HOUSE BILL 765:
Regulatory Reform Act of 2015

2015-2016 General Assembly

Committee:		**Date:**	September 28, 2015
Introduced by:	Rep. McElraft	**Prepared by:**	Karen Cochrane-Brown, Erika Churchill, Jeff Hudson, Jennifer McGinnis, Chris Saunders, Staff Attorneys Jennifer Mundt Legislative Analyst
Analysis of:	Conference Report H765-PCCS40526-SBf-6		

SUMMARY: House Bill 765 would amend a number of State laws related to business regulation, State and local government regulation, and environmental regulation.

PART I. ADMINISTRATIVE REFORMS

REPEAL OBSOLETE STATUTES

Section 1.1. would repeal obsolete provisions in the criminal law related to using profane or indecent language on public highways and refusing to relinquish a party telephone line in an emergency.

BURDEN OF PROOF IN CERTAIN CONTESTED CASES

Section 1.2. would clarify that the petitioner has the burden of proof in most contested cases and establishes that the State agency has the burden of proof in certain contested cases, including cases involving the imposition of civil fines or penalties and cases involving the demotion, suspension or discharge of a career State employee. The Joint Legislative Administrative Procedure Oversight Committee is directed to study whether there are other categories of cases in which the burden should be placed with the agency. This section would become effective when it becomes law and would apply to contested cases commenced on or after that date.

LEGISLATIVE APPOINTMENTS

Section 1.3. would amend the law governing legislative appointments to boards and commissions, whether by the General Assembly through the appointments bill or directly by the Speaker and the President Pro Tempore, to apply the following rules if the law requires a recommendation or nomination by a third party for the appointment:

- For consultations or recommendations of a third party:
    - The consultation or recommendation is discretionary and not binding.
    - The third party must submit the consultation or recommendation at least 60 days before expiration of the term or within 10 days of a vacancy.
    - Failure to submit the consultation recommendation within the time period is deemed a waiver of the opportunity.

- For appointments made from a list of nominees provided by a third party:
    - The third party must submit the recommendation at least 60 days before expiration of the term or within 10 days of a vacancy. This provision does not apply to appointments to the Legislative Ethics Committee.
    - Failure to submit nominees within the time limits is deemed a waiver of the opportunity.

These provisions would become effective when they become law and apply to recommendations, consultations, and nominations made on or after that date.

OCCUPATIONAL LICENSING BOARD INVESTIGATORS AND INSPECTORS

Section 1.5. would amend the law governing occupational licensing boards to prohibit a board from contracting with or employing a person licensed by the board to serve as an investigator or inspector, if the person is actively practicing in the profession or occupation over which the board has jurisdiction. The section would not prohibit the board from hiring a licensee for purposes other than as an investigator or inspector or if the licensee is not actively working in the field. Also, the section would not prohibit the board from contracting with licensees to serve as expert witnesses or consultants, provided their duties and authority are limited to serving as an information resource to the board or board personnel.

NO FISCAL NOTE REQUIRED FOR LESS STRINGENT RULES

Section 1.6. would amend the process for the periodic review and expiration of existing rules under the Administrative Procedure Act. The section provides that if, during the readoption process, a rule is amended to impose a less stringent burden on regulated persons than the existing rule, then the agency is not required to prepare a fiscal note for the rule.

APO TO MAKE RECOMMENDATIONS ON OCCUPATIONAL LICENSING BOARD CHANGES

Section 1.7. would direct the Joint Legislative Administrative Procedure Oversight Committee (APO) to review the recommendations contained in the Program Evaluation Division report, entitled "Occupational Licensing Agencies Should Not be Centralized, but Stronger Oversight is Needed," to determine how to improve oversight of occupational licensing boards. The section directs APO to consult with various interested parties in conducting its review and to propose legislation to the 2016 Session of the 2015 General Assembly.

TECHNICAL CORRECTION

Section 1.8.(a) would make a technical amendment to G.S. 20-116(g)(3) to rewrite the provision to eliminate duplicative lettering in accordance with coded bill drafting protocol.

Section 1.8(b) would add a new bill section to House Bill 44, Local Government Regulatory Reform, to limit the scope of the grant of zoning power with respect to special use permits and conditional use permits.

Sections 1.8(c)-(d) would amend Section 12 of House Bill 44, Local Government Regulatory Reform, which requires notice to property owners prior to commencement of construction by a county or city. The amendment would define 'construction' to exclude routine maintenance and repair.

PART II. BUSINESS REGULATION

EXEMPT SMALL BUSINESS ENTITIES BUYING OR SELLING ENTITY-OWNED PROPERTY

Section 2.1. would amend the Real Estate License Law to exempt the owners, officers, managers, and employees of a corporation, partnership, limited liability company, or the natural person owners of a closely held business entity from the requirement of obtaining a license in order to act as a real estate broker in connection with property owned or leased by the business. A closely held business entity is defined in the section as a limited liability company or a corporation with no more than two legal owners, at least one of whom is a natural person. The section also authorizes the officers, managers, and employees of a closely held business entity to act as the agent of another exempt business entity, without a license, if certain conditions relating to overlapping ownership are met. In this case, the closely held business entity must notify the Secretary of State, in writing annually of its legal name and physical address and the exemption is only effective if immediately following the completion of the transaction for which the exemption is claimed, the closely held business entity has a net worth equal to or exceeding the value of the transaction.

When a person claims an exemption under any of the provisions of this section, the person must disclose the following, in writing, to all parties to the transaction:

- That the person is not licensed as a real estate broker or salesperson.
- The specific exemption that applies.
- The legal name and physical address of the owner and of the closely held business acting as agent, if applicable.

The disclosure may be included on the face of the lease or contract executed under the exemption.

