



ENVIRONMENTAL REVIEW COMMISSION
March 12, 2014
Room 643 of the Legislative Office Building

The Environmental Review Commission (ERC or Commission) met on Wednesday, October 12, 2014 at 9:30 AM. The meeting was held in Room 643 of the Legislative Office Building. Representative Mike Hager presided.

Members present were: Senator Brent Jackson, Chair, Representative Mike Hager, Chair, Representative Ruth Samuelson, Chair; Senator Austin M. Allran, Senator Andrew Brock, Senator Bill Cook, Senator Ronald Rabin, Representative Rick Catlin, Representative Jimmy Dixon, Representative Pricey Harrison, Representative Pat McElraft, Representative Chuck McGrady, and Representative Chris Millis. Dr. Jeff Warren, Senate Senior Policy Advisor; Emily Wilson, House Senior Policy Advisor; Mr. Jeff Hudson, Commission Counsel, Ms. Jennifer McGinnis, Commission Counsel, Mr. Jeff Cherry, Commission Counsel; Tori Bragg, Lindsey Dowling, and Towers Mingledorff, Commission Clerks; and Sergeants-At-Arms Garland Shephard, Larry Elliott, Ashley Mickens, Ed Kesler, Billy Fritscher, and Steve Wilson. Attachment #1 and Attachment #2.

Notice was sent to members and interested parties via e-mail on February 24, 2014. A copy of the notice is included in the attachments to these minutes as Attachment #3. Copies of the agenda for the meeting and visitor registration sheets are included in the attachments to these minutes as Attachment #4 and Attachment #5.

Call to Order and Introductory Remarks

Representative Hager called the meeting to order and welcomed members, staff, and visitors in attendance. He then recognized Representative Ruth Samuelson who informed the Commission and visitors that the Duke Energy Coal Ash spill will not be discussed today and will not be discussed until more information is received. Representative Hager then recognized Senator Brent Jackson, who supported Representative Ruth Samuelson's statements about coal ash, stating that they are waiting to have a full report on the issue. Representative Hager proceeded to the agenda.



Report from Stormwater Working Group on the study of State stormwater programs, including how partially impervious surfaces are treated in the calculation of built-upon areas.

Representative Hager recognized Representative Samuelson to provide an overview of the Stormwater Working Group. A copy of the report is attached to these minutes as Attachment #6. Representative Samuelson showed the Commission sample bags of rocks, that some may consider gravel. Based on the sizes of the rocks and the ability of water to seep through the rocks, it was determined that the samples were actually aggregate and not gravel. The sample is determined to be aggregate based on the size of it, how it was crushed, how it is mixed, and whether it has been washed. All of those factors determine the ability of water to seep through it. Representative Samuelson then turns the floor over to Senator Jackson who briefly states that they will focus on changing the language in order to make the bill as clear as possible.

Representative Hager recognizes Mr. Jeff Hudson, Commission Counsel, to explain the legislative proposals from the working group. Copies of the proposals are attached to these minutes as Attachment #7 and Attachment #8. Representative Hager opened the floor and the following questions and comments were made:

Representative Catlin commented that there is a clear definition of gravel that exists and it is the American Society for Testing and Materials (ASTM) standard for grain size, the Department of Transportation uses the ASTM definition and he believes we should look at it. Representative Samuelson replied that the working group looked into that definition and decided that the definition was too specific, based on the way the word gravel has already been used in statute. To use that specific definition would only complicate the issue.

Representative Catlin states that the ASTM definition would be useful in this instance because the bill is focusing on permeability. Representative Samuelson replied that gravel under the ASTM definition is not always pervious; stating that factors such as the underlying subsoil, how much it had been compacted, and had it been stirred. She continued to state that the issue can be re-addressed, because there will not be a vote until April.

Report from the Water and Sewer Working Group on the study of statutory models for establishing, operating, and financing certain organizations that provide water and sewer services in the State.

Representative Hager provided an overview of the Water and Sewer Working Group. A copy of the overview has been attached to these minutes as Attachment #9. Representative Hager recognizes Mr. Jeff Hudson, Commission Counsel, to explain the legislative proposals from the working group. Copies of the proposals are attached to these minutes as Attachment #10 and Attachment #11. No questions or comments were made.



Report from the Review of Engineering Work Working Group

Representative Hager recognized Representative Millis to provide an overview of the Review of Engineering Work working group. A copy of the overview has been attached to these minutes as Attachment #12. The working group conducted a stakeholders study in order to get the best understanding of the situation. Representative Millis took a moment to thank all of the stakeholders who participated. Representative Millis explained the group's legislative proposal. The proposal has been attached to these minutes as Attachment #13. No questions or comments were made.

