

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 14
PROPOSED HOUSE COMMITTEE SUBSTITUTE S14-PCS35034-LR-1

Short Title: Acad. Standards/Rules Review/Coal Ash/Funds.

(Public)

Sponsors:

Referred to:

February 2, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FUNDS FOR THE LITIGATION EXPENSES OF THE RULES REVIEW COMMISSION; TO PROVIDE FUNDS FOR THE OPERATING EXPENSES OF THE ACADEMIC STANDARDS REVIEW COMMISSION; TO REQUIRE THAT THE ACADEMIC STANDARDS REVIEW COMMISSION POST CERTAIN PUBLIC RECORDS ON ITS WEB SITE; TO PROVIDE THAT A STATE OFFICER MAY SERVE ON THE ECONOMIC DEVELOPMENT PARTNERSHIP BOARD; TO CLARIFY COAL ASH MANAGEMENT COMMISSION APPROPRIATIONS; TO CLARIFY THAT THE PRACTICE OF ENGINEERING DOES NOT INCLUDE THE DEVELOPMENT OF A DAM EMERGENCY ACTION PLAN; TO EXTEND THE DEADLINE FOR THE SUBMISSION OF EMERGENCY ACTION PLANS FOR DAMS NOT ASSOCIATED WITH COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS TO DECEMBER 31, 2015; AND TO LIMIT THE USE OF FUNDS APPROPRIATED TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR HEALTH INFORMATION EXCHANGE.

The General Assembly of North Carolina enacts:

SECTION 1. Of the funds appropriated to the Department of Public Instruction for the 2014-2015 fiscal year, the Department shall transfer the sum of one hundred thousand dollars (\$100,000) to the Office of Administrative Hearings to be allocated to the Rules Review Commission, created by G.S. 143B-30.1, to pay for any litigation costs incurred in the defense of *North Carolina State Board of Education v. The State of North Carolina and The Rules Review Commission*, Wake County Superior Court, File No. 14 CVS 14791 (filed November 7, 2014). These funds shall not revert at the end of the 2014-2015 fiscal year but shall remain available during the 2015-2016 fiscal year for expenditure in accordance with this section.

SECTION 2. Of the funds appropriated to the Department of Public Instruction for the 2014-2015 fiscal year, the Department shall transfer the sum of two hundred seventy-five thousand dollars (\$275,000) to the Department of Administration to support the operations of the Academic Standards Review Commission established in S.L. 2014-78. From these funds, an amount equal to the total of all costs incurred by the Department of Administration prior to the enactment of this act to support the operations of the Commission shall be credited to the Department. Expenditure of the remainder of these funds shall be made upon authorization by the Commission, only for the following:

- (1) Administrative assistance, including professional and clerical staff and any contracts for professional, clerical, and consultant services. Consultant services may include contracts with qualified experts on academic standards



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1 that may be used as an alternative to the Common Core Standards, including
2 other state academic standards.

3 (2) Technical assistance, including meeting rooms, telephones, office space,
4 equipment, and supplies provided by the Department of Administration in
5 accordance with Section 2(f) of S.L. 2014-78.

6 (3) Per diem, subsistence, and travel allowances provided to Commission
7 members in accordance with G.S. 138-5, 138-6, or 120-3.1, as appropriate.

8 **SECTION 3.** The funds transferred to the Department of Administration in Section
9 2 of this act shall not revert at the end of the 2014-2015 fiscal year but shall remain available
10 for expenditure in accordance with that section until the Commission terminates on December
11 31, 2015, or upon the filing of its final report, whichever occurs first. Any unexpended,
12 unencumbered balance of these funds shall revert to the General Fund on June 30, 2016.

13 **SECTION 4.** The General Assembly finds that considerable resources have already
14 been expended to allow teachers and members of the public to make known their opinions and
15 concerns surrounding adoption of academic standards. Specifically, the General Assembly
16 finds that (i) on March 20, 2014, a Legislative Research Commission committee heard more
17 than two hours of comment from stakeholders and interested members of the public on the
18 subject; and (ii) on October 20, 2014, the Department of Public Instruction surveyed every
19 public school teacher in the State on the subject. Accordingly, funds transferred pursuant to
20 Section 2 of this act shall not be used by the Academic Standards Review Commission to
21 conduct any survey related to the adoption of academic standards or to contract for the
22 performance of such a survey by any third party.

23 **SECTION 5.** Notwithstanding any other provision of law, the Academic Standards
24 Review Commission is subject to the Public Records Act, Chapter 132 of the General Statutes,
25 and the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes. Additionally,
26 the Commission shall have the duty to comply with all of the following:

27 (1) All minutes, agendas, handouts, and presentations created during the course
28 of the Commission's work, and any audio recordings of the Commission's
29 meetings, shall be published on the Commission's Web site.

