



SENATE BILL 374: Regulatory Reform Act of 2020.

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

2019-2020 General Assembly

Committee:	House Regulatory Reform	Date:	June 17, 2020
Introduced by:	Sens. Wells, Brown	Prepared by:	Kyle Evans Staff Attorney
Analysis of:	PCS to Second Edition S374-CSBR-31		

OVERVIEW: *The Proposed Committee Substitute to Senate Bill 374 would amend several State laws related to agriculture, energy, environment, natural resources, State and local government, and other various regulations.*

CURRENT LAW AND BILL ANALYSIS:

PART I. VARIOUS REGULATORY REFORM PROVISIONS

INCREASE LIMITS ON PUBLIC EMPLOYEES BENEFITTING FROM PUBLIC CONTRACTS

Under current law, the statutes generally prohibit a public officer or employee who is involved in making or administering a contract on behalf of a public agency from deriving a direct benefit from the contract except in certain circumstances. Various public officials are exempt from the prohibition if the amount of the agreement between the government and the official does not exceed the following within a 12-month period:

- \$20,000 for medically related services.
- \$40,000 for other goods and services.

The public officials exempted are as follows:

- Any holder of an elective municipal office or member of a city school board in a municipality of no more than 15,000 population.
- Any holder of an elective county office or member of a county school board in a county that contains no municipality of more than 15,000.
- A physician or member of other listed medical professions appointed to a local social services board, health board, or area mental health, developmental disabilities, and substance abuse board in a county containing no municipality of more than 15,000.
- Any member of a board of directors of a public hospital, regardless of the population.

The exemption is not available unless the agreement is entered into publicly, the official entering into the contract abstains from participating or voting, the contract is disclosed in the audited financial report of the local government, and in a conspicuous public posting.

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Section 1 would raise the dollar threshold for contracts exempted from the conflict-of-interest prohibition from \$40,000 to \$60,000 for goods and services that are not medically related. This section would be effective when it becomes law, and would apply to contracts executed on or after that date.

AMENDMENTS TO THE 2018 NORTH CAROLINA BUILDING CODE AND PLUMBING CODE

Section 2 would require the Building Code Council to amend a section of the Building Code and a section of the Plumbing Code as follows:

- Revise Sec. 2902.6 of the 2018 Building Code to provide that drinking fountains are not required for an occupant load of 30 or fewer (current law provides that drinking fountains are not required for an occupant load of 15 or fewer).
- Revise Table 403.1 of the Plumbing Code to provide that: (i) only one water closet is required for business occupancies with an occupant load of 30 or fewer (current law provides that one is required for occupant loads of 25 or fewer); and (ii) no service sink is required for business and mercantile occupancies with an occupant load of 30 or fewer (current law provides that one is not required for occupant loads of 25 or fewer).

STUDY ONLINE CONTINUING EDUCATION REQUIREMENTS

Section 3 would require every occupational licensing board to study and report on any available options offered for online continuing education if continuing education is a requirement for licensure under the occupational licensing board's applicable laws or regulations. Each occupational licensing board required to study and report must provide its report to the Joint Legislative Administrative Procedure Oversight Committee and the Program Evaluation Division no later than December 1, 2020.

TEMPORARY EVENT VENUES

Currently, there is no statutory provision allowing counties to establish a permitting process for temporary event venues.

Section 4 would add new sections to Part 3 of Article 19 of Chapter 160A, allowing counties to establish, by ordinance, a process to permit temporary event venues (TEV). The venue must be in an existing building or structure suitable for entertainment, education, marketing, meetings, sales, trade shows. The event can last no more than 72 hours. Only one TEV is allowed on one parcel of land. Counties may charge an initial application fee of no more than \$100 and annual renewal fees of no more than \$50. The proposed TEV sites must be inspected before a permit can be issued. Applicants can be required to take reasonable measures to address health and safety concerns identified in the pre-permit inspection, and the Building Code Council is required to create an inspection checklist for use in the pre-permit inspection process. This section would become effective October 1, 2020, and would apply to counties with a population larger than 250,000.

NC PRE-K SCHOOL OPTIONS

Section 5 would require NC Pre-K operators to provide parents with information pertaining to public and private school options in the county. This section would become effective January 1, 2021.

