



HOUSE BILL 385: Various Energy/Env. Changes.

2023-2024 General Assembly

Committee:	Senate Agriculture, Energy, and Environment.	Date:	May 22, 2024
	If favorable, re-refer to Judiciary. If favorable, re-refer to Rules and Operations of the Senate		
Introduced by:	Reps. McNeely, Moss	Prepared by:	Jennifer McGinnis
Analysis of:	PCS to First Edition		Committee Counsel
	H385-CSRI-38		

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 385 would:*

- *Require the Department of Environmental Quality to report quarterly on applications for permits required for natural gas pipelines and gas-fired electric generation facilities.*
- *Increase the punishment for property crimes committed against critical infrastructure, including public water supplies, wastewater treatment facilities, and manufacturing facilities, and make conforming changes to update statutes relating to damage to utilities.*
- *Prohibit the acquisition of quartz mining operations and lands containing high purity quartz by foreign governments designated as adversarial by the United States Department of Commerce.*
- *Expand requirements for issuance of 401 certifications by the Department of Environmental Quality to projects involving the generation of energy or fuel.*
- *Require a 25-foot buffer for certain agricultural activities in proximity to streams classified as trout waters.*
- *Require the Coastal Resources Commission (CRC) to revise rules implementing the Coastal Area Management Act (CAMA) to eliminate a permit requirement for dock, pier, and walkway replacement, and allow the width and length of a pier, dock, or walkway to be enlarged by not more than 5%, and the structure heightened, at the time of repair.*

PART I. REQUIRE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO REPORT QUARTERLY ON APPLICATIONS FOR PERMITS REQUIRED FOR NATURAL GAS PIPELINES AND GAS-FIRED ELECTRIC GENERATION FACILITIES

Section 1 would require the Department of Environmental Quality to report quarterly to the Joint Legislative Commission on Energy Policy on: any applications received for permits required for siting or operation of natural gas pipelines and gas-fired electric generation facilities within the State; and, activities of the Department to process such applications, including tracking of processing times.

This section would be effective when it becomes law and apply to applications for permits for natural gas pipelines and gas-fired electric generation facilities pending on or received on or after that date. The Department must submit the initial report due no later than October 1, 2024.

Jeffrey Hudson
Director



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Legislative Analysis
Division
919-733-2578

House 385 PCS

Page 2

PART II. INCREASE THE PUNISHMENT FOR PROPERTY CRIMES COMMITTED AGAINST CRITICAL INFRASTRUCTURE, INCLUDING PUBLIC WATER SUPPLIES, WASTEWATER TREATMENT FACILITIES, AND MANUFACTURING FACILITIES, AND MAKE CONFORMING CHANGES TO UPDATE STATUTES RELATING TO DAMAGE TO UTILITIES

In 2023, [legislation](#) was enacted to:

- Update and consolidate statutes that relate to damage to utility property (electric, gas, and telecommunications).
- Increase penalties for acts of damage to energy facilities.
- Increase the penalty for trespass to energy facilities, and add a specific prohibition on trespass to wastewater treatment facilities.
- Increase the penalty for willful injury to wires and other fixtures of telephone, broadband, broadcast, or cable telecommunications.

Section 2 would:

- Update the current statute governing contamination of a public water system to:
 - Add language prohibiting injury to a public water system.
 - Extend coverage under the statute to wastewater treatment facilities (in addition to public water systems).
 - Provide that violation of the statute is punishable as a Class C felonyⁱ, and a fine of \$250,000.
 - Authorize any person injured by reason of damage to a public water system or wastewater treatment system to sue for and recover treble damages, punitive damages, costs, and attorneys' fees from the person who committed the violation, and any person who acts as an accessory before or after the fact, aids or abets, solicits, conspires, or lends material support to the violation.
- Update a statute included in the Public Utilities Chapter of the General Statutes governing willful injury to property of a public utility to:
 - Increase the punishment from a Class 1 misdemeanor to a Class C felony.
 - Authorize any person injured by reason of damage to property of a public utility to sue for and recover treble damages, punitive damages, costs, and attorneys' fees from the person who committed the violation, and any person who acts as an accessory before or after the fact, aids or abets, solicits, conspires, or lends material support to the violation.
- Create a new statute making it a Class C felony to knowingly and willfully destroy, injure, or otherwise damage, or attempt to destroy, injure, or otherwise damage, a manufacturing facility. A violation of the statute would also:
 - Be punishable by a fine of \$250,000.
 - Authorize any person injured by reason of damage to a manufacturing facility to sue for and recover treble damages, punitive damages, costs, and attorneys' fees from the person who committed the violation, and any person who acts as an accessory before or after the fact, aids or abets, solicits, conspires, or lends material support to the violation.
- Exempt punitive damages that can be recovered from a person committing damage to a public water system, wastewater treatment facility, or manufacturing facility from the cap on such damages established under G.S. 1D-25 (three times the amount of compensatory damages or \$250,000, whichever is greater).

