

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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BILL DRAFT 2013-MHz-186 [v.14] (02/18)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Reform Agency Review of Engineering Work.

(Public)

Sponsors: (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
14 delegated from the Department of Environment and Natural Resources, the
15 Department of Health and Human Services, or the Department of
16 Transportation.

17 (4) Regulatory Submittal. – An application or other submittal to a Regulatory
18 Authority for a permit, license, or approval.

19 (5) Submitting Party. – The person submitting the Regulatory Submittal to the
20 Regulatory Authority

21 **SECTION 2.** Standardize Certain Regulatory Review Procedures. – No later than
22 December 1, 2014, each Regulatory Authority shall revise its procedures for review of
23 Regulatory Submittals to accomplish the following:

24 (1) Standardize the provision of review and comments on Regulatory Submittals
25 so that revisions or requests for additional information that are required by
26 the Regulatory Authority in order to proceed with the permit, license, or
27 approval are clearly delineated from revisions or requests for additional
28 information that constitute suggestions or recommendations by the
29 Regulatory Authority. For purposes of this subdivision, "suggestions or
30 recommendations by the Regulatory Authority" means comments made by
31 the reviewer of the Regulatory Submittal to the Submitting Party that make a
32 suggestion or recommendation for consideration by the Submitting Party but
33 that are not required by the Regulatory Authority in order to proceed with
34 the permit, license, or approval.



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

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

- (1) The inclusion in a Regulatory Submittal of a new or innovative design or practice sealed by a Professional Engineer but not included in the Regulatory Authority's existing guidance, manuals, or standard operating procedures. This review should be conducted by a Professional Engineer. If the Regulatory Authority does not employ a Professional Engineer qualified and competent to perform the review, it may provide for review by a consulting Professional Engineer retained by the Regulatory Authority and paid for by the Submitting Party. Nothing in this subdivision is intended to limit the authority of the Regulatory Authority to make a final decision with regard to a Regulatory Submittal.
- (2) A disagreement between the reviewer of the Regulatory Submittal and the Submitting Party regarding the statutory or regulatory authority for revisions or requests for additional information designated as "required" under the procedures set forth in Section 2 of this act.

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

SECTION 4. Pilot study. – No later than December 1, 2014, the Department of Environment and Natural Resources shall complete a pilot study on the Pretreatment, Emergency Response and Collection System (PERCS) wastewater collection system permitting program and the stormwater permitting program and perform the following activities with the assistance and cooperation of the North Carolina Board of Examiners for Engineers and Surveyors and the Professional Engineers of North Carolina:

- (1) Produce an inventory of work activities associated with the operation of each regulatory program.
- (2) Determine the work activities identified under subdivision (1) of this section 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 5. Revision of job titles. – No later than December 1, 2014, each Regulatory Authority shall do the following:

- (1) Review the job titles of every employee with job duties that include the review of Regulatory Submittals.
- (2) Propose revisions to the job duties or job titles identified under subdivision (1) of this Section or other administrative measures that will eliminate to the extent practicable 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 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 pilot study required by Section 4 of this act.
- (4) The revision of job titles required by Section 5 of this act.

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

5 **SECTION 6.(c).** Allowance for Reporting by Units of Local Government. –Units
6 of local government considered Regulatory Authorities under this act may meet the reporting
7 requirements of this section through joint submission of single reports by the North Carolina
8 League of Municipalities and the North Carolina Association of County Commissioners on
9 behalf of their members. The reports shall provide a particularized assessment regarding the
10 progress of each local government Regulatory Authority in meeting the requirements of this
11 act.

12 **SECTION 6.(d).** Annual Reporting Sunset. – Subsection 6.(b) of this Section
13 expires on January 1, 2019.

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