



SENATE BILL 553: Regulatory Reform Act of 2019.

2019-2020 General Assembly

Committee:		Date:	January 6, 2020
Introduced by:	Sens. Sanderson, Wells	Prepared by:	Kyle Evans
Analysis of:	Ratified		Staff Attorney

OVERVIEW: *Senate Bill 553 would amend several State laws as follows:*

- *Raise the dollar threshold for contracts exempted from the conflict-of-interest prohibition for public employees benefitting from public contracts from \$40,000 to \$60,000 for goods and services that are not medically related.*
- *Direct the Building Code Council to amend the Building Code and Plumbing Code for certain regulations concerning drinking fountains and water closets.*
- *Direct the Building Code Council to amend the Fire Prevention Code to allow certain doorstep garbage and recycling containers.*
- *Require all occupational licensing boards with continuing education requirements to study and report on any available options for online continuing education.*
- *Exempt Onslow and Rockingham Counties from the list of counties required to conduct vehicle emissions testing.*
- *Create a process for counties to permit temporary event venues in certain situations.*
- *Require NC Pre-K operators to provide parents with information pertaining to public and private school choices in their county or any other county.*
- *Clarify landfill life-of-site franchise requirements.*
- *Repurpose pre-regulatory landfill funds.*
- *Direct the Department of Environmental Quality to study and report on express permitting expansion for certain programs.*
- *Extend the deadline for Coastal Area Management Act Emergency General Permits authorized in response to Hurricanes Florence and Michael to October 12, 2019, with all work to be completed by October 12, 2020.*
- *Provide additional criteria for determining priority for grants from the Wastewater Reserve or the Drinking Water Reserve.*
- *Amend the septic tank site suitability determination process.*
- *Establish a process to identify and assess distressed public water and wastewater systems and create a Viable Utility Fund within the Department of Environmental Quality to be used to assist distressed systems to become self-sustaining.*
- *Expand the architectural license exemption for small commercial projects.*

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- *Direct the Department of Revenue to provide information to the Revenue Laws Study Committee concerning the property taxation of outdoor signs.*
- *Require that electric membership cooperatives and their subsidiaries comply with applicable notice, safety, and permitting requirements when constructing or maintaining broadband lines.*
- *Authorize cities to require that manufactured homes be installed in accordance with certain standards, but prohibit cities from requiring masonry curtain walls or skirting being installed on manufactured homes on land leased to the homeowner.*
- *Authorize the Division of Motor Vehicles to issue a limited registration plate to a vehicle owner in certain situations.*
- *Require that the State Board of Elections certify voting systems only if a performance bond or letter of credit has been posted.*
- *Allow a dealer to sell, without a safety inspection, a salvage-titled vehicle in certain circumstances.*
- *Direct the Division of Motor Vehicles to study whether the laws governing salvage vehicles should be revised to protect consumers from unsafe vehicles.*
- *Allow the sale of alcoholic beverages at certain stadiums.*
- *Direct the Division of Emergency Management within the Department of Public Safety to study the needs of law enforcement and first responders to improve access to the interstate system.*
- *Make technical changes to the statutes governing the North Carolina Board of Architecture and the criteria necessary to sit for the architecture licensure exam.*
- *Add aquaculture to the uses that may be made of flood hazard areas without a permit.*
- *Clarify that proof of mailing is sufficient proof of notice for certain insurance policy or renewal cancellations by the insurer.*
- *Allow the Department of Agriculture and Consumer Services to use funds appropriated to it to provide a non-federal match for any project that has been or will be approved for funding by the USDA Emergency Watershed Protection Act.*

This bill was vetoed by the Governor on September 20, 2019, has not been overridden by the General Assembly, and, therefore, has not become law.

CURRENT LAW AND BILL ANALYSIS:

PART I. STATE AND LOCAL GOVERNMENT REGULATION

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.

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- \$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.

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 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).

FIRE CODE WASTE ACCUMULATION PROVISIONS

Section 3 would require the Building Code Council to amend the Fire Prevention Code to allow doorstep garbage and recycling containers as follows:

- For all apartments, the containers must be no more than 15 gallons in size and cannot remain in an exit corridor for more than five hours at a time, or in a non-exit access corridor for more than 12 hours at a time. Building management must have written policies in place to ensure compliance with these requirements.

STUDY ONLINE CONTINUING EDUCATION REQUIREMENTS

Section 4 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, 2019.

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EXEMPT ONSLOW AND ROCKINGHAM COUNTIES FROM VEHICLE EMISSIONS TESTING

Section 5 would exempt Onslow and Rockingham Counties from vehicle emissions testing requirements.

TEMPORARY EVENT VENUES

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

Section 6 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.

NC PRE-K SCHOOL OPTIONS

Section 7 would require NC Pre-K operators to provide parents with information pertaining to public and private school options in the county.

PART II. AGRICULTURE, ENERGY, ENVIRONMENT, AND NATURAL RESOURCES REGULATION

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 8 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.

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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 9 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 the Department of Environmental Quality (DEQ) must offer an express review program to provide express permit and certification reviews in all of its regional offices for the following programs

- Stormwater permits.
- 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 10 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, 2020.

EXTEND EMERGENCY GENERAL PERMIT DEADLINES

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

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Section 11 would provide that, notwithstanding any provision of law to the contrary, Coastal Area Management Act Emergency General Permits authorized in response to Hurricanes Florence and Michael must be issued by October 12, 2019, with all work to be completed by October 12, 2020.

WASTEWATER RESERVE PRIORITY

Under 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 12 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.