MANUFACTURED HOME LICENSE/CRIMINAL HISTORY CHECK

Section 2.2. would amend the law governing criminal history checks for applicants for manufactured home licenses to clarify that only applicants for initial licensure need consent to a criminal history record check. The section also clarifies that an applicant is a person applying for initial licensure as a manufactured home salesperson or a set-up contractor.

AMEND DEFINITION OF "EMPLOYEE" UNDER THE WORKERS' COMPENSATION ACT TO EXCLUDE VOLUNTEERS AND OFFICERS OF CERTAIN NONPROFIT CORPORATIONS AND ASSOCIATIONS

Section 2.3. would amend the definition of the term "employee" under the Workers' Compensation Act to exclude volunteers and officers of certain nonprofit corporations and associations. The new definition applies to nonprofits subject to the following acts: the Unit Ownership Act, the Condominium Act, the Planned Community Act, the Nonprofit Corporation Act, the Uniform Unincorporated Nonprofit Association Act, and any organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. The section applies to persons who receive no remuneration for voluntary service other than reasonable reimbursement for expenses incurred in connection with voluntary service, even if the person was elected or appointed and empowered as an executive officer, director, or committee member under the charter, articles, or bylaws of the nonprofit. If the nonprofit employs one or more persons who receive remunerations, the volunteer officers shall be counted solely for the purpose of determining the number of persons employed by the corporation. The provision does not apply to certain volunteer public safety workers who are currently covered by the definition of employee.

PART III. STATE AND LOCAL GOVERNMENT REGULATION

REDUCE STATE AGENCY MOBILE DEVICE REPORTING FREQUENCY
Section 3.1. would reduce the reporting requirement for State agencies with regard to the number, type, and use of mobile devices issued by the agency. Since 2011, agencies have been required to report to the Legislature and the Office of State Budget and Management on a quarterly basis. This provision would reduce the reporting requirement from quarterly to annually.

GOOD SAMARITAN EXPANSION
Section 3.3. would amend the criminal law to create an exception to the law against breaking or entering into or out of a railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft under certain circumstances. The following circumstances are not violations of the law:

- If the person committing the act does so in good faith to provide first aid or emergency health care, or because the person inside is in imminent danger of becoming unconscious, ill, or injured.
- Prompt decisions and actions in medical, other health care, or other assistance are required.
- Immediate health care or removal of the person is so reasonably apparent that any delay would seriously worsen the physical condition or endanger the life of the person.

This section would become effective December 1, 2015, and apply to offenses committed on or after that date.

Section 3.4. would create immunity from civil liability for damage to a railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft, if the damage occurred while a person was rendering emergency assistance to another person inside the conveyance. Immunity would be triggered if one or more of the following circumstances exist:

- If the person committing the act does so in good faith to provide first aid or emergency health care, or because the person inside is in imminent danger of becoming unconscious, ill, or injured.
- Prompt decisions and actions in medical, other health care, or other assistance are required.
- Immediate health care or removal of the person is so reasonably apparent that any delay would seriously worsen the physical condition or endanger the life of the person.

This section would become effective December 1, 2015, and apply to causes of action arising on or after that date.

DIRECT DMV TO ISSUE SUITABLY REDUCED SIZE REGISTRATION PLATES FOR MOTORCYCLES AND PROPERTY HAULING TRAILERS ATTACHED TO MOTORCYCLES

Section 3.5. would require, effective January 1, 2016, the Division of Motor Vehicles to issue a suitably reduced size registration plate, issued on either a multi-year or an annual basis, for a motorcycle, or for a trailer used as an attachment to the rear of a motorcycle.

STATUS FOR PROVIDERS OF MH/DD/SA SERVICES WHO ARE NATIONALLY ACCREDITED
Section 3.7. would authorize the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt rules for providers who have obtained national accreditation to be

exempt from undergoing any routine monitoring that is duplicative of the oversight by the national accrediting agency. Providers would continue to be subject to inspection by the Secretary, provided the inspection is not duplicative of inspections required by the national accrediting agency.

CLARIFY THAT WHEN A NEW PERMIT OR TRANSITIONAL PERMIT IS ISSUED FOR AN ESTABLISHMENT, ANY PREVIOUS PERMIT FOR THAT SAME ESTABLISHMENT IN THAT LOCATION BECOMES VOID

Section 3.8. would amend the law governing the regulation of food and lodging establishments to allow the issuance of more than one permit for the same location if more than one establishment is operated in the same location and if each establishment satisfies all of the requirements of the law.

ENVIRONMENTAL REVIEW COMMISSION TO STUDY OPEN AND FAIR COMPETITION WITH RESPECT TO THE MATERIALS USED IN WASTEWATER, STORMWATER, AND OTHER WATER PROJECTS

Section 3.9 would authorize the Environmental Review Commission to study whether to require public entities to consider all acceptable piping materials before determining which piping material should be used in the constructing, developing, financing, maintaining, rebuilding, improving, repairing, procuring, or operating of a water, wastewater, or stormwater drainage project. The Environmental Review Commission would report its findings and recommendations to the 2016 Regular Session of the 2015 General Assembly.

AMEND UNDERGROUND DAMAGE PREVENTION REVIEW BOARD, ENFORCEMENT, AND CIVIL PENALTIES

Section 3.12. would amend the statute establishing the Underground Damage Prevention Review Board (Board). The Board is charged with reviewing reports of alleged violations of the Underground Utility Safety Act and recommending penalties for violation of the Act. Section 3.12 would make a number of clarifying changes to the Board's statute, including provisions for length of Board member terms, how vacancies are filled and members removed, quorum, how the Chair of the Board is appointed, and the process for how the Board recommends actions or penalties when violations of the Act occur.