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CLARIFY LANDFILL LIFE-OF-SITE FRANCHISE REQUIREMENTS

Under current law, "life-of-site" permits are granted to sanitary landfills, and the law provides that such permits survive the expiration of a local government approval or franchise. The local government must allow the sanitary landfill to continue to operate until the term of the landfill's life of site permit expires if the owner or operator has complied with the terms of the local government approval or franchise agreement, and remains in compliance with those terms after expiration of the approval or agreement until the life of site permit has expired. The law also provides, however, that in order to preserve any economic benefits included in the franchise, a county may extend a franchise under the same terms and conditions for the term of the life-of-site permit. These provisions are only applicable to valid and operative franchise agreements in effect on October 1, 2015.

Section 6 would amend current law that requires a local government to allow a sanitary landfill to continue to operate until the term of a landfill's life-of-site permit expires if the owner or operator has complied with the terms of the local government approval or franchise agreement, and remains in compliance with those terms after expiration of the approval or agreement until the life-of-site permit has expired. The section would delete the term "has complied" and substitute the phrase "is in substantial compliance" and delete the language that requires that the owner or operator remain in compliance with the terms of the franchise agreement.

REPURPOSE PRE-REGULATORY LANDFILL FUNDS

Under current law, 50% of the proceeds from the solid waste disposal tax¹ must be credited to the Inactive Hazardous Sites Cleanup Fund, and the Secretary of the Department of Environmental Quality is required to use these funds to assess pre-1983 landfills (aka "pre-reg" and "orphan" landfills), to determine the priority for remediation of these landfills, and to develop and implement a remedial action plan for these landfills in the order of the priority determined.

Section 13.2 of the 2018 budget bill provided, however, that notwithstanding the requirement for prioritization of cleanup of such landfills, up to \$2,000,000 of the funds credited to the Inactive Hazardous Sites Cleanup Fund must instead be used by the Department of Environmental Quality's Division of Waste Management to provide a matching grant to Charlotte Motor Speedway, LLC, (CMS) for the purpose of remediation activities at the Charlotte Motor Speedway in Cabarrus County. The Division was required to provide \$1.00 for every \$2.00 non-State dollars provided in kind or otherwise, for the matching grant. CMS was authorized to allocate all or a portion of the grant provided to an entity that controls CMS or an entity controlled by CMS, and an entities receiving such an allocation would be considered a subgrantee.

Section 7 would amend the provision in last year's budget bill that required the Division to use up to \$2,000,000 of the funds credited to the Inactive Hazardous Sites Cleanup Fund for a matching grant to CMS for the purpose of remediation activities at the Charlotte Motor Speedway, to reduce the amount of the non-State dollars required for the matching grant from \$2.00 to \$1.00.

STUDY EXPRESS PERMITTING EXPANSION

Under current law, DEQ must offer an express review program to provide express permit and certification reviews in all its regional offices for the following programs

- Stormwater permits.

¹ \$2.00 per ton of waste disposed in municipal solid waste and construction and demolition debris landfills

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- Stream origination certifications.
- Water quality certifications.
- Erosion and sedimentation control permits.
- Permits under the Coastal Area Management Act (CAMA).

Participation in the express review program is voluntary, and the program is supported by fees. Maximum permit application fees range from \$4,000 to \$5,500, depending on the number of permits needed that are subject to express permitting.

Section 8 would require DEQ to study and report on additional positions and funding needed, as well as any changes in State or federal laws and regulations necessary to expand the express permitting programs to include additional types of permits typically required for job creating and real estate development or redevelopment activities. Additional permits considered in the study shall include, at a minimum, permits for facilities not discharging to the surface waters of the State and permits to apply petroleum contaminated soil to land. DEQ must provide its report and recommendations to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division no later than March 1, 2021.

WASTEWATER RESERVE PRIORITY

Pursuant to current law, DEQ's Division of Water Infrastructure (DWI) must consider, in part, the following when determining priority for a loan or grant from the Wastewater Reserve or the Drinking Water Reserve: the effect on impaired waters and whether a project will address a conflict between local plans.

