



SENATE BILL 303: Regulatory Reform Act of 2016.

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

2016-2017 General Assembly

Committee: House Regulatory Reform
Introduced by:
Analysis of: PCS to Third Edition
S303-CSSB-20

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SUMMARY: *The Proposed Committee Substitute for Senate Bill 303 would amend a number State laws related to business regulation; State and local government regulation; and agricultural, energy, environmental, and natural resources regulation.*

PART I. BUSINESS REGULATION

EMPLOYMENT STATUS OF FRANCHISES

Section 1.1. would clarify that a franchisor is not the employer of a franchisee or employees of a franchisee for employment law claims under state law. The clarifying language is in response to a decision by the National Labor Relations Board, *Browning-Ferris Industries v. Leadpoint* (2015), which revised the standard for determining joint-employer status under federal law.

PART II. STATE AND LOCAL GOVERNMENT REGULATION

WATER AND SEWER BILLING BY LESSORS

Section 2.2 would allow lessors of single family rental units that are not contiguous to pass through charges for water and sewer utility service to tenants. The provision also directs the Utilities Commission to develop an application that lessors must complete, and will allow lessors to submit one application for the authority to charge for water and sewer service for multiple homes with a single Commission approval.

REZONING/SIMULTANEOUS COMPREHENSIVE PLAN AMENDMENT

Section 2.4. would require counties and cities to treat an affirmative vote to amend a zoning ordinance as a simultaneous amendment to the comprehensive plan and the unified development ordinance, if any. Effective October 1, 2016.

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PARENT PARCEL/SUBDIVISION CLARIFICATION

Section 2.5. with respect to subdivision regulation by counties and cities on or after October 1, 2016, do the following:

- Except from subdivision regulation the division of a tract into parcels as specified in a will or intestate succession.
- Provide that a plat may be required, but nothing else, for the division of a single tract of land greater than 5 acres in size into no more than 3 lots that have a dedicated means of ingress and egress.

STATUTE OF LIMITATIONS/LAND USE VIOLATIONS

Section 2.6. would provide a 3 year statute of limitations for a unit of local government to institute an action for a violation of a land use statute, ordinance, permit, or other official action concerning land use carrying the effect of law. Effective August 1, 2016, and applies to actions commenced on or after that date.

PROGRAM EVALUATION TO STUDY NONPROFIT CONTRACTING

Section 2.7 would authorize the Joint Legislative Program Evaluation Oversight Committee to amend the 2016-2017 Program Evaluation Division work plan to direct the Division to study State law and internal agency policies and procedures for delivery of public services through State grants and contracts to non-profit organizations. If the study is conducted, the Division will submit a report on the results of the study to the Joint Legislative Program Evaluation Oversight Committee and the Joint Legislative Commission on Governmental Operations no later than September 1, 2017. Effective July 1, 2016.

CLARIFY ROLES OF SOIL SCIENTISTS AND GEOLOGISTS IN EVALUATION OF PROPOSED WASTEWATER SYSTEMS

Sections 2.8.(a) through 2.8.(e) would clarify that: (i) soil scientists are limited to the evaluation of soil conditions and site features, and (ii) geologists are limited to the evaluation of geologic and hydro-geologic conditions of a site proposed for a wastewater system.

RENAME AND AMEND THE BOARD OF REFRIGERATION EXAMINERS

Section 2.9 would, effective January 1, 2017, rename the State Board of Refrigeration Examiners the State Board of Commercial Refrigeration Examiners and make other changes to the refrigeration contractor licensing statutes as follows:

- Explicitly specify different classes of refrigeration contracting and licenses, including licenses for commercial refrigeration contracting; industrial refrigeration contracting; repair, maintenance, and servicing of commercial equipment; and transport refrigeration contracting.
- Increases the cap on the examination fee from \$40.00 to \$100.00.
- Increases the cap on the renewal fee from \$40.00 to \$80.00.
- Increases the cap on the late renewal fee from \$75.00 to \$160.00.

AMEND DEFINITION OF ANTIQUE AUTOMOBILE

Section 2.10 would amend the definition of antique automobile in the tax statutes to provide that an antique automobile may be owned by an individual directly or indirectly through one or more pass through entities. Under current law, an antique automobile is owned by an individual.

COPIES OF CERTAIN PUBLIC RECORDS

Section 2.11 would provide that a public agency that makes its public records and computer databases available online, in a format that is downloadable, is satisfying the requirement to allow persons access

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to public records, and is not required to provide copies through any other method or medium. That public agency may, but is not required to, provide copies by another method or in another medium and may negotiate a charge for that service if they so opt. Effective July 1, 2016.

