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

# HOUSE BILL 600: Regulatory Reform Act of 2023.

*2023-2024 General Assembly*

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| **Committee:** | Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate | **Date:** | June 14, 2023 |
| **Introduced by:** | Reps. Riddell, Zenger, Brody, Chesser | **Prepared by:** | Kyle Evans<br>Staff Attorney |
| **Analysis of:** | Fourth Edition | | |

***OVERVIEW:*** ***House Bill 600 would amend State laws related to State and local government, agriculture, energy, environment, natural resources, and other various regulations.***

## CURRENT LAW & BILL ANALYSIS:

## PART I. AGRICULTURE, ENERGY, ENVIRONMENT, AND NATURAL RESOURCES PROVISIONS

### WATER SUPPLY WATERSHED PROTECTION CHANGES

Current law permits a local government implementing a water supply watershed program to allow an applicant for new development to exceed allowable density under applicable water supply watershed rules if, among other things, the applicant voluntarily elects to treat the stormwater from all existing and new built-upon area on the property.

**Section 1** would eliminate the requirement that a property treat all stormwater from preexisting development or redevelopment activities in order to exceed allowable density under the applicable water supply watershed rules. In lieu, this section would require that the property owner treat the increase in stormwater resulting from the net increase in built-upon areas, in order to exceed allowable density under the applicable water supply watershed rules.

### STORMWATER PERMITTING MODIFICATIONS (Sections 2–4)

G.S. 143-214.7 governs requirements for stormwater control.

- In 2015, the General Assembly enacted legislation to provide that development may occur within an area that would otherwise be required to be placed within a vegetative buffer required by the pursuant to other statute to protect classified shellfish waters, outstanding resource waters, and high-quality waters provided the stormwater runoff from the development is collected and treated from the entire impervious area and discharged so that it passes through the vegetative buffer and is managed so that it otherwise complies with all applicable State and federal stormwater management requirements.
- In 2017, the General Assembly modified that legislation to provide that when a preexisting development is redeveloped, either in whole or in part, increased stormwater controls may only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment.

- In 2021, language was added to provide that a property owner may voluntarily elect to treat all stormwater from preexisting development or redevelopment activities for the purpose of exceeding allowable density under the applicable water supply watershed rules[1].

## STORMWATER PROGRAM CHANGES

**Section 2** would:

- Modify the statutory provision governing development in the vegetative buffer to provide that the entire impervious area of a development shall not include any portion of a project that is within a Department of Transportation or municipal right-of-way.
- Modify the language providing that when a preexisting development is redeveloped, either in whole or in part, increased stormwater controls may only be required for impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment irrespective of whether the impervious surface that existed before the redevelopment is to be demolished or relocated during the development activity.
- Modify the statutory provision authorizing a property owner to voluntarily elect to treat all stormwater from preexisting development or redevelopment for the purpose of exceeding allowable density under the applicable water supply watershed rules to:
  - Eliminate the requirement that a property treat all stormwater from preexisting development or redevelopment activities to exceed allowable density under the applicable water supply watershed rules.
  - In lieu, require that the property owner treat the increase in stormwater resulting from the net increase in built-upon areas, to exceed allowable density under the applicable water supply watershed rules.
- Add a new provision to allow an applicant for a new stormwater permit, or a reissuance of a permit due to transfer, modification, or renewal, to submit that application, at the applicant's option, to DEQ, a unit of local government with permitting authority in the relevant jurisdiction, or to any local government in a joint stormwater program where a local government in the joint program has permitting authority in the relevant jurisdiction.

## AMEND STORMWATER FEE CONSIDERATIONS

The statutes authorize cities to establish fees for stormwater management programs and structural and natural stormwater and drainage systems, which under current law may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system.

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[1] Under State law, the Environmental Management Commission (EMC) is required to assign each water supply watershed in the State an appropriate classification and applicable minimum management requirements. In addition, every local government that has within its jurisdiction all or a portion of a water supply watershed must adopt and implement a water supply watershed protection program that complies with the minimum standards adopted by the EMC (see applicable rule) that: (i) controls development density within the watershed and (ii) provides for performance-based alternatives to development density controls that are based on sound engineering principles.

**Section 3** would add stormwater control measures in use by the property as a basis on which stormwater fees may vary.

**EXEMPTION FROM REQUIREMENTS OF POST-CONSTRUCTION STORMWATER RULE**

Section .1000 of 15A NCAC 02H establishes post-construction stormwater requirements for certain development projects. 15A NCAC 02H .1001 (Post Construction Stormwater Management: Purpose and Scope) sets forth various exemptions from the section's requirements, including linear transportation projects undertaken by an entity other than the NCDOT, when:

- The project is constructed to NCDOT standards and is in accordance with the NCDOT Stormwater Best Management Practices.
- Upon completion, the project will be conveyed either to the NCDOT or another public entity and will be regulated in accordance with that entity's NPDES MS4 stormwater permit; and
- The project is not part of a common plan of development.

