



HOUSE BILL 374: Regulatory Reform Act of 2018.

2017-2018 General Assembly

Committee:		Date:	June 15, 2018
Introduced by:	Reps. McElraft, Howard, Johnson, Hurley	Prepared by:	Jeff Hudson
Analysis of:	Conference Committee Substitute (H374-CCSRI-11)		Jennifer McGinnis Chris Saunders Kyle Evans Staff Attorneys

OVERVIEW: *The Conference Committee Substitute (CCS) for House Bill 374 amends State laws related to the following:*

- *Allow electronic delivery of agency decision documents in contested cases*
- *Allow temporary food establishments to operate: (i) for up to 30 days, with a possible one-time 15-day extension, and (ii) operate at agritourism businesses*
- *Change the required office location for the North Carolina Board Of Cosmetic Art Examiners from Raleigh to Wake County*
- *Amend the law on contracts with automatic renewal clauses to exempt real estate professionals from the applicable requirements*
- *Make motorcycle financing changes to exempt motorcycles with a purchase price of \$7,500 or more from the prohibition on balloon payments*
- *Clarify registration requirements for employees of alarm system businesses to include those employees who install or service commercial business establishments to those persons who a licensee must register with the Alarm Systems Licensing Board*
- *Modify the timing for renewable precertification for persons transporting essentials or restoring utilities during emergency declarations*
- *Require the Division of Mitigation Services to review and revise its bidding and contracting procedures for procurement of mitigation services*
- *Clarify improvement permit and construction authorization extensions for wastewater systems to provide that for purposes of extending a permit's duration, site activities begun or completed pursuant to requirements from the local health department under the original permit would not be construed to be altered conditions and cannot constitute a basis for refusal of the permit extension*
- *Require the Legislative Research Commission to study mandatory connection authority relating to use of the engineer option permit for wastewater*
- *Revise wastewater permitting requirements*

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

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- *Expand the definition of "accepted wastewater dispersal system" to include approved trench dispersal systems*
- *Cap Title V air quality permit fees for air curtain burners*
- *Require the Environmental Management Commission to review local government implementation of certain water quality laws*
- *Authorize replacement of certain temporary erosion control structures*
- *Authorize certain coastal stormwater program variances*
- *Allow American eels to be imported from Maryland for aquaculture purposes*
- *Clarify applicability of institutional controls and notice recordation for aboveground tanks, and modify other requirements for underground storage tanks*
- *Expand exemptions for certain local governments' authority to enact flow control*
- *Clarify landfill life-of-site/franchise requirements for sanitary landfills*
- *Amend recoverable costs in the fuel clause rider for electric public utilities that have fewer than 150,000 North Carolina retail jurisdictional customers to include the cost of PURPA QF purchased power, and subject them to the current 1% annual cap on cost increases*
- *Amend the process for vacancy appointments to the Utilities Commission and the Industrial Commission*
- *Adjust the number of assistant district attorneys in Prosecutorial Districts 10 and 22*
- *Exempt the personal property of charter schools from property tax*
- *Amend legislation regarding maintenance of roads surrounding schools*
- *Repeal State Board of Education policies inconsistent with State law, as affirmed by the North Carolina Supreme Court, and address State Board of Education rules*
- *Prohibit the North Carolina Board of Funeral Service from revoking or refusing to renew a funeral license under certain circumstances*

CURRENT LAW AND BILL ANALYSIS:

ELECTRONIC DELIVERY OF DECISION DOCUMENTS IN CONTESTED CASES

Under current law, the 60 day time limit for commencement of a contested case begins upon notice of an agency decision, which must be given by the agency by personal delivery to all persons aggrieved who are known to the agency.

Section 1 would allow such notice to be delivered by both personal and electronic delivery.

ALLOW TEMPORARY FOOD ESTABLISHMENTS TO OPERATE FOR UP TO 30 DAYS AND OPERATE AT AGRITOURISM BUSINESSES

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Under current law, a temporary food establishment is an establishment that (i) prepares or serves food, (ii) operates for a period of time not to exceed 21 days in one location, and (iii) is affiliated with and endorsed by a transitory fair, carnival, circus, festival, or public exhibition.

