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

HOUSE BILL 765: Regulatory Reform Act of 2015

2015-2016 General Assembly

Committee:
Introduced by: Rep. McElraft
Analysis of: Third Edition

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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.

ALLOW ATTORNEYS' FEES WHEN THE STATE IS THE PREVAILING PARTY IN CERTAIN CIVIL ACTIONS AND CLARIFY AND STANDARDIZE THE REQUIREMENTS TO AWARD ATTORNEYS' FEES IN ACTIONS INVOLVING THE STATE.

Section 1.4. would amend the law governing the award of attorney's fees in certain civil actions involving the State. In a case that contests the State's ability to construct transportation improvements or seeks relief based on environmental impact, and the State is the prevailing party, the court must allow the State to recover reasonable attorney's fees and costs. The prevailing party must petition for fees within 30 days following final disposition of the case. If attorney's fees are awarded, the judge must issue a written order including the factual basis and amount of fees to be awarded.

This section would become effective September 1, 2015, and applies to all actions or other proceedings filed 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 other purposes or if the licensee is not actively working in the field.

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, 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. 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.

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 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 is defined in the section as a limited liability company or a corporation with no more than two legal owners. The section also authorizes the officers, managers, and employees of a closely held business entity that is not the owner or lessor of the property to engage in acts and services of a broker without a license, if the business notifies the Real Estate Commission in writing annually with contact information and demonstrates available assets of at least $50,000.

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 September 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 September 1, 2015, and apply to causes of action arising on or after that date.

AUTHORIZE DMV TO ISSUE PERMANENT PLATES FOR TRAILERS ATTACHED TO MOTORCYCLES

Section 3.5. would amend, effective July 1, 2015, the Motor Vehicle law to authorize the issuance of permanent plates 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.

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

Section 3.9 would amend the public contracting statutes to require public entities to consider all acceptable piping materials before determining which piping material should be used in the construction, development, financing, maintaining, rebuilding, improving, repairing, procuring, or operating of a water, wastewater, or stormwater drainage project that is funded in whole or in part with State funds, unless sound engineering practices suggest that one type of acceptable piping material is more suitable for a particular project.

This section would become effective October 1, 2015, and would apply to projects initiated on or after that date.

LICENSED SURVEYOR TO MARK BOUNDARIES OF STATE PROPERTIES

Section 3.10. would require State agencies to use a licensed professional engineer or surveyor when marking boundaries of State property under the care of that agency. Employees of the State agency would be exempt from the requirement, as provided in current law.

This section would become effective October 1, 2015, and applies to surveys conducted on or after that date.

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. 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 section would become effective July 1, 2015, and apply to environmental audits that are conducted on or after that date.

REPEAL RECYCLING REQUIREMENTS FOR DISCARDED COMPUTER EQUIPMENT AND TELEVISIONS

Section 4.2. would repeal the provisions in the General Statutes that require manufacturers to recycle computer equipment and televisions discarded by consumers in the State, and repeal DENR's obligation to submit an annual report on this matter to the General Assembly.

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 provide for the following two exceptions to the EMC's authority to develop and adopt standards and plans to implement federal air quality standards by prohibiting the EMC and the Department of Environment and Natural Resources (DENR) from:

1. 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 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.
2. Enforcing any federal air emissions standard adopted by the USEPA for the regulation of fuel combustion that is used directly or indirectly to provide hot water or comfort heating to a residence or a comfort heating to a business.

AMEND PROCESS FOR STATE ADOPTION OF FEDERAL AIR QUALITY STANDARDS

Sections 4.4, 4.5, and 4.6 would modify the implementation of the State's air pollution control rules for national emissions standards for hazardous air pollutants, maximum achievable control technology, and new source performance standards (15A NCAC 02D .1110, .1111, and .0524, respectively) to establish a

new process by which proposed federal standards are adopted into the Administrative Code. Instead of automatically enforcing new federal standards, the bill would prohibit the EMC from adopting new standards except by a three-fifths vote of the Commission, to include the new standards in the Administrative Code. Standards adopted according to this process would then be subject to legislative review.

Section 4.6A effective January 1, 2016, would prohibit the EMC from enforcing previously adopted federal national emissions standards for hazardous air pollutants, maximum achievable control technology, and new source performance standards until the EMC readopts the standards using the process outlined above

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[1] 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 sites where there was no migration of contaminants off the industrial site, were made eligible.
- Only sites where the release of contamination was reported to DENR prior to March 1, 2011, were made eligible.

The bill would eliminate these limitations. With respect to the cleanup of sites where contaminants have migrated off the industrial site, the bill does provide, however, that remediation of environmental contamination on the off-site properties must meet unrestricted use standards on those properties.

Section 4.8. would direct DENR, no later than January 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.

AMEND THE LAW GOVERNING BROWNFIELDS REDEVELOPMENT TO CONFORM CLASSES OF PERSONS ELIGIBLE TO PARTICIPATE TO THOSE AUTHORIZED UNDER FEDERAL LAW

[1] 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 the Department of Environment and Natural Resources (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.

