

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 686
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Short Title: Regulatory Reform Act of 2023.

(Public)

Sponsors:

Referred to:

April 10, 2023

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FURTHER REGULATORY RELIEF TO THE CITIZENS OF NORTH
CAROLINA.

The General Assembly of North Carolina enacts:

PART I. STORMWATER CONTROL AND DEVELOPMENT PROVISIONS

CHANGES TO REQUIREMENTS FOR DEVELOPMENT IN VEGETATIVE BUFFERS

SECTION 1. G.S. 143-214.7(b2) reads as rewritten:

"(b2) For purposes of implementing stormwater programs, "built-upon area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a slatted deck; the water area of a swimming pool; a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; a trail as defined in G.S. 113A-85 that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour); or landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, such as the area between sections of pavement that support the weight of a vehicle. The owner or developer of a property may opt out of any of the exemptions from "built-upon area" set out in this subsection. For State stormwater programs and local stormwater programs approved pursuant to subsection (d) of this section, all of the following shall apply:

...

- (2) Development may occur within the area that would otherwise be required to be placed within a vegetative buffer required by the Commission pursuant to G.S. 143-214.1 and G.S. 143-214.7 provided the stormwater runoff from the entire impervious area of the development-built-upon area of the vegetative buffer is collected, treated, and discharged so that it passes through a segment of the vegetative buffer and is managed so that it otherwise complies with all applicable State and federal stormwater management requirements.

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CHANGES TO STORMWATER TREATMENT REQUIRED FOR EXEMPTION FROM DENSITY LIMITATIONS IN WATER SUPPLY WATERSHED

SECTION 2. G.S. 143-214.7(b3) reads as rewritten:



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"(b3) Stormwater runoff rules and programs shall not require private property owners to install new or increased stormwater controls for (i) preexisting development or (ii) redevelopment activities that do not remove or decrease existing stormwater controls. When a preexisting development is redeveloped, either in whole or in part, increased stormwater controls shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment. ~~Provided, however, a~~ A property owner may voluntarily elect to treat all stormwater from preexisting development or redevelopment activities described herein for the purpose of exceeding allowable density under the exceed the otherwise applicable density limitation under the applicable water supply watershed rules as provided in G.S. 143-214.5(d3). ~~G.S. 143-214.5(d3) by treating the increase in stormwater resulting from the net increase in built-upon areas.~~ This subsection applies to all local governments regardless of the source of their regulatory authority. Local governments shall include the requirements of this subsection in their stormwater ordinances."

AMEND STORMWATER FEE CONSIDERATIONS

SECTION 3.(a) G.S. 160A-314(a1) reads as rewritten:

- "(a1) (1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for stormwater management programs and structural and natural stormwater and drainage systems under this section, the city council shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.
- (2) The fees established under this subsection must be made applicable throughout the area of the city. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, stormwater control measures in use by the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. A city may not impose a rate, fee, or charge pursuant to this subsection on a property where the stormwater controls in place on the property capture all stormwater on the property. Rates, fees, and charges imposed under this subsection may not exceed the city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

...."

SECTION 3.(b) G.S. 153A-277(a1) reads as rewritten:

- "(a1) (1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for stormwater management programs and structural and natural stormwater and drainage systems under this section, the board of commissioners shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

(2) The fees established under this subsection must be made applicable throughout the area of the county outside municipalities. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, stormwater control measures in use by the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. A county may not impose a rate, fee, or charge pursuant to this subsection on a property where the stormwater controls in place on the property capture all stormwater on the property. Rates, fees, and charges imposed under this subsection may not exceed the county's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The county's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

...."

SECTION 3.(c) This section is effective when it becomes law and applies to stormwater program amendments and stormwater fee schedules adopted on or after that date.

STORMWATER TRANSPORTATION PROJECT EXEMPTION RULE CHANGE

SECTION 4.(a) Definitions. – For purposes of this section and its implementation, "Stormwater Transportation Exemption Rule" means 15A NCAC 02H .1001 (Post-Construction Stormwater Management: Purpose and Scope).

SECTION 4.(b) Stormwater Transportation Exemption Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the Stormwater Transportation Exemption Rule as provided in subsection (c) of this section.