SPECIFY LOCATION OF LIEUTENANT GOVERNOR'S OFFICE

Section 2.12 would provide that the Lieutenant Governor's office would be located in the Hawkins-Hartness House located at 310 North Blount Street in Raleigh. Current law provides that the Lieutenant Governor's office is located in Raleigh.

CLARIFY THAT DOT STORMWATER REQUIREMENTS ARE APPLICABLE TO STATE ROAD CONSTRUCTION UNDERTAKEN BY PRIVATE PARTIES

Section 2.14 would provide that certain construction undertaken by a private party be considered to have been undertaken by the Department of Transportation, and as such the stormwater law applicable to the Department would apply to that construction.

PART III. AGRICULTURE, ENERGY, ENVIRONMENT, AND NATURAL RESOURCES REGULATION

DIRECT DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO INSPECT RENDERING PLANT

Section 3.1. would repeal the existing rendering plant inspection committee, which is composed of an employee of the Department of Agriculture and Consumer Services, an employee of the Department of Health and Human Services, and a person having practical knowledge of rendering operations, and instead direct the Commissioner or the Commissioner's designee to inspect rendering operations.

SOLID WASTE AMENDMENTS

Sections 3.3. through 3.5. would: (1) make technical, clarifying, and conforming changes to provisions enacted in 2015 to establish life-of-site permits for sanitary landfills and transfer stations; (2) provide that franchise agreements previously executed by local governments for sanitary landfills may be modified by agreement of all parties to a valid and operative franchise to last for a landfill's life-of-site; and (3) provide that no franchise agreement for a sanitary landfill, modified or newly executed, shall exceed a duration of sixty years.

AUTHORIZE THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS TO REVIEW AND COMMENT ON MILITARY-RELATED PERMIT CRITERIA

Sections 3.6.(a) and 3.6.(b) would amend the statutes governing the approval process for permitting wind energy facilities (Article 21C of Chapter 143 of the General Statutes) to (i) make clarifying and conforming changes, (ii) direct the Department of Military and Veterans Affairs (DMVA), instead of the Department of Environmental Quality (DEQ), to consult with military installation representatives to review information about the installations once a year and to provide such information to DEQ, and (iii) provide DMVA rulemaking authority under this Article.

These sections would become effective when the act becomes law and apply to applications for permits wind energy facilities submitted on or after that date.

Sections 3.6.(c) and 3.6.(d) would amend the statutes governing the endorsement of tall buildings and structures in the Military Lands Protection Act of 2013 (Article 9G of Chapter 143 of the General Statutes) to make clarifying and conforming changes. In addition, these sections (i) amend the default

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decision to endorse an application to instead deny an application for endorsement if the State Construction Office (SCO) does not act within the time periods set forth in the Act and (ii) include provisions for the institution of civil actions for violations of the Article.

These sections would become effective when the act becomes law and apply to requests for endorsements submitted on or after that date.

Sections 3.7.(a) and 3.7.(b) would authorize DMVA to review military-related criteria for permitting wind energy facilities. Specifically, these sections would establish a certification process by which DMVA would certify to DEQ that it finds construction or operation of the proposed facility would not encroach upon or result in a significant adverse impact on any military installation in the State.

These sections would become effective October 1, 2018, and apply to applications for permits wind energy facilities submitted on or after that date.

Sections 3.7.(c) through 3.7.(e) would authorize DMVA, instead of the SCO, to endorse tall buildings and structures. These sections also recodify the Military Lands Protection Act into Article 14 of Chapter 143B of the General Statutes, within the statutory jurisdiction of DMVA.

These sections would become effective October 1, 2018, and apply to requests for endorsements submitted on or after that date.

Sections 3.8.(a) and 3.8.(b) would, effective when this act becomes law, modify the statutory local government ordinance making procedures to direct a unit of local government, in addition to notifying the commander of a military base, to also notify DMVA when the adoption or modification of an ordinance would result in changes located five miles or less from the perimeter boundary of a military base.

Sections 3.8.(c) and (d) would, effective when this act becomes law, make conforming changes to transfer the responsibility for maintaining and making available accurate maps of areas surrounding military installations from SCO to DMVA.

Sections 3.8.(e) and (f) would amend the powers and duties of the DMVA to authorize the agency to issue certifications for proposed wind energy facilities and endorsements for tall buildings and structures.

