



# HOUSE BILL 770: Amend Environmental Laws 3.

2017-2018 General Assembly

<b>Committee:</b>		<b>Date:</b>	June 28, 2017
<b>Introduced by:</b>	Reps. K. Hall, McElraft, B. Turner, Harrison	<b>Prepared by:</b>	Jeff Hudson
<b>Analysis of:</b>	Fifth Edition		Jennifer McGinnis Staff Attorney

**OVERVIEW:** House Bill 770 would amend various environmental and natural resources laws.

## CURRENT LAW, BACKGROUND, AND BILL ANALYSIS:

### REPORT ON RULES FOR REMEDIATION OF CERTAIN UNDERGROUND STORAGE TANKS

**Section 1** would direct the Environmental Management Commission (EMC) to adopt temporary rules implementing a provision in the 2015 Appropriations Act no later than October 1, 2017, and provide that the temporary rules will remain in effect until permanent rules are adopted, and have become effective. The provision would also require that the EMC report on the status of the rulemaking to the Fiscal Research Division and the chairs of the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources no later than December 31, 2017.

The provision in the 2015 Appropriations Act directed the Department to amend several rules pertaining to risk-based assessment and corrective action for USTs to do the following:

- "(1) Not require a responsible party to take immediate action or initial abatement actions with respect to a discharge or release from a noncommercial underground storage tank until such time as the Department has classified the risk posed by the discharge or release, except for those actions determined by the Department to be necessary to protect public health, safety, and welfare and the environment, and to mitigate any fire, explosion, or vapor hazard.
- (2) Notify the responsible party that no cleanup, no further cleanup, or no further action will be required by the Department if the risk posed by a discharge or release from a noncommercial underground storage tank is determined by the Department to be low risk, without requiring soil remediation pursuant to 15A NCAC 02L .0408. The Department may, however, reclassify the risk if it later determines that the discharge or release poses an unacceptable risk or a potentially unacceptable risk to human health or the environment."

### SHELLFISH ENTERPRISE AREAS

**Section 2** would authorize the Marine Fisheries Commission (MFC) to adopt rules to provide for advanced siting and preapprovals of shellfish aquaculture leases.

Karen Cochrane-Brown  
Director



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## MARINE FISHERIES CLARIFYING CHANGES

Current State law on shellfish aquaculture provides:

- It is unlawful to transplant shellfish from public grounds or permitted aquaculture operations utilizing waters in the restricted or conditionally approved classification to private beds.
- It is lawful to transplant shellfish in the seed stage from permitted aquaculture operations that use waters in the restricted or conditionally approved classification to private beds as approved by the Secretary of Environmental Quality (Secretary).
- It is lawful to sell oysters or clams from a hatchery or aquaculture operation to the holder of an Aquaculture Operation Permit, an Underdock Culture Permit, or a shellfish cultivation lease.

**Section 3** would make the following changes to State law on shellfish aquaculture:

- It is unlawful to transplant shellfish from public grounds or permitted aquaculture operations utilizing waters in the prohibited classification to private beds.
- It is lawful to transplant shellfish in the seed stage from permitted aquaculture operations that use waters in the prohibited, restricted, or conditionally approved classification unless the Secretary determines that it would present a risk to public health.
- It is lawful to sell fish reared in a hatchery or aquaculture operation to the holder of an Aquaculture Operation Permit, an Underdock Culture Permit, or a shellfish cultivation lease.

## RIVER HERRING FISHERIES MANAGEMENT

**Section 4** would direct the Division of Marine Fisheries (DMF) to review its Fishery Management Plan (FMP) for River Herring regarding the validity and scientific basis for the status of the species as overfished. If DMF determines that it does not have an adequate scientific basis to review the status of the species, then DMF should develop costs estimates for the restoration of spawning and nursery area surveys and age composition work for all coastal streams within the State that historically contained significant river herring fisheries.

## STATE PARTICIPATION IN SITING OF ATLANTIC INTRACOASTAL WATERWAY DREDGED MATERIAL DISPOSAL EASEMENTS

**Section 5** would authorize the Division of Water Resources of the Department of Environmental Quality and the State Property Office to negotiate an agreement with appropriate agencies of the federal government for the State to assume responsibility for acquiring dredged material easement sites appropriate for maintenance dredging of the Atlantic Intracoastal Waterway between Beaufort Inlet and the border with the Commonwealth of Virginia in exchange for the reduction in size and possible change in location of dredged material disposal easement sites currently held by the federal government. The agreement shall provide for the federal government to relinquish certain dredged material disposal easements that are excess to maintenance project needs in exchange for the acquisition and furnishing to the federal government other easements that are sited and permitted by the Division and acquired by the State Property Office under its powers of condemnation or otherwise using such funds as may be appropriated by the General Assembly from the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund (Fund). Section 5 also modifies the statutory permissible uses of the Fund for this purpose.

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## **PRESERVE MUNICIPAL SOLID WASTE CAPACITY**

**Section 6** would prohibit units of local government from enacting ordinances to prohibit the disposal of: (i) waste outside the borders of their county or municipality for waste generated within their county or municipality; or (ii) construction and demolition (C&D) debris in a C&D landfill.

The statutes currently authorize units of local government to, by ordinance, require that all solid waste generated within the geographic area and placed in the waste stream for disposal, be delivered to a permitted solid waste management facility or facilities serving the geographic area. Such ordinances are often called "flow control" ordinances, which are provisions that allow state and local governments to designate the places where solid waste must be taken for processing, treatment, or disposal. Flow control ordinances are tools sometimes used by local governments to plan and fund solid waste management systems.

## **ESTABLISH COASTAL STORM DAMAGE MITIGATION FUND**

**Section 7** would establish the Coastal Storm Damage Mitigation Fund that would consist of General Fund appropriations, gifts, grants, devises, monies from non-State entities, and any other revenues allocated to the Fund by the General Assembly. Revenue in the Fund could only be used for beach nourishment, artificial dunes, and other projects to mitigate or remediate coastal storm damage to ocean beaches and dune systems. Funding for projects in tier one areas would require a non-State match of one dollar for every three dollars from the Fund and funding for projects not located in tier one areas would require a non-State match of one dollar for every two dollars from the Fund. Non-State entities that contribute to the Fund may request the return of funds that haven't been spent or encumbered within two years of receipt by the Fund.

## **EFFECTIVE DATE**

Except as otherwise provided, the bill would become effective when it becomes law.