30 (2) All official meetings, as that term is defined in G.S. 143-318.10, of the
31 Commission shall be streamed live over the Internet in a manner that allows
32 members of the public to listen to the proceedings.

33 **SECTION 6.** In implementing Section 2 of this act, the State Board of Education
34 shall make reductions to the operating budget of the Department of Public Instruction and shall
35 make no reduction to funding or positions for:

36 (1) The North Carolina Center for Advancement of Teaching.

37 (2) The Eastern North Carolina School for the Deaf, the North Carolina School
38 for the Deaf, and the Governor Morehead School.

39 (3) Communities in Schools of North Carolina, Inc.

40 (4) Teach for America, Inc.

41 (5) Beginnings For Parents of Children Who Are Deaf or Hard of Hearing, Inc.

42 **SECTION 7.** G.S. 62-302.1(d) reads as rewritten:

43 **"§ 62-302.1. Regulatory fee for combustion residuals surface impoundments.**

44 ...

45 (d) Use of Proceeds. – A special fund in the Office of State Treasurer and the Coal Ash
46 Management Commission is created. The fees collected pursuant to this section and all other
47 funds received by the Coal Ash Management Commission shall be deposited in the Coal
48 Combustion Residuals Management Fund. The Fund shall be placed in an interest-bearing
49 account, and any interest or other income derived from the Fund shall be credited to the Fund.
50 ~~Moneys in the Fund shall only be spent pursuant to appropriation by the General Assembly.~~
51 Subject to appropriation by the General Assembly, twenty-six and one-half percent (26.5%) of

1 the moneys in the Fund shall be used by the Coal Ash Management Commission and the
2 remainder shall be used by the Department of Environment and Natural Resources. The
3 Commission shall be subject to the provisions of the State Budget Act, except that no
4 unexpended surplus of the Coal Combustion Residuals Management Fund shall revert to the
5 General Fund. All funds credited to the Fund shall be used only to pay the expenses of the Coal
6 Ash Management Commission and the Department of Environment and Natural Resources in
7 providing oversight of coal combustion residuals."

8 **SECTION 8.** Sections 15(c) through 15(e) of S.L. 2014-122 read as rewritten:

9 **"SECTION 15.(c)** ~~Twenty five~~Up to twenty-five receipt-supported positions are created in
10 the Department of Environment and Natural Resources to carry out the duties in Part 2I of
11 Article 9 of Chapter 130A of the General Statutes. There is appropriated from the Coal
12 Combustion Residuals Management Fund the sum of one million seven hundred fifty thousand
13 dollars (\$1,750,000) to the Department of Environment and Natural Resources to support the
14 positions for the 2014-2015 fiscal year.

15 **SECTION 15.(d)** Five receipt-supported positions are created in the Division of
16 Emergency Management of the Department of Public Safety to carry out the duties in
17 G.S. 130A-309.202. ~~The funds remaining in the Coal Combustion Residuals Management Fund~~
18 ~~after the appropriation to the Department of Environment and Natural Resources are~~
19 ~~appropriated to the Department of Public Safety for the 2014-2015 fiscal year. There is~~
20 ~~appropriated from the Coal Combustion Residuals Management Fund the sum of six hundred~~
21 ~~thirty thousand dollars (\$630,000) to the Department of Public Safety to support the positions~~
22 ~~for the 2014-2015 fiscal year.~~ These positions shall be used to provide assistance to the Coal
23 Ash Management Commission established by G.S. 130A-309.202, as enacted by Section 3(a)
24 of this act. The positions shall be assigned in the following manner: one of the positions shall
25 be the executive director of the staff, two positions shall be assigned as analysts, one position
26 shall be assigned as a technician, and one position shall be assigned as administrative. The
27 Division of Emergency Management in the Department of Public Safety shall consult with the
28 Chair of the Commission in hiring the staff for the Coal Ash Management Commission. The
29 Division of Emergency Management in the Department of Public Safety shall provide support
30 to the Commission until the staff of the Commission is hired, including the designation of an
31 individual to serve as an interim executive director of the staff.

32 **SECTION 15.(e)** If the moneys in the Coal Combustion Residuals Management Fund are
33 insufficient to support the appropriations set out in subsection 15(c) and subsection 15(d) of
34 this section for the 2014-2015 fiscal year, then each appropriation is hereby reduced on a
35 proportional basis.

36 ~~**SECTION 15.(e)**~~**SECTION 15.(f)** Subsection (a) of this section becomes effective July 1,
37 2014, and expires April 1, 2030, and applies to jurisdictional revenues earned on or after July 1,
38 2014, and before April 1, 2030. The remainder of this section becomes effective July 1, 2014."