Section 2 would allow a temporary food establishment to operate for up to 30 days in one location, and to be affiliated with and endorsed by an agritourism business. This section would also direct a local health department, upon the request of a temporary food establishment, to grant a one-time, 15-day extension of the establishment's permit if the establishment continues to meet all of the requirements of its permit and applicable rules.

CHANGE REQUIRED OFFICE LOCATION FOR THE NORTH CAROLINA BOARD OF COSMETIC ART EXAMINERS FROM RALEIGH TO WAKE COUNTY

Under current law, the North Carolina Board of Cosmetic Art Examiners (Board) must maintain its office in Raleigh, North Carolina.

Section 3 would allow the Board to maintain its office anywhere in Wake County, North Carolina.

AMEND LAW OF CONTRACTS WITH AUTOMATIC RENEWAL CLAUSES

Under current law, any person engaged in commerce that sells, leases, or offers to sell or lease, any products or services to a consumer by contract, where the contract automatically renews unless the consumer cancels the contract, must comply with certain criteria, including requirements for disclosure and notice of automatic renewals. Certain insurers, banks, trust companies, savings and loan associations, savings banks, or credit unions, and other entities are exempt from these requirements.

Section 4 would also exempt real estate professionals from the requirements of this statute. The section would become effective October 1, 2018, and apply to contracts entered into or renewed on or after that date.

MOTORCYCLE FINANCING CHANGES

Under current law, the Retail Installment Sales Act includes a limitation on balloon payments in a consumer credit sale by providing that no scheduled payment may be more than 10% larger than the average of earlier scheduled payments, except that the final payment may be up to 25% larger than the average of earlier scheduled payments.

Section 5 would exempt the sale of motorcycles with a purchase price of \$7,500 or more from the prohibition on balloon payments. This section would become effective December 1, 2018, and would apply to contracts entered into on or after that date.

CLARIFY REGISTRATION REQUIREMENTS FOR EMPLOYEES OF ALARM SYSTEM BUSINESSES

Under current law, a licensee of an alarm systems business must register with the Alarm Systems Licensing Board all employees within the State that have access to confidential information detailing the design, installation, or application of any location specific electronic security system or that have access to any code, number, or program that would allow the system to be modified, altered, or circumvented, or any employee who installs or services an electronic security system in a personal residence.

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Section 6 would add employees who install or service an electronic security system in a commercial business establishment to those persons who a licensee must register with the Board.

MODIFY RENEWABLE PRECERTIFICATION FOR PERSONS TRANSPORTING ESSENTIALS OR RESTORING UTILITIES DURING EMERGENCY DECLARATIONS

Under current law, the Secretary of the Department of Public Safety is required to develop a system pursuant to which a person who transports essentials in commerce, or assists in ensuring their availability, and persons who assist in the restoring of utility services can be certified as such during periods in which emergency declarations are issued, and provides for annual renewal of the pre-certification.

Section 7 would modify the statute to eliminate the reference to "annual" renewals of pre-certification for such persons, allowing the Secretary greater discretion in terms of timing for renewals of pre-certification.

MITIGATION BONDING REFORM

Section 8 would direct the Division of Mitigation Services (DMS) to review and revise its bidding and contracting procedures for procurement of mitigation services with regard to the following policies:

- Bonding or other financial surety required for the construction of a mitigation project may reflect only the minimum amount necessary to secure State funds provided through a contract between DMS and a private mitigation provider.
- Post-construction bonding periods and amounts must reflect the minimum length of time necessary to determine with a reasonable degree of certainty project success and the reasonably determined level of financial risk to the State from total or partial failure of the mitigation project.

DMS must report to the Environmental Review Commission (ERC) no later than December 1, 2018 on their activities conducted pursuant to this section, which must include an explanation of the methodology followed in setting bonding amounts and time lines for procured mitigation projects and a description of any changes made to DMS procedures as a result of the review.

