HOUSE BILL 385:
Various Energy/Env. Changes.

2023-2024 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	**Date:**	June 19, 2024
Introduced by:	Reps. McNeely, Moss	**Prepared by:**	Jennifer McGinnis Staff Attorney
Analysis of:	PCS to Second Edition H385-CSRI-42		

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

- ***Require the Department of Environmental Quality (DEQ) to report quarterly on applications for permits required for natural gas pipelines and gas-fired electric generation facilities.***
- ***Increase the punishment for property crimes committed against critical infrastructure, including public water supplies, wastewater treatment facilities, and manufacturing facilities, and make conforming changes to update statutes relating to damage to utilities.***
- ***Prohibit the acquisition of quartz mining operations and lands containing high purity quartz by foreign governments designated as adversarial by the United States Department of Commerce.***
- ***Expand requirements for issuance of 401 certifications by DEQ to projects located at an existing or former electric generating facility.***
- ***Limit the authority of public water and sewer systems to impose unauthorized conditions on residential development, and to prohibit the implementation of preference systems for allocating water and sewer service to residential development.***
- ***Make a technical correction to the Swine Farm Siting Act.***
- ***Amend the statute governing cleanfields renewable energy demonstration parks.***
- ***Authorize renewable energy certificates for natural gas generated from renewable energy resources.***
- ***Amend the statutes governing natural gas local distribution companies cost recovery.***
- ***Exclude floating structures used for aquaculture associated with an active shellfish cultivation lease area or franchise and land uses related to aquaculture and aquaculture facilities associated with an active shellfish cultivation lease area or franchise from the definition of "development" in the Coastal Area Management Act (CAMA) and limits the authority of the Marine Fisheries Commission to adopt rules regulating aquaculture equipment.***
- ***Require the Office of State Archaeology to provide information to landowners or prospective purchasers in areas of environmental concern upon request, and establish limits on associated CAMA permit conditions.***
- ***Remove time limits on certain viable utility reserve grants.***
- ***Establish a time limit for review of applications submitted to DEQ for water distribution systems to construct or alter a public water system.***

- ***Amend statutes and rules applicable to dock, pier, and walkway replacement in the coastal area.***
- ***Prohibit certain backflow preventer requirements by public water systems.***
- ***Exempt certain food service establishments from septage management firm permitting requirements.***
- ***Authorize replacement of certain erosion control structures.***

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

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

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

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

In 2023, legislation was enacted to:

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

Section 2 would:

- Update the current statute governing contamination of a public water system to:
  - Add language prohibiting injury to a public water system.
  - Extend coverage under the statute to wastewater treatment facilities (in addition to public water systems).
  - Provide that violation of the statute is punishable as a Class C felony[1], and a fine of $250,000.

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

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

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

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

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

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

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

- Venezuelan politician Nicolás Maduro (Maduro Regime).

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

PART IV. EXPAND REQUIREMENTS FOR ISSUANCE OF 401 CERTIFICATIONS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROJECTS LOCATED AT AN EXISTING OR FORMER ELECTRIC GENERATING FACILITY

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

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

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

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

- Within 30 days of filing of an application, determine whether or not the application is complete and notify the applicant accordingly; and, if the Department determines an application is incomplete, specify all such deficiencies in the notice to the applicant. If DEQ fails to issue a notice as to whether the application is complete within the requisite 30-day period, the application would be deemed complete.
- Within 5 days of the date the application is deemed complete, issue a public notice soliciting comment on the application. Within 60 days of the filing of a completed application, DEQ must either approve or deny the application. Failure of DEQ to act within the requisite 60-day period would result in a waiver of the certification requirement by the State, unless the applicant agrees, in writing, to an extension of time, not to exceed one year from the State's receipt of the application for certification. The 60-day review period established would constitute the "reasonable period of time" for State action on an application for purposes of federal law, absent a negotiated agreement with the United States Environmental Protection Agency (USEPA) to extend that timeframe for a period not to exceed one year.
- Issue a certification upon determining that the proposed discharge into navigable waters would comply with State water quality requirements. DEQ must include as conditions in a certification any applicable effluent limitations or other limitations necessary to assure the proposed discharges

into navigable waters will comply with State water quality requirements. DEQ may not impose any other conditions in a certification.

