



SENATE BILL 469: Amend Environmental Laws - 4.

2017-2018 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	June 27, 2017
Introduced by:	Sen. Brown	Prepared by:	Jeff Hudson
Analysis of:	PCS to Third Edition S469-CSSB-31		Jennifer McGinnis Staff Attorneys

OVERVIEW: *The Proposed Committee Substitute for Senate Bill 469 (PCS) would amend various environmental and natural resources laws.*

CURRENT LAW, BACKGROUND, AND BILL ANALYSIS:

CONSERVE MUNICIPAL SOLID WASTE CAPACITY

Section 1 of the PCS would prohibit units of local government from enacting ordinances to prohibit the disposal of C&D debris in a C&D landfill.

C&D waste or debris is defined under the statutes to mean "solid waste resulting solely from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but does not include inert debris, land clearing debris or yard debris." Such debris may be disposed in C&D landfills, municipal solid waste landfills, and portions of the C&D waste stream, including clean wood and clean brick, block, etc., could be eligible for disposal in a land clearing and inert debris landfill. In addition, demolition debris from the decommissioning of manufacturing buildings may be disposed of on the same site as the decommissioned buildings if certain requirements are met.

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 controls ordinances are tools sometimes used by local governments to plan and fund solid waste management systems.

CLARIFY ROLES OF GEOLOGISTS AND SOIL SCIENTISTS IN WASTEWATER SYSTEM SITE EVALUATIONS

Section 2 would provide that for purposes wastewater system site evaluations, soil and site condition evaluations would be conducted by licensed soil scientists and geologic and hydrogeologic condition evaluations would be conducted by licensed geologists.

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REPORT ON RULES FOR REMEDIATION OF CERTAIN UNDERGROUND STORAGE TANKS

Section 3 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 4 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

Section 5 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.

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.

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RIVER HERRING FISHERIES MANAGEMENT

Section 6 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.

ESTABLISH COASTAL STORM DAMAGE MITIGATION AND PREVENTION FUND

Section 7 would establish the Coastal Storm Damage Mitigation and Prevention 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 by the State and local governments for beach nourishment, artificial dunes, and other projects to mitigate, remediate, or prevent 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.

AMEND GUARANTEED ENERGY SAVINGS CONTRACT STATUTES

Guaranteed energy savings contracts are contracts for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment or meters, in which payments are to be made over time, and in which energy savings are guaranteed to exceed costs.

Section 8 would add the following definitions to the guaranteed energy savings contracts statutes:

- Excusable delay is a delay in performance of a guaranteed energy savings contract caused by an event or circumstance beyond a party's reasonable control, including without limitation, any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, quarantine restrictions, delays of common carriers, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- Interim period is the period between the effective date of a guaranteed energy savings contract and the date the installation of the energy conservation measures is complete and has been accepted by the governmental unit.

Section 8 would provide that the provider of the guaranteed energy savings contract services would provide a reconciliation statement for energy savings realized during the interim period to be provided within 90 days from the time that the energy conservation measures become fully operational. Section 8 would also provide that if completion of a project is delayed for reasons not the fault of the governmental unit or due to an excusable delay, the projected acceptance date for purposes of structuring the financing will become the date when the energy savings guarantee begins and, if the measured and verifiable savings under the contract at the time of the scheduled payment of the financing contract are inadequate for making the payment, the service provider will be responsible for the shortfall; however, actual savings realized during the interim period will be held by the governmental unit for payment under the financing contract.

EFFECTIVE DATE

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