

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE DRS75242-MH-116A (03/17)

Short Title: Regulatory Reform Act of 2013.

(Public)

Sponsors: Senators Brown, Jackson, and Brock (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE REGULATORY RELIEF TO THE CITIZENS OF NORTH CAROLINA BY CLARIFYING THE PREEMPTION OF CITY ORDINANCES AND CLARIFYING THAT SIMILAR RULES APPLY TO COUNTY ORDINANCES; BY CLARIFYING WHAT TYPES OF DEBRIS MAY BE USED AS STRUCTURAL FILL; BY CLARIFYING THE LAWS RELATING TO GROUNDWATER COMPLIANCE BOUNDARIES; BY EXTENDING THE TERMS OF CERTAIN ENVIRONMENTAL PERMITS; BY CLARIFYING THE PROHIBITION ON MASTER METERING TO PERMIT AN ALL-INCLUSIVE LEASE; BY EXEMPTING CERTAIN PROPERTIES FROM RIPARIAN BUFFER RULES; AND BY PROVIDING THE RULES REVIEW COMMISSION THE AUTHORITY TO REVIEW EXISTING RULES.

The General Assembly of North Carolina enacts:

PART I. FAST TRACK PERMITTING FOR CERTAIN ENVIRONMENTAL PERMITS

SECTION 1.1.(a) Stormwater. – The Department of Environment and Natural Resources shall develop Minimum Design Criteria for permits issued by the stormwater runoff permitting programs authorized by G.S. 143-214.7. The Minimum Design Criteria shall include all requirements for siting, site preparation, design and construction, and post-construction monitoring and evaluation necessary for the Department to issue a stormwater permit

SECTION 1.1.(b) Erosion and Sedimentation Control. – The Department of Environment and Natural Resources shall develop Minimum Design Criteria for erosion and sedimentation control plans issued by the Department and local governments under the authority of Article 4 of Chapter 113A of the General Statutes. The Minimum Design Criteria shall include all requirements for siting, site preparation, design and construction, and post-construction monitoring and evaluation necessary for the Department or a local government stormwater program to approve an erosion and sedimentation control plan.

SECTION 1.2. In developing the Minimum Design Criteria, the Department shall consult with a technical working group that consists of industry experts, environmental engineers or consultants, relevant faculty from the University of North Carolina, and other interested stakeholders. The Department shall submit its recommendations to the Environmental Review Commission no later than March 1, 2014.

SECTION 1.3. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

§ 143-214.7B. Fast track permitting.



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1 The Commission shall adopt rules implementing a fast-track permitting process allowing
2 for issuance of stormwater management system permits without a technical review when the
3 permit applicant (i) complies with the Minimum Design Criteria for stormwater management
4 developed by the Department and (ii) submits a permit application sealed by a professional
5 engineer."

6 **SECTION 1.4.** Article 4 of Chapter 113A of the General Statutes is amended by
7 adding a new section to read:

8 **"§ 113A-68. Fast track plan approval.**

9 The Commission shall adopt rules implementing a fast-track plan approval process
10 allowing for approval of erosion and sedimentation control plans by the Department or a local
11 erosion and sedimentation control program without a technical review when the person files a
12 plan that (i) complies with the Minimum Design Criteria for erosion and sedimentation control
13 developed by the Department and (ii) is sealed by a professional engineer."

14 **SECTION 1.5.(a)** The Environmental Management Commission shall adopt rules
15 implementing Section 1.3 of this act no later than February 1, 2014.

16 **SECTION 1.5.(b)** The Sedimentation Control Commission shall adopt rules
17 implementing Section 1.4 of this act no later than February 1, 2014.

18 **SECTION 1.6.** The Department of Environment and Natural Resources shall
19 identify other permitting programs for which the fast-track permitting process described by this
20 Part would be appropriate and make a report, including proposed legislation, to the
21 Environmental Review Commission no later than May 1, 2014.

22
23 **PART II. CLARIFY LOCAL GOVERNMENT PREEMPTION**

24 **SECTION 2.1.** G.S. 160A-174(b) reads as rewritten:

25 "(b) A city ordinance shall be consistent with the Constitution and laws of North
26 Carolina and of the United States. An ordinance is not consistent with State or federal law
27 when:

- 28 (1) The ordinance infringes a liberty guaranteed to the people by the State or
29 federal Constitution;
- 30 (2) The ordinance makes unlawful an act, omission or condition which is
31 expressly made lawful by State or federal law;
- 32 (3) The ordinance makes lawful an act, omission, or condition which is
33 expressly made unlawful by State or federal law;
- 34 (4) The ordinance purports to regulate a subject that cities are expressly
35 forbidden to regulate by State or federal law;
- 36 (5) The ordinance purports to regulate a field for which a State or federal statute
37 clearly shows a legislative intent to provide a complete and integrated
38 regulatory scheme to the exclusion of local regulation;

39 **(5a)** The ordinance regulates a field that is also regulated by a State or federal
40 statute or regulation and the ordinance is more stringent than the State or
41 federal statute or regulation.