- Deny a certification application only if DEQ determines that no reasonable conditions would provide assurance that the proposed discharges will comply with State water quality requirements and include in the denial a statement explaining the determination.

Section 4 would extend these requirements to electric generation projects located at an existing or former electric generating facility.

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

PART V. PROHIBIT PUBLIC WATER AND SEWER SYSTEMS FROM IMPOSING UNAUTHORIZED CONDITIONS AND IMPLEMENTING PREFERENCE SYSTEMS FOR ALLOCATING SERVICE TO RESIDENTIAL DEVELOPMENT

Cities and counties may adopt zoning and development regulations as authorized under Chapter 160D of the General Statutes, subject to various limitations that include the following:

- G.S. 160D-702(b) prohibits cities and counties from regulating "building design elements"[2] for residential structures, with exceptions for safety regulations, floodplain management regulations, and regulations for structures that are historic sites or manufactured housing. Property owners may voluntarily consent to building design element requirements as part of obtaining a zoning amendment or zoning, subdivision, or development approval.
- G.S. 160D-702(c) prohibits cities and counties from adopting zoning or development regulations that: (1) set a minimum square footage requirement for residential structures; (2) require a parking space to be larger than 9 feet by 20 feet long unless the parking space is designed for handicap, parallel, or diagonal parking; or (3) require additional entrances into a residential subdivision that are not in compliance with the number of entrance requirements for residential subdivisions set forth in the North Carolina Fire Code.

Article 8, Chapter 162A of the General Statutes authorizes local government units to impose system development fees on new development within its territorial jurisdiction to fund certain capital costs attributable to that new development.

For purposes of this fee, "local government units" are counties, cities, sanitary districts, water and sewer authorities, metropolitan water districts, metropolitan sewerage districts, metropolitan water and sewerage districts, and county water and sewer districts.

Section 5 would prohibit local government units from requiring an applicant for water or sewer service for residential development to agree to any condition not otherwise authorized by law, or to accept any

[2] "Building design elements" include exterior building color; type, or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors; the number and type of rooms; and the interior layout of rooms. The phrase "building design elements" specifically excludes the height, bulk, orientation, or location of a structure on a zoning lot; the use of buffering or screening to minimize visual impacts or mitigate the impacts of light or noise; and regulations governing permitted uses of land.

offer by the applicant to consent to any condition not otherwise authorized by law. These conditions would include, without limitation, any of the following:

- Payment of taxes, impact fees or other fees, or contributions to any fund.
- Adherence to any restrictions related to land development or land use, including those within the scope of G.S. 160D-702(c).
- Adherence to any restrictions related to building design elements within the scope of G.S. 160D-702(b).

This section would also prohibit local government units from implementing a scoring or preference system to allocate water or sewer service among applicants for water or sewer service for residential development that does any of the following:

- Includes consideration of building design elements, as defined in G.S. 160D-702(b).
- Sets a minimum square footage of any structures subject to regulation under the North Carolina Residential Code.
- Requires a parking space to be larger than 9 feet wide by 20 feet long unless the parking space is designated for handicap, parallel, or diagonal parking.
- Requires additional fire apparatus access roads into developments of one- or two-family dwellings that are not in compliance with the required number of fire apparatus access roads into developments of one- or two-family dwellings set forth in the Fire Code of the North Carolina Residential Code.

PART VI. SWINE FARM SITING ACT TECHNICAL CORRECTION

In 2023, the General Assembly enacted legislation to clarify certain environmental permitting laws applicable to agricultural activities, specifically that a person who constructs or operates an animal waste management system only need obtain a permit under the Animal Waste Management Systems Part (Part 1A) of Article 21 of Chapter 143 of the General Statutes. This would not eliminate a permittee's responsibility to obtain an NPDES permit.

Section 6 would make conforming changes to statutes in Chapter 106 of the General Statutes (Agriculture).

