



SENATE BILL 131: Regulatory Reform Act of 2016-2017.

2017-2018 General Assembly

Committee:	House Finance	Date:	March 28, 2017
Introduced by:	Sens. Wells, Cook, Sanderson	Prepared by:	Jeff Hudson, Jennifer McGinnis, Jennifer Mundt, Layla Cummings Erika Churchill Central Staff
Analysis of:	PCS to Third Edition S131-CSRIxf-2		

OVERVIEW: *The Proposed Committee Substitute (PCS) Senate Bill 131 would amend several State laws related to business regulation; State and local government regulation; and agricultural, energy, environmental, and natural resources regulation.*

The following sections relate to finance matters:

- *Section 1.1. would clarify that a franchisor is not the employer of a franchisee's employees. In rare cases, unemployment taxes would be affected.*
- *Section 2.7. would rename the State Board of Refrigeration Examiners the State Board of Refrigeration Contractors and increase the following fees:*
 - *Increase the cap on the examination fee from \$40 to \$100.*
 - *Increase the cap on the renewal fee from \$40 to \$80.*
 - *Increase the cap on the late renewal fee from \$75 to \$160.*
- *Section 2.8. would amend the definition of antique automobile to allow indirect ownership through pass through entities.*

CHANGES MADE BY PCS: The PCS makes two technical changes (a date change and addition of a statutory reference), and one conforming change to delete language incompatible with an amendment adopted by the House Committee on Environment on March 22, 2017, which concerned notice and hearing required for modification of operative landfill franchise agreements to extend such agreements to a 60 year duration.

CURRENT LAW AND BILL ANALYSIS:

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

Karen Cochrane-Brown
Director



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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.

STREAMLINE MORTGAGE NOTICE REQUIREMENTS

Section 1.2. would remove a duplicative notice requirement required to be made by a servicer of a home loan.

CLARIFY PRIVATE DRINKING WATER WELL PERMITTING REQUIREMENTS

Section 1.3. would clarify that a local health department has exclusive authority to permit and inspect private drinking water well systems, and that no building permit is required for a certified well contractor to either (i) connect or disconnect a well system to the plumbing of the structure served by the well or (ii) connect or disconnect electrical wiring to the pump or pressure switch of a well system to the electric service that serves the well system. A well system would be defined to include the well, the pressure tank, the pressure switch, and all plumbing and electrical equipment in the well and between the well and the pressure tank.

EXEMPT CERTAIN BUILDING CODE CLASSIFICATIONS FROM ENERGY EFFICIENCY STANDARDS

Section 1.4. would require the Building Code Council to exempt the following use and occupancy classifications from the requirements of the Energy Conservation Code: Factory Group F, Storage Group S, Utility and Miscellaneous Group U.

PART II. STATE AND LOCAL GOVERNMENT REGULATION

WILDLIFE RESOURCES COMMISSION, DIVISION OF MARINE FISHERIES, AND UTILITIES COMMISSION PRIVATE IDENTIFYING INFORMATION

Section 2.1. would, effective October 1, 2017, provide that customer e-mail addresses received, and customer identification numbers issued, by the Wildlife Resources Commission (WRC) and the Marine Fisheries Commission are considered "identifying information" and may not be made available to the public. This section would also provide that any customer's name, physical address, email address, telephone number, or public utility account number received by the Public Staff of the Utilities Commission is not a public record, and may only be disclosed for the purpose of investigating a complaint against a public utility by the customer.

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 would also direct 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.

CLARIFY RECYCLING PROGRAMS BY LOCAL SCHOOL BOARDS MUST COMPLY WITH G.S. 160A-327

Section 2.3. would amend a statute that requires local boards of education to encourage recycling and authorizes those boards to adopt recycling programs, by adding a requirement that the boards comply with criteria that must be met under existing law by a local government for the local government

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to displace a private company that is providing collection services for municipal solid waste or recovered materials within the local government's jurisdiction.

REZONING/SIMULTANEOUS COMPREHENSIVE PLAN AMENDMENT

Section 2.4. would, effective October 1, 2017, require counties and cities to treat an affirmative vote to amend a zoning ordinance not in conformity with the comprehensive plan as a simultaneous amendment to that comprehensive plan.