CLARIFY IMPROVEMENT PERMIT AND CONSTRUCTION AUTHORIZATION EXTENSIONS FOR WASTEWATER SYSTEMS

Under current law, an improvement permit or authorization for wastewater system construction issued by a local health department from January 1, 2000, to January 1, 2015, which has not been acted on and would have otherwise expired, remains valid until January 1, 2020, unless there are changes in the hydraulic flows or wastewater characteristics from the original local health department evaluation. Permits shall retain the site, soil evaluations, and construction conditions of the original permit.

Section 9 would clarify that for purposes of extending a permit's duration, site activities begun or completed pursuant to requirements from the local health department under the original permit, would not be construed to be altered conditions and cannot constitute a basis for refusal of the permit extension. The section also provides that a property owner may contract with a licensed soil scientist to conduct a site verification to determine whether the conditions of the original permit are unchanged. Written verification

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by the licensed soil scientist must be accepted by the local health department, used in lieu of verification by the local health department.

STUDY MANDATORY CONNECTION AUTHORITY RELATING TO USE OF ENGINEER OPTION PERMIT FOR WASTEWATER

Under current law, the Legislative Research Commission (LRC) must study the following issues:

- Fee and charge setting by units of local government in the operation of a water or sewer system, including collection rates of those fees and charges.
- Proper accounting controls to ensure transparency in budgeting and accounting for expenditures and interfund transfers of public enterprise services by units of local government.
- Legislation that may be necessary to ensure proper funding of infrastructure maintenance and improvements for the provision of water and sewer services, including whether regionalization could facilitate financially healthy systems with lower fees and charges to customers.
- Legislation that may be necessary to ensure that units of local government monitor aging water and sewer infrastructure to ensure proper maintenance and repair, including how this responsibility impacts the financial health of the public enterprise.

Section 10 would require the LRC to also study legislation that may be necessary to grant or clarify mandatory connection authority relating to use of the engineer option permit for wastewater and relating to multiple public systems operating as one, however constituted, or public-private partnerships.

REVISE WASTEWATER PERMITTING REQUIREMENTS

Section 11 would make the following changes to the wastewater permitting statutes:

- Provide that replacement of a damaged gravity distribution box by an on-site wastewater contractor is not a repair to a permitted wastewater system.
- Repeal a provision that a wastewater system located on multiple adjoining lots or tracts of land under common ownership or control is considered a single system for purposes of wastewater permitting.
- Require that evaluations conducted by a licensed soil scientist or a licensed geologist to produce design and construction features for a new proposed wastewater system or a proposed repair project for an existing wastewater system be approved by the applicable permitting authorities if (i) the evaluation of soil conditions, site features, or geologic and hydrogeologic conditions satisfies all requirements of the wastewater system laws, and (ii) the licensed soil scientist or licensed geologist conducting the evaluation maintains an errors and omissions liability insurance policy issued by a licensed insurer in an amount commensurate with the risk.
- Direct local boards of health to use historical experience to establish modifications or additions to rules established by the Commission for Public Health.

EXPAND DEFINITION OF ACCEPTED WASTEWATER DISPERSAL SYSTEM TO INCLUDE APPROVED TRENCH DISPERSAL SYSTEMS

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Section 12 would amend the definition of "accepted wastewater dispersal system" to include other approved trench dispersal systems. Under current law, only innovative wastewater dispersal systems may be accepted wastewater dispersal systems.

CAP CERTAIN TITLE V AIR QUALITY PERMIT FEES

Pursuant to current rules, facilities with air emissions below the Title V major source threshold that are otherwise subject to the Title V permitting program due to the applicability of the federal New Source Performance Standards are required to obtain a general Title V permit regardless of actual or potential emissions. The current cost of the annual general permit fee and application fee is fifty percent (50%) of the otherwise applicable fee.