SECTION 4.(c) Implementation. – Stormwater programs, as defined in the Stormwater Transportation Exemption Rule, shall not apply to linear transportation projects undertaken by an entity other than the North Carolina Department of Transportation that (i) are constructed to NCDOT standards and are in accordance with the NCDOT Stormwater Best Management Practices Toolbox (Version 2, April 2014 Edition) which is herein incorporated by reference, including any subsequent amendments and editions, and may be accessed at no cost at https://connect.ncdot.gov/resources/hydro/HSPDocuments/2014_BMP_Toolbox.pdf and (ii) will be conveyed upon completion either to the NCDOT or another public entity and will be regulated in accordance with that entity's NPDES MS4 stormwater permit. Whether or not the project is a part of a common plan of development shall have no bearing on the exemption afforded by this subsection.

SECTION 4.(d) Additional Rulemaking Authority. – The Commission shall adopt a rule to amend the Stormwater Transportation Exemption Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

SECTION 4.(e) Applicability and Sunset. – This section and rules adopted pursuant to this section apply to all linear transportation projects undertaken by an entity other than the North Carolina Department of Transportation on or after August 1, 2023. This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

WETLANDS RULE CHANGE

SECTION 5.(a) Definitions. – For purposes of this section and its implementation, "Wetlands Definition" means 15A NCAC 02B .0202 (Definitions).

SECTION 5.(b) Wetlands Definition Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission (Commission) is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the Wetlands Definition Rule as provided in subsection (c) of this section.

SECTION 5.(c) Implementation. – Wetlands classified as waters of the State are restricted to waters of the United States as defined by 33 C.F.R. § 328.3 and 40 C.F.R. § 230.3. Wetlands do not include prior converted cropland as defined in the National Food Security Act Manual, Fifth Edition, issued by the United States Department of Agriculture.

SECTION 5.(d) Additional Rulemaking Authority. – The Commission shall adopt a rule to amend the Wetlands Definition Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

SECTION 5.(e) Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

WASTEWATER DESIGN FLOW RATE RULE CHANGE

SECTION 6.(a) Definitions. – For purposes of this section and its implementation, "Dwelling Wastewater Design Flow Rate Rule" means 15A NCAC 02T .0114 (Wastewater Design Flow Rates) as it applies to dwelling units.

SECTION 6.(b) Dwelling Wastewater Design Flow Rate Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the Dwelling Wastewater Design Flow Rate Rule as provided in subsection (c) of this section.

SECTION 6.(c) Implementation. – In determining the volume of sewage from dwelling units, the flow rate shall be 75 gallons per day per bedroom. The minimum volume of sewage from each dwelling unit shall be 75 gallons per day and each additional bedroom above two bedrooms shall increase the volume by 75 gallons per day.

SECTION 6.(d) Additional Rulemaking Authority. – The Commission shall adopt a rule to amend the Dwelling Wastewater Design Flow Rate Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

SECTION 6.(e) Applicability and Sunset. – This section and rules adopted pursuant to this section apply to all dwelling units sewer system permits issued on or after August 1, 2023.

- 1 This section expires when permanent rules adopted as required by subsection (d) of this section
- 2 become effective.
- 3

PART II. MARINE FISHERIES PROVISIONS**DIRECT THE MARINE FISHERIES COMMISSION TO ADOPT CERTAIN RULES**

SECTION 7.(a) Consistent with its duties under Articles 15 and 17 of Chapter 113 of the General Statutes and under applicable federal law, the Marine Fisheries Commission (Commission) shall adopt rules that provide for the voluntary reporting of all coastal and marine finfish (i) harvested by holders of Coastal Recreational Fishing Licenses and Recreational Commercial Gear Licenses and (ii) harvested, but not sold by, holders of Standard Commercial Fishing Licenses and Retired Standard Commercial Fishing Licenses. The Commission, to the extent feasible, shall model these reporting requirements on those for large game harvest reporting under rules of the Wildlife Resources Commission.

SECTION 7.(b) The Commission may adopt temporary rules to implement this section and shall adopt permanent rules consistent with subsection (a) of this section. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

ESTABLISH AN EXPIRATION DATE FOR FISHERIES PROCLAMATIONS AND PROVIDE FOR A PERSON TO PETITION FOR A CONTESTED CASE TO CHALLENGE THE ISSUANCE OR RENEWAL OF A PROCLAMATION

SECTION 8. G.S. 113-221.1 reads as rewritten:

"§ 113-221.1. Proclamations; emergency review.