PARENT PARCEL/SUBDIVISION CLARIFICATION

Section 2.5. would, with respect to subdivision regulation by counties and cities on or after July 1, 2017, do the following:

- Codify a statutory exception from subdivision regulation if the division of a tract into parcels is done in accordance with the provisions of 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 five acres in size, no part of which has been divided in the past 10 years, into no more than three lots that comply with the lot use and dimension size requirements of the applicable land use regulations, and a permanent means of ingress and egress is recorded for each lot.

PROGRAM EVALUATION TO STUDY NONPROFIT CONTRACTING

Section 2.6. 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 by September 1, 2018. This section would become effective September 1, 2017.

RENAME AND AMEND THE BOARD OF REFRIGERATION EXAMINERS

Section 2.7. would, effective January 1, 2018, rename the State Board of Refrigeration Examiners the State Board of Refrigeration Contractors, and make other changes to the refrigeration contractor licensing statutes as follows:

- Increases flexibility of academic appointments to the Board.
- Explicitly specifies four different classes of refrigeration contracting and licenses, including licenses for commercial refrigeration contracting; industrial refrigeration contracting; refrigeration service contracting; and transport refrigeration contracting.
- Increases the cap on the examination fee from \$40 to \$100.
- Increases the cap on the renewal fee from \$40 to \$80.
- Increases the cap on the late renewal fee from \$75 to \$160.

This section would become effective January 1, 2018, and would apply to applications submitted and Board membership appointments on or after that date.

AMEND DEFINITION OF ANTIQUE AUTOMOBILE

Section 2.8. 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

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Section 2.9. would, effective July 1, 2017, provide that a public agency may satisfy the requirements for inspection and examination of public records in computer databases by making the public records in the computer databases available online in a format that allows a person to view the public records and print or save the public records to obtain a copy. The section would also establish a similar provision for public agencies and custodians making public records available online in a format that allows a person to view the public records and print or save the public records to obtain a copy.

SPECIFY LOCATION OF LIEUTENANT GOVERNOR'S OFFICE

Section 2.10. 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 2.11. 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.

DOT/PERMIT PROCESS REVISIONS & REIMBURSEMENT FOR MOVING CERTAIN UTILITIES

Section 2.12. would, effective June 30, 2017, provide that applications for permits issued by the Department of Transportation may be submitted electronically. Section 2.12 would also provide that when the Department of Transportation requires the relocation of utilities, including cable service, located in a right-of-way for which the utility owner contributed to the cost of acquisition, the Department must reimburse the utility owner for the cost of relocation.

AMENDMENTS TO GENERAL CONTRACTOR LICENSURE

Section 2.13. would provide that the holder of an intermediate general contractor license may act as a general contractor for any single project with a value of up to \$1,000,000, excluding the cost of land and any ancillary costs to improve the land; and that the holder of a limited general contractor license may act as a general contractor for any single project with a value of up to \$500,000, excluding the cost of land and any ancillary costs to improve the land. This section would also provide that after a license has been inactive for four years, the license is deemed archived and the licensee may not renew it. A licensee whose license is archived would have to fulfill the requirements of a new licensee to be relicensed. Archived licensed numbers would not be renewed. This section also makes numerous technical and clarifying changes to the statutes governing licensure of general contractors. This section would become effective October 1, 2017, and would apply to applications submitted on or after that date.

REPEAL CERTAIN EDUCATIONAL TESTING LAWS

Section 2.14. would repeal a provision of State law that encourages local school districts to continue to develop local testing programs designed to diagnose student needs.

STATUTE OF LIMITATIONS/LAND-USE VIOLATIONS

Section 2.15. would provide a three year statute of limitations, and a six year bar on bringing actions, 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. This section would become effective October 1, 2018, and would apply to actions commenced on or after that date.

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

SOLID WASTE AMENDMENTS

Sections 3.1. and 3.2. would: (i) make technical, clarifying, and conforming changes to provisions enacted in 2015 to establish life-of-site permits for sanitary landfills and transfer stations; (ii) 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, provided public notice and hearing is offered prior to such a change; and (iii) provide that no franchise agreement for a sanitary landfill, modified or newly executed, shall exceed a duration of 60 years.

Section 3.3. would require the Division of Waste Management in DEQ to study landfill capacity and usage issues, as well as cost issues associated with transport of waste due to lack of, or underutilized, landfill capacity in a jurisdiction. The Department must submit a report, including any legislative recommendations, to the Environmental Review Commission (ERC) by November 1, 2017.