Section 4.9. 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 change the definition of "prospective developer" to include all the classes of persons eligible for liability protection under the federal Brownfields program, as described below:

- **Bona fide prospective purchaser (BFPP)** liability protection allows persons to acquire property knowing, or having reason to know, of contamination on the property, and still be eligible for Brownfields treatment, if, among other things, they:
  - Acquire contaminated property after January 11, 2002.
  - Perform "all appropriate inquiries" prior to acquiring the property, and demonstrate "no affiliation" with a liable party, and meet other threshold criteria.
  - Satisfy other continuing obligations, including compliance with land use restrictions and not impeding the effectiveness or integrity of institutional controls, etc.

- **Contiguous Property Owners (CPO)** liability protection is for owners of property that is not the source of the contamination (i. e., property is "contiguous" to, or otherwise similarly situated to, a facility that is the source of contamination found on their property). CPOs must also perform all appropriate inquiry prior to purchase, but they must buy without knowing, or having reason to know, of contamination on the property.

- **Innocent Landowners (ILOs)** liability protection is for owners of property that is the source of the contamination, but purchased without knowing, or having reason to know, of contamination on the property, after having performed all appropriate inquiries.

BFPPs or CPOs must not be potentially liable or affiliated with any other person who is potentially liable for the site response costs. "Affiliated with" includes direct and indirect familial

relationships and many contractual, corporate, and financial relationships. ILOs cannot have a contractual relationship with a liable party.

This section would become effective July 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 4.10.(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 4.10.(b) would repeal a provision that allows DENR to collect a fee for registration of persons transporting, collecting, or recycling used oil.

REPEAL ENERGY AUDIT REQUIREMENTS

Section 4.11. would repeal the requirement for the Department of Administration to develop an energy audit and procedure to perform energy audits for each State agency or State institution of higher learning. This section would also repeal any corresponding reporting requirements.

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.

Sections 4.14.(a) through 4.14.(e) of the bill would amend G.S. 130A-333 through G.S. 130A-342 by enacting an alternative process – the private option permit – by which a professional engineer may design, construct, install, and prepare for operation, a new on-site wastewater system without requiring the oversight or approval of a local health department as follows:

Section 4.14.(a) defines the "***private option permit***" (POP) to mean the approval of an on-site wastewater system by a professional engineer who has both expertise and education in civil or environmental engineering and who has designed the wastewater system acting under the authority of the owner thereof.

Section 4.14.(b) (i) authorizes licensed soil scientists (as defined in Chapter 89F of the General Statutes), in addition to local health department staff, to evaluate the soil conditions and site features of any site proposed for new wastewater systems; (ii) establishes a system for an owner of a wastewater system or the Department of Health and Human Services (DHHS) to file written complaints against professional engineers or licensed soil scientists citing failure to adhere to rules applicable to wastewater systems; and (iii) makes conforming changes to implement the POP.

Section 4.14(c) creates a new section in Article 11 of Chapter 130A of the General Statutes authorizing the utilization of the private option permit (POP) for a professional engineer, under the legal authority of the owner of a proposed wastewater treatment system, to prepare 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 POP, a professional engineer would be authorized, at the engineer's discretion, to employ wastewater system technologies not yet approved in this State. An owner or engineer who seeks to utilize the POP 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 engineer, the licensed soil scientist, proof of insurance or appropriate liability coverage of at least $1 million per claim, 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 14 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 POP, the engineer or owner, as applicable, must: (i) 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) employ a licensed soil scientist to evaluate soil conditions and site features; (iii) be responsible for all aspects for the construction and installation of the wastewater system, including the selection and oversight of an on-site wastewater system contractor certified in accordance with Article 5 of Chapter 90A of the General Statutes; and (iv) comply with any and all State, local, and federal laws and regulations that pertain to the proposed wastewater system.

Under the POP, the licensed soil scientist must assume all ***liability*** for the findings of the soils evaluation and soils report. The professional engineer must assume all liability for the engineer's scope of work for the wastewater system. The owner of the wastewater system must assume all liability for the proper operation and management of the wastewater system. Once the owner has commenced operation of the wastewater system, neither the professional engineer or licensed soil scientist may be held liable for any damages resulting from unapproved changes made to the wastewater system by the owner. DHHS and LHD's are not liable for any wastewater systems approved under the POP, however, may at any time, conduct an inspection of the wastewater system.

In order to operate and maintain a wastewater system under the POP, the professional engineer must: (i) establish a written operations and management program and provide the written program to the owner and (ii) assist the owner in selecting a certified water pollution control system operator, an operator that is required to be under contract with the owner and chosen from a list maintained by the Division of Water Resources in DENR.

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. 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.

Upon 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 authorizes a LHD to ***assess fees***, of up to 10% 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 private permit with the register of deeds or other recordation of the wastewater system as required.

In addition, this section directs the Commission to ***adopt rules*** to implement the POP 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 POP.

