



# HOUSE BILL 374: Business Freedom Act.

2017-2018 General Assembly

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<b>Committee:</b> Senate Rules and Operations of the Senate	<b>Date:</b> June 26, 2017
<b>Introduced by:</b> Reps. McElraft, Howard, Johnson, Hurley	<b>Prepared by:</b> Wendy Ray
<b>Analysis of:</b> Third Edition	Staff Attorney

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## **OVERVIEW:** *House Bill 374 would:*

- *Make a number of technical, conforming, and other changes to the labor laws of North Carolina.*
- *Codify the Carolina Star Program in the Department of Labor.*
- *Amend provisions enacted in the Regulatory Reform Act of 2016-2017 that modified provisions enacted in 2015 to establish life-of-site permits for sanitary landfills and transfer stations.*
- *Modify provisions under existing law that require the owner of a coal ash pond or impoundment to install and operate ash beneficiation projects.*
- *Provide an exemption to building code provisions allowing construction of a parking garage to extend across a lot line between a city-owned lot and a privately-owned lot without meeting certain requirements that apply to exterior walls approaching a lot line.*
- *Clarify the definition of commercial real estate for purposes of commercial real estate broker liens by including property used for agricultural or forestry purposes.*
- *Exempt certain pressure vessels from inspection and regulation under the Uniform Boiler and Pressure Vessel Act.*
- *Extend to January 2020 the validity of improvement and wastewater system construction permits that were issued between 2000 and 2015, if they have not been acted on and would have otherwise expired.*
- *Modify the scrap tire tax by making the tax applicable to the sale of used tires as well as new tires and by changing the rate of the tax.*
- *Direct the North Carolina Medical Care Commission to adopt the American Society of Healthcare Engineers Facility Guidelines Institute "Guidelines for Design and Construction of Hospitals and Outpatient Facilities".*
- *Restrict what stormwater runoff requirements a local government can apply to public airports.*
- *Create alternative procedures for contested cases for certain decisions of the Department of Environmental Quality and the Environmental Management Commission.*

## **BILL ANALYSIS:**

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**PART I** of the bill would make the following changes related to labor laws in the State:

**Approval of youth employment certificates.** Under current law, the Wage and Hour Act allows the Commissioner of Labor and county directors of social services to review and approve youth employment certificates. The bill would remove the ability of county directors of social services or their designees from approving youth employment certificates.

**Changes to Passenger Tramway Safety Act.** The bill would make the following changes to the Passenger Tramway Safety Act:

**Operation of Unsafe Devices** - provides that no person must operate, permit to be operated, or use any device subject to the provisions of this Article if the person knows or reasonably should know that the operation or use of the device will expose the public to an unsafe condition which is likely to result in personal injury or property damage.

**Reports Required** - requires the owner or an agent to notify the Commissioner within 24 hours when a death or injury requiring medical treatment occurs, or there is damage to a device indicating a substantial defect in design that affects the future safe operation of the device. Upon notification, the Commissioner must complete an investigation, and a report is placed on file. The owner may include independent investigations in the file. After an occurrence, (i) a person may not operate or attempt to move a device without the approval of the Commissioner unless doing so to prevent injury of another person, and (ii) a person shall not remove or attempt to remove any part of the device or repair or attempt to repair any damaged part necessary to a complete investigation.

**Civil Penalties** - creates the following civil penalties:

- Violation of registration and application procedures - penalty not to exceed \$1,250 for each day each device is so operated or used.
- Violation of required liability insurance or reporting requirements - penalty not to exceed \$2,500 for each day each device is so operated and used.
- Violation of operation of unsafe device - penalty not to exceed \$5,000 for each day each device is so operated and used.

In determining the amount of the penalty, the Commissioner must consider the annual gross volume of the person charged, the gravity of the violation, whether good faith was exercised, and the record of previous violations. There is a mechanism for appealing the decision of the Commissioner under Chapter 150B. The Commissioner may file with the clerk of superior court a certified copy of a final order unappealed from or a final order affirmed upon appeal. The clerk shall enter judgment and notify the parties, and the judgment has the same effect as if entered by the superior court.

**Criminal Penalties** – provides that a person who willfully violates Article 15 of Chapter 95 and the violation causes the serious injury or death of a person, is guilty of a Class E felony which shall include a fine.

**PART II** of the bill would codify the Carolina Star Program in the Department of Labor as follows:

The Carolina Star Program is set out as a voluntary program designed to recognize work sites that implement effective safety and health management systems and that meet standards adopted by the Commissioner. It allows the Commissioner of Labor to adopt rules that will promote safe workplaces in the State. The workplace's management submits applications for participation in the program and must show that the employer meets standards for participation. The Department must provide for on-site evaluations, as resources allow, for each workplace applicant to determine if that workplace complies with standards for participation in the program. To continue to participate in the Carolina Star Program,

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the workplace must meet requirements established by the Carolina Star Program Policies and Procedures Manual, Star Annual Report, and successful completion of periodic on-site evaluations.