39 **SECTION 9.(a)** G.S. 89C-3(6) reads as rewritten:

40 **"§ 89C-3. Definitions.**

41 The following definitions apply in this Chapter:

42 ...

43 (6) Practice of engineering. –

- 44 a. Any service or creative work, the adequate performance of which
45 requires engineering education, training, and experience, in the
46 application of special knowledge of the mathematical, physical, and
47 engineering sciences to such services or creative work as
48 consultation, investigation, evaluation, planning, and design of
49 engineering works and systems, planning the use of land and water,
50 engineering surveys, and the observation of construction for the
51 purposes of assuring compliance with drawings and specifications,

1 including the consultation, investigation, evaluation, planning, and
 2 design for either private or public use, in connection with any
 3 utilities, structures, buildings, machines, equipment, processes, work
 4 systems, projects, and industrial or consumer products or equipment
 5 of a mechanical, electrical, hydraulic, pneumatic or thermal nature,
 6 insofar as they involve safeguarding life, health or property, and
 7 including such other professional services as may be necessary to the
 8 planning, progress and completion of any engineering services.

9 A person shall be construed to practice or offer to practice
 10 engineering, within the meaning and intent of this Chapter, who
 11 practices any branch of the profession of engineering; or who, by
 12 verbal claim, sign, advertisement, letterhead, card, or in any other
 13 way represents the person to be a professional engineer, or through
 14 the use of some other title implies that the person is a professional
 15 engineer or that the person is licensed under this Chapter; or who
 16 holds the person out as able to perform, or who does perform any
 17 engineering service or work not exempted by this Chapter, or any
 18 other service designated by the practitioner which is recognized as
 19 engineering.

- 20 b. The term "practice of engineering" shall not be construed to permit
 21 the location, description, establishment or reestablishment of
 22 property lines or descriptions of land boundaries for conveyance. The
 23 term does not include the assessment of an underground storage tank
 24 required by applicable rules at closure or change in service unless
 25 there has been a discharge or release of the product from the tank.
 26 The term does not include the development of an Emergency Action
 27 Plan pursuant to G.S. 143-215.31."

28 **SECTION 9.(b)** Section 8(b) of S.L. 2014-122 reads as rewritten:

29 "**SECTION 8.(b)** Notwithstanding G.S. 143-215.31, as amended by Section 8(a) of this
 30 act, the owners of all high-hazard dams and intermediate-hazard dams associated with coal
 31 combustion residuals surface impoundments, as defined by G.S. 130A-309.201, in operation on
 32 the effective date of this act shall submit their proposed Emergency Action Plans to the
 33 Department of Environment and Natural Resources and the Department of Public Safety no
 34 later than March 1, 2015. Notwithstanding G.S. 143-215.31, as amended by Section 8(a) of this
 35 act, the owners of all high-hazard dams and intermediate-hazard dams not associated with coal
 36 combustion residuals surface impoundments, as defined by G.S. 130A-309.201, in operation on
 37 the effective date of this act shall submit their proposed Emergency Action Plans to the
 38 Department of Environment and Natural Resources and the Department of Public Safety no
 39 later than December 31, 2015."

40 **SECTION 10.** G.S. 143B-431.01(d)(2)(c) reads as rewritten:

41 "(d) Limitations. – Prior to contracting with a North Carolina nonprofit corporation
 42 pursuant to this section and in order for the North Carolina nonprofit corporation to receive
 43 State funds, the following conditions shall be met:

- 44 ...
 45 (2) The nonprofit corporation adheres to the following governance provisions
 46 related to its governing board:

- 47 ...
 48 c. No State ~~officer~~ or employee may serve on the board.

49"

50 **SECTION 11.(a)** Notwithstanding any other provision of law to the contrary, the
 51 sum of two million dollars (\$2,000,000) appropriated to the Department of Health and Human

1 Services, Division of Central Management and Support, for the health information exchange
2 for the 2014-2015 fiscal year shall be nonrecurring. The Department shall not, under any
3 circumstances, use any portion of this two million dollars (\$2,000,000) in nonrecurring funds
4 for any purpose not expressly authorized under section 12A.2 of S.L. 2014-100, as amended by
5 this act.