**Section 4** would require the Environmental Management Commission to modify 15A NCAC 02H .1001 to strike the reference to "common plan of development" in the exemption described above, thereby allowing an exemption for linear transportation projects undertaken by an entity other than the North Carolina Department of Transportation, which are part of a common plan of development (and comply with the other two criteria), from requirements under the rule. Under those rules, the following relevant definitions apply:

- "Public linear transportation project" means a project consisting of a road, bridge, sidewalk, greenway, or railway that is on a public thoroughfare plan or provides improved access for existing development and that is owned and maintained by a public entity.
- "Common plan of development" means a site where multiple separate and distinct development activities may be taking place at different times on different schedules but governed by a single development plan regardless of ownership of the parcels. Information that may be used to determine a "common plan of development" include plats, blueprints, marketing plans, contracts, building permits, public notices or hearings, zoning requests, and infrastructure development plans.

**MODIFY CERTAIN RULES RELATED TO DEVELOPMENT DENSITY IN WATER SUPPLY WATERSHEDS, AS APPLICABLE IN IREDELL COUNTY AND THE TOWN OF MOORESVILLE**

Pursuant to State law, the Environmental Management Commission (EMC) is required to assign each water supply watershed in the State an appropriate classification and applicable minimum management requirements. In addition, every local government that has within its jurisdiction all or a portion of a water supply watershed must adopt and implement a water supply watershed protection program that complies with the minimum standards adopted by the EMC (see applicable rule) that: (i) controls development density within the watershed and (ii) provides for performance-based alternatives to development density controls that are based on sound engineering principles.

15A NCAC 02B .0624(7) authorizes local governments to exercise the "10/70 option" whereby a maximum of 10 percent of the land area of a water supply watershed outside of the critical areas may be developed up to 70 percent built-upon area.

**Section 5** would direct the EMC to implement 15A NCAC 02B .0624 to authorize Iredell County and the Town of Mooresville to regulate development in water supply watersheds within their planning jurisdiction so that a maximum of 20 percent of the land area of a water supply watershed outside of the critical areas may be developed up to 70 percent built-upon area.

**PHASED IN MANDATORY COMMERCIAL AND RECREATIONAL REPORTING OF CERTAIN FISH HARVESTS**

**Section 6** would require that any person holding a recreational fishing license that harvests red drum, flounder, spotted seatrout, striped bass, or weakfish from coastal fishing waters, joint fishing waters, or inland fishing waters adjacent to coastal fishing waters must report that harvest to the Division of Marine Fisheries (DMF). Additionally, any person holding a commercial fishing license engaged in a commercial fishing operation who harvests any fish, regardless of sale, would be required to report that harvest to DMF. The Marine Fisheries Commission would be required to adopt rules to implement this section.

This section would become effective December 1, 2024. Violations of this section would be punishable only by a verbal warning beginning December 1, 2024. Beginning December 1, 2025, violations would be punishable by issuance of warning ticket. Beginning December 1, 2026, violations would be punishable as an infraction with a fine of no more than $35.

**DREDGE PERMIT SHOTCLOCK FOR UNITED STATES COAST GUARD MARKED NAVIGATIONAL CHANNELS**

A person wishing to begin any dredging or filling projects in any estuarine wasters, tidelands, marshlands, or State-owned lakes must first obtain a permit from the Department of Environmental Quality (DEQ). Current law requires that DEQ act on the permit application within 75 days, but allows DEQ to extend that deadline by another 75 days if necessary to properly consider the application. For applications for a special emergency permit, DEQ must act within two working days and failure to do so automatically approves the application.

**Section 7** would, for applications for activities in a United States Coast Guard marked navigational channel, shorten the deadline from 75 days to 30 days, with an option for DEQ to extend the deadline by another 30 days. Failure by DEQ to act within the shortened time frame would automatically approve the permit.

**ESTABLISH REQUIREMENTS FOR ISSUANCE OF 401 CERTIFICATIONS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

Under Section 401 of the Clean Water Act (Section 401), a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a state where a discharge from the activity would originate issues or waives a Section 401 water quality certification, which concerns whether the discharge will comply with applicable water quality standards, effluent limitations, toxic pollutants restrictions and other appropriate water quality requirements under state and federal law. Section 401 provides that a state "fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year)" after receipt of a certification request, the certification is deemed waived by the State. A state may not only waive, deny, or grant certification, but also grant certification with conditions.