(a) Except as provided in subsection (e) of this section, Chapter 150B of the General Statutes does not apply to proclamations issued under this Article.

(b) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission that may be affected by variable conditions. These proclamations shall be issued by the Fisheries Director or by a person designated by the Fisheries Director. Except as provided in this subsection, all proclamations shall state the hour and date upon which they become effective and shall be issued at least 48 hours in advance of the effective date and time. A proclamation that prohibits the taking of certain fisheries resources for reasons of public health or that governs a quota-managed fishery may be made effective immediately upon ~~issuance.~~ issuance and shall remain in effect no longer than 12 months, unless renewed by the Fisheries Director. A proclamation to reopen the taking of certain fisheries resources closed for reasons of public health shall be issued at least 12 hours in advance of the effective date and time of the reopening. A person who violates a proclamation that is made effective immediately upon issuance shall not be charged with a criminal offense for the violation if the violation occurred between the time of issuance and 48 hours after the issuance and the person did not have actual notice of the issuance of the proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether the person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding. The Fisheries Director shall make every reasonable effort to give actual notice of the terms of any proclamation to persons who may be affected by the proclamation. Reasonable effort includes a press release to communications media, posting of a notice at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and other measures designed to reach the persons who may be affected. It is a defense to an enforcement action for a violation of a proclamation that a person was prevented from receiving notice of the proclamation due to a natural disaster or other act of God occasioned exclusively by violence of nature without interference of any human agency and that could not have been prevented or avoided by the exercise of due care or foresight.

(c) All persons who may be affected by proclamations issued by the Fisheries Director are under a duty to keep themselves informed of current proclamations. It is no defense in any criminal prosecution for the defendant to show that the defendant in fact received no notice of a particular proclamation. In any prosecution for violation of a proclamation, or in which proof of matter contained in a proclamation is involved, the Department is deemed to have complied with publication procedures; and the burden is on the defendant to show, by the greater weight of the evidence, substantial failure of compliance by the Department with the required publication procedures.

(d) Pursuant to the request of five or more members of the Marine Fisheries Commission, the Chair of the Marine Fisheries Commission may call an emergency meeting of the Commission to review an issuance or proposed issuance of proclamations under the authority delegated to the Fisheries Director pursuant to subsection (b) of this section or to review the desirability of directing the Fisheries Director to issue a proclamation to prohibit or allow the taking of certain fisheries resources. At least 48 hours prior to any emergency meeting called pursuant to this subsection, a public announcement of the meeting shall be issued that describes the action requested by the members of the Marine Fisheries Commission. The Department shall make every reasonable effort to give actual notice of the meeting to persons who may be affected. After its review is complete, the Marine Fisheries Commission, consistent with its duty to protect, preserve, and enhance the commercial and sports fisheries resources of the State, may approve, cancel, or modify the previously issued or proposed proclamation under review or may direct the Fisheries Director to issue a proclamation that prohibits or allows the taking of certain fisheries resources. An emergency meeting called pursuant to this subsection and any resulting orders issued by the Marine Fisheries Commission are exempt from the provisions of Article 2A of Chapter 150B of the General Statutes. ~~The decisions of the Marine Fisheries Commission shall be the final decision of the State and shall not be set aside on judicial review unless found to be arbitrary and capricious.~~

(e) A person aggrieved by the issuance or renewal of a proclamation made pursuant to this section may file a petition for a contested case pursuant to G.S. 150B-23."

PART III. WATER PERMITTING AND QUALITY PROVISIONS

DREDGE PERMIT EXEMPTION FOR UNITED STATES COAST GUARD MARKED NAVIGATIONAL CHANNELS

SECTION 9. G.S. 113-229 reads as rewritten:

"§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.

(a) Except as hereinafter provided before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or State-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department. Granting of the State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The Department shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

...