CONFORM NORTH CAROLINA ALL-TERRAIN VEHICLE LAWS TO NATIONAL SAFETY AND DESIGN STANDARDS FOR YOUTH OPERATORS

Section 3.13 would amend North Carolina's all-terrain vehicle laws to conform to the American National Standards Institute/Specialty Vehicle Institute of America (ANSI/SVIA) design standard. Under current law, there are different age restrictions on riders of all-terrain vehicles, with criteria for riders of 8, 12, and 16 years of age. Under the national standards, different all-terrain vehicles are approved for use by riders of 6, 10, 12, 14, and 16 years of age. The North Carolina law would remain the same that a rider must be at least 8 years of age.

All riders under 16 years of age must be under adult supervision regardless of the age restriction on the vehicle.

PART IV. ENVIRONMENTAL AND NATURAL RESOURCES REGULATION

ENVIRONMENTAL SELF-AUDIT PRIVILEGE AND LIMITED IMMUNITY

Section 4.1. would establish a disclosure privilege for environmental audit reports that would generally prevent the use of the reports as evidence in civil or administrative proceedings. The provision would also prohibit persons who conducted or participated in an audit or who significantly reviewed an audit

report from being compelled to testify regarding the audit report or a privileged part of the audit, except in certain circumstances. In addition, the provision would generally establish immunity for owners and operators of facilities from imposition of civil and administrative penalties for a violation of environmental laws discovered through the conduct of an environmental audit and voluntarily disclosed to an enforcement agency in conformance with requirements established by the provision. The provision specifically provides, however, that waiver of penalties and fines must not be granted until the applicable enforcement agency has certified that the violation was corrected within a reasonable period of time (i.e., the enforcement agency retains discretion to assess penalties and fines for the violation until it is corrected). An owner or operator of a facility who makes a voluntary disclosure of a violation of environmental laws discovered through an audit would be limited to exercise the privilege or immunity only once in a 2-year period, not more than twice in a 5-year period, and not more than three times in a 10-year period.

The provision would not apply to activities regulated under the Coal Ash Management Act of 2015.

The section would require the Department of Environment and Natural Resources (DENR)[1] to: (i) submit these environmental self-audit privilege and immunity provisions to the United States Environmental Protection Agency (USEPA) and request the USEPA's approval to implement the provisions in concert with the State's legal authority to continue administering delegated, approved, or authorized federal environmental programs within the State; and (ii) report to the Environmental Review Commission (ERC) no later than December 1, 2015, and monthly thereafter, until approval to implement these provisions is received from USEPA. The section would become effective upon the date such approval is received from USEPA.

STUDY COMPUTER EQUIPMENT, TELEVISION, AND ELECTRONICS RECYCLING PROGRAM

Section 4.2. would direct DENR to study, in consultation with various stakeholders, the State's recycling requirements for discarded computer equipment and televisions, including issues such as: (i) the changing waste stream, including the transition from televisions containing cathode ray tubes to flat screen televisions; (ii) the current status of North Carolina's recycling system, including cost and financing issues, and options that may be available to reduce costs and establish sufficient funding to cover necessary costs; and (iii) opportunities for more efficient and effective recycling systems. The Department would be required to report its findings, including specific recommendations for legislative action, to the ERC on or before April 1, 2016.

PROHIBIT IMPLEMENTATION AND ENFORCEMENT OF FEDERAL STANDARDS FOR WOOD HEATERS AND FOR FUEL SOURCES THAT PROVIDE HEAT OR HOT WATER TO A RESIDENCE OR BUSINESS

Sections 4.3.(a) and 4.3.(b) Pursuant to G.S. 143-215.107, the Environmental Management Commission (EMC) is empowered to develop and adopt standards and plans necessary to implement the requirements of the federal Clean Air Act and regulations adopted by the USEPA. **Sections 4.3(a) and 4.3(b)** would limit EMC's authority to develop and adopt standards and plans to implement federal air quality standards by prohibiting the EMC and DENR from issuing rules to implement regulations adopted by the USEPA after May 1, 2014, to limit emissions from wood heaters or enforce against a manufacturer, distributor, or consumer of a wood heater subject to federal regulation. "*Wood heater*" is defined by this section to mean: a fireplace, wood stove, pellet stove, wood-fired hydronic heater, wood-burning forced-air furnace, or masonry wood heater or other similar appliance designed for

[1] Now the Department of Environmental Quality (DEQ) pursuant to Sec. 14.30 of S.L. 2015-241

heating a residence or business or for heating water for use by a residence through the combustion of wood or products substantially composed of wood.

AMEND RISK-BASED REMEDIATION PROVISIONS

Section 4.7. would amend the law governing risk-based cleanup of contaminated sites, originally enacted in 2011, that authorized use of risk-based cleanup[2] for certain contaminated sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site. The 2011 legislation included a number of limitations on a site's eligibility for risk-based cleanup, including:

- Only "industrial sites" were made eligible. "Industrial sites" as defined under the legislation include those where the property is or has been used primarily for manufacturing or other industrial activities for the production of a commercial product. This includes a property used primarily for the generation of electricity.
- Only sites where the release of contamination was reported to DENR prior to March 1, 2011, were made eligible.
- Only sites where there was no migration of contaminants off the industrial site were made eligible.

Section 4.7 would eliminate these limitations.

With respect to the cleanup of sites where contaminants have migrated off the contaminated (source) site, the section allows the person who proposes to conduct risk-based remediation on the contaminated site to use risk-based remediation for the off-site properties only if the person who proposes to conduct the remediation on the contaminated site: (i) provides the owner of the contaminated off-site property with a copy of the governing law and a publication produced by DENR, pursuant to requirements of the bill as described below, that informs owners of contaminated off-site property of the issues and liabilities associated with the contamination on their property; and (ii) obtains written consent from the owner of the contaminated off-site property for the person to remediate the contaminated off-site property using site-specific remediation standards. Notwithstanding an off-site owner's consent, the bill provides that any site-specific remediation conducted must not allow concentrations of contaminants on the off-site property to increase above the levels present on the date the written consent is obtained.