If a workplace is participating in the program, the workplace is exempt from inspections under G.S. 95-136. However, the exception does not apply to inspections or investigations arising from complaints, referrals, fatalities, catastrophes, nonfatal accidents, or significant toxic chemical releases.

The bill provides that a workplace that was a participant in the uncodified Carolina Star Program prior to July 1, 2017, may continue as a participant in the Carolina Star Program established in this act. On and after July 1, 2017, the continued participation by that workplace in the program is conditioned upon the workplace's ability to meet all guidelines for participation in the program and adopted by the Commissioner.

**PART III** of the bill would make other changes to laws affecting businesses in the State as follows:

**Life of site for landfills.** Section 3 would make changes to provisions enacted in the Regulatory Reform Act of 2016-2017 (S.L. 2017-10/S131) that modified provisions enacted in 2015 to establish life-of-site permits for sanitary landfills and transfer stations. Specifically, Sections 3.1 and 3.2 of S.L. 2017-10: (i) allowed valid and operative franchise agreements previously executed by local governments for sanitary landfills to be modified by agreement of all parties to last for a landfill's life-of-site, if public notice and hearing was offered prior to such a change; and (ii) prohibited any franchise agreement for a sanitary landfill, modified or newly executed, from exceeding a duration of 60 years.

The bill would repeal language included in S.L. 2017-10 allowing consensual modification of a valid and operative franchise agreement to extend the term for a landfill's life-of-site, and would delete language that required public notice and hearing for a franchise agreement so modified.

In addition, the bill would:

- Modify the definition of a landfill's "life-of-site" to provide that the term means the period from initial receipt of solid waste at the facility until the facility reaches its final permitted elevations, which period may not exceed 60 years (existing law provides that the period runs until the Department approves final closure of the facility).
- Delete language under existing law concerning termination of a life-of-site permit for a sanitary landfill upon the expiration of any local government franchise, and add the following language:

"In order to preserve long term disposal capacity, a life-of-site permit issued for a sanitary landfill shall survive the expiration of a local government approval or franchise. In order to preserve any economic benefits included in the franchise, the County may extend the franchise under the same terms and conditions for the term of the life-of-site permit. The extension of the franchise hereby shall not trigger the requirements for a new permit, a major permit modification or a substantial amendment to the permit."

**Coal ash beneficiation requirements.** Section 4 would modify provisions under existing law that require the owner of a coal combustion residuals surface impoundment (coal ash pond or impoundment) to install and operate ash beneficiation projects at three sites capable of annually processing 300,000 tons of ash to specifications appropriate for cementitious products (two of the three sites must be identified no later than January 1, 2017, and operation of ash beneficiation projects at those sites must be commenced no later than 24 months after issuance of all necessary permits; the site for the third project

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must be identified no later than July 1, 2017, and operation of the ash beneficiation project at that site must be commenced no later than 24 months after issuance of all necessary permits).

The bill would modify these requirements as follows:

- Delete the requirement applicable July 1, 2017 to identify and enter into a binding agreement for a third additional ash beneficiation project (and subsequently install and operate the project within 24 months).
- Require the Environmental Management Commission (EMC) to conduct a study to determine if (i) there is a projected unmet annual demand in North Carolina and contiguous states of at least 300,000 tons of additional ash beneficiated to specifications appropriate for cementitious products over that to be supplied by the two required ash beneficiation projects; and (ii) if such demand is projected to exist, whether the installation and operation of an additional ash beneficiation project is commercially viable to meet such demand in that the costs associated with the project are less than any revenues derived from the sale of processed ash. The EMC must consider both of the following:
  - The impact of the two required ash beneficiation projects.
  - The availability of ash appropriate for cementitious products from other suppliers, including beneficiation projects in other states.

For purposes of the study: (i) the EMC must assume a 20% cement replacement rate for beneficiated fly ash in order to determine the projected unmet annual demand for ash in North Carolina and contiguous states; and (ii) "costs associated with the project" includes costs for acquiring and improving land for the project, costs of equipment for the project, costs of construction and installation, costs of operation of the project, and the costs of transportation of raw materials or finished goods to or from sellers or purchasers when those costs are borne by the impoundment owner.

The EMC must report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than July 1, 2018.

**Building Code exemption.** Section 5 would provide an exemption to building code provisions allowing construction of a parking garage to extend across a lot line between a city-owned lot and a privately-owned lot without meeting certain requirements that apply to exterior walls approaching a lot line. This would allow a parking garage to be constructed as if it were on a single parcel, eliminating increased fire rating requirements for exterior walls and limitations on openings that would be unworkable for certain projects.

**Amend definition of commercial real estate for broker liens.** Section 6 would amend the definition of commercial real estate under the Commercial Real Estate Broker Lien Act by adding property that is used primarily for agricultural or forestry purposes.