Section 13 would direct the Environmental Management Commission to implement rules to provide that the annual permit fee and permit application fee for a general permit for air curtain burner facilities with emissions below the Title V major source threshold that are subject to the Title V permitting program due to federal regulations that require the facilities to obtain a permit regardless of actual or potential emissions is ten percent (10%) of the otherwise applicable fee.

ENVIRONMENTAL MANAGEMENT COMMISSION TO REVIEW LOCAL GOVERNMENT IMPLEMENTATION OF CERTAIN WATER QUALITY LAWS

Section 14 would direct the Environmental Management Commission (Commission) to review the delegated stormwater management programs implement by local government to determine:

- Which local governments are enforcing stormwater regulations more stringent than the requirements of State law, including inspection, maintenance of stormwater controls, and best management practices.
- Which local governments have taken enforcement actions since August 1, 2015, based on requirements in Total Maximum Daily Load calculations or National Pollutant Discharge Elimination System permits that exceed the requirements of State law.

The Commission shall reports its findings to the Environmental Review Commission no later than January 1, 2019.

AUTHORIZE REPLACEMENT OF CERTAIN TEMPORARY EROSION CONTROL STRUCTURES

Section 15 would allow the Environmental Management Commission to renew a permit for a permanent erosion control structure originally permitted pursuant to a variance granted by the Commission before July 1, 1995, if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules in effect at the time the structure is replaced.

This section would also allow the Commission to authorize the repair or replacement of a temporary erosion control structure that was originally permitted prior to July 1, 1995, if the Commission finds that (i) the structure is located adjacent to an intertidal marine rock outcropping designated by the State as a Natural Heritage Area pursuant to Part 42 of Article 2 of Chapter 143B of the General Statutes and (ii)

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the replacement structure will comply with all applicable laws and with all rules in effect at the time the structure is replaced.

COASTAL STORMWATER PROGRAM VARIANCES

Pursuant to current law, certain development in 20 coastal counties is subject to stormwater regulation to protect surface waters from the impact of stormwater runoff. These regulations control aspects of development such as the maximum amount of allowable built-upon area and the types of stormwater best management practices that must be applied to the development. Development in the following counties is subject to these regulations: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.

Section 16 would provide that a subdivision is deemed to be fulfilling its coastal stormwater permitting requirements if the subdivision meets all of the following requirements:

- The subdivision's original declaration of covenants was recorded at least 20 years prior to the effective date of this act.
- The original developer of the subdivision transferred the stormwater permit to the homeowners association for the subdivision and, at the time of the transfer, the homeowners association had no notice from the original developer or any regulatory agency that the subdivision was not in compliance with the impervious surface limitations.

This section would also provide that a regional water facility is not required to increase the size of its wet detention ponds or decrease the amount of development or impervious surface for which it has been permitted based on an incorrect calculation in its stormwater management permit, but this would not apply to a regional water facility that intentionally provided inaccurate information upon which the incorrect calculation is based.

This Section would only apply to impervious surface built prior to January 1, 2017. Any impervious surface built on or after January 1, 2017, would be subject to the State's coastal stormwater laws.

ALLOW AMERICAN EELS TO BE IMPORTED FROM MARYLAND FOR AQUACULTURE PURPOSES

Section 17 would allow American eels to be imported from Maryland for use in an aquaculture operation. Under current law, American eels may only be imported from Virginia and South Carolina.

ABOVEGROUND TANKS INSTITUTIONAL CONTROLS CLARIFICATION

In 2017, the General Assembly amended the law that allows imposition of land-use restrictions and recordation of notices of residual petroleum on property contaminated from the discharge or release of petroleum from underground storage tanks, to: (i) allow such processes for aboveground tanks, and other sources of petroleum; (ii) establish additional criteria that must be met to allow such processes for a site with contamination from an aboveground tank, or other petroleum source, with offsite migration of contamination (concerning compliance with requirements for disclosure and agreement from owners of offsite property with contamination located elsewhere in the statutes).

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Section 18 would clarify the language enacted in 2017 regarding the requirements for sites with offsite contamination from aboveground tanks and other petroleum sources.