- 42 (6) The elements of an offense defined by a city ordinance are identical to the
43 elements of an offense defined by State or federal law.

44 The fact that a State or federal law, standing alone, makes a given act, omission, or
45 condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or
46 condition."

47 **SECTION 2.2.** G.S. 153A-121 is amended by adding a new subsection to read:

48 **"(a1)** A county ordinance shall be consistent with the Constitution and laws of North
49 Carolina and of the United States. An ordinance is not consistent with State or federal law
50 when:

- 1 (1) The ordinance infringes a liberty guaranteed to the people by the State or
2 federal Constitution;
- 3 (2) The ordinance makes unlawful an act, omission, or condition which is
4 expressly made lawful by State or federal law;
- 5 (3) The ordinance makes lawful an act, omission, or condition which is
6 expressly made unlawful by State or federal law;
- 7 (4) The ordinance purports to regulate a subject that cities are expressly
8 forbidden to regulate by State or federal law;
- 9 (5) The ordinance purports to regulate a field for which a State or federal statute
10 clearly shows a legislative intent to provide a complete and integrated
11 regulatory scheme to the exclusion of local regulation;
- 12 (5a) The ordinance regulates a field that is also regulated by a State or federal
13 statute or regulation and the ordinance is more stringent than the State or
14 federal statute or regulation.
- 15 (6) The elements of an offense defined by a city ordinance are identical to the
16 elements of an offense defined by State or federal law.

17 The fact that a State or federal law, standing alone, makes a given act, omission, or
18 condition unlawful shall preclude county ordinances requiring a higher standard of conduct or
19 condition."
20

21 **PART III. ENVIRONMENTAL REGULATORY REFORM**

22 **SECTION 3.1.(a)** G.S. 130A-309.09B reads as rewritten:

23 **"§ 130A-309.09B. Local government waste reduction programs.**

24 (a) Each unit of local government shall establish and maintain a solid waste reduction
25 program that will enable the unit of local government to meet the local solid waste reduction
26 goals established pursuant to G.S. 130A-309.09A(b)(2). The following requirements shall
27 apply:

- 28 (1) ~~Demolition~~Inert debris or demolition debris consisting of used asphalt or
29 used asphalt mixed with dirt, sand, gravel, rock, concrete, brick, wood, or
30 similar nonhazardous material may be used as fill and need not be disposed
31 of in a permitted landfill or solid waste disposal facility, provided that
32 demolition debris may not be placed in the waters of the State or at or below
33 the seasonal high water table.
- 34 (3) Units of local government are encouraged to separate marketable plastics,
35 glass, metal, and all grades of paper for recycling prior to final disposal and
36 are further encouraged to recycle yard trash and other organic solid waste
37 into compost available for agricultural and other acceptable uses.

38 "

39 **SECTION 3.1.(b)** G.S. 130A-294(m) reads as rewritten:

40 **"§ 130A-294. Solid waste management program.**

41 ...

42 (m) ~~Demolition~~Inert debris or demolition debris consisting of used asphalt or used
43 asphalt mixed with dirt, sand, gravel, rock, concrete, brick, wood, or similar nonhazardous
44 material may be used as fill and need not be disposed of in a permitted landfill or solid waste
45 disposal facility. Such demolition debris may not be placed in the waters of the State or at or
46 below the seasonal high water table."

47 **SECTION 3.2.(a)** G.S. 143-215.1 is amended by adding three new subsections to
48 read:

49 **"§ 143-215.1. Control of sources of water pollution; permits required.**

50 ...

1 (i) Any person subject to the requirements of this section who is required to obtain an
2 individual permit from the Commission for a disposal system shall have a compliance
3 boundary as the Commission may establish by rule for various categories of disposal systems
4 and beyond which groundwater quality standards may not be exceeded. Rules promulgated by
5 the Commission pursuant to this subsection may not establish a compliance boundary beyond
6 the property boundary. Multiple contiguous properties under common ownership and permitted
7 for use as a disposal system shall be treated as a single property with regard to determination of
8 a compliance boundary under this subsection.