Report from the Environmental Ordinance Working Group on the circumstances under which cities and counties should be authorized to enact certain environmental ordinances.

Representative Hager recognized Representative McGrady and Senator Brock to provide an overview of the Environmental Ordinance Working Group. A copy of the overview has been attached to these minutes as Attachment #14. Representative McGrady stated that one of the most difficult aspects was defining an environmental ordinance. He also explained the legislative proposal. A copy of the proposal has been attached to these minutes as Attachment #15. Representative Hager opened the floor and the following questions and comments were made:

Representative Catlin asked when the working group will be finished making changes to the bill. Senator Brock explained that the changes that are present are the only changes being made.

Representative Catlin states that he has been meeting with his city staff and city council, who have expressed concern about the bill. He will be providing that information to Senator Brock.

Representative Harrison notes her concern with water quality issues being put under the jurisdiction of the Department of Agriculture and Consumer Services, stating that the local governments would have more access and information on issues such as run-off. Senator Brock replied that most of the concerns heard from the local entities tended to be more aesthetic than environmental. Representative McGrady then interjects to recognize the last line in the legislation which states, "Nothing in this section shall limit the authority of DENR to enforce water quality standards."

Representative McElraft asked if the working group was aware of any statutes that prohibit local governments from making regulations or ordinances on public health. Representative McGrady replied that the scope of this study focused only on environmental ordinances, not health ordinances. Mr. Jeff Hudson agreed with Representative McGrady's statement. Mr. Hudson then said that he would provide the location of the public health statutes; within the constitution, to Representative McElraft.



Representative Millis asked the staff if local government has the same authority or purview to regulate the same things that State government regulates and even beyond the purview of State government. Mr. Hudson said it will depend on whether or not the State legislature has laid out a complete regulatory field, which means the State government has a very detailed policy on the subject in question. If there is a complete regulatory field in place then the local government cannot enforce anymore limitations. Representative McGrady comments that most of the issues focused on were soft environmental issues.

Additional Legislative Proposals

Representative Hager, Representative Samuelson, and Senator Jackson explained the additional legislative proposals the Commission plans on looking into. Mr. Jeff Hudson was also recognized to explain further detail. Copies of the proposals are attached to these minutes as Attachment #16. Representative Hager opened the floor and the following questions and comments were made:

Representative Harrison asked if there is any appetite for a shorter window than 24 hours reporting on wastewater spills? Representative Hager responded that he would discuss this further after the meeting.

Senator Allran wanted to know if there are specifications and standards set for alarms that will be used in the hotels. He wants to know if there will be specifications of; battery operated, electrically operated, how long they should last, the standards for the alarm itself (whether you can buy it from "Lowe's" or a specialty store). Representative Samuelson replied that the alarms will be required to have an electric source, but the type of alarms will be regulated by another entity.

Senator Allran states that the alarms not having a battery back-up could be a hazard if the alarm gets unplugged or if the power were to go out. Representative Samuelson responded by saying that information may have been discussed and left out of this draft. Mr. Hudson interjects stating that there is a transition period, but eventually all hotels will be required to have alarms that are battery operated and electrically operated at the same time and the standard for the alarms are present in the legislation.

Representative McGrady asked what the executive orders are, such as Executive Order #22. Representative Samuelson responded that the Executive Orders can be found online. Mr. Hudson states that Executive Order #22 was in response to a provision in House Bill 74 last year, which dealt with solid waste.



Overview of the Yadkin Hydroelectric Project:

Representative Hager recognized Ms. Jennifer McGinnis, Commission Counsel, to provide an overview of the Yadkin Hydroelectric Project. A copy of her presentation has been attached to these minutes as Attachment #17. No questions or comments were made.

Commission discussion and announcements

Representative Hager opened the floor and the following questions and comments were made:

Representative Samuelson reiterates the fact the proposed legislation is just “proposed” so the Commission is happy to speak to people who have comments and ideas on the legislation.

Representative Harrison asked if coal ash will be discussed in the next meeting? Representative Samuelson responded that they are not sure if it will be discussed in the next meeting. She states that they are not trying to rush the process and trying to gain as much information as possible before the issue is addressed.

There being no further business, the meeting adjourned at 2:49 PM.

Representative Mike Hager,
Presiding

Lindsey Dowling, Commission Clerk