



# SENATE BILL 16: Business Regulatory Reform Act of 2017.

2017-2018 General Assembly

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<b>Committee:</b>		<b>Date:</b>	November 14, 2017
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**OVERVIEW:** *S.L. 2017-211 amends State law related to the following:*

- *Require agencies and the Office of Administrative Hearings to provide additional notice of petitions for rulemaking*
- *Wildlife Resources Commission private identifying information*
- *Provide for heightened Environmental Management Commission oversight of certain reports*
- *Allow optional meals for bed and breakfast guests*
- *Amend alarm system business licensing statutes*
- *Eliminate duplicative and unnecessary electrical equipment and appliance certification requirements*
- *Authorize private condemnation of land for pipelines and mains originating outside of North Carolina*
- *Clarify stormwater laws*
- *Amend the threshold for coastal stormwater requirements for residential projects*
- *Study electrical safety for swimming pools*
- *Study use of ungraded lumber in certain circumstances*
- *Require original equipment backup lamps to be operable and study decreasing the frequency of vehicle inspections*
- *Study erosion and sedimentation control programs*
- *Department of Labor technical changes*
- *Department of Labor/Carolina Star Program*
- *Landfill/Life of Site*
- *Clarify definition of commercial real estate/broker lien*
- *Pressure vessel exclusion*

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- *Wastewater system permit extension*
- *Study creation of a process for the mediation and arbitration of disputes between owners of property located in a homeowners or property owners association and the governing entities of such homeowners or property owners associations*

## **CURRENT AND PRIOR LAW AND BILL ANALYSIS:**

### **REQUIRE AGENCIES AND THE OFFICE OF ADMINISTRATIVE HEARINGS TO PROVIDE ADDITIONAL NOTICE OF PETITIONS FOR RULEMAKING**

Under current law, a person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition. If the rule-making petition requests that the agency create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change.

**Section 1** provides that an agency receiving a rule-making petition must send the proposed text of the requested rule change and statement of the effect of the requested rule change to the Office of Administrative Hearings (OAH) within three business days of receipt. OAH must distribute the information via its mailing list and publish the information on its website within three business days of receipt. This section will become effective January 1, 2018,

### **WILDLIFE RESOURCES COMMISSION PRIVATE IDENTIFYING INFORMATION**

Under current law, the Department of Agriculture and Consumer Services collects various statistical information related to agriculture. The Department is required to classify the information so as to prevent it from being used to identify individual farm operators

**Section 2** requires that the Wildlife Resources Commission treat such information that it receives from the Department as confidential.

### **PROVIDE FOR HEIGHTENED ENVIRONMENTAL MANAGEMENT COMMISSION OVERSIGHT OF CERTAIN REPORTS**

Under current law, the Department of Environmental Quality (DEQ) submits numerous environmental reports to the General Assembly's Environmental Review Commission (ERC). The Environmental Management Commission (EMC) is an appointed regulatory board with jurisdiction over environmental matters.

**Section 3** authorizes the EMC to identify, review, and assess reports prepared by DEQ and report its assessments of the reports to the ERC.

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## **ALLOW OPTIONAL MEALS FOR BED AND BREAKFAST GUESTS**

Prior law defined a "bed and breakfast home" as a business in a private home of not more than eight guest rooms that offers bed and breakfast accommodations for a period of less than one week and a "bed and breakfast inn" as a business of not more than 12 guest rooms that offers bed and breakfast accommodations to at least nine but not more than 23 persons per night for a period of less than one week.

Both bed and breakfast homes and bed and breakfast inns were limited as follows:

- Serve food or drink only to overnight guests (Bed and breakfast inn may only serve breakfast).
- Include the price of any meals served in the room rate.
- Permanent residence of the owner or the manager.

**Section 4.(a)** allows a "bed and breakfast home" to charge separately for lunch and dinner.

**Section 4.(b)** sets nine as the minimum number of rooms for a bed and breakfast inn to differentiate an "inn" from a "home" and eliminates the limit on the number of persons that may be accommodated. Bed and breakfast inns are also allowed to serve all meals and charge separately for lunch and dinner.

This section becomes effective January 1, 2018.

## **AMEND ALARM SYSTEM BUSINESS LICENSING STATUTES**

Under prior law, an alarm systems business would have to employ a designated resident qualifying agent licensed by the Alarm Systems Licensing Board. Alarm systems businesses were also required to register all of the businesses employees with the Alarm Systems Licensing Board. Registration includes providing fingerprints and criminal records.

**Section 5.(a)** removes the requirement that the qualifying agent of the alarm systems business be a resident of the State.

**Section 5.(b)** exempts from licensing requirements employees of alarm systems businesses who are only engaged in sales or marketing and who do not have access to information regarding location specific electronic security systems and who do not install or service electronic security systems in personal residences.

## **ELIMINATE DUPLICATIVE AND UNNECESSARY ELECTRICAL EQUIPMENT AND APPLIANCE CERTIFICATION REQUIREMENTS**

**Section 6** amends G.S. 66-25 which requires acceptable testing of electrical goods. Under current law, electrical materials, devices, appliances, and equipment must be evaluated for safety and suitability by a qualified testing laboratory. The Commissioner of Insurance is charged with approving suitable standards and qualified testing laboratories. This section adds a provision prohibiting the Department of Administration, Division of Purchase and Contract from requiring acceptance inspections or additional testing for electrical goods purchased by State agencies, departments, and institutions. The Division is also directed to publish a notice on its website reflecting the change in policy.