(e) Applications for permits except special emergency permit applications shall be circulated by the Department among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation

of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. Permits may allow for projects granted a permit the right to maintain such project for a period of up to 10 years. The right to maintain such project shall be granted subject to such conditions as may be reasonably necessary to protect the public interest. The Coastal Resources Commission shall coordinate the issuance of permits under this section and G.S. 113A-118 and the granting of variances under this section and G.S. 113A-120.1 to avoid duplication and to create a single, expedited permitting process. The Coastal Resources Commission may adopt rules interpreting and applying the provisions of this section and rules specifying the procedures for obtaining a permit under this section. Maintenance work as defined in this subsection shall be limited to such activities as are required to maintain the project dimensions as found in the permit granted. The Department shall act on an application for permit within 75 days after the completed application is filed, provided the Department may extend such deadline by not more than an additional 75 days if necessary to properly to consider the application, except for applications for a special emergency permit, in which case the Department shall act within two working days after an application is filed, and failure to so act shall automatically approve the application. The Department shall act on an application for a permit for activities in a United States Coast Guard marked navigational channel within 30 days after the completed application is filed, provided the Department may extend such deadline by not more than an additional 30 days if necessary to properly consider the application, and failure to so act shall automatically approve the application.

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SHALLOW DRAFT NAVIGATION CHANNEL DREDGING AND AQUATIC WEED FUND CHANGES

SECTION 10. G.S. 143-215.73F reads as rewritten:

"§ 143-215.73F. Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund.

(a) Fund Established. – The Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund is established as a special revenue fund. The Fund consists of fees credited to it under G.S. 75A-3 and G.S. 75A-38, taxes credited to it under G.S. 105-449.126, and funds contributed by non-State entities.

(b) Uses of Fund. – Revenue in the Fund may only be used for the following purposes:

- (1) To provide the State's share of the costs associated with any dredging project designed to keep shallow draft navigation channels located in State waters or waters of the State located within lakes navigable and safe.
- (2) For aquatic weed control projects in waters of the State under Article 15 of Chapter 113A of the General Statutes. Funding for aquatic weed control projects is limited to one million dollars (\$1,000,000) in each fiscal year.
- (3) For administrative support of activities related to beach and inlet management in the State, limited to one hundred thousand dollars (\$100,000) in each fiscal year.
- (3a) For administrative support of Fund operations, limited to one hundred thousand dollars (\$100,000) in each fiscal year.
- ~~(4) To provide funding for siting and acquisition of dredged disposal easement sites associated with the maintenance of the Atlantic Intracoastal Waterway between the border with the state of South Carolina and the border with the Commonwealth of Virginia, under a Memorandum of Agreement between the State and the federal government.~~

(5) For assessments and data collection regarding dredge material disposal sites located in the State.

(b1) Grants Authorized. – The Secretary is authorized to accept applications for grants for nonfederal costs of projects sponsored by (i) units of local government for the purpose set forth in subdivision (1) of subsection (b) of this section and (ii) units of local government and other entities for the purpose set forth in subdivision (2) of subsection (b) of this section.

(b2) Prohibition on Certain Grants and Funding. – Notwithstanding any other provision of law, the Secretary is prohibited from awarding grants or providing any other type of funding from the fund established in subsection (a) of this section to the United States Army Corps of Engineers.

(c) Cost-Share. – Any project funded by revenue from the Fund must be cost-shared with non-State dollars as follows:

(1) The cost-share for dredging projects shall be at least one non-State dollar for every three dollars from the Fund.

(2) Repealed by Session Laws 2022-74, s. 12.1(a), effective July 1, 2022.

(3) The cost-share for an aquatic weed control project shall be at least one non-State dollar for every dollar from the Fund. The cost-share for an aquatic weed control project located within a component of the State Parks System shall be provided by the Division of Parks and Recreation of the Department of Natural and Cultural Resources. The Division of Parks and Recreation may use funds allocated to the State Parks System for capital projects under G.S. 143B-135.56 for the cost-share.

(4) The cost-share for the dredging of the access canal around the Roanoke Island Festival Park shall be paid from the Historic Roanoke Island Fund established by G.S. 143B-131.8A.

(c1) Cost-Share Exemption for DOT Ferry Channel Projects. – Notwithstanding the cost-share requirements of subdivision (1) of subsection (c) of this section, no cost-share shall be required for dredging projects located, in whole or part, in a development tier one area for a ferry channel used by the North Carolina Department of Transportation.