PART VII. AMEND THE STATUTE GOVERNING CLEANFIELDS RENEWABLE ENERGY DEMONSTRATION PARKS

In 2010, the General Assembly enacted legislation to authorize cleanfields renewable energy demonstration parks (cleanfields park) on a tract or parcel of land that meets certain criteria. Any electric power or renewable energy certificates (RECs) generated at a biomass renewable energy facility located in a cleanfields park that is purchased by an electric power supplier would be given triple credit for the purposes of compliance with specific provisions of the State's renewable energy portfolio standard (REPS, now CEPS). The triple credit would apply only to the first 20 megawatts of biomass renewable energy facility generation capacity located in all cleanfields renewable energy demonstration parks in the State. The statute provides that the additional credits assigned to the first 10 megawatts of biomass renewable energy facility generation capacity shall first be used to comply with the CEPS requirement through use of poultry waste resources.

Section 7 would amend the cleanfields' statute to:

- Clarify and revise certain required criteria for establishment of a park.
- Provide that triple credit would be provided to natural gas generated from renewable energy resources at the biomass facility, in addition to electric power or RECs.
- Amend the language that provides that the additional credits assigned to the first 10 megawatts of biomass renewable energy facility generation capacity must first be used to comply with the CEPS requirement through use of poultry waste resources, to provide that those credits must be to comply with the CEPS requirements for swine or poultry waste.

PART VIII. AUTHORIZE RENEWABLE ENERGY CERTIFICATES FOR NATURAL GAS GENERATED FROM RENEWABLE ENERGY RESOURCES

Pursuant to Chapter 62 of the General Statutes:

- A REC "means a tradable instrument that is equal to one megawatt hour of electricity or equivalent energy supplied by a clean energy facility, new clean energy facility, or reduced by implementation of an energy efficiency measure that is used to track and verify compliance with the requirements of this section as determined by the Commission…."
- A "clean energy facility" means a renewable energy facility, a nuclear energy facility, including an uprate to a nuclear energy facility, or a fusion energy facility.
- A "renewable energy facility" means a facility, other than a hydroelectric power facility with a generation capacity of more than 10 megawatts, that either:
    - Generates electric power by the use of a renewable energy resource.
    - Generates useful, measurable combined heat and power derived from a renewable energy resource.
    - Is a solar thermal energy facility.

Section 8 would: (i) authorize RECs for natural gas generated from renewable energy resources; and (ii) require the Utilities Commission to consider each 5,500 cubic feet of natural gas generated from renewable energy resources when injected into a natural gas pipeline to be equivalent to 1 megawatt hour of electric generation when assigning RECs.

PART IX. NATURAL GAS LOCAL DISTRIBUTION COMPANIES COST RECOVERY MODIFICATIONS

Section 9 would amend statutes governing cost recovery for natural gas local distribution companies to provide that the Utilities Commission may authorize a rate adjustment mechanism for a company's recovery of costs to produce, purchase, and transport natural gas, which may include gas derived from renewable energy biomass resources. For purposes of the provision, "renewable energy biomass" would include agricultural waste, animal waste, wood waste, spent pulping liquors, organic waste, combustible residues, combustible gases, energy crops, landfill methane, or domestic wastewater. The company would be prohibited, however, from recovering the incremental cost of natural gas attributable to renewable energy biomass resources that exceeds the average system cost of gas unattributable to renewable energy biomass resources.

PART X. EXCLUDE AQUACULTURE FROM THE DEFINITION OF "DEVELOPMENT" FOR PURPOSES OF CAMA AND LIMIT THE AUTHORITY OF THE MARINE FISHERIES COMMISSION TO ADOPT RULES REGULATING AQUACULTURE EQUIPMENT

The Coastal Area Management Act (CAMA) requires a person to obtain a permit from the Division of Coastal Management before engaging in development in an area of environmental concern in the 20 coastal counties.

The use of land for the purposes of planting, growing, or harvesting plants, crops, trees, or other agricultural or forestry products is generally excluded from the definition of "development."

Section 10.(a) would provide that "development" does not include placement of a floating structure used primarily for aquaculture and associated with an active shellfish cultivation lease area or franchise. This section would also clarify that the use of any land for uses related to aquaculture and aquaculture facilities associated with an active shellfish cultivation lease area or franchise is also excluded from the definition of "development."