MODIFY OTHER REQUIREMENTS FOR UNDERGROUND STORAGE TANKS (USTS)

Under current law, the Administrative Code requires that overfill protection equipment for underground storage tanks (USTs) be checked annually, and that only certain test methods or equipment may be used for required UST testing.

Sections 19 and 19.1 would direct the Environmental Management Commission to amend the rules governing standards and requirements for USTs to:

- Require that overfill protection equipment is checked for operability, proper operating condition, and proper calibration once every 3 years in accordance with federal law.
- Allow UST owners and operators to use all test methods and equipment approved by the United States Environmental Protection Agency, including the use of a testable drop tube, for required UST testing.

EXPAND EXEMPTIONS FOR CERTAIN LOCAL GOVERNMENTS' AUTHORITY TO ENACT FLOW CONTROL

In 2017 the General Assembly generally prohibited units of local governments from, by ordinance, requiring that all solid waste generated within the geographic area and placed in the waste stream for disposal, be delivered to a permitted solid waste management facility or facilities serving the geographic area. Such ordinances are often called "flow control" ordinances, which are provisions that allow state and local governments to designate the places where solid waste must be taken for processing, treatment, or disposal. Flow controls ordinances are tools sometimes used by local governments to plan and fund solid waste management systems. The legislation, however, exempted certain local governments from the prohibition on enacting flow control ordinances in certain circumstances, including where the local government had outstanding debt associated with an existing landfill, or was party to an exclusive franchise agreement with a private entity for the management or disposal of solid waste.

Section 20 would establish an additional exemption, allowing a unit of local government to enact flow control ordinances if the unit of local government purchased or otherwise acquired title to property between January 1, 2006, and September 1, 2017, with the specific intent of adding the property to an existing landfill for the disposal of municipal solid waste, which landfill (i) is contiguous to the property acquired; (ii) had been issued an operating permit on or before September 1, 2017; and (iii) received less than 55,000 tons of waste in fiscal year 2016 2017. This exemption would expire on June 30, 2019.

CLARIFY LANDFILL LIFE-OF-SITE/FRANCHISE REQUIREMENTS

Under current law, "life-of-site" permits are granted to sanitary landfills, and the law provides that such permits survive the expiration of a local government approval or franchise. The law also provides, however, that in order to preserve any economic benefits included in a franchise, a county may extend a franchise under the same terms and conditions for the term of the life-of-site permit. These provisions are only applicable to valid and operative franchise agreements in effect on October 1, 2015.

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Section 21 would clarify that not only does a life-of-site permit for a sanitary landfill located within a unit of local government survive expiration of an applicable franchise agreement, but the local government must allow the sanitary landfill to continue to operate until the term of the landfill's life-of-site permit expires if the owner or operator has complied with the terms of the local government approval or franchise agreement, and remains in compliance with those terms after expiration of the approval or agreement until the life-of-site permit has expired. Again, this language only applies to valid and operative franchise agreements in effect on October 1, 2015.

AMEND RECOVERABLE COSTS IN FUEL CLAUSE RIDER FOR ELECTRIC PUBLIC UTILITIES THAT HAVE FEWER THAN 150,000 NORTH CAROLINA RETAIL JURISDICTIONAL CUSTOMERS TO INCLUDE THE COST OF PURPA QF PURCHASED POWER, AND SUBJECT THEM TO THE CURRENT 1% ANNUAL CAP ON COST INCREASES

Under current law, electric public utilities are allowed to recover certain costs under the fuel clause rider, which costs are adjustable for gains or losses resulting from the sale of fuel, and other fuel related cost components. As it relates to costs associated with renewable energy sources, however, the law limits the annual increase in the aggregate amount of those costs that are recoverable by electric public utilities. For an electric public utility that has less than 150,000 North Carolina retail jurisdictional customers as of December 31, 2006 the annual increase is limited to 1% of the utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year.

