

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE DRS45108-MHz-186A (05/09)

Short Title: Reform Agency Review of Engineering Work. (Public)

Sponsors: Senator Bingham (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REFORM THE PROCESS BY WHICH REGULATORY AUTHORITIES
3 REVIEW SUBMITTALS OF APPLICATIONS FOR PERMITS, LICENSES, AND
4 APPROVALS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
5 COMMISSION.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Definitions. The following definitions apply in this act:

- 8 (1) Practice of Engineering. – As defined in G.S. 89C-3.
9 (2) Professional Engineer. – As defined in G.S. 89C-3.
10 (3) Regulatory Authority. – The Department of Environment and Natural
11 Resources, the Department of Health and Human Services, the Department
12 of Transportation, and any unit of local government operating a program (i)
13 that grants permits, licenses, or approvals to the public and (ii) that is either
14 approved by or delegated from the Department of Environment and Natural
15 Resources, the Department of Health and Human Services, or the
16 Department of Transportation.
17 (4) Regulatory Submittal. – An application or other submittal to a Regulatory
18 Authority for a permit, license, or approval. In the case of a unit of local
19 government, Regulatory Submittal shall mean an application or submittal
20 submitted to a program approved by or delegated from the Department of
21 Environment and Natural Resources, the Department of Health and Human
22 Services, or the Department of Transportation.
23 (5) Submitting Party. – The person submitting the Regulatory Submittal to the
24 Regulatory Authority.
25 (6) Working Job Title. – The job title a Regulatory Authority uses to publicly
26 identify an employee with job duties that include the review of Regulatory
27 Submittals. Working Job Title does not mean job titles that are used by the
28 human resources department of a Regulatory Authority to classify jobs
29 containing technical aspects related to the Practice of Engineering.

30 **SECTION 2.** Standardize Certain Regulatory Review Procedures. – No later than
31 December 1, 2014, each Regulatory Authority shall review and, where necessary, revise its
32 procedures for review of Regulatory Submittals to accomplish the following:

- 33 (1) Standardize the provision of review and comments on Regulatory Submittals
34 so that revisions or requests for additional information that are required by
35 the Regulatory Authority in order to proceed with the permit, license, or
36 approval are clearly delineated from revisions or requests for additional



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1 information that constitute suggestions or recommendations by the
2 Regulatory Authority. For purposes of this subdivision, "suggestions or
3 recommendations by the Regulatory Authority" means comments made by
4 the reviewer of the Regulatory Submittal to the Submitting Party that make a
5 suggestion or recommendation for consideration by the Submitting Party but
6 that are not required by the Regulatory Authority in order to proceed with
7 the permit, license, or approval.

- 8 (2) With respect to revisions or requests for additional information that are
9 required by the Regulatory Authority in order to proceed with the permit,
10 license, or approval, the Regulatory Authority shall identify the statutory or
11 regulatory authority for the requirement.

12 **SECTION 3.(a)** Informal Review. – No later than December 1, 2014, each
13 Regulatory Authority shall create a process for each regulatory program administered by the
14 Regulatory Authority for an informal internal review at the request of the Submitting Party in
15 each of the following circumstances:

- 16 (1) The inclusion in a Regulatory Submittal of a design or practice sealed by a
17 Professional Engineer but not included in the Regulatory Authority's existing
18 guidance, manuals, or standard operating procedures. This review should
19 first be conducted by the reviewing employee's supervisor or, in the case of a
20 Regulatory Authority that is a unit of local government, either the reviewing
21 employee's supervisor or the delegating or approving State agency. If this
22 initial review was not conducted by a Professional Engineer, then the
23 Submitting Party may request review by (i) a Professional Engineer on the
24 staff of the Regulatory Authority or (ii) the delegating or approving State
25 agency in the case of a Regulatory Authority that is a unit of local
26 government. If the Regulatory Authority or delegating or approving State
27 agency does not employ a Professional Engineer qualified and competent to
28 perform the review, it may provide for review by a consulting Professional
29 Engineer selected from a list developed and maintained by the Reviewing
30 Authority. The Regulatory Authority may charge the Submitting Party for
31 the costs of the review by the consulting Professional Engineer. Nothing in
32 this subdivision is intended to limit the authority of the Regulatory Authority
33 to make a final decision with regard to a Regulatory Submittal following the
34 reviews described in this subdivision.

- 35 (2) A disagreement between the reviewer of the Regulatory Submittal and the
36 Submitting Party regarding whether the statutory or regulatory authority
37 identified by the Regulatory Authority for revisions or requests for
38 additional information designated as "required" under the procedures set
39 forth in Section 2 of this act justifies a required change.

40 **SECTION 3.(b)** Scope. – Nothing in this section shall limit or abrogate any rights
41 available under Chapter 150B of the General Statutes to any Submitting Party.

42 **SECTION 4.(a)** Pilot Study. – No later than March 1, 2015, the Department of
43 Environment and Natural Resources shall complete a pilot study on the Pretreatment,
44 Emergency Response and Collection System (PERCS) wastewater collection system permitting
45 program and the stormwater permitting program and perform the following activities with the
46 assistance and cooperation of the North Carolina Board of Examiners for Engineers and
47 Surveyors and the Professional Engineers of North Carolina:

- 48 (1) Produce an inventory of work activities associated with the operation of each
49 regulatory program.
50 (2) Determine the work activities identified under subdivision (1) of this section
51 that constitute the Practice of Engineering.

- (3) Develop recommendations for ensuring that work activities constituting the Practice of Engineering are conducted with the appropriate level of oversight.

SECTION 4.(b) Report. – The Department shall report the results of the pilot study to the Environmental Review Commission no later than April 15, 2015.

SECTION 5. Review of Working Job Titles. – No later than December 1, 2014, each Regulatory Authority shall do the following:

- (1) Review the Working Job Titles of every employee with job duties that include the review of Regulatory Submittals.
- (2) Propose revisions to the Working Job Titles identified under subdivision (1) of this section or other administrative measures that will eliminate the public identification as "engineers" of persons reviewing Regulatory Submittals who are not Professional Engineers.

SECTION 6.(a) Initial Report. – Each Regulatory Authority shall report to the Environmental Review Commission prior to the convening of the 2015 Regular Session of the 2015 General Assembly on implementation of the following, if applicable:

- (1) The standardized procedures required by Section 2 of this act.
- (2) The informal review process required by Section 3 of this act.
- (3) The review of Working Job Titles required by Section 5 of this act.

SECTION 6.(b) Annual Report. – Beginning in 2016, each Regulatory Authority shall annually report to the Environmental Review Commission no later than January 15 on the informal review process required by Section 3 of this act. The report shall include the number of times the informal review process was utilized and the outcome of the review.

SECTION 6.(c) Annual Reporting Sunset. – Section 6(b) of this act expires on January 1, 2019.

SECTION 7. This act is effective when it becomes law.