
21 principles set forth in subsection (a) of this section. The agency shall repeal any rule identified
22 by this review.

23 (c) Each agency subject to this Article shall post on its ~~Web site when the agency~~
24 ~~submits the notice of text for publication in accordance with G.S. 150B-21.2~~ Web site, no later
25 than the publication date of the notice of text in the North Carolina Register, all of the
26 following:

27 (1) The text of a proposed rule.

28 (2) An explanation of the proposed rule and the reason for the proposed rule.

29 (3) The federal certification required by subsection (g) of this section.

30 (4) Instructions on how and where to submit oral or written comments on the
31 proposed rule.

32 (5) Any fiscal note that has been prepared for the proposed rule.

33 ~~The agency shall maintain the information in a searchable database and shall periodically~~
34 ~~update this online information to reflect changes in the proposed rule or the fiscal note prior to~~
35 ~~adoption. If an agency proposes any change to a rule or fiscal note prior to the date it proposes~~
36 ~~to adopt a rule, the agency shall publish the proposed change on its Web site as soon as~~
37 ~~practicable after the change is drafted. If an agency's staff proposes any such change to be~~
38 ~~presented to the rule-making agency, the staff shall publish the proposed change on the~~
39 ~~agency's Web site as soon as practicable after the change is drafted.~~

40 (d) Each agency shall determine whether its policies and programs overlap with the
41 policies and programs of another agency. In the event two or more agencies' policies and
42 programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid
43 unnecessary, unduly burdensome, or inconsistent rules.

44 (e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to
45 the greatest extent possible. Prior to submission of a proposed rule for publication in
46 accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared
47 in connection with the proposed rule ~~with the rule-making body, and the rule-making body~~
48 ~~must~~ and approve the fiscal note before submission.

49 (f) If the agency determines that a proposed rule will have a substantial economic
50 impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to

1 the proposed rule. The alternatives may have been identified by the agency or by members of
2 the public.

3 (g) Whenever an agency proposes a rule that is purported to implement a federal law, or
4 required by or necessary for compliance with federal law, or on which the receipt of federal
5 funds is conditioned, the agency shall:

6 (1) Prepare a certification identifying the federal law requiring adoption of the
7 proposed rule. The certification shall contain a statement setting forth the
8 reasons why the proposed rule is required by federal law. If all or part of the
9 proposed rule is not required by federal law or exceeds the requirements of
10 federal law, then the certification shall state the reasons for that opinion.

11 (2) Post the certification on the agency Web site in accordance with subsection
12 (c) of this section.

13 (3) Maintain a copy of the federal law and provide to the Office of State Budget
14 and Management the citation to the federal law requiring or pertaining to the
15 proposed rule.

16 (h) Before an agency that is within the Governor's cabinet submits the proposed text of
17 a permanent rule change for publication in the North Carolina Register, the agency must submit
18 the text of the proposed rule change and an analysis of the proposed rule change to the Office
19 of State Budget and Management and obtain a certification from the Office that the agency
20 adhered to the principles set forth in this section. Before an agency that is within the
21 departments of the Council of State other than the Governor submits the proposed text of a
22 permanent rule change for publication in the North Carolina Register, the agency must submit
23 the text of the proposed rule change and an analysis of the proposed rule change to the
24 Commission and obtain a certification from the Commission that the agency adhered to the
25 principles set forth in this section. The Office of State Budget and Management or the
26 Commission, respectively, must respond to an agency's request for certification within 20 days
27 of receipt of the request."

28 **SECTION 4.** G.S. 150B-21.4(a) reads as rewritten:

29 "(a) State Funds. – Before an agency publishes in the North Carolina Register the
30 proposed text of a permanent rule change that would require the expenditure or distribution of
31 funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the
32 text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on
33 the proposed rule change to the Office of State Budget and Management and obtain
34 certification from the Office that the funds that would be required by the proposed rule change
35 are available. ~~The Office must also determine and certify that the agency adhered to the~~
36 ~~principles set forth in G.S. 150B-19.1.~~ The fiscal note must state the amount of funds that
37 would be expended or distributed as a result of the proposed rule change and explain how the
38 amount was computed. The Office of State Budget and Management must certify a proposed
39 rule change if funds are available to cover the expenditure or distribution required by the
40 proposed rule change."

