



HOUSE BILL 760: Regulatory Reform Act of 2015

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2015-2016 General Assembly

Committee:	House Regulatory Reform	Date:	April 27, 2015
Introduced by:	Reps. Millis, J. Bell, Riddell	Prepared by:	Karen Cochrane-Brown
Analysis of:	PCS to First Edition H760-CSSB-7 [v. 8]		Jeff Hudson Committee Counsel Erika Churchill Staff Attorney

SUMMARY: *The Proposed Committee Substitute for House Bill 760 (PCS) would amend a number of State laws related to business regulation, State and local government regulation, and environmental regulation.*

BILL ANALYSIS:

PART I. BUSINESS REGULATION

Section 1.1. 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.

Section 1.2. would amend the law governing sanitation requirements for pushcarts and mobile food units to clarify that pushcarts and mobile food units must meet all the sanitation requirements of a permitted commissary or must have a permitted restaurant or commissary that serves as its base of operation. The section also adds certain requirements for pushcarts and mobile food units that operate from a permitted commissary or restaurant located on a facility that contains at least 3,000 permanent seats.

Section 1.3. 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 which 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.

Section 1.4. 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 other purposes or if the licensee is not actively working in the field.

O. Walker Reagan
Director



Research Division
(919) 733-2578

PART II. STATE AND LOCAL GOVERNMENT REGULATION

Section 2.1. would require cities to provide density credit or severable development rights for dedicated rights-of-way in the city's zoning ordinance.

Section 2.2.(a) and (b) 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, the agency is not required to prepare a fiscal note for the rule.

Section 2.3. 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.

Section 2.4. would allow a unit of local government, when leasing property, including property of a public enterprise, for communications towers, facilities or equipment, to do so for a term up to 25 years without treating the lease as a sale of the property under Article 12 of Chapter 160A. The unit of government would also not be required to provide notice by publication of the intended lease.

Section 2.5.(a) through (g) would authorize the creation of a Government-Nonprofit Contracting Task Force to address problems related to the administration of grants and contracts issued by the State to private charitable nonprofits that provide public services to citizens of the State. The Task Force would be composed of representatives from the legislature, the executive branch, the nonprofit community, and the public. The Task Force would be charged with studying the entire body of law, regulations, policies, etc., to eliminate obsolete, redundant, or unreasonable requirements. The Task Force is required to submit a preliminary report to the Joint Legislative Commission on Governmental Operations by September 30, 2016, including recommendations for changes that can increase the efficiency and effectiveness of the delivery of public services by nonprofits through State grants and contracts. The Task Force must submit a final report by January 31, 2017.

Section 2.6. 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 2.6 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.

Section 2.7. would allow county and city building inspections departments to rely upon inspections by licensed architects and licensed engineers of building components or elements, provided the licensed architect or licensed engineer certifies the inspection in writing, under seal.

Section 2.8. would specify that a city or county, in the adoption of land use planning ordinances, may not use a definition of bedroom, sleeping unit, or dwelling unit that exceeds any definition of the same in another statute or rule.

House Bill 760

Page 3

PART III. ENVIRONMENTAL AND NATURAL RESOURCES REGULATION

Section 3.1.(a) through (c) 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, any other man-made isolated pond, or any other type of isolated wetland.
- Provide that the mitigation requirements for impacts to isolated wetlands apply only to the amount of impact that exceeds the regulatory thresholds of one acre east of I-95 and 1/3 acre west of I-95.
- 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.

Section 3.2.(a) through (d) 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 vegetative buffers adjacent to intermittent streams will be measured from the center of the stream bed.
- 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 January 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 July 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 General Assembly.

Section 3.3.(a) through (d) would make the following changes to riparian buffer programs in the State effective August 1, 2015:

- Limit local government deviation from State riparian buffer width requirements as follows:

House Bill 760

Page 4

- An existing local government ordinance that includes a deviation from State riparian buffer width requirements may not be enforced after June 1, 2016, unless the Environmental Management Commission (EMC) approves the deviation.
- The EMC may consider a request for a local government deviation from State riparian buffer width requirements only if the request is accompanied by a scientific study that provides a justification for the deviation based on the topography, soils, hydrology, and environmental impacts.
- The EMC will grant the request for deviation only if it finds that the need for a deviation is established by the scientific evidence presented by the local government in order to meet the nutrient reduction goal set by the EMC.
- When riparian buffers are placed in portions of a subdivision that are designated as common areas or open space and neither the State nor its subdivisions holds any property interest in that riparian buffer area, the local government must attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development related regulatory requirements
- Local governments may impose restrictions upon the use of riparian areas only within river basins where riparian buffers are required by the State. The width of the restricted area and the body of water to which the restrictions apply shall not deviate from State requirements unless the deviation has been approved by the EMC.
- The limitations on local government riparian buffer requirements will not apply to a local ordinance adopted prior to July 22, 1997, that has the following characteristics:
 - The ordinance includes findings that the setbacks are imposed for purposes that include the protection of aesthetics, fish and wildlife habitat and recreational use by maintaining water temperature, healthy tree canopy and understory, and the protection of the natural shoreline through minimization of erosion and potential chemical pollution in addition to the protection of water quality and the prevention of excess nutrient runoff.
 - The ordinance includes provisions to permit under certain circumstances small or temporary structures within 50 feet of the water body and docks and piers within and along the edge of the water body.
- Absent a requirement of federal law or an imminent threat to public health or safety, a river basin buffer rule will not apply to any tract of land that meets all of the following criteria:
 - The tract was platted and recorded in the register of deeds in the county where the tract is located prior to the effective date of the applicable river basin buffer rule.
 - Other than the applicable river basin buffer rule, the use of the tract complies with either of the following:
 - The rules and other laws regulating and applicable to that tract on the effective date for the applicable river basin buffer rule.
 - The current rules, if the application of those rules to the tract was initiated after the effective date for the applicable river basin buffer rule by the unit of local government with jurisdiction over the tract and not at the request of the property owner.
- If State law requires a riparian buffer for coastal wetlands in either the Neuse River Basin or the Tar Pamlico River Basin, the coastal wetlands and marshlands will not be treated as part of the surface waters but instead will be included in the measurement of the protective riparian buffer. The riparian

House Bill 760

Page 5

buffer for any of the coastal wetlands or marshlands in the Neuse River Basin or the Tar Pamlico River Basin will be delineated as follows:

- If the coastal wetlands or marshlands extend less than 50 feet from the high normal water level or normal water level, then the riparian buffer will include all of the coastal wetlands and marshlands and enough of the upland footage to equal a total of 50 feet from the normal high water level or the normal water level.
- If the coastal wetlands or marshlands extend 50 feet or more from the normal high water level or normal water level, then the protective riparian buffer shall be the full width of the marshlands or coastal wetlands up to the landward limit of the marshlands or coastal wetlands but shall not extend beyond the landward limit of the marshlands or coastal wetlands.
- The Department of Environment and Natural Resources may not impose as a condition of a water quality permit a more restrictive riparian buffer requirement than that established for the river basin within which the activity or facility receiving the permit is located unless the EMC finds that the condition is necessary in order to meet the nutrient reduction goals for the river basin based on basin specific evidence compiled through a scientific study that provides a justification for the permit condition based on the topography, soils, or hydrology of the river basin, the environmental impacts of the activity or facility.

Section 3.4.(a) through (c) would prohibit law enforcement officers, including marine fisheries inspectors and wildlife protectors, from inspecting weapons, equipment, fish, or wildlife in the absence of a person in apparent control of the item to be inspected, unless the inspection is incident to an arrest. These sections would also direct the Wildlife Resources Commission to:

- Study whether and under what circumstances reasonable suspicion that a violation has been committed should be required before a wildlife protector, marine fisheries inspector, or other law enforcement officer may inspect weapons, equipment, fish, or wildlife. The Commission must consult with the Division of Marine Fisheries and other law enforcement agencies in the conduct of this study and report the results of this study to the Joint Legislative Oversight Committee on Justice and Public Safety no later than March 1, 2016.
- Report to the Joint Legislative Oversight Committee on Justice and Public Safety no later than March 1, 2016, and annually thereafter, on the number of complaints received against Commission law enforcement officers, the subject matter of the complaints, and the geographic areas in which the complaints were filed.

Section 3.5.(a) through (d) would make several changes to marine fisheries laws as follows:

- Repeal the requirement for logbook reporting of catch and effort statistical data by for-hire coastal recreational fishing licensees voluntary.
- Prohibit the Director of the Division of Marine Fisheries from entering into a Joint Enforcement Agreement (JEA) with the National Marine Fisheries Service (NMFS) allowing marine inspectors to accept delegation of law enforcement powers over matters within the jurisdiction of NMFS.
- Require the Division of Marine Fisheries (Division) to conduct a 12-month process to seek input from stakeholders on:
 - The costs and benefits of a for-hire logbook reporting requirement.
 - The impacts, costs, and benefits of a JEA with NMFS.

The Division would report to the Environmental Review Commission no later than January 15, 2016.

House Bill 760

Page 6

Section 3.6. would alter the implementation of animal waste management system regulations to provide that:

- A "new animal waste management system" does not include a system that has been abandoned or unused for a period of four years or more and is then put back into service.
- Certain swine waste management system performance standards will not apply to any facility that:
 - Has had no animals on site for five continuous years or more.
 - Notifies the Division of Water Resources in writing at least 60 days prior to bringing any animals back onto the site.
 - Before bringing the animals on the site, has all of the necessary permits from the Division of Water Resources and the permit for the animal waste management system does not allow a level of production, as measured by steady state live weight, greater than the largest production for which the farm has received a permit in the past.

Section 3.7. would direct the Department of Insurance, the Building Code Council, and the Coastal Resources Commission to jointly study how flood elevations and building heights for structures are established and measured in the coastal region of the State. The Department, Council, and Commission 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 January 1, 2016.

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