Section 3.4. would provide that Sections 3.1 and 3.2 would be effective retroactively to July 1, 2015, and that Sections 3.3 and 3.4 would become effective when the act becomes law.

MOTOR VEHICLE EMISSIONS INSPECTIONS

Section 3.5.(a) would remove the following counties from the list of counties in which motor vehicle emissions inspections are required: Brunswick, Burke, Caldwell, Carteret, Catawba, Chatham, Cleveland, Craven, Edgecombe, Granville, Harnett, Henderson, Lenoir, Moore, Nash, Orange, Pitt, Robeson, Rutherford, Stanly, Stokes, Surry, Wayne, Wilkes, and Wilson.

Section 3.5.(b) would change the model year threshold for motor vehicles subject to emissions inspections from 1996 to the model year within 20 years of the current year.

Section 3.5.(c) would require the Department of Environmental Quality (DEQ) to prepare and submit a revised State Implementation Plan based on the removal of counties from the emissions inspection program to the United States Environmental Protection Agency (USEPA) by September 30, 2017.

Section 3.5.(d) would provide that the removal of counties from the emissions inspection program would become effective on the later of October 1, 2017, or the first day of a month that is 60 days after DEQ certifies to the Revisor of Statutes that USEPA has approved the revised State Implementation Plan.

FARRIERS/HORSESHOEING

Section 3.6. would clarify that a farrier or any person engaged in the activity or profession of shoeing hooved animals does not require a license from the North Carolina Veterinary Medical Board, provided that the person's actions are limited to shoeing hooved animals or trimming, clipping, or maintaining hooves.

DEQ TO STUDY RIPARIAN BUFFERS

Section 3.7. 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.
- Under what circumstances units of local government should be allowed to exceed riparian buffer requirements mandated by the State and the federal government.

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DEQ would be required to report the results of the study to the Environmental Review Commission by December 1, 2017.

ELIMINATE OUTDATED PROVISION OF THE COASTAL AREA MANAGEMENT ACT

Section 3.8. would repeal the statute that originally required coastal counties to develop a land-use plan or directed the Coastal Resources Commission to prepare and adopt a land-use plan for a county that failed to do so.

REPEAL PASTURE POINTS PROVISION

Section 3.9. would repeal a 2001 provision that directed the Soil and Water Conservation Commission to approve best management practices for pasture-based production and a point system applicable to pasture management practices no later than September 1, 2002. The point system was never implemented.

ELIMINATE REPORTS TO THE COMMISSIONER OF AGRICULTURE AS TO MILK PURCHASED OR SOLD

Section 3.10. would repeal a requirement that buyers of milk for processing and distribution report on the quantities of the various classifications of milk purchased and the class in which milk was distributed or sold. The production of Grades B, C, and D milk has decreased to the point that this report is no longer necessary.

PROHIBIT CERTAIN STORMWATER CONTROL MEASURES

Section 3.11. would prohibit the Director of the Division of Water Resources in the Department of Environmental Quality (DEQ) from requiring the use of on-site stormwater control measures to protect downstream water quality standards unless required to do so by State or federal law.

EXEMPT LANDSCAPING MATERIAL FROM STORMWATER MANAGEMENT REQUIREMENTS

Section 3.12. would exempt landscaping material, including but not limited to gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, from the definition of built-upon area for purposes of implementing stormwater programs. Section 3.12 would also allow the owner or developer of property to opt out of any of the exemptions from built-upon area.

AMEND STREAM MITIGATION REQUIREMENTS

Section 3.13. would:

- Establish a statutory 300 linear foot threshold for mitigation of losses of stream bed and direct the Environmental Management Commission to amend its rules accordingly.
- Direct the cochairs of the Environmental Review Commission (ERC) to examine the mitigation thresholds for losses of stream bed adopted by the Norfolk, Charleston, and Savannah Districts of the U.S. Army Corps of Engineers (Corps). The ERC cochairs must submit written comments to the Corps' Washington, D.C. Headquarters, the Wilmington District Office, and the North

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Carolina congressional delegation to encourage the Wilmington District to adopt a threshold consistent with those adopted for the aforementioned districts.