The section would require DENR, in consultation with the Consumer Protection Division of the North Carolina Department of Justice and the North Carolina Real Estate Commission, to develop and make available a publication entitled "Contaminated Property: Issues and Liabilities" to inform owners of contaminated off-site property of the issues and liabilities associated with the contamination on their property. In particular, the publication would be required to provide information on the nature of risk-based remediation and how it differs from remediation to unrestricted use standards, potential health impacts that may arise from residual contamination, as well as identification of liabilities that arise from contaminated property and associated issues, including potential impacts to real estate transactions and real estate financing.

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[2] Generally, cleanup of environmental contamination must be performed to meet unrestricted use standards, meaning contaminant concentrations present at a location are acceptable for all uses; are protective of public health, safety, and welfare and the environment; and comply with an applicable program's standards established by statute or rule adopted by the Environmental Management Commission, the Commission for Public Health, or DENR. Risk-based cleanup, however, allows cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards.

In addition, with respect to such sites, the section provides that, if, after issuance of a no further action determination, DENR determines that additional remedial action is required for a contaminated off-site property, the responsible party (owner of the contaminated site) would be liable for the additional remediation deemed necessary.

The section would also: (i) amend the legislation enacted in 2011 **to enact additional exemptions from** the use of risk-based remediation for the facilities subject to the Coal Ash Management Act of 2014 and animal waste management systems; and (ii) authorize DENR to consider, in lieu of imposition of land-use restrictions already permissible under current law, reliance on other State or local land-use controls.

Section 4.8. would direct DENR, no later than March 1, 2016, to develop all of the following:

- Internal processes to govern remediation of contaminated industrial sites using risk-based remediation that are consistent across all programs or requirements.
- A coordinated program and processes for remediation of contaminated industrial sites using risk-based remediation that are subject to more than one program or requirement.
- Reforms to expand the role, and otherwise enhance the use of, registered environmental consultants approved to implement and oversee sites using risk-based remediation .

DENR would be required to report to the ERC no later than April 1, 2016, on its activities conducted pursuant to this section, together with any pertinent findings or recommendations, including any legislative proposals that it deems advisable.

Section 4.8.A. would direct DENR, in conjunction with the Department of Health and Human Services, to study the State's groundwater standards, or State Interim Allowable Maximum Contaminant Levels (IMAC), as applicable, as well as State health screening levels, for hexavalent chromium and vanadium relative to other southeastern states' standards for these contaminants and the federal maximum contaminant levels (MCLs) for these contaminants under the Safe Drinking Water Act, in order to identify appropriate standards to protect public health, safety, and welfare; the environment; and natural resources. In addition, the Department would also be required to evaluate background standards for these contaminants where they naturally occur in groundwater in the State. DENR would be required to submit an interim report no later than November 1, 2015, and a final report no later than April 1, 2016, to the ERC and the Joint Legislative Oversight Committee on Health and Human Services with any pertinent findings or recommendations, including any legislative proposals that it deems advisable.

MODIFY EFFECTIVE DATE FOR LIFE-OF-SITE PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS AND MAKE OTHER TECHNICAL, CLARIFYING, AND CONFORMING CHANGES

Section 4.9. would modify the provision included in the 2015 Appropriations Act that authorized issuance of life-of-site permits for sanitary landfills and transfer stations (in lieu of five or ten-year permits for such facilities). Section 14.20.(f) of S.L. 2015-241 provided that currently permitted facilities would be eligible for life-of-site permits at the time their current permit was next subject to renewal. Section 4.9 of this act would amend that provision to allow such facilities the option to obtain life-of-site permits on or after July 1, 2016, or at the conclusion of their current permit's term. Section 4.9 also makes other technical, clarifying, and conforming changes to the budget provision.

AMEND THE DEFINITION FOR "PROSPECTIVE DEVELOPER" UNDER THE LAW GOVERNING BROWNFIELDS REDEVELOPMENT

Section 4.10. would amend the definition of "prospective developer" included in the statutes under the Brownfields Property Reuse Act (Act) of 1997.

A Brownfields site is any real property that is abandoned, idled, or underutilized where environmental contamination, or perceived environmental contamination, hinders redevelopment. This program was enacted to encourage and facilitate redevelopment of these sites by removing barriers to redevelopment posed by a prospective developer's (PD's) potential liability for clean-up costs. To be eligible for participation in the Brownfields Program (Program), a PD must not have caused or contributed to contamination at a site. The Act does not obviate practical or necessary remediation of properties under any State or federal cleanup program, but it does authorize DENR to work with PDs toward the safe redevelopment of sites, and to provide PDs regulatory flexibility and liability protection that would not be available to parties who actually caused or contributed to contamination at a site.

If a site is included in the Brownfields Program, DENR will enter into an agreement with the developer that is in effect a covenant not-to-sue contingent on the developer making the site suitable for the reuse proposed. Additionally, a Brownfields agreement obtained from the Program entitles the developer to a property tax exclusion on the improvements made to the property for a period of five years, which can more than pay for assessment and cleanup activities on many projects. Site remedies (cleanup requirements) under the Program are also less costly and time consuming than they would be for a party who caused or contributed to the contamination, as site remedies under the Brownfields Program are designed to prevent exposure and make the site suitable for reuse, rather than meet environmental standards required under the traditional cleanup programs.

Under current law "prospective developer" means any person with a bona fide, demonstrable desire to ***either buy or sell*** a Brownfields property for the purpose of developing or redeveloping that brownfields property and who did not cause or contribute to the contamination at the brownfields property. The bill would eliminate the requirement that a prospective developer have a demonstrable intent to "buy or sell" a property.