**Pressure vessel exclusion.** Section 7 would exempt certain pressure vessels from inspection and regulation under the Uniform Boiler and Pressure Vessel Act. The Act applies to all boilers and pressure vessels constructed, used, or designed for operation in the State unless specifically excluded. There are a number of exclusions listed under G.S. 95-69.10(b). This section would add to the list of exclusions a pressure vessel that is not equipped with a quick actuating closer and is no more than 5 cubic feet in volume when it is constructed and operated on the same real property that is zoned industrial and where its operation is undertaken using commercially acceptable safety precautions for the application.

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**Wastewater system permit extension.** Section 8 would extend the validity of improvement and wastewater system construction permits that were issued from January 1, 2000, to January 1, 2015, to January 1, 2020, if they have not been acted on and would have otherwise expired.

**Modification of scrap tire tax.** The scrap tire disposal tax is imposed on the sale of new tires at a percentage rate based on the bead diameter of the tire. For tires with a bead diameter that is equal to or greater than 20 inches, the rate is 1%; for tires with a bead diameter that is less than 20 inches, the rate is 2%. This tax is in addition to the State and local sales and use tax. The tax does not apply to bicycle tires, recapped tires, or tires sold for placement on newly manufactured vehicles. The tax was last changed in 1993.

The purpose of the tax is to provide funds for (i) the disposal of scrap tires, (ii) for the cleanup of inactive hazardous waste sites, and (iii) for all the purposes for which the Bernard Allen Memorial Emergency Drinking Water Fund may be used. The Department of Revenue may retain up to \$425,000 of the proceeds as reimbursement for administering the tax. Of the remaining proceeds, 30% is credited to the General Fund and 70% is distributed to the counties on a per capita basis. Counties, which are responsible for providing for the disposal of scrap tires located within their boundaries, may only use the funds distributed to it for scrap tire disposal and the abatement of nuisances associated with tire collection sites. Counties may work with other counties or with municipalities to manage disposal. The Department of Environmental Quality provides additional money in the form of grants to counties for costs that exceed their allocation. The tax generates approximately \$19 million per year.

Section 9 would modify the scrap tire disposal tax by making the tax applicable to the sale of used tires as well as new tires and by changing the rate of the tax. For tires with a bead diameter of less than 20 inches, the tax would be \$1.00 per tire. For tires with a bead diameter of 20 inches or greater, the tax would be \$2.00 per tire.

**Reduce cost and regulatory burden for hospital construction.** The North Carolina Medical Care Commission adopts and implements rules for hospital licensure. The rules in 10A NCAC 13B .6000 et. seq. include physical plant and construction requirements for hospital facilities. Section 10 would do the following:

- Direct the Medical Care Commission to repeal a suite of rules that regulate licensing of hospitals pertaining to physical plant, general requirements, and construction requirements (Hospital Facilities Rules) within 120 days of the act becoming law.
- Direct the Commission to replace those particular rules with temporary (and subsequently permanent) rules by incorporating, by reference, all the applicable standards, rules, and requirements of the most current edition of the American Society for Healthcare Engineering's Facility Guidelines Institute *Guidelines for Design and Construction of Hospitals and Outpatient Facilities* (Guidelines).
- Provide that the rules adopted to replace the Hospital Facilities Rules with the Guidelines would be exempt from the provisions of the Administrative Procedure Act (Act) under Chapter 150B of the General Statutes that require the preparation of fiscal notes.
- Provide that until the Hospital Facilities Rules are repealed and replaced by the Guidelines, the Hospital Facilities Rules would not be subject to the statutory periodic rules review required by the Act.

**Stormwater control rules.** Section 11 would amend stormwater runoff rules for airports by not allowing local governments to require control measures that promote standing water and requiring local governments to deem runways in compliance with water supply watershed management protection ordinances if they provide certain measures of stormwater control.

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**DEQ and EMC contested cases.** Section 12 would create a new section in Article 3 (Administrative Hearings) of the Administrative Procedure Act governing contested cases that involve the issuance of a permit, license, authorization, certificate, certification, or other approval action by the Department of Environmental Quality or the Environmental Management Commission where the Department or Commission accepts public comment. Standing to bring a contested case would be limited to the original applicant or a party who raised the basis for the contested case prior to the decision or demonstrates that it could not have done so. When a petition is filed, the Department or Commission that made the decision would be required to send a copy of the administrative record created in support of the decision to the Office of Administrative Hearings, and review of the decision would be based on the administrative record provided. No additional material could be considered unless the party seeking to introduce it raised the issue to which the material is directed during the public comment period or prior to the final decision, or the material was unavailable at that time.

**EFFECTIVE DATE:** Part I of this act would become effective July 1, 2017, except for Section 1(c), which would become effective October 1, 2017, and would apply to violations occurring and offenses committed on or after that date. Part II of this act would become effective July 1, 2017. The remainder of the act would be effective when it becomes law, except that the provision amending the scrap tire tax would become effective October 1, 2017, and would apply to sales or purchases of tires on or after that date, and the provision on contested cases would be effective January 1, 2019, and would apply to contested cases involving actions by the agency for which an application was received on or after that date.