DEQ would be directed to submit to the United States National Oceanic and Atmospheric Administration (NOAA) for approval these proposed changes. This subsection would become effective on the later of:

- October 1, 2024.
- The first day of a month that is 60 days after the Secretary of DEQ certifies to the Revisor of Statutes that NOAA has approved the changes.

The Marine Fisheries Commission (MFC) is generally directed to "adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction."

Section 10.(b) would provide that the MFC would not have the authority to adopt rules regulating cages, poles, anchoring systems, or any above-water frames or structural supports used to suspend or hold in place equipment or floating structures used for aquaculture.

PART XI. REQUIRE THE OFFICE OF STATE ARCHAEOLOGY TO PROVIDE INFORMATION TO LANDOWNERS OR PROSPECTIVE PURCHASERS IN AREAS OF ENVIRONMENTAL CONCERN UPON REQUEST, AND ESTABLISH LIMITS ON ASSOCIATED CAMA PERMIT CONDITIONS

Originally enacted in 1973, CAMA requires permits (major, minor, or general) for development[3] in "areas of environmental concern" (AECs) in twenty coastal counties.[4] The Coastal Resources Commission is

[3] "Development" means any activity in a duly designated area of environmental concern involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal; or placement of a floating structure in an area of environmental concern. The statute includes another specific exemptions from the term "development."

[4] Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.

authorized to designate geographic areas of the coastal area as AECs for, among other things, fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, where uncontrolled or incompatible development could result in major or irreversible damage to important historic, cultural, scientific, or scenic values or natural systems.

Section 11 would:

- Require the Office of State Archaeology to, upon the request of an owner or prospective purchaser of land located in an AEC, provide the owner or prospective purchaser with information as to any known or suspected archaeological or historical significance of the property.
- Provide that if the Office of State Archaeology has informed an owner or prospective purchaser of land that there is no known or suspected archaeological or historical significance associated with the property, the Office of State Archaeology shall, for a period of three years thereafter, be prohibited from adding a condition to a CAMA permit that requires or restricts a permittee's activity with respect to the property based on any archaeological or historical significance of the property.

  DEQ would be directed to submit this change to the United States National Oceanic and Atmospheric Administration (NOAA) for approval. This subsection would become effective on the later of:

  - October 1, 2024.
  - The first day of a month that is 60 days after the Secretary of DEQ certifies to the Revisor of Statutes that NOAA has approved the changes.
- Require the Office of State Archaeology to apply for any State, federal, or private grant funding that may be available to purchase properties within AECs of great archaeological or historical significance to the State.

PART XII. REMOVE TIME LIMITS ON CERTAIN VUR GRANTS

The Viable Utility Reserve (VUR) is an account within the Water Infrastructure Fund established to receive appropriated State funds to be used for grants to local government units for any of the following purposes:

- Providing physical interconnection and extension of public water or wastewater infrastructure to provide regional service.
- Rehabilitating existing public water or wastewater infrastructure.
- Decentralizing an existing public water system or wastewater system into smaller viable parts.
- Funding a study of rates, asset inventory and management, or merger and regionalization options.
- Funding other options deemed feasible which result in local government units generating sufficient revenues to adequately fund management and operations, personnel, appropriate levels of maintenance, and reinvestment that facilitate the provision of reliable water or wastewater services.
- Providing emergency grants for operating deficits if the Local Government Commission has exercised its powers under G.S. 159-181 to assume full or partial control over the affairs of the public water or wastewater system or of the local government unit or public authority that owns or operates the public water or wastewater system.

Under current law, emergency grants from the VUR for operating deficits to any single local government may not exceed $750,000 in any fiscal year and may not be awarded for more than three consecutive fiscal years.

Section 12 would allow emergency grants from the VUR to be awarded for more than three consecutive fiscal years.

PART XIII. ESTABLISH A TIME LIMIT FOR REVIEW OF APPLICATIONS SUBMITTED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR WATER DISTRIBUTION SYSTEMS TO CONSTRUCT OR ALTER A PUBLIC WATER SYSTEM

DEQ must review plans, specifications, and other information submitted by an applicant before approving the construction or alteration of a public water system.

Section 13 would establish a time limit for DEQ to review an application for a water distribution system authorization. DEQ would be required to review an application within 45 days of receipt of a complete application when a professional engineer provides certification that the design meets or exceeds the Minimum Design Criteria applicable to the project.