41 **SECTION 5.** G.S. 150B-23.2(b) reads as rewritten:

42 "(b) Time of Collection. – All fees that are required to be assessed, collected, and
43 remitted under subsection (a) of this section shall be collected by the Office of Administrative
44 Hearings at the time of commencement of the contested case ~~(except in suits in forma~~
45 ~~pauperis)~~ except as may be allowed by rule to permit or complete late payment or in suits in
46 forma pauperis."

47 **SECTION 6.** G.S. 150B-23(a) reads as rewritten:

48 "(a) A contested case shall be commenced by paying a fee in an amount established in
49 G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except
50 as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who
51 files the petition shall serve a copy of the petition on all other parties and, if the dispute

1 concerns a license, the person who holds the license. A party who files a petition shall file a
2 certificate of service together with the petition. A petition shall be signed by a ~~party or a~~
3 ~~representative of the party~~ party, an attorney representing a party, or other representative of the
4 party as may specifically be authorized by law, and, if filed by a party other than an agency,
5 shall state facts tending to establish that the agency named as the respondent has deprived the
6 petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise
7 substantially prejudiced the petitioner's rights and that the agency:

- 8 (1) Exceeded its authority or jurisdiction;
- 9 (2) Acted erroneously;
- 10 (3) Failed to use proper procedure;
- 11 (4) Acted arbitrarily or capriciously; or
- 12 (5) Failed to act as required by law or rule.

13 The parties in a contested case shall be given an opportunity for a hearing without undue delay.
14 Any person aggrieved may commence a contested case hereunder.

15 A local government employee, applicant for employment, or former employee to whom
16 Chapter 126 of the General Statutes applies may commence a contested case under this Article
17 in the same manner as any other petitioner. The case shall be conducted in the same manner as
18 other contested cases under this Article."

19 **SECTION 7.** G.S. 150B-29(a) reads as rewritten:

20 "(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall
21 be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division
22 of the General Court of Justice shall be followed; but, when evidence is not reasonably
23 available under the rules to show relevant facts, then the most reliable and substantial evidence
24 available shall be admitted. On the judge's own motion, an administrative law judge may
25 exclude evidence that is inadmissible under this section. The party with the burden of proof in a
26 contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the
27 evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence
28 in order to preserve the right to object to its consideration by the administrative law judge in
29 making a ~~decision, by the agency in making a final decision,~~decision or by the court on judicial
30 review."

31 **SECTION 8.** Section 63 of S.L. 2011-398 reads as rewritten:

32 "**SECTION 63.** Sections 2 through 14 of this act become effective October 1, 2011, and
33 apply to rules adopted on or after that date. Sections 15 through 55 of this act become effective
34 January 1, 2012, and apply to contested cases commenced on or after that date. With regard to
35 contested cases affected by Section 55.2 of this act, the provisions of Sections 15 through 27 of
36 this act become effective when the United States Environmental Protection Agency approvals
37 referenced in Section 55.2 have been issued or ~~June 15, 2012,~~October 1, 2012, whichever
38 occurs first. With regard to contested cases affected by Section 55.1 of this act, the provisions
39 of Sections 15 through 27 and Sections 32 and 33 of this act become effective when the waiver
40 referenced in Section 55.1 has been granted or February 1, 2013, whichever occurs first. Unless
41 otherwise provided elsewhere in this act, the remainder of this act is effective when it becomes
42 law."

43 **SECTION 9.** G.S. 116B-73(a) reads as rewritten:

44 "(a) Except as otherwise provided in subsection (b) of this section, a holder required to
45 file a report under G.S. 116B-60 shall maintain the records containing the information required
46 to be included in the report for ~~40 years~~ five years after the holder files the report, unless a
47 shorter period is provided by rule of the Treasurer."

48 **SECTION 10.** Each State agency, as defined in G.S. 150B-2(1a), shall submit a
49 report of the audit, examination, and inspection functions performed by the agency and the
50 amount of notice, if any, that the agency is required, by law or rule, to provide to a business or
51 individual prior to conducting the audit, examination, or inspection. The agency shall submit

1 the report to the Joint Legislative Administrative Procedure Oversight Committee, as
2 reestablished by Section 1 of this act, no later than October 31, 2012.