This section would become effective December 1, 2015, and apply to notices of Intent to Redevelop a Brownfields Property filed on or after that date.

ELIMINATE OUTDATED FEES RELATED TO SOLID WASTE MATTERS

Section 4.11.(a) would repeal a tax imposed on publishers of newsprint publications of $15 per each ton by which the publisher's recycled content tonnage falls short of the tonnage of recycled postconsumer recovered paper needed to achieve the applicable minimum recycled content percentage as established in the statute.

Section 4.11.(b) would repeal a provision that allows DENR to collect a fee for registration of persons transporting, collecting, or recycling used oil.

DELETE OR REPEAL VARIOUS ENVIRONMENTAL AND NATURAL RESOURCES REPORTING REQUIREMENTS

Section 4.12. would repeal or amend various environmental and natural resources reporting requirements as follows:

- Repeal the annual joint report from the Chairs of the Marine Fisheries Commission and the Wildlife Resources Commission to the Joint Legislative Commission on Governmental Operations (Gov Ops) on the Marine Resources Fund and the Endowment Fund.
- Repeal the Secretary of Environment's annual progress report to Gov Ops on developing and implementing Fishery Management Plans.
- Repeal the annual One-Stop Permitting Program and Express Permitting Program report from DENR to Fiscal Research and the ERC.
- Repeal the annual report from the Division of Aquariums in DENR to Gov Ops, NER Appropriations Subcommittees, and Fiscal Research on the North Carolina Aquariums Fund.
- Repeal the annual report by the Office of State Budget and Management and the Division of Waste Management to Gov Ops on the preceding fiscal year concerning the allocation of loans authorized under the Solid Waste Management Loan Program.
- Repeal the Advisory Committee report for the Coordination of Waterfront Access to the Joint Legislative Seafood and Aquaculture Commission (The Commission was terminated in 2011).

ON-SITE WASTEWATER AMENDMENTS AND CLARIFICATIONS

CURRENT LAW: G.S. 130A-333 through G.S. 130A-342 provides for a three-step process to site, install, and operate an on-site wastewater system. First, an application for an improvement permit must be submitted to the local health department that includes a plat or site plan, a description of the facility the proposed site is to serve, and characteristics of the proposed wastewater system. Once an improvement permit is issued, the local health department must conduct a field investigation to ensure that the system can be installed and operated in compliance with State laws and rules. If the local health department determines that the system can be installed adequately, the local health department issues an authorization for wastewater system construction. This authorization must be obtained before a building permit will be granted and before construction of the system or the structure can begin. After the system has been installed, the local health department conducts an in-place inspection to ensure the system was installed in compliance with the improvement permit, the construction authorization, and applicable rules. If the local health department determines that the installed system is in compliance, an operation permit will be issued that allows the system to be placed into operation. The operation permit is valid for as long as the system is operating properly and must be obtained prior to receiving permanent electrical power hookup and an occupancy permit.

SUMMARY:

Sections 4.14.(a) through 4.14.(e) would amend G.S. 130A-333 through G.S. 130A-342 by enacting an alternative process – the engineered option permit – by which a professional engineer may prepare signed and sealed drawings, specifications, plans, and reports for the design, construction, operation, and maintenance of an on-site wastewater system without requiring the oversight or approval of a local health department as follows:

Section 4.14.(a) would define the "***engineered option permit***" (EOP) to mean an on-site wastewater that is permitted pursuant to the rules adopted by the Commission in accordance with this Article, meets the criteria established by G.S. 130A-336.1, and is designed by a professional engineer who is licensed under Chapter 89C of the General Statutes who has expertise in the design of on-site wastewater systems.

Section 4.14.(b) would (i) authorize licensed soil scientists and licensed geologists (as defined in Chapters 89F and 89E of the General Statutes, respectively), in addition to local health department staff, to evaluate the soil conditions and site features of any site proposed for new wastewater systems; (ii) establish a procedure for an owner of a wastewater system or the Department of Health and Human Services (DHHS) to file written complaints against professional engineers, licensed soil scientists, licensed geologists, and on-site wastewater contractors citing failure to adhere to rules applicable to wastewater systems; and (iii) make conforming changes to implement the EOP.

Section 4.14(c) would create a new section in Article 11 of Chapter 130A of the General Statutes to allow for the utilization of the engineered option permit (EOP) for a professional engineer, at the direction of the owner of a proposed wastewater treatment system, to prepare signed and sealed drawings, specifications, plans, and reports that are certified and stamped with the professional engineer's seal for the design, construction, operation, and maintenance of the wastewater system. Under the EOP, a professional engineer is authorized, at the engineer's discretion, to employ pretreatment technologies not yet approved in this State. An owner or engineer who seeks to utilize the EOP must submit a ***notice of intent to construct*** (NOI to construct) to the local health department (LHD) prior to beginning construction, siting, or relocation of a wastewater system.

DHHS must develop a ***common form for the NOI to construct*** that includes information about: the owner, the professional engineer, the licensed soil scientist, licensed geologist, and any on-site wastewater contractors and proof of insurance or appropriate liability coverage for each, a description of the wastewater system and the facility it is proposed to serve, design flow and characteristics, the soils evaluation and site conditions, and a plat.

The LHD must determine whether a NOI to construct is ***complete*** within 15 business days of receipt from the owner or engineer. A determination of completeness by the LHD means that the NOI to construct includes all of the components as required on the common form. The owner or engineer must submit a duplicate copy of the NOI to construct to DHHS for proposed wastewater systems that collect, treat, and dispose of industrial wastewater, or that treat more than 3,000 gallons per day.