(d) Return of Non-State Entity Funds. – Non-State entities that contribute to the Fund for a particular project or group of projects may make a written request to the Secretary that the contribution be returned if the contribution has not been spent or encumbered within two years of receipt of the contribution by the Fund. If the written request is made prior to the funds being spent or encumbered, the Secretary shall return the funds to the entity within 30 days after the later of (i) receiving the request or (ii) the expiration of the two-year period described by this subsection.

(e) Definitions. – For purposes of this section, "shallow draft navigation channel" means (i) a waterway connection with a maximum depth of 16 ~~feet~~ feet, inclusive of the depth of overdepth for navigational depth compliance, between the Atlantic Ocean and a bay or the Atlantic Intracoastal Waterway, (ii) a river entrance to the Atlantic Ocean through which tidal and other currents flow, or (iii) other interior coastal waterways. The term includes the Atlantic Intracoastal Waterway and its side channels, Beaufort Harbor, Bogue Inlet, Carolina Beach Inlet, Mason Inlet, Rich Inlet, Tubbs Inlet, the channel from Back Sound to Lookout Back, channels connected to federal navigation channels, Lockwoods Folly River, Manteo/Shallowbag Bay, Southport Small Boat Harbors, including Oregon Inlet, Masonboro Inlet, New River, New Topsail Inlet, Rodanthe, Hatteras Inlet, Rollinson, Shallotte River, Silver Lake Harbor, and the waterway connecting Pamlico Sound and Beaufort Harbor.

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FLOATATION DEVICES REQUIREMENTS

SECTION 11.(a) Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 12. Submersible Polystyrene Devices.

"§ 143-215.75A. Definitions.

The following definitions apply in this Article:

- (1) Department. – Department of Environmental Quality.
- (2) Dock. – An unenclosed structure used for mooring boats or for similar recreational uses such as sunbathing or as a swimming platform, which may either float or be secured to the adjacent or underlying land.
- (3) Encapsulated. – A protective covering or physical barrier between the polystyrene device and the water.
- (3) Float or floating structure. – A structure supported by polystyrene foam flotation and held in place by piling and mooring devices, including boathouses, floating homes, marinas, walkways, boarding floats, or combination thereof.
- (4) Fuel float. – Any floating structure used to dispense any form of fuel or used to store, maintain, or repair boat engines.
- (5) Polystyrene foam flotation. – All products manufactured from expanded polystyrene foam beads with cell diameters of at least 0.125 inches used for flotation.
- (6) Repair or maintenance. – The reconstruction or renewal of any part of an existing floating structure for the purpose of its maintenance.
- (7) Submersible polystyrene device. – Any molded or expanded type of polystyrene foam used for flotation.

"§ 143-215.75B. Encapsulation and design requirements for submersible polystyrene devices.

(a) Except as provided in subsection (b) of this section, no person shall install a submersible polystyrene device on a dock, buoy, or float unless the device is encapsulated by a protective covering or designed to prevent the polystyrene from disintegrating into the waters of the State.

(b) The requirements of this section do not apply to any of the following:

- (1) Construction, maintenance, or operation of boats or vessels.
- (2) Polystyrene foam devices manufactured into extruded closed cell beads of no more than 0.125 inches in diameter.

(c) The following methods of encapsulation shall be considered sufficient to meet the requirements of this section:

- (1) Concrete of at least 1 inch in thickness.
- (2) Galvanized steel of at least .065 inches or 16 gauge in thickness.
- (3) Liquid coatings of at least .03 inches in thickness, chemically or securely bonded to the polystyrene foam flotation.
- (4) Rigid plastics of at least .05 inches in thickness.
- (5) Fiberglass or plastic resins, of at least .03 inches in thickness, chemically or securely bonded to the polystyrene foam flotation.

"§ 143-215.75C. Polystyrene containment requirement for construction and maintenance activities.

Any polystyrene foam flotation or part thereof installed, removed, replaced, or repaired during construction or maintenance activities must be effectively contained. All unused or replaced polystyrene foam must be removed from the waters of the State and lawfully disposed.

"§ 143-215.75D. Requirements for polystyrene foam on fuel floats.