9 (j) When operation of a disposal system permitted under this section results in an
10 exceedance of the groundwater quality standards adopted in accordance with G.S. 143-214.1,
11 the Commission shall require that the exceedances within the compliance boundary be
12 remedied through clean-up, recovery, containment, or other response when any of the
13 following conditions occur:

14 (1) A violation of any water quality standard in adjoining classified waters of
15 the State occurs or can be reasonably predicted to occur considering
16 hydrogeological conditions, modeling, or any other available evidence.

17 (2) An imminent hazard or threat to the environment, public health, or safety
18 exists.

19 (3) A violation of any standard in groundwater occurring in the bedrock other
20 than limestones found in the Coastal Plain sediments, unless it can be
21 demonstrated that the violation will not adversely affect, or have the
22 potential to adversely affect, a water supply well.

23 (k) Where operation of a disposal system permitted under this section results in
24 exceedances of the groundwater quality standards outside the compliance boundary established
25 under subsection (i) of this section, exceedances shall be remedied through clean-up, recovery,
26 containment, or other response as directed by the Commission."

27 **SECTION 3.2.(b)** With respect to exceedances of groundwater quality standards
28 within a compliance boundary and related remedy requirements, G.S. 143-215.1(j) as set forth
29 in Section 3.1(a) of this act shall apply in lieu of the restricted designation directives found in
30 15A NCAC 2L .0104(d) and (e) until the Department of Environment and Natural Resources
31 has adopted revisions to those rules to comply with this act.

32 **SECTION 3.3.(a)** G.S. 143-215.1 reads as rewritten:

33 **"§ 143-215.1. Control of sources of water pollution; permits required.**

34 ...

35 (d2) No permit issued pursuant to subsection (c) of this section shall be issued or
36 renewed for a term exceeding five years. All other permits issued pursuant to this section for
37 which an expiration date is specified shall be issued for a term not to exceed ~~eight~~ 10 years.

38 (e) Administrative Review. – A permit ~~applicant or permittee~~ applicant, a permittee, or
39 a third party who is dissatisfied with a decision of the Commission may commence a contested
40 case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the
41 applicant or permittee of its decision. If the permit applicant or permittee does not file a petition
42 within the required time, the Commission's decision is final and is not subject to review.

43 "

44 **SECTION 3.3.(b)** G.S. 143-215.108 reads as rewritten:

45 **"§ 143-215.108. Control of sources of air pollution; permits required.**

46 ...

47 (d1) No Title V permit issued pursuant to this section shall be issued or renewed for a
48 term exceeding five years. All other permits issued pursuant to this section shall be issued for a
49 term not to exceed ~~eight~~ 10 years.

50 (e) A permit ~~applicant or permittee~~ applicant, a permittee, or a third party who is
51 dissatisfied with a decision of the Commission may commence a contested case by filing a

1 petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or
2 permittee of its decision. If the permit applicant or permittee does not file a petition within the
3 required time, the Commission's decision on the application is final and is not subject to
4 review.

5"

7 **PART IV. CLARIFY MASTER METER PROHIBITION TO PERMIT AN** 8 **ALL-INCLUSIVE LEASE**

9 **SECTION 4.** G.S. 143-151.42 reads as rewritten:

10 **"§ 143-151.42. Prohibition of master meters for electric and natural gas service.**

