

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2013**

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**BILL DRAFT 2013-MHz-186 [v.20] (02/18)**

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

**4/7/2014 11:30:25 AM**

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 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



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the Regulatory Authority in order to proceed with the permit, license, or approval are clearly delineated from revisions or requests for additional information that constitute suggestions or recommendations by the Regulatory Authority. For purposes of this subdivision, "suggestions or recommendations by the Regulatory Authority" means comments made by the reviewer of the Regulatory Submittal to the Submitting Party that make a suggestion or recommendation for consideration by the Submitting Party but that are not required by the Regulatory Authority in order to proceed with the permit, license, or approval.

- (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 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 at the request of the Submitting Party in each of the following circumstances:

- (1) The inclusion in a Regulatory Submittal of a 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 first be conducted by the reviewing employee's supervisor, or, in the case of a Regulatory Authority that is a unit of local government, either the reviewing employee's supervisor or the delegating or approving state agency. If this initial review was not conducted by a Professional Engineer, then the Submitting Party may request review by (i) a Professional Engineer on the staff of the Regulatory Authority; or (ii) the delegating or approving state agency, in the case of a Regulatory Authority that is a unit of local government. If the Regulatory Authority or delegating or approving state agency does not employ a Professional Engineer qualified and competent to perform the review, it may provide for review by a consulting Professional Engineer selected from a list developed and maintained by the Reviewing Authority. The Regulatory Authority may charge the Submitting Party for the costs of the review by the consulting Professional Engineer. 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 following the reviews described in this subdivision.
- (2) A disagreement between the reviewer of the Regulatory Submittal and the Submitting Party regarding whether the statutory or regulatory authority identified by the Regulatory Authority for revisions or requests for additional information designated as "required" under the procedures set forth in Section 2 of this act justifies a required change.

**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.(a)** Pilot study. – No later than March 1, 2015, 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.

- 1 (2) Determine the work activities identified under subdivision (1) of this section  
2 that constitute the Practice of Engineering.  
3 (3) Develop recommendations for ensuring that work activities constituting the  
4 Practice of Engineering are conducted with the appropriate level of  
5 oversight.

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

8 **SECTION 5.** Review of working job titles. – No later than December 1, 2014, each  
9 Regulatory Authority shall do the following:

- 10 (1) Review the working job titles of every employee with job duties that include  
11 the review of Regulatory Submittals.  
12 (2) Propose revisions to the working job titles identified under subdivision (1) of  
13 this Section or other administrative measures that will eliminate the public  
14 identification as "engineers" of persons reviewing Regulatory Submittals  
15 who are not Professional Engineers.

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

- 19 (1) The standardized procedures required by Section 2 of this act.  
20 (2) The informal review process required by Section 3 of this act.  
21 (3) The review of working job titles required by Section 5 of this act.

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

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

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