To satisfy the requirements of the EOP, the engineer designing the proposed wastewater system: (i) must use recognized principles and practices of engineering and applicable rules of the Commission for Public Health (Commission) in the calculations and design of the wastewater system; (ii) is responsible for the engineer's scope of work; (iii) must prepare a signed and sealed statement of special inspections that meet enumerated criteria; (iv) must establish a written operations and management program based on the size and complexity of the wastewater system and provide the program to the owner; and (iv) may assist the owner of the proposed wastewater system in the selection of a certified on-site wastewater system contractor.

An on-site wastewater system operator, licensed pursuant to Article 5 of Chapter 90A of the General Statutes, must be employed to construct and install the wastewater system or system components and is responsible for adhering to the engineer's design and specifications.

Regarding ***liability***, DHHS and LHDs are not liable for any wastewater systems approved under the EOP however, may at any time, conduct an inspection of the wastewater system.

During the construction and installation of the wastewater system, the professional engineer must make periodic visits to the site to observe the progress and quality of the construction, and to determine if the construction is proceeding according to the engineer's plans and specifications. The owner of the wastewater system must employ a competent special inspector to conduct ***special inspections*** of the materials, installation, fabrication, erection, or placement of components and systems that require special expertise to ensure compliance with referenced standards and documents prepared by the professional engineer. All ***inspection reports*** must be maintained and provided to

the professional engineer and must indicate whether the work inspected was completed in conformance with the engineer's design and specifications.

A ***post-construction conference*** with all affected parties, including the LHD, must be held prior to operation of the wastewater system. In addition, prior to commencing operation of the system and after the post-construction conference, the following ***documentation and reporting*** must be completed:

- Signed, sealed, and dated copies of the engineer's report must be delivered to the owner of the wastewater system.
- Upon review of the engineer's report, the owner of the wastewater system must sign and notarize the report as having been received.
    - The owner must submit a certified copy of the engineer's report, a copy of the written operations and management program, the required fees, and a notarized letter documenting the owner's acceptance of the system from the professional engineer to the LHD. The owner must also furnish these documents to DHHS for wastewater systems that collect, treat, and dispose of industrial wastewater or that treat more than 3,000 gallons per day.

Within 15 business days of receipt of the required documentation and fees, the LHD must issue a letter of confirmation that states the documents and information contained therein have been received and that the ***wastewater system may operate*** in accordance with rules adopted by the Commission.

This section would authorize a LHD to ***assess fees***, of up to 30% of the fees established to obtain an improvement permit, an authorization to construct, or an operations permit within the LHD's on-site wastewater program, for the use of staff to conduct inspections, support participation at post-construction meetings, and to archive the engineered option permit with the register of deeds or other recordation of the wastewater system as required.

In addition, this section would direct the Commission to ***adopt rules*** to implement the EOP and directs the Commission to ***report,*** beginning January 1, 2017, and annually thereafter, to the Joint Legislative Oversight Committee on Health and Human Services (HHS Oversight) and the ERC on the implementation and effectiveness of the EOP.

Sections 4.14.(d) and 4.14.(e) would make conforming changes to the statutes governing the operation of a wastewater system to include requiring applicable documentation under the EOP prior to receiving permanent electrical power service and an occupancy permit.

Section 4.14.(f) would direct the Commission, in consultation with DHHS, local health departments, and industry stakeholders to study minimum on-site wastewater system inspection frequency as established in the administrative code to evaluate the feasibility and desirability of eliminating duplicative inspections of on-site wastewater systems, and to report its findings and recommendations to HHS Oversight and the ERC by March 1, 2016.

Section 4.14.(g) would (i) make conforming changes to the statute governing improvement permits and authorizations for wastewater system construction to incorporate the EOP and (ii) provide that improvement permits or authorizations to construct must not be affected by a change in ownership of the wastewater system.

Section 4.14.(h) would direct the Commission, in consultation with DHHS, local health departments, and industry stakeholders to study the period of validity for improvement permits and authorizations for wastewater system construction and to evaluate the costs and benefits of a range of periods of validity, including the feasibility of conducting an abbreviated review and possible extension of a permit or

authorization that is due to expire at a lower cost to the applicant. The Commission must report its findings and recommendations to HHS Oversight and the ERC by April 1, 2016.

Section 4.14.(i) would provide that any improvement permit or authorization for wastewater system construction that is in effect on the effective date of the act, which is scheduled to expire on or before July 1, 2016, will remain in effect until July 1, 2016.

Section 4.14(j) would require certified Subsurface Water Pollution Control System Operators for systems with a design flow of less than 1,500 gallons per day and authorizes the Commission to establish standards, in addition to the requirement for a certified Water Pollution Control System Operator, for systems with a design flow of 1,500 gallons or more per day.

Section 4.14.(k) provides that this section would be effective when it becomes law and directs the Commission to adopt temporary rules to implement the EOP no later than June 1, 2016, and permanent rules by January 1, 2017. This section further provides that no person may utilize the EOP until such time as the rules adopted by the Commission become effective.

CLARIFY CERTIFICATION REQUIREMENTS FOR PLUMBING CONTRACTORS WHO INSTALL OR REPAIR GREASE TRAPS

Section 4.14A. would clarify the exemption from the requirements for certification under the On-Site Wastewater Contractors and Inspectors statutes for licensed plumbing contractors. Specifically, this clarification would provide that a plumbing contractor need not be a certified on-site wastewater contractor to install or repair a grease trap, interceptor, or separator upstream from a septic tank or similar depository that complies with the requirements of the local health department.