These sections would become effective October 1, 2018, and apply to certifications and endorsements issued on or after that date.

DEQ TO STUDY RIPARIAN BUFFERS FOR INTERMITTENT STREAMS

Section 3.9 would direct the Department of Environmental Quality (DEQ) to study whether the size of riparian buffers required for intermittent streams should be adjusted and whether the allowable activities within the buffers should be modified. DEQ would report the results of the study to the Environmental Review Commission no later than December 1, 2016.

TRANSFER OF CERTAIN CONSERVATION EASEMENTS

Section 3.10 would provide that when a recipient of funds from the Ecosystem Restoration Fund acquires a conservation easement as part of a restoration project for the Division of Mitigation Services, the recipient may, upon approval by the Department of Environmental Quality, transfer the conservation easement to another governmental agency or third party.

PART IV. ELIMINATE AND CONSOLIDATE REPORTS

Sections 4.1 through 4.24 would eliminate, consolidate, and make other changes to various reports to the Environmental Review Commission (ERC).

These sections would eliminate the following reports:

- Cost of implementing the Mining Act of 1971 by the Department of Environmental Quality (DEQ).
- The implementation of the sustainable energy efficient buildings program by the Department of Administration (DOA).
- Systemwide municipal and domestic wastewater collection system permit program by the Environmental Management Commission (EMC).
- Reducing vehicle emissions from state employee and private sector vehicles by the Department of Transportation (DOT).
- Purchase of new motor vehicles and fuel savings by DOA.
- State of the Environment Report by DEQ.
- Developing engineering standards governing municipal and domestic systems to allow regional interconnection by the EMC.
- Implementation of the North Carolina Beach and Inlet Management Plan by DEQ.
- Informal review process for agency review of engineering work.

These sections would make the following changes to reports:

- The Coastal Resources Commission, EMC, and Marine Fisheries Commission report on progress in developing and implementing the Coastal Habitat Protection Plans would be consolidated with the report requiring DEQ to report on any significant changes in the Plans.
- DEQ's report on the cost of the State's environmental permitting programs would be consolidated with the report on the time required to process all permit applications in the One-Stop for Certain Environmental Permits Programs. The annual reports would become due biennially with the first combined report due no later than January 1, 2017.
- The EMC's report on permits and renewals for facilities discharging to surface waters would be consolidated with the report on the operation and activities of the Commission. The quarterly reports would become due annually with the first combined report due no later than January 1, 2017.
- DEQ's report on the status of solid waste management would be consolidated with the reports on recycling of computer equipment and televisions, the Brownfields Property Reuse Act, the Inactive Hazardous Waste Response Act of 1987, the Dry-Cleaning Solvent Cleanup Act of 1997, and the implementation and cost of the hazardous waste management program. The combined report would be due annually with the first report due no later than January 15, 2017.
- DEQ's report on the Sedimentation Pollution Control Act of 1973 would be consolidated with the on stormwater control program report. The first annual combined report would be due no later than October 1, 2016.
- DEQ's reports on the development of the State water supply plan and the development of basinwide hydrological models would be consolidated with the report on basinwide water quality

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management submitted by the EMC and DEQ. The first annual combined report would be due no later than November 1, 2016.

- DEQ's report on accounts in the Water Infrastructure Fund would be consolidated with the State Water Infrastructure Authority's reports of its activity and findings. The first annual combined report would be due no later than October 1, 2016 and the combined report would also be received by the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources (ANER Oversight Committee) and the Fiscal Research Division.
- The Soil and Water Conservation Commission's reports on the Agriculture Cost Share Program for Nonpoint Source Pollution Control Program and the Community Conservation and Assistance Program would be consolidated with the comprehensive report on the Agricultural Water Resources Assistance Program by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services. The first annual combined report would be due no later than January 31, 2017.

These sections would make the following changes to reports:

- Decrease reporting frequency on the terminal groins pilot project by the Coastal Resources Commission from annually to every 5 years.
- Decrease reporting frequency on the parks system plan by the Department of Natural and Cultural Resources from annually to every five years and add the ANER Oversight Committee as a recipient of the report.
- Redirect interagency report on superfund cost share to the ANER Oversight Committee.
- Redirect reports on expenditures from the Bernard Allen Emergency Drinking Water Fund to the ANER Oversight Committee.
- Redirect report on the Parks and Recreation Trust Fund to the ANER Oversight Committee.

PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE

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

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