Upon receipt of an application, DEQ would have to perform an administrative review for completeness within 10 days and notify the applicant whether the application is complete. If it is complete, the 45-day period would begin on the date the complete application was received. If not, DEQ would notify the applicant of the missing information. The 45-day review period would begin on the day that DEQ receives the remaining required information.

If additional information is still required to complete the technical review, DEQ must request the additional information and the 45-day review period is paused until the additional information is received. If DEQ does not receive the information from the applicant within 30 days, it must return the application to the applicant. If DEQ does receive the information within 30 days, the technical review period time will restart and DEQ must complete the review within the number of days that remained in the technical review period on the date the technical review period was paused by the request for additional information.

DEQ would be required to issue either an authorization to construct or a denial of the application by the last day of the review period. If DEQ does not complete its review within the 45-day review period, the authorization would be deemed approved.

PART XIV. AMEND STATUTES AND RULES APPLICABLE TO DOCK, PIER, AND WALKWAY REPLACEMENT IN THE COASTAL AREA

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

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

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

- It enlarges the existing structure in any dimension.

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

Section 14 would:

- Require the Coastal Resources Commission to revise the CAMA rules to provide that for certain fixed docks, piers, or walkways damaged or destroyed by natural elements, fire, or normal deterioration, activity to rebuild the dock, pier, or walkway to its pre-damage condition shall be considered repair of the structure, and shall not require CAMA permits, without regard to the percentage of framing and structural components required to be rebuilt. At the time a dock, pier, or walkway damaged or destroyed by natural elements, fire, or normal deterioration is repaired, the width and length of the dock, pier, or walkway structure may be enlarged by not more than five feet or five percent, whichever is less, and the structure may be heightened, without need for a CAMA permit. These changes would not, however, apply to docks and piers: (i) greater than six feet in width; (ii) greater than 800 square feet of platform area; or (iii) that are adjacent to a federal navigation channel.
- Require local building inspection departments to, not later than 60 days after an inspection of a dock, pier, or catwalk or walkway that has been replaced in the coastal area, notify the Division of Coastal Management of the replacement.
- Prohibit the North Carolina Residential Building Code from requiring a professional engineer or architect to design or otherwise certify the construction of residential docks, piers, or catwalks or walkways.

PART XV. PROHIBIT CERTAIN BACKFLOW PREVENTER REQUIREMENTS BY PUBLIC WATER SYSTEMS

Subchapter 18C of Title 15A of the North Carolina Administrative Code governs public water supplies. Under the Subchapter, "backflow preventer" means an assembly, device, or method that prohibits the backflow of water into potable water supply systems.

Prior to 2019, 15A NCAC 18C. 0406, included within that Subchapter, provided:

> (4) All cross-connections between potable water supplies and non-potable or unprotected supplies that are not specifically covered in the categories in this Paragraph will be considered special problems and the protective devices required shall be determined by the Department on the basis of the degree of health hazard involved.

Effective July 1, 2019, the rule was amended with additional detail for backflow preventer requirements.

The State's Plumbing Code (Code) also includes requirements for backflow preventers. Generally, under the Code:

- New plumbing systems must comply with the Code that is in effect during the time of construction.
- There is grandfathering that allows existing plumbing systems to remain in effect until a retrofit, upfit/fit-up, or facility addition takes place, but only if the original construction met the Code at the time of construction and there is no hazard to life, health, or property.

Section 15 would generally prohibit any public water system owned or operated by a local government unit from requiring a customer to install a backflow preventer on an existing nonresidential or residential

connection, including multifamily dwellings, not otherwise required by State or federal law except where the degree of hazard from the customer's connection is determined to be high by the Department of Environmental Quality. The limitation, however, would not prohibit requirements for installation of backflow preventers pursuant to the State Plumbing Code or the North Carolina Fire Code due to retrofit or upfit/fit-up to the customer's plumbing, facility addition on the customer's property, or change in use of the property served by the connection. The single act of a retrofit or upfit/fit-up to the customer's plumbing limited to the service line between the home or building and the meter, and without a change in use or facility addition, would not necessitate a backflow preventer. An increase in the flow of water to the home or building, without a change in use or facility addition, would not necessitate a backflow preventer.