House 385 PCS

Page 3

This section would become effective December 1, 2024, and apply to offenses committed on or after that date.

PART III. PROHIBIT THE ACQUISITION OF QUARTZ MINING OPERATIONS AND LANDS CONTAINING HIGH PURITY QUARTZ BY FOREIGN GOVERNMENTS DESIGNATED AS ADVERSARIAL BY THE UNITED STATES DEPARTMENT OF COMMERCE

Section 3 would prohibit any state-controlled enterprise of, or the government of, a foreign nation that has been designated an adversarial foreign government by the United States Secretary of Commerce, from purchasing, acquiring, leasing, or holding any interest in either a quartz mining operation or land containing commercially valuable amounts of high purity quartz. Any transfer of an interest in land or a mining operation in violation of this section would be void. No individual who is not an adversarial foreign government would bear any civil or criminal liability for failing to determine or make inquiry of whether an individual or other entity is an adversarial foreign government.

Currently, the following foreign governments and foreign non-government persons have been found to be adversarial foreign governments:

- The People's Republic of China, including the Hong Kong Special Administrative Region (China).
- Republic of Cuba (Cuba).
- Islamic Republic of Iran (Iran).
- Democratic People's Republic of Korea (North Korea).
- Russian Federation (Russia).
- Venezuelan politician Nicolás Maduro (Maduro Regime).

This section would become effective January 1, 2025, and would apply only to interests in land acquired on or after that date.

PART IV. EXPAND REQUIREMENTS FOR ISSUANCE OF 401 CERTIFICATIONS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROJECTS INVOLVING THE GENERATION OF ENERGY OR FUEL

Under [Section 401 of the Clean Water Act](#), a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a state where a discharge from the activity would originate issues or waives a Section 401 water quality certification, which concerns whether the discharge will comply with applicable water quality standards, effluent limitations, toxic pollutants restrictions and other appropriate water quality requirements under state and federal law. Section 401 provides that if a state "fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year)" after receipt of a certification request, the certification is deemed waived by the State. A state may not only waive, deny, or grant certification, but also grant certification with conditions.

Examples of permits for activities that trigger 401 certification requirements include:

- Clean Water Act Section 404 permits issued by the United States Army Corps of Engineers involving the discharge of dredged or fill material.
- Federal Energy Regulatory Commission (FERC) licenses for hydropower facilities and natural gas pipelines.

House 385 PCS

Page 4

In 2023, legislation was enacted to establish statutory requirements for DEQ's handling of applications for 401 certifications for maintenance dredging projects partially funded by the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund and projects involving the **distribution or transmission** of energy or fuel, including natural gas, diesel, petroleum, or electricity, including requiring DEQ to:

- Within 30 days of filing of an application, determine whether or not the application is complete and notify the applicant accordingly; and, if the Department determines an application is incomplete, specify all such deficiencies in the notice to the applicant. If DEQ fails to issue a notice as to whether the application is complete within the requisite 30-day period, the application would be deemed complete.
- Within 5 days of the date the application is deemed complete, issue a public notice soliciting comment on the application. Within 60 days of the filing of a completed application, DEQ must either approve or deny the application. Failure of DEQ to act within the requisite 60-day period would result in a waiver of the certification requirement by the State, unless the applicant agrees, in writing, to an extension of time, not to exceed one year from the State's receipt of the application for certification. The 60-day review period established would constitute the "reasonable period of time" for State action on an application for purposes of federal law, absent a negotiated agreement with the United States Environmental Protection Agency (USEPA) to extend that timeframe for a period not to exceed one year.
- Issue a certification upon determining that the proposed discharge into navigable waters would comply with State water quality requirements. DEQ must include as conditions in a certification any applicable effluent limitations or other limitations necessary to assure the proposed discharges into navigable waters will comply with State water quality requirements. DEQ may not impose any other conditions in a certification.
- Deny a certification application only if DEQ determines that no reasonable conditions would provide assurance that the proposed discharges will comply with State water quality requirements and include in the denial a statement explaining the determination.