AMEND APPROVAL OF ON-SITE WASTEWATER SYSTEMS

Section 4.15.(a) would amend the statute pertaining to the approval of on-site wastewater systems technologies. This section would:

- Rename "controlled demonstration system" as a "***provisional wastewater system***" and provide that a provisional system includes any system or component that is acceptable to DHHS or has been approved by a nationally recognized certification body for at least one year. "***Nationally recognized certification body***" is defined to mean a third-party certification body for wastewater systems or system components that is accredited by an entity widely recognized in the United States such as the American National Standards Institute, the Standards Council of Canada, or the International Accreditation Service, Inc.
- Repeal the subsection on "experimental systems."
- Amend the processes by which a wastewater system achieves either provisional or innovative wastewater system status.
- Repeal the subsection authorizing DHHS to form a technical advisory committee (I & E Committee) comprised of specialists who have training and expertise related to on-site subsurface wastewater systems to assist in evaluating applications for approval.
- Repeal the five-year warranty required for certain nitrification trenches for innovative or accepted wastewater systems handling untreated effluent.
- Make conforming changes to the fee schedule for DHHS review or modification of wastewater systems.

Section 4.15.(b) would direct the Commission for Public Health (Commission) to review and amend rules to implement the changes described above.

Section 4.15.(c) would direct the Commission to report, beginning January 1, 2016, and every quarter thereafter until all rules are adopted, as to its progress of adopting and amending rules pursuant to Sections 4.14 and 4.15 of this act to HHS Oversight and the ERC.

Section 4.15.(d) would direct the Commission, in consultation with DHHS, local health departments, and industry stakeholders, to study the costs and benefits of requiring treatment standards above those that are established by nationally recognized standards, and report its findings and recommendations to HHS Oversight and the ERC on or before March 1, 2016.

CONTESTED CASES FOR AIR PERMITS

Section 4.17. would amend the process for filing a contested case regarding an air quality permit decision of the EMC by:

- Providing that the filing for a contested case by a permit applicant or permittee would stay the EMC's decision while the filing for a contested case by a person who is not the permit applicant or permittee would not automatically stay the EMC's decision.
- Limiting these contested case provisions to permit application decisions rather than other types of permit decisions, such as permit modification, suspension, or revocation.

Section 4.17 would also direct the Department of Environment and Natural Resources to study whether these changes to contested cases for air quality permits should be expanded into other programs administered by the Department. The Department will report the results of the study to the Environmental Review Commission by March 1, 2016.

AMEND ISOLATED WETLANDS LAW

Section 4.18. would make the following changes to the regulation of isolated wetlands in the State:

- Provide that the only types of isolated wetlands the State will regulate are Basin Wetlands and Bogs and that the State will not regulate isolated man-made ditches or ponds constructed for stormwater management purposes or any other man-made isolated pond.
- Provide that the mitigation requirements for impacts to isolated wetlands apply only to the amount of impact that exceeds the current regulatory thresholds.
- Provide that impacts to wetlands that aren't isolated wetlands will not be combined with impacts to isolated wetlands to determine whether the regulatory thresholds have been reached.
- Direct the Environmental Management Commission to amend its rules by March 1, 2016, to establish a coastal region, piedmont region, and mountain region for purposes of regulating impacts to isolated wetlands. The regulatory thresholds for the three regions would be as follows:
    - Less than or equal to one acre of isolated wetlands for the entire project in the coastal region.
    - Less than or equal to one-half acre of isolated wetlands for the entire project for the piedmont region.
    - Less than or equal to one-third acre of isolated wetlands for the entire project for the mountain region.

  In no event could the regulatory requirements for impacts to isolated wetlands be more stringent than required under current law, which is less than or equal to one acre of isolated wetland for

the entire project for areas east of Interstate 95 and less than or equal to 1/3 acre of isolated wetland for the entire project for areas west of Interstate 95.

AMEND COASTAL STORMWATER REQUIREMENTS

Section 4.19. would direct the Department of Environment and Natural Resources to evaluate the water quality of surface waters in the Coastal Counties, the impact of stormwater on this water quality, and stormwater management measures. The Department would report the results of the study, including any recommendations to the Environmental Review Commission no later than April 1, 2016.

AMEND STORMWATER MANAGEMENT LAW

Section 4.20. would make the following changes to the regulation of stormwater in the State:

- Extend the deadline for the Environmental Management Commission (EMC) to adopt rules to implement fast-track permitting for stormwater management systems.
- Provide that the volume, velocity, and discharge rates of water associated with the one year, 24-hour storm and the difference in stormwater runoff from the predevelopment and postdevelopment conditions for the one year, 24-hour storm must be calculated using an acceptable engineering hydrologic and hydraulic method.
- Provide that development may occur within a vegetative buffer if the stormwater runoff from the development is discharged outside of the buffer and is managed so that it otherwise complies with all applicable State and federal stormwater management requirements.
- Provide that the requirements that apply to development activities within one half mile of and draining to Class SA (shellfish) waters or within one half mile of Class SA waters and draining to unnamed freshwater tributaries will not apply to development activities and associated stormwater discharges that do not occur within one half mile of and draining to Class SA waters or are not within one half mile of Class SA waters and draining to unnamed freshwater tributaries.
- Provide that no later than March 1, 2016, a State agency or local government that implements a stormwater management program must submit its current stormwater management program or a revised stormwater management program to the EMC and that no later than December 1, 2016, the EMC must review and act on each of the submitted stormwater management programs. The EMC may only approve a program if it finds that the standards of the program equal those of the EMC's model program.
- Direct the Environmental Review Commission (ERC), with the assistance of the Department of Environment and Natural Resources to review and consider reorganization of State statutes, session laws, rules and guidance documents related to stormwater management. The ERC must submit any legislative recommendations to the 2016 Regular Session of the 2015 General Assembly.
- Extend the sunset on the provision that allows cluster mailboxes to be constructed without requiring a modification of a stormwater permit from December 31, 2015 to December 31, 2017.

