



SENATE BILL 434: Amend Environmental Laws 2.

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

2017-2018 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	April 24, 2017
Introduced by:	Sens. Sanderson, Cook, Wells	Prepared by:	Jeff Hudson
Analysis of:	Second Edition		Jennifer McGinnis Staff Attorneys

OVERVIEW: *Senate Bill 434 would make various changes to State environmental and natural resources laws.*

CURRENT LAW AND BILL ANALYSIS:

REPEAL YARD WASTE PERMITTING REQUIREMENTS

Under current law, facilities that accept yard waste could, depending on the type and amount of material accepted and the size of the facility, be required to obtain a solid waste permit for a treatment and processing facility, a land clearing and inert debris landfill, or could be required to file a Yard Waste Notification.

Section 1(a) would define "yard waste" as land-clearing debris, including stumps, limbs, leaves, grass, and untreated wood, and yard trash, including brush, grass, tree limbs, and similar vegetative material.

Section 1(b) would provide that yard waste diverted from the waste stream or collected as source separated material would not be subject to a solid waste permit for transfer, treatment, processing, storage, or disposal in a permitted solid waste management facility. The provision, however, would not limit the authority of any local government to manage yard waste. Yard waste as defined under the bill would include land-clearing debris, including stumps, limbs, leaves, grass, and untreated wood, and yard trash including brush, grass, tree limbs, and similar vegetative material.

Section 1(c) would provide that the section becomes effective July 1, 2017, and would apply to the transfer, treatment, processing, storage, or disposal of yard waste occurring on or after that date.

REPEAL PLASTIC BAG BAN

Under current law, retailers in certain areas of the State are prohibited from providing customers with plastic bags unless the bag (1) is reusable, or (2) is used solely to hold sales of otherwise unpacked portions of fresh fish or fish products, meat or meat products, poultry or poultry products, or produce. Substitution of paper bags is permitted if the bag is a recycled paper bag and the retailer offers one of the following incentives to any customer who uses the customer's own reusable bags instead of the bags provided by the retailer: (1) a cash refund; (2) a store coupon or credit for general store use; or (3) a value or reward under the retailer's customer loyalty or rewards program for general store use.

S434-SMSB-20 (e2) -v-4

Karen Cochrane-Brown
Director

Legislative Analysis
Division
919-733-2578

Senate Bill 434

Page 2

The prohibition only applies to islands or peninsulas bounded on the east by the Atlantic Ocean and on the west by a coastal sound, which are within counties that have a barrier island or barrier peninsula that both: (1) has permanent habitation of 200 or more residents and is separated from the mainland by a sound; and (2) contains either a National Wildlife Refuge or a portion of a National Seashore (Dare, Currituck, and Hyde Counties).

Section 1.1 would repeal the prohibition providing customers with plastic bags. The repeal would become effective July 1, 2017.

LOCAL GOVERNMENT RIPARIAN BUFFER UNIFORMITY

Under current law, a local government can receive the approval of the Environmental Management Commission (EMC) to enact, implement, and enforce a local government ordinance that establishes riparian buffer requirements that exceed the requirements of State and federal law if the EMC determines that the riparian buffers are necessary for the protection of water quality.

Section 2 would repeal the ability of local governments to enact, implement, and enforce ordinances that establish riparian buffer requirements that exceed the requirements of State and federal law. Section 2 would also prohibit local governments from applying for or renewing permits issued by State or federal agencies that require riparian buffers that exceed riparian buffer requirements directly imposed by State or federal law.

AMEND THE RULE FOR PROTECTION OF EXISTING BUFFERS TO EXEMPT CERTAIN APPLICABILITY REQUIREMENTS FOR PUBLIC SAFETY

Under current law, the shorelines of certain waters in the Jordan Lake Watershed are subject to riparian buffer requirements for water quality protection, the Jordan Lake Riparian Buffer Rule, that limit development and other activities and impacts within the riparian buffers.

Section 2.1 would exempt from the Jordan Lake Riparian Buffer Rule any publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the buffers pose a risk to public safety. This could allow for modification of a riparian buffer for public safety purposes.

SHELLFISH ENTERPRISE AREAS

Section 3 would authorize the Marine Fisheries Commission (MFC) to adopt rules to provide for advanced siting and preapprovals of shellfish aquaculture leases.

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.