A public water system and its employees would be immune from civil liability in tort from any loss, damage, or injury arising out of or relating to the backflow of water into potable water supply systems where a backflow preventer is not required by State or federal law, or where the degree of hazard from the customer's connection is not determined to be high by the Department.

Where a backflow preventer would not otherwise be required by law, or by determination of high hazard by the Department, a local government would be authorized to require installation of backflow preventer on a customer's property if the public water system pays all costs associated with the backflow preventer, including the device, installation, and appropriate landscaping.

This section would also prohibit public water systems from requiring periodic testing more frequently than once every three years for backflow preventers installed or replaced within the last ten years on residential irrigation systems that do not apply or dispose chemical feeds. A public water system and its employees would be immune from civil liability in tort from any loss, damage, or injury resulting from compliance with these limitations on periodic testing.

A public water system may accept the results of backflow preventer testing conducted by a licensed plumbing contractor or a certified backflow prevention assembly tester approved by the public water system.

This section would become effective when it becomes law and applies to requirements for installation and testing of backflow preventers made by a public water supply on or after that date.

PART XVI. EXEMPT CERTAIN FOOD SERVICE ESTABLISHMENTS FROM SEPTAGE MANAGEMENT FIRM PERMITTING REQUIREMENTS

Septage management firms must obtain a permit from the Department of Environmental Quality before commencing or continuing operation. A "septage management firm" is defined in statute as "a person engaged in the business of pumping, transporting, storing, treating, or disposing septage." This definition does not include public or community wastewater systems that treat or dispose septage.

Section 16 would provide that food service establishments not involved in pumping or vacuuming a grease appurtenance do not have to obtain a septage management firm permit.

PART XVII. AUTHORIZE REPLACEMENT OF CERTAIN EROSION CONTROL STRUCTURES

The Coastal Area Management Act generally prohibits construction of permanent erosion control structures in an ocean shoreline. The applicable statute does, however, authorize the Coastal Resources Commission (CRC) to, among other things: (i) renew a permit for a permanent erosion control structure originally permitted pursuant to a variance granted by the Commission prior to July 1, 1995; and (ii) issue no more than six permits for the construction of a terminal groin.

Section 17 would:

- Make several changes to the definition of "terminal groin" to include a structure constructed: (i) where the ocean shoreline converges with Frying Pan Shoals; (ii) to protect the terminus of the island from shoreline erosion "**or**" inlet migration (existing law provides **"and"**); (iii) that allows sand moving in the littoral zone to flow "around, over, or through" the structure (existing law provides that sand "flow past").
- Require the CRC to permit replacement of a permanent erosion control structure originally permitted pursuant to a variance granted by the Commission prior to July 1, 1995, consisting of a field of geotextile sand tubes, the field of geotextile sand tubes with rock erosion control structures subject to the following criteria:
    - The number of rock erosion control structures must be equal to or less than the number of geotextile sand tubes originally permitted.
    - The structure(s) or field of structures may consist of groins, including T head or lollipop groins, or breakwaters to be approved by the Division of Coastal Management, in its discretion, or by variance from the Coastal Resources Commission.
    - The structure field may not be enlarged beyond the alongshore dimensions authorized under the original permit, and the aggregate overall length of the rock structures may not exceed the aggregate overall length of the geotextile sand tubes authorized under the original permit.
    - The plans for the work must be sealed by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes with experience in engineering in the coastal area.

  The language provides that such a permanent erosion control structure is not a terminal groin, and subject to requirements for terminal groins elsewhere in the statute.
- Would increase the number of permits for the construction of terminal groins the CRC may issue from six to seven.

DEQ would be directed to submit this change to the United States National Oceanic and Atmospheric Administration (NOAA) for approval. This subsection would become effective on the later of:

- October 1, 2024.
- The first day of a month that is 60 days after the Secretary of DEQ certifies to the Revisor of Statutes that NOAA has approved the changes.

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

Chris Saunders and Aaron McGlothlin, Staff Attorneys with the Legislative Analysis Division, substantially contributed to this summary.