



# SENATE BILL 553: Regulatory Reform Act of 2019.

2019-2020 General Assembly

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<b>Committee:</b>	Senate Rules and Operations of the Senate	<b>Date:</b>	May 28, 2019
<b>Introduced by:</b>	Sens. Sanderson, Wells	<b>Prepared by:</b>	Jennifer McGinnis and Jeff Hudson
<b>Analysis of:</b>	Second Edition		Staff Attorneys

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**OVERVIEW:** *Senate Bill 553 would amend several State laws related to State and local government regulation, and agricultural, energy, environmental, and natural resources regulation.*

## BILL ANALYSIS:

### PART I. STATE AND LOCAL GOVERNMENT REGULATION

#### **SECTION 1. 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 apply to contracts executed on or after that date.

## **SECTION 2. AMENDMENTS TO THE 2018 NORTH CAROLINA 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).

## **SECTION 3. MODIFY REAL ESTATE LICENSING REQUIREMENT FOR TIME SHARE SALESPEOPLE**

Under current law, it is unlawful for:

- Any person to engage in the business of a time share salesperson without first obtaining a real estate broker license issued by the North Carolina Real Estate Commission.
- A time share developer to sell or offer to sell a time share located in this State without first obtaining a certificate of registration for the time share project to be offered for sale issued by the North Carolina Real Estate Commission.

**Section 3** would modify the requirement that a time share salesperson obtain a real estate broker license, to provide that a time share salesperson must be a licensed real estate broker unless the time share salesperson meets the requirement for an exemption under general law from licensure pertaining to business entities that, as owner or lessor, are acting with reference to property owned or leased by them in the regular course of, or as incident to, the management of that property. This exemption from licensure extends to officers and employees, general partners, and similarly situated persons, whose income is reported on IRS Form W 2 of an exempt corporation. When a person conducts a real estate transaction pursuant to this exemption, the person must disclose in writing to all parties to the transaction that the person is not licensed as a real estate broker or salesperson, information about this exemption, and the legal name and physical address of the owner of the subject property and of the applicable business entity.

## **SECTION 4. 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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## PART II. AGRICULTURE, ENERGY, ENVIRONMENT, AND NATURAL RESOURCES REGULATION

### **SECTION 5. REPEAL LANDFILL BANS FOR COMPUTERS AND TELEVISIONS**

Current law bans the disposal of discarded computer equipment and televisions from disposal in landfills, or by incineration (in addition to the following items: used oil; yard trash; white goods; antifreeze; aluminum cans; whole scrap tires; lead acid batteries; beverage containers that are required to be recycled by ABC permittees; motor vehicle oil filters; wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris; oyster shells).

**Section 5** would repeal the prohibition against the disposal of discarded computer equipment and televisions from in landfills, or by incineration.

### **SECTION 6. REPURPOSE PRE-REGULATORY LANDFILL FUNDS**

Under current law, 50% of the proceeds from the solid waste disposal tax<sup>1</sup> 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 6** 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.

### **SECTION 7. 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.

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

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**Section 7** 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.

## **SECTION 8. ALLOW FLOOD HAZARD AREA FILL FOR AGRICULTURAL 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 8** would add aquaculture to the uses that may be made of flood hazard areas without a permit, and would prohibit local governments from adopting ordinances or requiring permits to regulate uses related to aquaculture, general farming, pasture, outdoor plant nurseries, horticulture, forestry, mining, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses in flood hazard areas, if the loss of flood storage capacity in the flood hazard area caused by the new use is offset by the use of compensatory storage. If, however, the loss of flood storage capacity in the flood hazard area caused by the new use is not offset by the use of compensatory storage, a local government may adopt ordinances or require permits to regulate these uses, and Section 8 would authorize local governments to charge an application fee in an amount not to exceed \$100.00 in association with such permits.

## **SECTION 9. STUDY EXPRESS PERMITTING EXPANSION**

Under current law the Department of Environmental Quality 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).

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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 9** 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. The Department 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.

## **SECTION 9.1. AMEND SEPTIC TANK SITE SUITABILITY DETERMINATION PROCESS**

Under current law, septic tank site suitability is determined based on a process set out in rules of the Commission for Public Health. Generally, septic tank site suitability related to soil wetness is determined under 15A NCAC 18A .1942 (Soil Wetness Conditions), but site suitability may also be determined under 15A NCAC 18A .1948 (Site Classification) under certain circumstances. The Site Classification Rule allows for a site suitability classification based on written documentation, including engineering, hydrogeologic, geologic, or soil studies, that indicates all of the following:

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

**Section 9.1** would explicitly allow local health departments to determine site suitability for septic tanks based on rules adopted by the Commission for Public Health, including the process allowed under the Site Classification Rule.

## **PART III. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

**Section 10** 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.