COASTAL RESOURCES COMMISSION RULES ON TEMPORARY EROSION CONTROL STRUCTURES

Section 3.14. would repeal a directive in the 2015 Appropriations Act that required the Coastal Resources Commission (CRC) to adopt updated rules for the use of sandbags by December 2015. The new rules were approved at the May 2016 meeting of the CRC and are currently in the rulemaking process to become permanent rules. This section would allow the CRC to adopt or modify those rules through emergency rulemaking.

DIRECT THE COASTAL RESOURCES COMMISSION TO AMEND THE SEDIMENT CRITERIA RULE TO EXEMPT SEDIMENT FROM CAPE SHOAL SYSTEMS

Section 3.15. would direct the CRC to amend the sediment criteria rule to allow sand from the cape shoals to be used as ocean beach nourishment without undergoing permitting requirements. Sand used for beach nourishment must be similar in quality and grain size as the area being nourished and the rule requires sediment samples to be taken from both the borrow site and recipient beach to determine if the sediment source is compatible.

DIVISION OF COASTAL MANAGEMENT TO STUDY CURRENT LONG-TERM EROSION RATES ADJACENT TO TERMINAL GROINS

Section 3.16. would direct the Division of Coastal Management in DEQ, in consultation with the CRC, to study whether the long-term erosion rates should be modified in and around newly constructed terminal groins. Long-term erosion rates are evaluated by the Division about every five years and are used to determine setbacks for oceanfront development.

REGULATION AND DISPOSITION OF CERTAIN REPTILES

Section 3.17.(a) would provide that if the North Carolina Museum of Natural Sciences (Museum) or the North Carolina Zoological Park (Zoo) finds that a seized illegally-owned reptile is a venomous reptile, large constricting snake, or a regulated crocodylian, the Museum or the Zoo must determine the interim disposition of the seized reptile until a final disposition is determined by a court. The Museum or Zoo are not liable to the owner of the reptile if the Museum or Zoo determines euthanasia to be the appropriate interim disposition, or if the seized reptile dies of natural or unintended causes. Upon conviction of any violation of Article 55 of Chapter 14 of the General Statutes (Regulation of Venomous Reptiles), the court shall issue a final disposition of the confiscated reptiles, which may include transfer of title to the State of North Carolina and reimbursement for the cost of seizure, delivery, and storage of the reptiles. This section would also authorize law enforcement officers or animal control officers to kill a dangerous reptile if the officer determines that there is an immediate threat to public safety.

Section 3.17.(b) would direct the Department of Natural and Cultural Resources (DNCR) and WRC to study and develop a list of potential designated representatives for the storage and safekeeping of venomous reptiles, large constricting snakes, or crocodylians.

Section 3.17.(c) would direct DNCR and WRC to study and make recommendations to the Environmental Review Commission (ERC) by December 31, 2017, on potential procedural and policy changes to improve the regulation of dangerous reptiles.

PROVIDE FOR LOW-FLOW DESIGN ALTERNATIVES FOR PUBLIC WATER SUPPLY SYSTEMS

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Section 3.18. would amend the North Carolina Administrative Code to exempt a public water supply system from the Daily Flow Requirements as provided by Table No. 1 of 15A NCAC 18C .0409(b)(1), provided the flow rates that are less than those required by the rule are (i) achieved through an engineering design that utilizes low-flow fixtures and low-flow reduction technologies and the design is prepared, sealed, and signed by a professional engineer licensed pursuant to Chapter 89C of the General Statutes and (ii) provide for a flow that is sufficient to sustain the water usage required in the engineering design.

ESTABLISH NORTH CAROLINA SENTINEL LANDSCAPES COMMITTEE

Section 3.19. would establish the North Carolina Sentinel Landscape Committee (Committee). The Committee is directed to:

1. Recognize all lands in the State as Sentinel Landscapes that are designated as such by the United States Department of Defense.
2. Identify and designate certain lands to be contained in the sentinel landscape of this State that are of particular import to the nation's defense and in the vicinity of major military installations, or other areas of strategic benefit to national defense.
3. Evaluate all working or natural lands that the Committee identifies as contributing to the long-term sustainability of the military missions in the State.
4. Develop recommendations to encourage landowners located within the sentinel landscapes (as designated above) to voluntarily participate in and begin or continue land uses that are compatible with the United States Department of Defense operations in this State.
5. Provide technical support and assistance to landowners who voluntarily participate in the sentinel landscape program.