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

Section 4.14.(f) of the bill directs 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 January 1, 2016.

Section 4.14.(g) of the bill (i) makes conforming changes to the statute governing improvement permits and authorizations for wastewater system construction to incorporate the POP; (ii) provides that improvement permits or authorizations to construct must not be affected by a change in ownership of the wastewater system; (iii) provides that an improvement permit and an authorization for wastewater system construction must remain valid once issued, without expiration, provided the design flow and characteristics and description of the facility the wastewater system will serve remain unchanged; and (iv) directs the LHD to maintain a database of proposed wastewater systems for which both the improvement permit and the authorization for wastewater construction have been obtained, but no activity related to the construction or installation of the site has begun in the five years immediately following approval. For those systems identified, the LHD must notify the applicant of any alternative wastewater system technologies and options that may be employed by the applicant in lieu of the system already permitted and authorized by the department.

Section 4.14.(h) of the bill amends the criteria for operators of permitted systems to provide that systems with a design flow of less than 1,500 gallons per day must be operated by a certified Subsurface Water Pollution Control System Operator and authorizes the Commission to establish additional standards for systems with a design flow of 1,500 gallons or more per day.

Section 4.14.(i) of the bill provides that this section is effective when it becomes law and that the Commission must adopt rules to implement the POP no later than June 1, 2016. This section further provides that no person may utilize the POP until such time as the rules adopted by the Commission become effective.

AMEND APPROVAL OF ON-SITE WASTEWATER SYSTEMS

Section 4.15.(a) of the bill 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 NSF International; the International Association of Plumbing and Mechanical Officials; the Bureau of Normalization of Quebec; or another certification body for wastewater systems or system components accredited by the American National Standards Institute or the Standards Council of Canada.
- 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) of the bill directs the Commission to review and amend rules to implement the changes above.

Section 4.15.(c) of the bill directs the Commission to report, beginning October 1, 2015, 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) of the bill directs 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 January 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.

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, any other man-made isolated pond, or any other type of isolated wetland.
- Provide that the regulatory threshold for impacts to isolated wetlands is one acre. Currently, the regulatory thresholds are one acre for isolated wetlands east of I95 and 1/3 acre for isolated wetlands west of I95.
- Provide that the mitigation requirements for impacts to isolated wetlands apply only to the amount of impact that exceeds the regulatory threshold of one acre.
- 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.

AMEND COASTAL STORMWATER REQUIREMENTS
Section 4.19. would make the following changes to the State's coastal stormwater management laws:

- Increase the threshold for coastal stormwater management requirements to apply to nonresidential development from 10,000 square feet of built upon area to an acre or more of land-disturbing activity.
- Increase the amount of allowable built upon area for less stringent stormwater management requirements from 12% of a lot to 24% of a lot.
- Provide that as necessary to comply with federal stormwater management requirements, the rescission of designations of local governments within the 20 Coastal Counties as Phase 2 municipalities, is repealed.

EXEMPT LINEAR UTILITY PROJECTS FROM CERTAIN ENVIRONMENTAL REGULATIONS

Section 4.21. would provide that except as required by federal law, activities related to the construction, maintenance, or removal of an electric power line, water line, sewage line, stormwater drainage line, telephone line, cable television line, data transmission line, or natural gas pipeline are exempt from regulation by State agencies authorized to implement and enforce State and federal environmental laws.

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 December 1, 2015, 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. 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. 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.

DISCLOSURE OF PERSONAL IDENTIFYING INFORMATION

Section 4.29. would require the Wildlife Resources Commission and the Division of Marine Fisheries to treat email addresses like they treat other forms of personal identifying information, such as a person's mailing address, residence address, date of birth, and telephone number.

PROVIDE REGULATORY RELIEF BY INCREASING THRESHOLDS FOR MITIGATION OF LINEAR STREAM IMPACTS

Section 4.30. would increase the threshold for when stream mitigation for loss of streams is required from 150 linear feet of streambed to 300 linear feet of streambed and would provide that a 1:1 ratio of mitigation may only be required for loss of streambed greater than 300 linear feet.

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 designate that pigeons are wild birds for the purposes of jurisdiction and regulation by the Wildlife Resources Commission (Commission). The Commission currently excludes pigeons from the definition of wild birds. This designation would allow pigeon hunting in the State.

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 the "NC Pets We Care 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. This section would also create a $250 fee for support of local animal control authorities in the investigation of animal cruelty or Animal Welfare Act violations, to be remitted to the general fund of the local governmental unit that investigated the crime.

AMEND STORMWATER MANAGEMENT LAW

Section 4.37. would make the following changes to the regulation of stormwater in the State:

- Extend from July 1, 2016 to November 1, 2016, the deadline for the 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 development complies with all applicable State and federal stormwater management requirements and State requirements for protection of watersheds, control and prevention of sedimentation and erosion, and reduction and control of the pollutant loading that caused impaired water designations to be established by the EMC.
- 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 ERC, with the assistance of DENR 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.

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 January 1, 2016.

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.