

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 1081
Committee Substitute Favorable 5/28/14

Short Title: Reform Agency Review of Engineering Work.

(Public)

Sponsors:

Referred to:

May 19, 2014

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, and any unit of
12 local government operating a program (i) that grants permits, licenses, or
13 approvals to the public and (ii) that is either approved by or delegated from
14 the Department of Environment and Natural Resources or the Department of
15 Health and Human Services.

16 (4) Regulatory Submittal. – An application or other submittal to a Regulatory
17 Authority for a permit, license, or approval. In the case of a unit of local
18 government, Regulatory Submittal shall mean an application or submittal
19 submitted to a program approved by or delegated from the Department of
20 Environment and Natural Resources or the Department of Health and
21 Human Services.

22 (5) Submitting Party. – The person submitting the Regulatory Submittal to the
23 Regulatory Authority.

24 (6) Working Job Title. – The job title a Regulatory Authority uses to publicly
25 identify an employee with job duties that include the review of Regulatory
26 Submittals. Working Job Title does not mean job titles that are used by the
27 human resources department of a Regulatory Authority to classify jobs
28 containing technical aspects related to the Practice of Engineering.

29 **SECTION 2.** Standardize Certain Regulatory Review Procedures. – No later than
30 December 1, 2014, each Regulatory Authority shall review and, where necessary, revise its
31 procedures for review of Regulatory Submittals to accomplish the following:

32 (1) Standardize the provision of review and comments on Regulatory Submittals
33 so that revisions or requests for additional information that are required by
34 the Regulatory Authority in order to proceed with the permit, license, or
35 approval are clearly delineated from revisions or requests for additional
36 information that constitute suggestions or recommendations by the



1 Regulatory Authority. For purposes of this subdivision, "suggestions or
2 recommendations by the Regulatory Authority" means comments made by
3 the reviewer of the Regulatory Submittal to the Submitting Party that make a
4 suggestion or recommendation for consideration by the Submitting Party but
5 that are not required by the Regulatory Authority in order to proceed with
6 the permit, license, or approval.

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

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

- 15 (1) The inclusion in a Regulatory Submittal of a design or practice sealed by a
16 Professional Engineer but not included in the Regulatory Authority's existing
17 guidance, manuals, or standard operating procedures. This review should
18 first be conducted by the reviewing employee's supervisor or, in the case of a
19 Regulatory Authority that is a unit of local government, either the reviewing
20 employee's supervisor or the delegating or approving State agency. If this
21 initial review was not conducted by a Professional Engineer, then the
22 Submitting Party may request review by (i) a Professional Engineer on the
23 staff of the Regulatory Authority or (ii) the delegating or approving State
24 agency in the case of a Regulatory Authority that is a unit of local
25 government. If the Regulatory Authority or delegating or approving State
26 agency does not employ a Professional Engineer qualified and competent to
27 perform the review, it may provide for review by a consulting Professional
28 Engineer selected from a list developed and maintained by the Regulatory
29 Authority. The Regulatory Authority may charge the Submitting Party for
30 the costs of the review by the consulting Professional Engineer. Nothing in
31 this subdivision is intended to limit the authority of the Regulatory Authority
32 to make a final decision with regard to a Regulatory Submittal following the
33 reviews described in this subdivision.
- 34 (2) A disagreement between the reviewer of the Regulatory Submittal and the
35 Submitting Party regarding whether the statutory or regulatory authority
36 identified by the Regulatory Authority for revisions or requests for
37 additional information designated as "required" under the procedures set
38 forth in Section 2 of this act justifies a required change.

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

41 **SECTION 3.(c)** Procedure to Develop List of Consulting Professional Engineers. –
42 Regulatory Authorities shall develop formal written procedures to prepare and maintain a list of
43 consulting Professional Engineers required pursuant to subdivision (1) of Section 3(a) of this
44 act.

45 **SECTION 4.(a)** Pilot Study. – No later than March 1, 2015, the Department of
46 Environment and Natural Resources shall complete a pilot study on the Pretreatment,
47 Emergency Response and Collection System (PERCS) wastewater collection system permitting
48 program and the stormwater permitting program and perform the following activities with the
49 assistance and cooperation of the North Carolina Board of Examiners for Engineers and
50 Surveyors and the Professional Engineers of North Carolina:

- 1 (1) Produce an inventory of work activities associated with the operation of each
2 regulatory program.
- 3 (2) Determine the work activities identified under subdivision (1) of this section
4 that constitute the Practice of Engineering.
- 5 (3) Develop recommendations for ensuring that work activities constituting the
6 Practice of Engineering are conducted with the appropriate level of
7 oversight.

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

10 **SECTION 5.** Review of Working Job Titles. – No later than December 1, 2014,
11 each Regulatory Authority and the Department of Transportation shall do the following:

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

18 **SECTION 6.(a)** Initial Report. – Each Regulatory Authority shall report to the
19 Environmental Review Commission prior to the convening of the 2015 Regular Session of the
20 2015 General Assembly on implementation of the following, if applicable:

- 21 (1) The standardized procedures required by Section 2 of this act.
- 22 (2) The informal review process required by Section 3 of this act.
- 23 (3) The review of Working Job Titles required by Section 5 of this act.

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

28 **SECTION 6.(c)** Annual Reporting Sunset. – Section 6(b) of this act expires on
29 January 1, 2019.

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