In addition to the chair appointing members who represent other State agencies, local government officials, and nongovernmental organizations that are experienced in land management activities within sentinel lands, the Committee is made up of the following four members: (i) the Commissioner of Agriculture, or the Commissioner's designee, who will serve as chair for an initial two-year term; (ii) the Secretary of DMVA, or the Secretary's designee; (iii) the Secretary of Natural and Cultural Resources, or the Secretary's designee; (iv), the Executive Director of the Wildlife Resources Commission, or the Executive Director's designee, and (v) the Dean of the College of Natural Resources at North Carolina State University, or the Dean's designee.

The Committee must report on its activities to implement this section along with any findings, recommendations, and legislative proposals to both the Military Affairs Commission and the Agriculture and Forestry Awareness Study Commission beginning September 1, 2017, and annually thereafter until such time as the Committee completes its work.

PART IV. ELIMINATE, CONSOLIDATE, AND AMEND REPORTS TO THE ENVIRONMENTAL REVIEW COMMISSION

Sections 4.1 through 4.23 would eliminate, consolidate, redirect and make other changes to various environmental and natural resources reports.

Sections 4.1. through 4.10. would eliminate:

- The report on the cost of implementing the Mining Act of 1971 by the Department of Environmental Quality (DEQ).

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- The report on the implementation of the sustainable energy efficient buildings program by the Department of Administration (DOA). (Two separate reports eliminated)
- The report on systemwide municipal and domestic wastewater collection system permit program by the Environmental Management Commission (EMC).
- The report on reducing vehicle emissions from state employee and private sector vehicles by the Department of Transportation (DOT). (Two separate reports eliminated)
- The report on progress in achieving emissions reductions of NO_x and reduce vehicle miles traveled in the State by 2009 by DEQ and DOT.
- The report on the number of new motor vehicles purchased and fuel savings by DOA.
- The biennial report on the state of the environment by DEQ.
- The annual report on fish kill activity by DEQ.
- The report on progress towards developing engineering standards governing municipal and domestic systems to allow regional interconnection by the EMC.
- The report on the implementation of the State beach and inlet management plan by DEQ.
- The report on informal review process for agency review of engineering work.

Sections 4.11. through 4.18. would consolidate and amend reports as follows:

- The Coastal Resources Commission (CRC), EMC, and Marine Fisheries Commission annual report on progress in developing and implementing the Coastal Habitat Protection Plans would be amended to provide that the reports are only required by September 1 of the each year in which any significant revisions to the Plans are made.
- DEQ's annual 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 and the Express Permit Certification Reviews.
- EMC's quarterly 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 combined report would be due annually and the first report must be submitted by January 1, 2018.
- DEQ's annual reports on: (i) recycling discarded computer equipment and televisions, (ii) the Brownfields Property Reuse Act, (iii) the Inactive Hazardous Waste Response Act of 1987, (iv) the Dry-Cleaning Solvent Cleanup Act of 1997, and (v) the implementation and cost of the hazardous waste management program would be consolidated with the Department's annual solid waste management report. The combined report would be due annually and the first report must be submitted by January 15, 2018.
- DEQ's annual report on the Sedimentation Pollution Control Act of 1973 would be consolidated with the stormwater control program report. The combined report would be due annually and the first report must be submitted by October 1, 2017.
- DEQ's annual reports on the development of the State water supply plan and the development of basinwide hydrological models would be consolidated with the annual report on basinwide water

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quality management submitted by the EMC and DEQ. The combined report would be due annually and the first report must be submitted by November 1, 2017.

- DEQ's annual 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 combined report would be due annually and the first report must be submitted to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources (ANER Oversight Committee) and the Fiscal Research Division, by November 1, 2017.
- The Soil and Water Conservation Commission's annual 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 annual 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 combined report would be due annually and the first report must be submitted by January 31, 2018.

Sections 4.19. through 4.23. would make the following changes:

- Reduce the frequency of reporting on terminal groin projects by the CRC from annually to every five years.
- Reduce the reporting frequency on the State Parks System Plan by the Department of Natural and Cultural Resources from annually to every five years and directs the Department to submit the report to ANER Oversight Committee in addition to other entities.
- Redirect the interagency report on the use of Superfund cost share funds to the ANER Oversight Committee.
- Redirect the annual report on expenditures from the Bernard Allen Emergency Drinking Water Fund to the ANER Oversight Committee.
- Redirect the annual report on allocations from the Parks and Recreation Trust Fund to the ANER Oversight Committee.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.