11 (a) From and after September 1, 1977, in order that each occupant of an apartment or
12 other individual dwelling unit may be responsible for his own conservation of electricity and
13 gas, it shall be unlawful for any new residential building, as hereinafter defined, to be served by
14 a master meter for electric service or natural gas service. Each individual dwelling unit shall
15 have individual electric service with a separate electric meter and, if it has natural gas,
16 individual natural gas service with a separate natural gas meter, which service and meters shall
17 be in the name of the tenant or other occupant of said apartment or other dwelling unit. No
18 electric supplier or natural gas supplier, whether regulated public utility or municipal
19 corporation or electric membership corporation supplying said utility service, shall connect any
20 residential building for electric service or natural gas service through a master meter, and said
21 electric or natural gas supplier shall serve each said apartment or dwelling unit by separate
22 service and separate meter and shall bill and charge each individual occupant of said separate
23 apartment or dwelling unit for said electric or natural gas service. A new residential building is
24 hereby defined for the purposes of this section as any building for which a building permit is
25 issued on or after September 1, 1977, which includes two or more apartments or other family
26 dwelling units. Provided, however, that any owner or builder of a multi-unit residential building
27 who desires to provide central heat or air conditioning or central hot water from a central
28 furnace, air conditioner or hot water heater which incorporates solar assistance or other designs
29 which accomplish greater energy conservation than separate heat, hot water, or air conditioning
30 for each dwelling unit, may apply to the North Carolina Utilities Commission for approval of
31 said central heat, air conditioning or hot water system, which may include a central meter for
32 electricity or gas used in said central system, and the Utilities Commission shall promptly
33 consider said application and approve it for such central meters if energy is conserved by said
34 design. This section shall apply to any dwelling unit normally rented or leased for a minimum
35 period of one month or longer, including apartments, condominiums and townhouses, but shall
36 not ~~apply~~apply (i) to hotels, motels, hotels or motels that have been converted into
37 condominiums, dormitories, rooming houses or nursing homes, or homes for the
38 elderly-elderly; or (ii) unless the tenant and the landlord have agreed to an all-inclusive lease
39 where the electric and natural gas utilities are included in the rental payments and the service
40 remains in the name of the landlord.

41"

43 **PART V. EXEMPT CERTAIN PROPERTIES FROM RIPARIAN BUFFER RULES**

44 **SECTION 5.** Part 1 of Article 21 of Chapter 143 of the General Statutes is
45 amended by adding a new section to read:

46 **"§ 143-214.18. Exemption to riparian buffer requirements for certain private properties** 47 **in the Neuse River and Tar-Pamlico River Basins.**

48 (a) Absent a requirement of federal law or an imminent threat to public health or safety,
49 the temporary rules adopted July 22, 1997, January 22, 1998, April 22, 1998, and June 22,
50 1999, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0233,
51 regarding the protection and maintenance of existing riparian buffers in the Neuse River and

1 Tar-Pamlico River Basins shall not apply to any tract of land that meets all of the following
2 criteria:

- 3 (1) The property is private property.
4 (2) Prior to August 1, 2000, the property was private property and was platted
5 and recorded in the register of deeds in the county where the property is
6 located.
7 (3) With the exception of 15A NCAC 02B .0233, the use of the property
8 complies with the rules and other laws regulating and applicable to that
9 property prior to August 1, 2000.

10 (b) If a property described in subsection (a) of this section is converted to a use that
11 does not comply with subdivisions (1) and (3) of subsection (a) of this section, then 15A
12 NCAC 02B .0233 shall apply. "

14 **PART VI. EXPANDED RRC AUTHORITY**

15 **SECTION 6.** Article 2A of Chapter 150B of the General Statutes is amended by
16 adding a new section to read:

17 **"§ 150B-21.14A. Review by Commission of existing rules.**

18 (a) Authority. – At the request of any person or upon its own motion, the Commission
19 may review any existing rule that was adopted in accordance with Part 2 of this Article.

20 (b) Notice. – At least 30 days prior to reviewing an existing rule, the Commission shall
21 notify the agency that adopted the rule. If the agency that adopted the rule no longer exists or
22 has become a part of another agency, the Commission shall provide the notice required by this
23 subsection to the agency responsible for enforcing the rule.

24 (c) Standards. – The Commission shall review an existing rule under the criteria set
25 forth in subdivisions (a)(1), (a)(2), and (a)(3) of G.S. 150B-21.9. The Commission shall not
26 consider questions relating to the quality or efficacy of the rule but shall restrict its review to
27 determination of the standards set forth in this subsection.

28 (d) Procedures. – When it reviews an existing rule, the Commission shall follow the
29 procedures set forth in G.S. 150B-21.10 and subsections (a), (b), and (c) of G.S. 150B-21.12. If
30 the Commission approves the rule, it will notify the agency. If the Commission disapproves the
31 rule and the agency responds to the Commission that it has decided not to change the rule, the
32 Commission shall provide a written report within 30 days to the Joint Legislative
33 Administrative Procedure Oversight Committee and the Joint Legislative Commission on
34 Governmental Operations. The report shall include the written statement required by
35 G.S. 150B-21.12(a) together with all subsequent communications between the agency and the
36 Commission."

38 **PART VII. SEVERABILITY AND EFFECTIVE DATE PROVISIONS**

39 **SECTION 7.1.** If any section or provision of this act is declared unconstitutional or
40 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
41 the part so declared to be unconstitutional or invalid.

42 **SECTION 7.2.** Except as otherwise provided, this act is effective when it becomes
43 law.