Section 9 would require priority to be given to projects that improve designated impaired waters of the State and that serve as a public water supply for a large public water system (defined as those with over 175,000 service connections). It would also require DWI to give priority to improvements made by a local government unit in order to protect or preserve the water supply of a neighboring local government unit that has a lower poverty rate, lower utility bills, higher population growth, higher median household incomes, and lower unemployment. This section would become effective July 1, 2020, and apply to applications for loans or grants from the Wastewater Reserve or the Drinking Water Reserve received by the Division of Water Infrastructure on or after that date.

ALLOW USE OF FLOOD HAZARD AREAS FOR AQUACULTURE IN CERTAIN CIRCUMSTANCES

Under current law, local governments are authorized to adopt ordinances to regulate uses in flood hazard areas and grant permits for the use of flood hazard areas. The statutes specify certain uses that may be made of flood hazard areas without a permit, provided that the uses comply with local land-use ordinances and any other applicable laws or regulations, which include:

- General farming, pasture, outdoor plant nurseries, horticulture, forestry, mining, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses;
- Ground level loading areas, parking areas, rotary aircraft ports and other similar ground level area uses.
- Lawns, gardens, play areas and other similar uses.

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- Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space and other similar private and public recreational uses.
- Land application of waste at agronomic rates consistent with a permit or an approved animal waste management plan.
- Permitted land application of septage.

Section 10 would add aquaculture to the uses that may be made of flood hazard areas without a permit.

ARCHITECTURAL LICENSE EXCEPTION FOR SMALL PROJECTS

Under current law, an architectural license is not needed for commercial projects that have a value of \$90,000 or less or an area of less than 2,500 square feet.

Section 11 would allow commercial architectural projects with a value of \$200,000 or an area of less than 3,000 square feet to be completed without an architectural license.

REVENUE LAWS STUDY

Section 12 would require the Department of Revenue to provide to the Revenue Laws Study Committee, information related to the property taxation of outdoor advertising signs, and any other issues deemed relevant by the Department. The requested information would be required to be provided no later than March 31, 2021.

BROADBAND EASEMENTS

Under current law, electric membership corporations and their subsidiaries are permitted to use easements held for the purpose of electrification to also supply high-speed broadband.

Section 13 would clarify that with regard to easements held by electric membership corporations and their subsidiaries for electrification and to supply high-speed broadband, the corporations and subsidiaries must comply with applicable requirements related to notice, safety, and permitting requirements when constructing or maintaining lines or broadband fiber on, over, under, or across property owned by a railroad company.

MANUFACTURED HOMES INSTALLATION

Section 14 would prohibit cities from requiring masonry curtain walls or masonry skirting from being installed on manufactured homes located on land leased to the homeowner. This section would become effective October 1, 2020.

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LIMITED REGISTRATION PLATES/FINE COLLECTION

Section 15 would authorize the Division of Motor Vehicles to issue a limited registration plate to a vehicle owner who would not otherwise be eligible to register the vehicle, because of certain statutory registration blocks, if the application for the limited registration plate is made through a licensed motor vehicle dealer as part of a purchase.

SALVAGE TITLE STUDY

Section 16 would require the Division of Motor Vehicles to, in consultation with the Department of Insurance and interested parties, study whether the laws governing salvage vehicles need to be revised to protect consumers from vehicles that appear safe but are actually unsafe. The Division must report on its findings to the chairs of the Joint Legislative Transportation Oversight Committee, the House of Representatives Appropriations Committee on Transportation, the Senate Appropriations Committee on the Department of Transportation, and the Fiscal Research Division no later than March 1, 2021.

DIVISION OF EMERGENCY MANAGEMENT STUDY

Section 17 would require the Division of Emergency Management of the Department of Public Safety to study the needs of law enforcement and first responders to improve access to the interstate system. The Division may consult with the Department of Transportation, the Office of State Fire Marshal of the Department of Insurance, the Office of Emergency Medical Services of the Department of Health and Human Services, or any other governmental organizations the Department deems necessary. The Division must report its findings to the Joint Legislative Oversight Committee on Justice and Public Safety, the Joint Legislative Emergency Management Oversight Committee, and the Joint Legislative Transportation Oversight Committee no later than March 1, 2022.

NORTH CAROLINA BOARD OF ARCHITECTURE MODIFICATIONS

Section 18 would make technical changes to statutes relating to the North Carolina Board of Architecture and the criteria necessary to sit for the architect licensure exam.