AMEND SEPTIC TANK SITE SUITABILITY DETERMINATION PROCESS

Under current law, a site evaluation is used to determine the suitability of a location for a proposed septic system. The evaluation examines: 1) topography and landscape position; 2) soil characteristics; 3) soil wetness; 4) soil depth; 5) restrictive horizons; and 6) available space. Based on this evaluation, a determination of suitable, provisionally suitable, or unsuitable shall be made by the local health department under rules adopted by the Commission for Public Health or pursuant to an alternative process for wastewater system approvals set out in G.S. 130A-336.1.

Section 13 would amend the site evaluation to allow a local health department to determine site suitability for a ground absorption sewage treatment and disposal system under either rules adopted by the Commission for Public Health or the alternative process in G.S. 130A-336.1 provided that all of the following are indicated:

- 1) The system can be installed so that the effluent will be nonpathogenic, noninfectious, nontoxic, and nonhazardous;
- 2) The effluent will not contaminate groundwater or surface water; and
- 3) The effluent will not be exposed on the ground surface or discharged to surface waters where it could come into contact with people, animals, or other vectors.

WATER/WASTEWATER PUBLIC ENTERPRISE REFORM

DEQ's Division of Water Infrastructure (DWI) administers programs to provide grants and low-interest loans to local government units for water and wastewater infrastructure projects. The State Water Infrastructure Authority (SWIA) consists of nine members, is within DWI, and is tasked with, among other things:

- Establishing priorities for making loans and grants.
- Developing a master plan to meet the State's water infrastructure needs.
- Determining the rank of applications and to select the applications eligible to receive loans and grants.

In addition to federal programs such as the Community Development Block Grant, the Division and SWIA administer the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund.

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The Local Government Commission (LGC), composed of nine members, provides assistance to local governments and public authorities, approves the issuance of debt for all units of local government, and assists those units with fiscal management.

Section 14 would:

- Establish a process for identifying and assessing distressed public water systems and wastewater systems.
- Establish the Viable Utility Fund, within DEQ, to be used for assisting public water and wastewater systems to become self-sustaining.
- Establish a process for a water or wastewater system created under Chapter 162 of the General Statutes to request merger or dissolution of that system.
- Require DEQ to study the statutes and rules governing subbasin transfers and make recommendations as to whether the statutes and rules should be amended. The study must specifically examine whether transfers of water between subbasins within the same major river basin should continue to be required to comply with all of the same requirements under G.S. 143 215.22L as transfers of water between major river basins. In conducting this study, the Department shall consider whether the costs of complying with specific requirements, including financial costs and time, are justified by the benefits of the requirements, including the production of useful information and public notice and involvement. No later than October 1, 2019, the Department of Environmental Quality must report its findings and recommendations to the Environmental Review Commission.
- Require the Department of State Treasurer to study and make recommendations as to the feasibility of authorizing historical charters for units of local government that have become, or are on the brink of becoming, defunct. The study must specifically examine whether these historical charters are needed, the impact of these charters on the bond rating of the State and its political subdivisions, and the consequences of these historical charters. No later than March 1, 2020, the Department of State Treasurer must report its findings and recommendations to the General Assembly.

PART III. MISCELLANEOUS REGULATORY REFORM PROVISIONS

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 15 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 16 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, 2020.

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.

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Section 17 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 18 would prohibit cities from requiring masonry curtain walls or masonry skirting from being installed on manufactured homes located on land leased to the homeowner.

LIMITED REGISTRATION PLATES/FINE COLLECTION

Section 19 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.

VOTING SYSTEMS PERFORMANCE BOND

Section 20 would require that the State Board of Elections certify voting systems only if a performance bond or letter of credit has been posted. This section would become effective January 1, 2020.

SALE OF SALVAGED VEHICLES

Section 21 would allow a dealer to sell, without a safety inspection, a salvage-titled vehicle if no repairs have been made, and the dealer discloses that no inspection has been performed.

SALVAGE TITLE STUDY

Section 22 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, 2020.

ABC PERMITS AT CERTAIN STADIUMS

Section 23 would allow the sale of alcoholic beverages at certain stadiums meeting the following criteria: any stadiums with a permanently constructed seating capacity of 2,000 or more, leased for a year or more to a for-profit corporation registered in the State, if (i) the permittee only sells malt beverages, unfortified wine, or fortified wine at events that are not sponsored or funded by the public college or university and (ii) the Board of Trustees of the public college or university has voted to allow the issuance of permits for use at that stadium.

DIVISION OF EMERGENCY MANAGEMENT STUDY

Section 24 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

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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 25 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.

ALLOW FLOOD HAZARD AREA FILL FOR AQUACULTURE USES WHEN IMPACT IS FLOOD STORAGE NEUTRAL

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

INSURANCE CANCELLATION PROOF OF MAILING

Section 27 clarifies that proof of mailing is sufficient proof of notice for certain insurance policy or renewal cancellations by the insurer.

HURRICANE FLORENCE FUNDS

Section 28 would provide that, notwithstanding any other provision of law to the contrary, the Department of Agriculture and Consumer Services may use funds appropriated to the Department pursuant to Session Law 2018-136, Section 4.1, to provide non-federal match for any project that has been or will be approved for funding by the USDA Emergency Watershed Protection Program.

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PART IV. SEVERABILITY CLAUSE AND EFFECTIVE DATE

Section 29 would provide that:

- If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.
- Except as otherwise provided, the act would be effective when it becomes law.

****Jeff Hudson, Jennifer McGinnis, Jason Moran-Bates, and Jeremy Ray of the Legislative Analysis Division substantially contributed to this summary.****