Examples of permits for activities that trigger 401 certification requirements include:

- Clean Water Act Section 404 permits issued by the United States Army Corps of Engineers involving the discharge of dredged or fill material.
- Federal Energy Regulatory Commission (FERC) licenses for hydropower facilities and natural gas pipelines.

As of the date of this summary, the United States Environmental Protection Agency has pending regulations governing states' issuance of 401 certifications, which include, among other things, a requirement that states consider activity "as a whole," rather than just point source discharges from a proposed project.

**Section 7.1** of the bill would establish statutory requirements for DEQ's handling of applications for 401 certifications, including requiring DEQ to:

- Within 30 days of filing of an application, determine whether or not the application is complete and notify the applicant accordingly; and, if the Department determines an application is incomplete, specify all such deficiencies in the notice to the applicant. If DEQ fails to issue a notice as to whether the application is complete within the requisite 30-day period, the application would be deemed complete.
- Within 60 days of the filing of a completed application, either approve or deny the application. Failure of DEQ to act within the requisite 60-day period would result in a waiver of the certification requirement by the State, unless the applicant agrees, in writing, to an extension of time, not exceed one year from the State's receipt of the application for certification. The 60-day review period established would constitute the "reasonable period of time" for State action on an application for purposes of federal law, absent a negotiated agreement with the United States Environmental Protection Agency to extend that timeframe for a period not to exceed one year.
- Limit DEQ review of applications for certification to water quality impacts from point source discharges from the proposed project into navigable waters located within the State, and prohibit consideration of water quality impacts from the activity as a whole.
- Issue a certification upon determining that the proposed discharge from a point source of the proposed project into navigable waters would comply with State water quality standards.

**DEQ TO REQUEST USEPA APPROVAL TO REQUIRE ADOPTION OF WATER QUALITY CRITERIA FOR SPECIFIC POLLUTANTS TO ESTABLISH EFFLUENT STANDARDS IN PERMITS**

Pursuant to the federal Clean Water Act, a National Pollutant Discharge Elimination System (NPDES) permit is required for the discharge of any pollutant from any point source (such as a wastewater treatment plant or industrial discharger) to waters of the United States. The DEQ and the Environmental Management Commission have been delegated authority from the USEPA to administer the NPDES program within North Carolina, and otherwise implement the requirements of the Clean Water Act. States that have been delegated authority to administer the requirements of the Clean Water Act **are required to both**:

- Establish water quality standards for regulated water bodies within their jurisdiction. Water quality standards may consist of numeric or narrative criteria designed to protect designated uses of the waterbody in question. Examples of narrative criteria includes requirements such as "free from toxics in toxic amounts," or "free of objectionable color, odor, taste, and turbidity," and may include methodologies by which numeric standards may be established. Examples of designated

uses for waterbodies include public water supplies, recreation, industrial, propagation of fish, shellfish, and wildlife, etc.

- Establish specific effluent limits in NPDES permits to control the amount of pollutants discharged into receiving waters.

The following provision found at 40 CFR 122.44 requires that a specific effluent limitation be included in an NPDES permit if a pollutant in a discharge has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, whether or not the State has established a water quality criterion for the specific pollutant in question.

**"(vi)** Where a State has ***not*** established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the permitting authority must establish effluent limits using one or more of the following options:

**(A)** Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

**(B)** Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 304(a) of the CWA, supplemented where necessary by other relevant information; or

…."

DEQ's authority to administer and enforce the NPDES program in North Carolina is granted and maintained pursuant to a Memorandum of Agreement (MOA) with USEPA, which is available here. The MOA establishes detailed requirements for the State's delegated authority. The MOA provides:

"Prior to taking any action to propose or effect any amendment, recission, or repeal of any statute, rule, or directive which has been approved by EPA in connection with the State NPDES program; any action to modify program approval documents (e.g., MOA, Program Description or Attorney General's Independent Counsel's Statement); or any action to transfer all or any part of the approved State NPDES program to another State agency or instrument, the State shall notify the Regional Administrator and shall transmit the text of any such change to the EPA Region 4 NPDES and Biosolids Permits Section for review and approval pursuant to 40 C.F.R. § 123.62(b). The State shall keep EPA fully informed of any proposed modification or court action which acts to amend, rescind or repeal any part of its authority to administer the NPDES program. EPA acknowledges that the State has no veto authority over acts of the State legislature and, therefore, reserves the right to initiate procedures for withdrawal of the State NPDES program approval in the event that the State legislature enacts any legislation or issues any directive which substantially impairs the State ability to administer the NPDES program or to otherwise maintain compliance with NPDES program requirements."