All polystyrene foam flotation used on fuel floats or floating structures used to store, maintain, or repair boat engines must be encapsulated with materials that are not subject to degradation by fuel oils or products.

"§ 143-215.75E. Prohibited sales.

No person shall sell any polystyrene foam buoys, markers, ski floats, bumpers, fish trap markers, or similar devices unless encapsulated by a protective covering in accordance with this Article and rules adopted by the Department to implement this Article.

"§ 143-215.75F. Rule-making authority.

The Department shall adopt rules to implement this Article."

SECTION 11.(b) This section becomes effective January 1, 2025, and applies to any polystyrene foam flotation sold or used in the State after that date.

PART IV. SOLID AND HAZARDOUS WASTE PROVISIONS

PROHIBIT DISPOSAL OF LITHIUM-ION BATTERIES IN LANDFILLS

SECTION 12.(a) Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-309.10A. Landfilling and incineration of lithium-ion batteries prohibited.

(a) No person shall knowingly place or dispose of a lithium-ion battery in a landfill, incinerator, or in any waste-to-energy facility. Any person may deliver a lithium-ion battery to a collection or recycling facility authorized under this Chapter or by the United States Environmental Protection Agency.

(b) Any person who knowingly places or disposes of a lithium-ion battery in violation of this section shall be assessed a civil penalty of not more than fifty dollars (\$50.00) per violation. Each battery improperly disposed of shall constitute a separate violation.

(c) The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 12.(b) G.S. 130A-309.10 reads as rewritten:

"§ 130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited.

...

(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1.

(2) Used oil.

(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.

(4) White goods.

(5) Antifreeze (ethylene glycol).

(6) Aluminum cans.

(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition on disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.

(8) Lead-acid batteries, as provided in G.S. 130A-309.70.

(9) Repealed by Session Laws 2011-394, s. 4, effective July 1, 2011.

(10) Motor vehicle oil filters.

(11) Recyclable rigid plastic containers that are required to be labeled as provided in subsection (e) of this section, that have a neck smaller than the body of the container, and that accept a screw top, snap cap, or other closure. The

- 1 prohibition on disposal of recyclable rigid plastic containers in landfills does
2 not apply to rigid plastic containers that are intended for use in the sale or
3 distribution of motor oil or pesticides.
- 4 (12) Wooden pallets, except that wooden pallets may be disposed of in a landfill
5 that is permitted to only accept construction and demolition debris.
- 6 (13) Oyster shells.
- 7 (14) Discarded computer equipment, as defined in G.S. 130A-309.131.
- 8 (15) Discarded televisions, as defined in G.S. 130A-309.131.
- 9 (16) Lithium-ion batteries, as provided in G.S. 130A-309.10A.
- 10 (f1) No person shall knowingly dispose of the following solid wastes by incineration in
11 an incinerator for which a permit is required under this Article:
- 12 (1) Antifreeze (ethylene glycol) used solely in motor vehicles.
- 13 (2) Aluminum cans.
- 14 (3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
- 15 (4) White goods.
- 16 (5) Lead-acid batteries, as provided in G.S. 130A-309.70.
- 17 (6) Repealed by Session Laws 2011-394, s. 4, effective July 1, 2011.
- 18 (7) Discarded computer equipment, as defined in G.S. 130A-309.131.
- 19 (8) Discarded televisions, as defined in G.S. 130A-309.131.
- 20 (9) Lithium-ion batteries, as provided in G.S. 130A-309.10A.
- 21 ..."
- 22

23 **LIMIT DISPOSAL OF SOLAR PANELS TO LINED LANDFILLS AND OTHER** 24 **APPROVED COLLECTION OR RECYCLING FACILITIES**

25 **SECTION 13.** Article 9 of Chapter 130A of the General Statutes is amended by
26 adding a new section to read:

27 **"§ 130A-309.10B. Landfilling and incineration of photovoltaic modules prohibitions.**

28 (a) Except as provided herein, no person shall knowingly place or dispose of a used
29 photovoltaic module in a landfill, incinerator, or in any waste-to-energy facility. Any person may
30 deliver a photovoltaic module to a collection or recycling facility authorized under this Chapter
31 or by the United States Environmental Protection Agency, or a landfill for the disposal of
32 municipal solid waste. For purposes of this section, "photovoltaic module" or "PV module"
33 means the smallest nondivisible, environmentally protected assembly of photovoltaic cells or
34 other photovoltaic collector technology and ancillary parts, including associated wiring, control
35 devices, and switches, to generate electrical power under sunlight.