Section 22 would add the total delivered costs, including capacity and noncapacity costs, associated with all purchases of electric power from qualifying cogeneration facilities and qualifying small power production facilities that are not subject to economic dispatch or economic curtailment by the electric public utility and not otherwise recoverable under other methods, to the 1% cap on annual increases for a utility that has less than 150,000 North Carolina retail jurisdictional customers as of December 31, 2006.

AMEND PROCESS FOR VACANCY APPOINTMENTS TO THE UTILITIES COMMISSION AND THE INDUSTRIAL COMMISSION

Section 23 would prohibit a person from serving on the Utilities Commission or the Industrial Commission on an interim basis pending confirmation by the General Assembly, if the person was subject to but not confirmed by the General Assembly within the preceding four years.

This section would be effective when it becomes law and would apply to appointments made on or after that date.

ADJUST NUMBER OF ASSISTANT DISTRICT ATTORNEYS

Section 24 would amend Section 18B.6 of S.L. 2018-5 to increase the number of Assistant District Attorneys in Prosecutorial District 10 (Franklin, Granville, Person, Vance, Warren) by one, to fifteen, and reduce the number of Assistant District Attorneys in Prosecutorial District 22 (Caswell, Rockingham) by one, to eight.

EXEMPT PERSONAL PROPERTY OF CHARTER SCHOOLS FROM PROPERTY TAX

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Section 25 would exempt from property tax the personal property of all charter schools, both profit and nonprofit. With respect to charter schools, the current law is as follows:

- Real property of all charter schools, both nonprofit and for profit, is exempt from property tax as long as the property is wholly and exclusively used for educational purposes.
- Mobile classrooms wholly and exclusively used for educational purposes by nonprofit charter schools are exempt from property tax. This means that mobile classrooms used by for profit charter schools are NOT currently exempt.

This provision expands the current law as follows:

- It exempts all personal property of both nonprofit and for profit charter schools, which would include mobile classrooms used by for profit charters, which are not currently exempt.
- In all instances, the property must be wholly and exclusively used for educational purposes; the exemption applies regardless of ownership.

MAINTENANCE OF ROADS SURROUNDING SCHOOLS

Section 34.18(a) of S.L. 2018-5 specified that a city may not condition the approval of any zoning, rezoning, or permit request on the waiver or reduction of street improvements for safe ingress and egress for schools. Section 7.4 of Senate Bill 335 repeals that change.

Section 26 would repeal the repeal, if the repeal becomes law.

REPEAL STATE BOARD OF EDUCATION POLICIES INCONSISTENT WITH STATE LAW, AS AFFIRMED BY NC SUPREME COURT

Section 27.(a) would repeal two State Board of Education policies that are inconsistent with laws affirmed by the North Carolina Supreme Court in North Carolina State Board of Education v. State of North Carolina and Mark Johnson that grant direct supervision of the Department of Public Instruction to the Superintendent of Public Instruction.

STATE BOARD OF EDUCATION INTERIM RULES

Section 27.(b) would deem current policies of the State Board of Education as interim rules for a period of time to allow the State Board to complete permanent rulemaking for those rules, as required by North Carolina State Board of Education v. State of North Carolina and North Carolina Rules Review Commission.

PROHIBIT THE NORTH CAROLINA BOARD OF FUNERAL SERVICE FROM REVOKING OR REFUSING TO RENEW A FUNERAL LICENSE UNDER CERTAIN CIRCUMSTANCES

SECTION 28 would provide that the North Carolina Board of Funeral Service (Board) must not revoke or refuse to renew a license to practice funeral directing, embalming, or funeral service based on a test score invalidated by the International Conference of Funeral Service Examining Boards (Conference) if, prior to January 1, 2018, the Conference notified the Board that the licensee had achieved a passing score on the licensing tests required by G.S. 90-210.25.

This section would not apply if the Conference provides the Board with specific proof that a licensee has acted in a manner that requires invalidation of a test score.

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SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 29. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 30. Except as otherwise provided, this act is effective when it becomes law.