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## **AUTHORIZE PRIVATE CONDEMNATION OF LAND FOR PIPELINES AND MAINS ORIGINATING OUTSIDE OF NORTH CAROLINA**

Under prior law, private condemners are given the power of eminent domain, for the public use or benefit, for certain purposes, including: the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains originating in North Carolina for the transportation of petroleum products, coal, gas, limestone or minerals. The statute further provides that land condemned for any liquid pipelines shall:

- Not be less than 50 feet nor more than 100 feet in width; and
- Comply with provisions in Chapter 62 (Public Utilities) that govern the right of eminent domain conferred upon pipeline companies.

**Section 7**, with respect to private condemners' power of eminent domain over pipelines and mains, deletes the limitation that such pipelines or mains "originat[e] in North Carolina."

## **CLARIFY STORMWATER LAWS**

Under prior law, stormwater runoff rules and programs may not require private property owners to install new or increased stormwater controls for preexisting development or redevelopment activities that do not remove or decrease existing stormwater controls.

**Section 8** provides that when a preexisting development is redeveloped, increased stormwater controls may only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment.

## **AMEND THE THRESHOLD FOR COASTAL STORMWATER REQUIREMENTS FOR RESIDENTIAL PROJECTS**

Under a prior coastal stormwater rule of the EMC, a State stormwater permit was required if development would exceed 10,000 square feet and exceed 12% built upon area. The EMC adopted a new coastal stormwater rule, effective January 1, 2017, that provides that a State stormwater permit is required if development would exceed 12% built upon area – the 10,000 square foot threshold was eliminated.

**Section 9** provides that the EMC and DEQ may not require a State stormwater permit unless the development would cumulatively exceed 10,000 square feet.

## **STUDY ELECTRICAL SAFETY FOR SWIMMING POOLS**

**Section 10** directs the Building Code Council to review electrical safety requirements for swimming pools to determine if the requirements should be amended in order to better protect public safety. The Council will report its findings and recommendations, including any actions the Council has taken related to electrical safety requirements for swimming pools, to the Joint Legislative Oversight Committee on Justice and Public Safety no later than December 1, 2017.

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## STUDY USE OF UNGRADED LUMBER IN CERTAIN CIRCUMSTANCES

**Section 11** directs the Building Code Council to study under what circumstances it would be appropriate to use lumber that has not been grade-stamped under the authority of a lumber grading bureau in construction in North Carolina. The Council will report its findings and recommendations to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources no later than December 1, 2017.

## REQUIRE ORIGINAL EQUIPMENT BACKUP LAMPS TO BE OPERABLE AND STUDY DECREASING THE FREQUENCY OF VEHICLE INSPECTIONS

**Section 12** provides that vehicle safety inspections include operable backup lights. This provision becomes effective March 1, 2018, and applies to offenses committed on or after that date. Section 12 also directs the Department of Transportation and DEQ to study whether the frequency of vehicle safety inspections and vehicle emissions inspections should be decreased.

## STUDY EROSION AND SEDIMENTATION CONTROL PROGRAMS

**Section 13** directs the ERC to study the State and local sedimentation and erosion control programs, including whether such programs could be more efficient and streamlined. The ERC will report the results of this study to the 2018 Regular Session of the 2017 General Assembly.

## DEPARTMENT OF LABOR TECHNICAL CHANGES

**Section 14** makes the following changes related to labor laws in the State:

**Approval of youth employment certificates.** Under prior law, the Wage and Hour Act allowed the Commissioner of Labor and county directors of social services to review and approve youth employment certificates. Section 14 removes the ability of county directors of social services or their designees from approving youth employment certificates.

**Changes to Passenger Tramway Safety Act.** Section 14 makes 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 of Labor 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:

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- 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.

Section 14 makes other clarifying, conforming, and technical changes to Department of Labor statutes.

The Passenger Tramway Safety provisions become effective January 1, 2018, and apply to violations occurring and offenses committed on or after that date. The remainder of this section became effective October 1, 2017.

## **DEPARTMENT OF LABOR/CAROLINA STAR PROGRAM**

**Section 15** codifies 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 of Labor. It allows the Commissioner 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, 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.

Section 15 also provides that a workplace that was a participant in the uncodified Carolina Star Program prior to October 1, 2017, may continue as a participant in the Carolina Star Program established in this act. On and after October 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.

This section became effective October 1, 2017.

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## LANDFILL/LIFE OF SITE

**Section 16** makes 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.

Section 16 repeals 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 deletes language that required public notice and hearing for a franchise agreement so modified.

In addition, Section 16:

- Modifies 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 (prior law provided that the period ran until DEQ approves final closure of the facility).
- Deletes language under prior law concerning termination of a life-of-site permit for a sanitary landfill upon the expiration of any local government franchise, and adds 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."

- Provides that a franchise extended per the terms of this provision would not require the local government to conduct a public hearing.

## CLARIFY DEFINITION OF COMMERCIAL REAL ESTATE/BROKER LIEN

**Section 17** amends 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 18** exempts 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 adds 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 19** extends 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 had not been acted on and had otherwise expired.

## **STUDY CREATION OF A PROCESS FOR THE MEDIATION AND ARBITRATION OF DISPUTES BETWEEN OWNERS OF PROPERTY LOCATED IN A HOMEOWNERS OR PROPERTY OWNERS ASSOCIATION AND THE GOVERNING ENTITIES OF SUCH HOMEOWNERS OR PROPERTY OWNERS ASSOCIATIONS**

Section 20 directs the Legislative Research Commission (LRC) to study the creation of a process for the mediation and arbitration of disputes between the owners of property located in a homeowners or property owners association and the governing entities of such homeowners or property owners associations. The LRC will report its findings and recommendations to the 2018 Regular Session of the 2017 General Assembly when it convenes.

**EFFECTIVE DATE:** Except as otherwise provided, S.L. 2017-211 became law on October 5, 2017.