STUDY EXEMPTING LINEAR UTILITY PROJECTS FROM CERTAIN ENVIRONMENTAL REGULATIONS

Section 4.21. would direct DENR to study whether and to what extent activities related to the construction, maintenance, or removal of linear utility projects should be exempt from certain environmental regulations. DENR will report the results of the study to the ERC no later than March 1, 2016.

REPEAL DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES IDLING RULES

Section 4.24. would direct the Secretary of Environment and Natural Resources to repeal the Heavy-Duty Vehicle Idling Restrictions rules by March 1, 2016, and provide that until the effective date of the repeal of the rule, DENR, the EMC, or any other political subdivision of the State cannot implement or enforce the rule.

AMBIENT AIR MONITORING

Section 4.25. would direct DENR to review its ambient air monitoring network and request from the United States Environmental Protection Agency (EPA) the authority to remove any monitor not required by federal law that the Department has determined is not necessary to protect public health, safety, and welfare; the environment; and natural resources. This section would also direct DENR, no later than September 1, 2016, to discontinue all ambient air monitors not required by federal law and for which EPA approval for discontinuance is not required if the Department has determined that the monitors are not necessary to protect public health, safety, and welfare; the environment; and natural resources. This section would not preclude DENR from installing temporary ambient air monitors as part of an investigation of a suspected air quality violation or in response to an emergency causing an imminent danger to human health and safety.

DIVISION OF AIR QUALITY NOTICE REQUIREMENTS

Section 4.27. would reduce the notice period for consent orders related to air pollution from 45 days to 30 days and would provide that notice of a consent order or a public meeting on a consent order would be given on DENR's website rather than in a newspaper having general circulation in the county in which the air pollution originated.

PROHIBIT THE REQUIREMENT OF MITIGATION FOR IMPACTS TO INTERMITTENT STREAMS

Section 4.31. would provide that, except as required by federal law, DENR could not require mitigation for impacts to intermittent streams.

PIGEON HUNTING

Section 4.32. would exempt pigeons from the animal cruelty statutes and the Animal Welfare Act.

WILDLIFE RESOURCES COMMISSION STUDIES

Section 4.33. would direct the Wildlife Resources Commission (Commission) to review the methods and criteria by which it adds, removes, or changes the status of animals on the State Protected animal list and compare these to federal regulations and the methods and criteria of other States in the region. This section would also direct the Commission to review the State's policies for addressing introduced species and make recommendations for improving these policies. The Commission would be required to report its findings to the ERC by March 1, 2016.

Section 4.34. would direct the Commission to establish a coyote management plan to address the impacts of coyotes in this State and the threats that coyotes pose to citizens, industries, and populations of native wildlife species within the State. The Commission would be required to report its findings and recommendations, including any proposed legislation to address overpopulation of coyotes, to the ERC by March 1, 2016.

Section 4.35. would direct the Commission to establish a pilot coyote management assistance program in Mitchell County, which would document and assess private property damage associated with coyotes; evaluate effectiveness of different coyote control methodologies, including lethal removal; and evaluate potential for a scalable statewide coyote assistance program. The Commission would be required to submit an interim report on the progress of the pilot program to the ERC by March 1, 2016, and a final report by January 1, 2017.

ANIMAL WELFARE HOTLINE AND COURT FEE TO SUPPORT THE INVESTIGATION OF ANIMAL CRUELTY VIOLATIONS

Section 4.36. would direct the Attorney General to establish and publicize a hotline to receive reports of allegations of animal cruelty or violations of the Animal Welfare Act against animals under private ownership. An individual who makes a report to the hotline would be required to disclose his or her name and telephone number, and any other information the Attorney General may require. When the Attorney General receives allegations of activity involving cruelty to animals under private ownership, the Attorney General's office would be required to refer the allegations to the appropriate local animal control agency. When the Attorney General receives allegations of activity involving a violation of the Animal Welfare Act against animals under private ownership, the Attorney General's office would be required to refer the allegations to the Department of Agriculture and Consumer Services. The Attorney General would be required to maintain a record of the total number of reports received on the hotline and the number of reports received against any individual on the hotline.

STUDY FLOOD ELEVATIONS AND BUILDING HEIGHT REQUIREMENTS

Section 4.38. would direct the Department of Insurance, the Department of Public Safety, and the Building Code Council to jointly study how flood elevations and building heights for structures are established and measured in the coastal region of the State. The Departments and the Council would specifically consider how flood elevations and coastal building height requirements affect flood insurance rates and how height calculation methods might be made more consistent and uniform in order to provide flood insurance rate relief. The agencies would jointly report the results of the study to the 2015 General Assembly no later than March 1, 2016.

ALLOW ALTERNATE DISPOSAL OF BIODEGRADABLE AGRICULTURAL PLASTICS

Section 4.39. would allow burning of polyethylene agricultural plastic without an air quality permit, provided that the burning:

- Does not violate State or federal ambient air quality standards.
- Is conducted between an hour after sunrise and an hour before sunset.
- Is set back at least 250 feet from a paved public roadway and at least 500 feet from an occupied structure outside the property where the burning is conducted.
- Is conducted in a manner such that it does not constitute a public nuisance.
- Is conducted by any of the following means:
    - By professionally manufactured equipment solely for the purpose of plastic mulch burning or incineration and approved by the Commissioner.
    - By a fire that is enclosed in a noncombustible container.
    - By a fire that is restricted to a pile no greater than eight feet in diameter on cleared ground.

DACS would be permitted to adopt rules to implement the provisions of this section.

This section would be retroactively effective on January 1, 2015.

PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE

Section 5.1. would add a severability clause to the bill.

Section 5.2. would provide that the bill would be effective when it becomes law, except as otherwise specified.