6 **SECTION 11.(b)** Section 12A.2 of S.L. 2014-100 reads as rewritten:

7 ~~"SECTION 12A.2.(a) It is the intent of the General Assembly:~~

- 8 ~~(1) To maximize receipt of federal funds for administration and support of the~~
9 ~~statewide health information exchange network (HIE Network).~~
- 10 ~~(2) To allow the North Carolina Health Information Exchange (NC HIE), the~~
11 ~~nonprofit corporation responsible for overseeing and administering the HIE~~
12 ~~Network, to receive the State's share of available federal funds for~~
13 ~~administration and support of the HIE Network in order to reduce the~~
14 ~~operating costs of the HIE Network by an amount sufficient to allow for the~~
15 ~~elimination or reduction of the participation fee the NC HIE currently~~
16 ~~imposes on hospitals required to connect to the HIE Network pursuant to~~
17 ~~G.S. 90-413.3A.~~
- 18 ~~(3) Beginning with the 2015-2016 fiscal year, to make the Department of Health~~
19 ~~and Human Services, Division of Central Management and Support,~~
20 ~~responsible for using State funds to draw down available matching federal~~
21 ~~funds for administration and support of the HIE Network.~~

22 **SECTION 12A.2.(b)** From the nonrecurring funds appropriated in this act to the
23 Department of Health and Human Services, Division of Central Management and Support, for
24 the health information exchange for the 2014-2015 fiscal year, the Department shall allocate to
25 the North Carolina Health Information ~~Exchange, Exchange~~ (NC HIE), a nonprofit corporation,
26 an amount determined by the Department and the State Chief Information Officer (SCIO) to be
27 sufficient to represent the State share for the maximum amount of approved federal matching
28 funds for allowable Medicaid administrative costs related to the HIE Network, reasonably
29 necessary to fund the following monthly operating expenses incurred or encumbered by the
30 NCHIE during the period commencing February 1, 2015, and ending June 30, 2015:

- 31 (1) Software vendor maintenance, hosting, and licensing costs due under the
32 technology vendor contract currently in effect between NCHIE and Orion.
- 33 (2) NCHIE payroll costs.
- 34 (3) Contract labor costs and other expenses to sustain the current operations of
35 the NC HIE and to complete the process of connecting to the HIE Network
36 the 23 hospitals that, as of February 2015, had initiated the connection
37 process. For the purpose of this section, "HIE Network" is as defined in
38 G.S. 90-413.3.

39 **SECTION 12A.2.(b1)** The NC HIE shall not use any portion of the funds allocated to the
40 NC HIE pursuant to subsection (b) of this section for expenses incurred or encumbered prior to
41 February 1, 2015, or for any other purpose not expressly authorized under subsection (b) of this
42 section.

43 **SECTION 12A.2.(b2)** In addition to the allocations authorized under subsection (b) of this
44 section, the Department may use these nonrecurring funds for the following purposes:

- 45 (1) To make debt payments on behalf of the NC HIE which are determined by
46 the Department and the SCIO to be reasonably necessary to sustain the
47 operations of the software vendor.
- 48 (2) To conduct the assessment required under Section 12A.2(c)(2) of this act.

49 **SECTION 12A.2.(c)** ~~By March 1, 2015, the NC HIE shall report to the Joint Legislative~~
50 ~~Oversight Committee on Health and Human Services, the Joint Legislative Oversight~~
51 ~~Committee on Information Technology, and the Fiscal Research Division~~ May 1, 2015, the

1 Department shall submit both of the following to the House Appropriations Subcommittee on
2 Health and Human Services, the Senate Appropriations Committee on Health and Human
3 Services, the Joint Legislative Oversight Committees on Health and Human Services and
4 Information Technology, and the Fiscal Research Division:

5 (1) A report on its use of (i)all State appropriations allocated to or on behalf of
6 the NC HIE pursuant to this section and (ii) federal matching funds received
7 by the NC HIE for costs related to the HIE Network. The report shall include
8 a detailed, audited report of all State and federal funds received by the NC
9 HIE and all expenditures from these funds.section.

10 (2) In conjunction with the Office of the SCIO and the North Carolina
11 Government Data Analytics Center, an assessment of the existing
12 functionality, structure, and operation of the HIE Network.

13 **SECTION 12A.2.(d)** By September 1, 2015, the Department, in conjunction with the
14 Office of the SCIO and the North Carolina Government Data Analytics Center, shall submit
15 both of the following to the Joint Legislative Oversight Committees on Health and Human
16 Services and Information Technology:

17 (1) An assessment of the best business model and operational structure for
18 administering a statewide health information exchange network in this State.

19 (2) A recommendation as to whether the NC HIE should continue to oversee
20 and administer this State's HIE Network."

21 **SECTION 12.** Sections 7 and 8 of this act become effective July 1, 2014. Section 9
22 of this act is effective retroactively to September 20, 2014. Section 11 of this act is effective
23 when it becomes law or June 30, 2015, whichever is earlier. The remainder of this act is
24 effective when it becomes law.