INSURANCE CANCELLATION PROOF OF MAILING

Section 19 would clarify that proof of mailing is sufficient proof of notice for certain insurance policy or renewal cancellations by the insurer. This section would become effective October 1, 2020, and apply to policies issued, amended, or renewed on or after that date.

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REQUIRE ADDITIONAL NOTICE BEFORE STATE OF EMERGENCY DECLARATIONS TAKE EFFECT

Section 20 would require that municipalities and counties must publish a signed copy of a state of emergency declaration on the website of the municipality or county and submit a signed copy of the declaration to the Department of Public Safety WebEOC critical incident management system before the declaration becomes effective.

CONFIDENTIALITY CHANGES FOR CERTAIN DOCUMENTS IN SECURITIES INVESTIGATIONS

Section 21 would exempt from public records requests certain investor financial information obtained during an investigation conducted by the Secretary of State.

ALLOW SELF-INSURERS TO MAKE PAYMENTS FOR AN INITIAL ASSESSMENT OVER A PERIOD

Section 22 would allow an individual self-insurer upon receiving its license from the North Carolina Commission of Insurance to pay its required initial assessment over a period as determined by the Board of Directors of the North Carolina Self-Insurance Security Association. Pursuant to current law, an initial assessment must be paid upon the receipt of an initial license by an individual self-insurer.

AMEND CERTAIN CHARTER SCHOOL REPORT DATE

The State Board of Education (BOE) must review and evaluate the educational effective of charter schools and the effect of charter schools in the local school administrative unit in which the charter schools are located. The BOE must submit its report to the Joint Legislative Education Oversight Committee no later than February 15 of each year.

Section 23 would move the reporting date to June 15.

CLARIFICATION REGARDING SUBMISSION OF CERTAIN COMPONENT DESIGNS OR PROPOSALS

Pursuant to G.S. 160D-1106, a city must approve, without further responsibility to inspect, a design or proposal for a component or element in the construction of buildings from a licensed architect or engineer provided certain criteria are met, including that the design or proposal is completed under valid seal of the licensed architect or engineer.

Section 24 would require the design or proposal be completed under valid seal of an architect or engineer only when required by the North Carolina State Building Code.

PART II. AGRICULTURE, ENERGY, ENVIRONMENT, AND NATURAL RESOURCES REGULATORY REFORM PROVISIONS

ALLOW DIVISION OF COASTAL MANAGEMENT TO ACCEPT ELECTRONIC PAYMENTS

Section 25 would allow the Division of Coastal Management, or the appropriate city or county authority, to accept electronic payments for permit applications, in addition to checks or money orders.

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MINE RECLAMATION REPORTING DATE CHANGE

Section 26 would move the annual mine reclamation reporting date for mine operators from July 1 to September 1, and move the date late fees begin for failure to submit the annual report or pay the required annual fee to accrue from July 31 to September 30.

DEQ REPORTS DATE CHANGE

Section 27 would move the reporting date for certain Department of Environmental Quality (DEQ) reports, largely related to solid waste, to April 15th, from January 1, make other conforming changes, and change the recipient of annual reports relating to the use of federal dredging funds from the Joint Legislative Commission of Governmental Operations to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources.

TECHNICAL AND CONFORMING CHANGES TO SOLID WASTE STATUTES

Section 28 would make a conforming change to a statute governing penalties for solid waste violations, and associated rulemaking, to reflect legislation enacted in 2013 that transferred authority over solid waste matters from the Commission for Public Health to the Environmental Management Commission.

Section 29 would make a technical correction concerning a statutory cross-reference.

CONSOLIDATE RIVER BASIN ADVISORY COMMISSION REPORTS

The River Basin Advisory Commission, consisting of the Catawba/Wateree River Basin Advisory Commission and the Yadkin/Pee Dee River Basin Advisory Commission, must report the findings of two annual audits to multiple entities in North Carolina, South Carolina, and Virginia by March 1 of each year, and must submit two annual reports to those entities by October 1 of each year.

Section 30 would move the audit report date to October 1 of each year, allowing the River Basin Advisory Commission to submit the required audits as a part of the required annual report, and simplify the number of entities receiving the annual reports.

ELECTRONIC PERMITTING CLARIFICATION

Section 31 would clarify that the Environmental Management Commission may issue permits, certifications, authorizations, or other approvals by electronic delivery, registered or certified mail, or any other means authorized by G.S. 1A-1, Rule 4.