3 **SECTION 11.** G.S. 143-213 reads as rewritten:

4 **"§ 143-213. Definitions.**

5 Unless the context otherwise requires, the following terms as used in this Article and
6 Articles 21A and 21B of this Chapter are defined as follows:

7 ...
8 (9) Whenever reference is made in this Article to "discharge" or the "discharge
9 of waste," it shall be interpreted to include discharge, spillage, leakage,
10 pumping, placement, emptying, or dumping into waters of the State, or into
11 any unified sewer system or arrangement for sewage disposal, which system
12 or arrangement in turn discharges the waste into the waters of the State. A
13 reference to "discharge" or the "discharge of waste" shall not be interpreted
14 to include "emission" as defined in subdivision (12) of this section.

15 ...
16 (12) The term "emission" means a release into the outdoor atmosphere of air
17 contaminants.

18"

19 **SECTION 12.(a)** Section 1 of S.L. 2008-198, S.L. 2009-124, and Section 10.10A
20 of S.L. 2010-31 are repealed.

21 **SECTION 12.(b)** G.S. 87-97 reads as rewritten:

22 **"§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

23 ...
24 (h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion
25 for a newly constructed private drinking water well, the local health department shall test the
26 water obtained from the well or ensure that the water obtained from the well has been sampled
27 and tested by a certified laboratory in accordance with rules adopted by the Commission for
28 Public Health. The water shall be tested for the following parameters: arsenic, barium,
29 cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates,
30 nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

31 (i) Commission for Public Health to Adopt Drinking Water Testing Rules. – The
32 Commission for Public Health shall adopt rules governing the sampling and testing of well
33 water and the reporting of test results. The rules shall allow local health departments to
34 designate third parties to collect and test samples and report test results. The rules shall also
35 provide for corrective action and retesting where appropriate. The Commission for Public
36 Health may by rule require testing for additional ~~parameters~~ parameters, including volatile
37 organic compounds, if the Commission makes a specific finding that testing for the additional
38 parameters is necessary to protect public health. If the Commission finds that testing for certain
39 volatile organic compounds is necessary to protect public health and initiates rule making to
40 require testing for certain volatile organic compounds, the Commission shall consider all of the
41 following factors in the development of the rule: (i) known current and historic land uses
42 around well sites and associated contaminants; (ii) known contaminated sites within a given
43 radius of a well and any known data regarding dates of contamination, geology, and other
44 relevant factors; (iii) any GIS-based information on known contamination sources from
45 databases available to the Department of Environment and Natural Resources; and (iv) visual
46 on-site inspections of well sites.

47"

48 **SECTION 13.** Part 1 of Article 7 of Chapter 143B of the General Statutes is
49 amended by adding a new section to read:

50 **"§ 143B-279.17. Tracking and report on permit processing times.**

1 The Department of Environment and Natural Resources shall track the time required to
2 process all permit applications received by the Department. The processing time tracked shall
3 include (i) the total processing time from when an initial permit application is received to
4 issuance or denial of the permit and (ii) the processing time from when a complete permit
5 application is received to issuance or denial of the permit. No later than March 1 of each year,
6 the Department shall report to the Fiscal Research Division of the General Assembly and the
7 Environmental Review Commission on the permit processing times required to be tracked
8 pursuant to this section."

9 **SECTION 14.** Section 3(b) of S.L. 2011-39 reads as rewritten:

10 "**SECTION 3.(b)** Wading Pool Fence Compliance. – From the effective date of this act
11 through ~~July 1, 2012,~~ January 1, 2013, the Department of Environment and Natural Resources
12 shall not require owners and operators of public swimming pools to comply with 15A NCAC
13 18A .2531(a)(7)."

14 **SECTION 15.** No later than July 1, 2013, the Commission for Public Health shall
15 adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to
16 construct a five-year phase of landfill development and apply to amend the permit to construct
17 subsequent five-year phases of landfill development; or (ii) apply for a permit to construct a
18 10-year phase of landfill development and apply to amend the permit to construct subsequent
19 10-year phases of landfill development, with a limited review of the permit five years after
20 issuance of the initial permit and five years after issuance of each amendment for subsequent
21 phases of development. In developing these rules, the Department of Environment and Natural
22 Resources shall examine the current fee schedule for permits for sanitary landfills set forth
23 under G.S. 130A-295.8, and formulate recommendations for adjustments to the current fee
24 schedule sufficient to address any additional demands associated with review of permits issued
25 for 10-year phases of landfill development. The Department shall report its findings and
26 recommendations, including any legislative proposals, to the Environmental Review
27 Commission on or before December 1, 2012. The rules required by this section shall not
28 become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as
29 necessary to address any additional demands associated with review of permits issued for
30 10-year phases of landfill development.

31 **SECTION 16.** This act is effective when it becomes law.