Senate Bill 434

Page 3

Section 4 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 5 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 6 would authorize the Division of Coastal Management 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 6 modifies the statutory permissible uses of the Fund for this purpose.

ENERGY POLICY COUNCIL CLARIFICATION

Under current law, the Lieutenant Governor serves as the chair of the Energy Policy Council.

Section 7 would provide that the Lieutenant Governor's designee could also serve as the chair of the Council.

NUTRIENT MANAGEMENT REGULATORY FRAMEWORK REVISIONS

In the 2016 Budget, the General Assembly appropriated \$500,000 for each of the fiscal years from 2016-2017 through 2021-2022 to the Chief Sustainability Officer at the University of North Carolina at Chapel Hill to designate an entity to oversee a continuing study and analysis of nutrient management strategies and compilation of existing water quality data for Jordan Lake and Falls Lake. For the Falls Lake component of the study, the entity was to report its findings and recommendations no later than December 31, 2021, with interim updates no later than December 31, 2019, and December 31, 2020.

Senate Bill 434

Page 4

Under the State Administrative Procedure Act, State agencies are required to undergo a review and readoption process for their rules. This applies to the Environmental Management Commission (EMC) and its Jordan Lake and Falls Lake water quality rules.

Under current law, certain Jordan Lake and Falls Lake water quality rules have delayed effective dates.

Section 7.1 would modify the Falls Lake study reporting deadlines so that the final report would be due no later than December 31, 2023, and the second interim report would be due no later than December 31, 2021.

Section 7.1 would also direct the EMC to readopt the Jordan Lake and Falls Lake Water Supply Nutrient Strategies as follows:

- For Jordan Lake, begin readoption no later than six months after the EMC receives the completed study and final recommendations of the Jordan Lake component of the study.
- For Falls Lake, begin readoption on the earlier of the following: (i) upon receipt of the completed study and final recommendations for the Falls Lake component of the study and any monitoring or modeling study conducted pursuant to existing regulations for nutrient management in Falls Lake or (ii) December 31, 2024.

Section 7.1 would also provide that even with the delayed effective dates for the Falls Lake water quality rules, provisions of the Falls Lake water quality rules that establish Stage I reduction actions and goals shall remain in effect until the readoption of Falls Lake water quality rules. The due dates for reduction actions and goals set to be completed by December 31, 2020, and the reduction actions and goals identified as Stage II in the Falls Lake rules are delayed until the readoption of the Falls Lake water quality rules.

REPEAL CATAWBA BUFFER RULES

Under current law, the shorelines of certain waters in the Catawba River Basin are subject to riparian buffer requirements for water quality protection, the Catawba Riparian Buffer Rule, that limit development within the riparian buffers. The Rule applies within 50 feet of all shorelines along the Catawba River mainstem below Lake James to the North Carolina/South Carolina border and all shorelines of the Catawba mainstem lakes including, Lake James, Lake Rhodhiss, Lake Hickory, Lookout Shoals Lake, Lake Norman, Mountain Island Lake, and the North Carolina portion of Lake Wylie.

Section 7.2 would direct the Environmental Management Commission (EMC) to repeal the Catawba Buffer Rule on or before December 1, 2017, and would prohibit the EMC, the Department of Environmental Quality, or any other political subdivision of the State from implementing or enforcing the Rule until the Rule is repealed.

COASTAL STORMWATER PROGRAM VARIANCE

Under current law, certain development in 20 coastal counties is subject to stormwater regulation to protect surface waters from the impact of stormwater runoff. These regulations control aspects of development such as the maximum amount of allowable built-upon area and the types of stormwater best management practices that must be applied to the development. Development in the following counties is subject to these regulations: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare Gates, Hertford., Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.

Senate Bill 434

Page 5

Section 7.3 would direct the Director of the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality to issue a Director's Certification that a subdivision is fulfilling its coastal stormwater permitting requirements if the subdivision meets all of the following requirements:

- The subdivision's declaration of covenants was recorded with the Register of Deeds in 1993.
- The development exceeds the low density impervious surface limitations provided in the Coastal Stormwater Requirements, but the developer of the subdivision is financially unable to bring the development into compliance with the Requirements.
- The developer of the subdivision transferred the stormwater permit to the homeowners association for the subdivision.

The Director would be required to issue the Certification no later than 30 days after the bill becomes law.

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