Section 4 would extend these requirements to projects involving the **generation of energy or fuel** (in addition to the distribution or transmission of energy or fuel).

This section would be effective when it becomes law and apply to applications for 401 certification pending or submitted on or after that date.

PART V. REQUIRE A 25-FOOT BUFFER FOR CERTAIN AGRICULTURAL ACTIVITIES IN PROXIMITY TO STREAMS CLASSIFIED AS TROUT WATERS

The Sedimentation Pollution Control Act was adopted in 1973 to minimize the effects of pollution by sedimentation. The State's erosion and sedimentation control program requires that an erosion and sedimentation control plan must be submitted at least 30 days before land disturbance begins on any site involving over one acre in disturbance. A sufficient buffer zone must be retained or established along any natural watercourse or lake to contain all visible sediment to the first 25% of the buffer strip nearest the disturbed area. An undisturbed 25-foot buffer must be maintained along trout waters. However, there are some activities to which the Sedimentation Pollution Control Act, does not apply, including "activities on agricultural land and for the production plants and animals useful to man."

House 385 PCS

Page 5

Section 5 would provide that, despite the exception for activities on agricultural land, waters that have been classified as trout waters by the Environmental Management Commission (EMC) must have an undisturbed, vegetated buffer zone 25 feet wide where such activities are prohibited. However, the EMC may approve plans that include land-disturbing activity within the 25-foot buffer when the EMC finds that the duration of the disturbance would be temporary and the extent of the disturbance would be minimal.

This section would become effective January 1, 2025, and would apply to tracts or portions of tracts on which agricultural activities are initiated on or after that date.

PART VI. REQUIRE THE CRC TO REVISE THE CAMA RULES TO ELIMINATE A PERMIT REQUIREMENT FOR DOCK, PIER, AND WALKWAY REPLACEMENT, AND ALLOW THE WIDTH AND LENGTH OF A PIER, DOCK, OR WALKWAY TO BE ENLARGED BY NOT MORE THAN 5%, AND THE STRUCTURE HEIGHTENED, AT THE TIME OF REPAIR

[15A NCAC 07J .0210](#) (Replacement of Existing Structures) currently provides that:

- "Replacement" of structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and requires CAMA permits.
- "Repair" of structures damaged by natural elements, fire or normal deterioration is not considered development and shall not require CAMA permits.

Under the rules proposed work is considered "replacement" if:

- It enlarges the existing structure in any dimension.
- In the case of fixed docks and piers, more than 50 percent of the framing and structural components (beams, girders, joists, stringers, or pilings) must be rebuilt in order to restore the structure to its pre-damage condition.

Section 6 would require the CRC to revise the CAMA rules to provide that for fixed docks, piers, or walkways damaged or destroyed by natural elements, fire, or normal deterioration, activity to rebuild the dock, pier, or walkway to its pre-damage condition shall be considered repair of the structure, and shall not require CAMA permits, without regard to the percentage of framing and structural components required to be rebuilt. At the time a dock, pier, or walkway damaged or destroyed by natural elements, fire, or normal deterioration is repaired, the width and length of the dock, pier, or walkway structure may be enlarged by not more than 5%, and the structure may be heightened, without need for a CAMA permit.

EFFECTIVE DATE: Except as otherwise provided, the act would be effective when it becomes law.

Chris Saunders, counsel to the Senate Agriculture, Energy, and Environment Committee, substantially contributed to this summary.

ⁱ Contamination of a public water system is currently punishable as a Class C felony. The presumptive range of punishment for a Class C felony, assuming no prior convictions, is incarceration for a period ranging between 58–73 months (see information on punishment for the various classes of felonies (and misdemeanors) [here](#)); the aggravated range of punishment is incarceration for a period range of 73-92 months.