36 (b) Any person who knowingly places or disposes of a photovoltaic module in violation
37 of this section shall be assessed a civil penalty of not more than fifty dollars (\$50.00) per
38 violation. Each module improperly disposed of shall constitute a separate violation.

39 (c) The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to
40 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

41

42 **CLARIFY AND LIMIT BROWNFIELD PROGRAM CONSTRUCTION**

43 **SECTION 14.** G.S. 130A-310.37(a) reads as rewritten:

44 "(a) This Part is not intended and shall not be construed to:

- 45 (1) Affect the ability of local governments to regulate land use under Chapter
46 160D of the General Statutes. The use of the identified brownfields property
47 and any land-use restrictions in the brownfields agreement shall be consistent
48 with local land-use controls adopted under those statutes.
- 49 (2) Amend, modify, repeal, or otherwise alter any provision of any remedial
50 program or other provision of this Chapter, Chapter 143 of the General
51 Statutes, or any other provision of law relating to civil and criminal penalties

- 1 or enforcement actions and remedies available to the Department, except as
2 may be provided in a brownfields agreement.
- 3 (3) Prevent or impede the immediate response of the Department or responsible
4 party to an emergency that involves an imminent or actual release of a
5 regulated substance that threatens public health or the environment.
- 6 (4) Relieve a person receiving liability protection under this Part from any
7 liability for contamination later caused by that person on a brownfields
8 property.
- 9 (5) Affect the right of any person to seek any relief available against any party to
10 the brownfields agreement who may have liability with respect to the
11 brownfields property, except that this Part does limit the relief available
12 against any party to a brownfields agreement with respect to remediation of
13 the brownfields property to the remediation required under the brownfields
14 agreement.
- 15 (6) Affect the right of any person who may have liability with respect to the
16 brownfields property to seek contribution from any other person who may
17 have liability with respect to the brownfields property and who neither
18 received nor has liability protection under this Part.
- 19 (7) Prevent the State from enforcing specific numerical remediation standards,
20 monitoring, or compliance requirements specifically required to be enforced
21 by the federal government as a condition to receive program authorization,
22 delegation, primacy, or federal funds.
- 23 (8) Create a defense against the imposition of criminal and civil fines or penalties
24 or administrative penalties otherwise authorized by law and imposed as the
25 result of the illegal disposal of waste or for the pollution of the land, air, or
26 waters of this State on a brownfields property.
- 27 (9) Relieve a person of any liability for failure to exercise due diligence and
28 reasonable care in performing an environmental assessment or transaction
29 screen.
- 30 (10) Authorize the Department to place a restriction on the use of a brownfields
31 property more stringent than federal law.
- 32 (11) Limit or preclude a prospective developer from performing an investigation
33 of a brownfields property without prior approval from the Department."
34

35 INCREASE FEE FOR CERTAIN HAZARDOUS WASTE GENERATORS

36 SECTION 15.(a) G.S. 130A-294.1 reads as rewritten:

37 "§ 130A-294.1. Fees applicable to generators and transporters of hazardous waste, and to 38 hazardous waste storage, treatment, and disposal facilities.

39 ...

40 (e) A person who generates either one kilogram or more of any acute hazardous waste as
41 listed in 40 C.F.R. § 261.30(d) or § 261.33(e) as revised 1 July 1987, or 1000 kilograms or more
42 of hazardous waste, in any calendar month during the year beginning 1 July and ending 30 June
43 shall pay an annual fee of one thousand four hundred dollars (\$1,400).

44 (f) A person who generates 100 kilograms or more of hazardous waste in any calendar
45 month during the year beginning 1 July and ending 30 June but less than 1000 kilograms of
46 hazardous waste in each calendar month during that year shall pay an annual fee of ~~one hundred~~
47 ~~seventy-five dollars (\$175.00).~~ three hundred dollars (\$300.00).