NONBETTERMENT COST RECOVERY FOR CERTAIN PRIVATE WATER AND SEWER SYSTEMS

The NC Department of Transportation (DOT) is authorized by G.S. 136-18(10) to allow entities that provide various utility services to locate their utility lines in DOT rights-of-way. The cost to move the lines because of a DOT project must be paid by the utility, unless State law provides otherwise. G.S. 136-27.1 requires DOT to pay the nonbetterment cost of relocating the water and sewer lines

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owned by certain entities in the transportation right-of-way when the lines must be moved for a transportation improvement project.

DOT must pay the nonbetterment cost to move water and sewer lines belonging to the following:

- Municipalities with a population of 10,000 or less, including lines for systems that were initially organized under Chapter 162A.
- Nonprofit water or sewer associations and corporations.
- A water or sewer system organized under Chapter 162A.
- A rural water system operated as a County enterprise system.
- Sanitary districts.
- Local boards of education.

Section 32 would add water and sewer lines owned by a private water or sewer utility organized pursuant to Chapter 62 of the General Statutes serving 10,000 or fewer customers to the type of lines that DOT must pay to relocate for transportation improvement projects. This section would be effective retroactively to March 1, 2020, and would apply to nonbetterment costs for State transportation improvement projects incurred on or after that date.

UNDERGROUND STORAGE TANK SPILL BUCKET RULE CHANGE

Section 33 would require the Environmental Management Commission to adopt a rule to allow the use of mechanical liquid detecting sensors for interstitial leak detection on spill buckets replaced on underground storage tanks installed prior to November 1, 2007, if those spill buckets meet certain requirements.

PREVENT FROM BECOMING EFFECTIVE RULES MODIFYING THE NORTH CAROLINA BUILDING CODE

On March 10, 2020, the North Carolina Building Code Council adopted, and the Rules Review Commission later approved, rules that would allow certain large plastic pipes to be used in drain, waste, and vent conductors in buildings in which the top occupied floor exceeds 75 feet in height.

Section 34 would prevent those rules from becoming effective.

LIBRARY STATUTE CHANGES

The Public Librarian Certification Commission is comprised of 5 members and reserves one seat for the dean of an accredited North Carolina graduate school of librarianship appointed by the Governor. Of the five accredited library schools in the State, only two use the term "dean" to denote the program head.

Section 35(a) would expand the dean's seat to include "department chair, program director, or equivalent."

Pursuant to current law, the State Library Commission (Library Commission) must have at least four standing committees comprised of six members appointed annually by the Secretary of the Department of Natural and Cultural Resources and approved by the Library Commission.

Section 35(b) would eliminate the requirement for standing committees within the State Library Commission, and instead give the authority to create four-person committees to the Chair of the State Library Commission with the approval of the Library Commission.

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Section 35(c) repeals the requirement that State publications that are of historical or enduring value and importance to the citizens of North Carolina must be printed on alkaline (acid-free) paper.

ABANDONED AND DERELICT VESSELS

S.L. 2019-224 allocated \$1,000,000 to the Wildlife Resources Commission (WRC) to inspect, investigate, and remove derelict and abandoned water vessels.

Section 36 would amend S.L. 2019-224 to require WRC to provide notice to the owner of an abandoned or derelict vessel, if possible, post notice on the vessel itself, and allow 30 days for response prior to taking actions to remove and dispose of the abandoned or derelict vessel. This section would also direct that WRC prioritize the removal of abandoned and derelict vessels on public waters and lands, and clarify the definition of "abandoned and derelict vessel."

LOCAL PLANNING AND DEVELOPMENT REGULATION CONFORMING CHANGE

Planning and zoning statutes in Chapters 153A and 160A will be recodified in a new Chapter 160D of the General Statutes effective January 1, 2021.

Section 37 would conform a section in the new Chapter 160D with a change made in Chapter 153A in Senate Bill 315. This section would become effective when Chapter 160D of the General Statutes becomes effective.

Section 38 would update cross-references to a section in Chapter 153A to refer to the appropriate section in Chapter 160D. This section would become effective when Chapter 160D of the General Statutes becomes effective.

EFFECTIVE DATE: Except as otherwise provided, this act would become effective when law.