48 (g) A person who generates one kilogram or more of acute hazardous waste or 1000
49 kilograms or more of hazardous waste in any calendar month during the calendar year shall pay,
50 in addition to any fee under subsections (e) and (f) of this section, a tonnage fee of seventy cents

1 (\$0.70) per ton or any part thereof of hazardous waste generated during that year up to a
2 maximum of 25,000 tons.

3 (h) A person who generates less than one kilogram of acute hazardous waste and less
4 than 100 kilograms of hazardous waste in each calendar month during the year beginning 1 July
5 and ending 30 June shall not be liable for payment of a fee under subsections (e) and (f) of this
6 section for that year.

7"

8 **SECTION 15.(b)** This section becomes effective July 1, 2023.

9 10 **PART V. STATE GOVERNMENT PROVISIONS**

11 12 **RESTORE 2009 BUILDING CODE STANDARDS FOR PIERS AND DOCKS** 13 **CONSTRUCTED IN ESTUARINE WATERS**

14 **SECTION 16.(a)** Definitions. – As used in this section, "Council" means the
15 Building Code Council, "Dock and Pier Code" means Chapter 36 of the 2018 North Carolina
16 Building Code, as adopted by the Council.

17 **SECTION 16.(b)** Dock and Pier Code. – Until the effective date of the revised
18 permanent rules that the Council is required to adopt pursuant to subsection (d) of this section,
19 the Council shall implement the applicable requirements of the 2018 Building Code, as provided
20 in subsection (c) of this section.

21 **SECTION 16.(c)** Implementation. – The Council shall not impose any building
22 requirements inconsistent with the 2009 Building Code Chapter for Docks, Piers, Bulkheads, and
23 Waterway Structures for piers or docks built in estuarine waters.

24 **SECTION 16.(d)** Additional Rule-Making Authority. – The Council shall adopt
25 rules to amend the Building Code consistent with subsection (c) of this section. Notwithstanding
26 G.S. 150B-19(4), the rules adopted by the Council, pursuant to this section, shall be substantively
27 identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section
28 are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted
29 pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10
30 or more written objections had been received as provided by G.S. 150B-21.3(b2).

31 **SECTION 16.(e)** Sunset. – This section expires when permanent rules adopted as
32 required by subsection (d) of this section become effective.

33 34 **DISAPPROVE CERTAIN DOA RULES**

35 **SECTION 17.** Pursuant to G.S. 150B-21.3(b1), the following rules, as adopted by
36 the North Carolina Department of Administration on October 20, 2022, and approved by the
37 Rules Review Commission on December 15, 2022, are disapproved:

38 01 NCAC 05A .0112 (Definitions)

39 01 NCAC 05E .0101 (Good Faith Efforts)

40 41 **RETENTION OF MEDICAL RECORDS**

42 **SECTION 18.** Article 29 of Chapter 90 of the General Statutes is amended by adding
43 a new section to read:

44 **"§ 90-413. Retention of medical records.**

45 Unless otherwise required by federal law or regulation, a health care provider shall retain
46 medical records for a minimum of 10 years from the date of service to which the medical record
47 pertains. In the case of a minor patient, the health care provider shall retain the minor patient's
48 medical records for a minimum of 10 years after the patient reaches the age of majority."

INCREASE THE TOTAL APPRAISED VALUE OF ALL REAL ESTATE PRIZES OFFERED DURING A CALENDAR YEAR BY A NONPROFIT ORGANIZATION AS PART OF A RAFFLE

SECTION 19.(a) G.S. 14-309.15(g) reads as rewritten:

"(g) Real property may be offered as a prize in a raffle. ~~The maximum appraised value of real property that may be offered for any one raffle is five hundred thousand dollars (\$500,000).~~ Any nonprofit organization offering real property as a prize in a raffle shall provide the property free from all liens, provide an owner affidavit and indemnity agreement, and provide a title commitment for the property and shall make that commitment available for inspection upon request. The total appraised value of all real estate prizes offered by any nonprofit organization shall not exceed ~~five hundred thousand two million~~ two million dollars ~~(\$500,000) (\$2,000,000)~~ in any calendar year."

SECTION 19.(b) This section is effective when it becomes law and applies to raffles conducted on or after that date.

EFFECTIVE DATE

SECTION 20. Except as otherwise provided, this act is effective when it becomes law.