**Section 7.2** would prohibit the inclusion of a numeric effluent limitation in a water quality permit unless a numeric water quality standard for the pollutant has been adopted by rule in compliance with requirements of the Administrative Procedure Act.

DEQ would be required, no later than August 1, 2023, to submit the change to USEPA for approval. The provision would not become effective unless USEPA approves the change.

**ENVIRONMENTAL MANAGEMENT COMMISSION TO STUDY NARRATIVE WATER QUALITY STANDARDS**

As noted under the summary for the prior section of the bill, the federal Clean Water Act requires states to establish water quality standards for regulated water bodies within their jurisdiction. Water quality standards may consist of numeric or narrative criteria designed to protect designated uses of the waterbody in question.

15A NCAC 02B .0208 (Standards for Toxic Substances and Temperature) sets forth narrative water quality standards for toxic substances, and includes methodologies by which DEQ may establish numeric water quality standards for specific pollutants.

**Section 7.3** would require the Environmental Management Commission (EMC) to review 15A NCAC 02B .0208 to determine if the standards and methodologies for establishment of numeric water quality standards for specific pollutants included in the rule are scientifically sound, protective of human health and the environment, and result in water quality criteria that are technologically achievable without placing undue economic burdens on publicly-owned treatment works and their ratepayers. In its review, the EMC must examine: (i) other states' narrative water quality standards, and identify other states with more stringent and less stringent narrative standards; and (ii) requirements established by USEPA for development of narrative and numeric water quality standards by states, as well as any discretion given to states to set these standards. The Commission must report its findings to the Joint Legislative Commission on Governmental Operations no later than April 1, 2024.

**SHALLOW DRAFT NAVIGATION CHANNEL DREDGING AND AQUATIC WEED FUND CHANGES**

The Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund is a special fund in DEQ to provide the State's share of costs associated with any dredging project designed to keep shallow draft navigation channels located in State waters or waters of the State located within lakes navigable and safe and for aquatic weed control projects. The Fund may also be used to provide funding for siting and acquisition of dredged disposal easement sites associated with the maintenance of the Atlantic Intracoastal Waterway between the border with the state of South Carolina and the border with the Commonwealth of Virginia, under a Memorandum of Agreement between the State and the federal government.

**Section 8** would:

- Repeal the authorization for funds in the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund to be used to provide funding for siting and acquisition of dredged disposal easement sites associated with the maintenance of the Atlantic Intracoastal Waterway between the border with the state of South Carolina and the border with the Commonwealth of Virginia, and instead allow funds to be used for the siting and acquisition dredged disposal sites.
- Clarify that the term "shallow draft navigation channel" means a waterway connection with a maximum depth of 18 feet, including the depth of overdepth for navigational depth compliance, and includes Mason Inlet, Rich Inlet, Tubbs Inlet, and the Southport Small Boat Harbors.

**SHALLOW DRAFT RULES APPLICABILITY CHANGE**

Section 12.1(a) of S.L. 2022-74 provided that the Secretary of DEQ was only authorized to accept applications for grants from the Shallow Draft Fund for nonfederal costs of projects sponsored by units of

local government for dredging projects in State waters. DEQ was directed to adopt rules pursuant to this change, and those rules provide that the projects funded by the Shallow Draft Fund that are related to dredging federally authorized channels where the work is performed by the US Army Corps of Engineers (Corps) are exempt from those rules.

**Section 8.5** would direct DEQ to implement its Shallow Draft rules such that dredging projects in federally authorized channels where the work is performed by the Corps are not exempt from the rules otherwise applicable to local governments applying for grant funds from the Shallow Draft Fund.

**FLOTATION DEVICES REQUIREMENTS**

**Section 9** would require that any polystyrene flotation devices installed on a dock, buoy, or float must be encapsulated by a protective covering to prevent the polystyrene from disintegrating. This provision would not apply to polystyrene used in the construction, maintenance, or operation of boats or vessels, but would require that such polystyrene be effectively contained and lawfully disposed of. This section would also prohibit the sale of polystyrene flotation devices unless encapsulated in compliance with this provision.

This section would become effective January 1, 2025, and would apply to any polystyrene foam flotation sold or used in the State after that date.

**ADD NEW PROCEDURAL REQUIREMENTS FOR COASTAL AREA MANAGEMENT ACT GUIDELINES**

**Section 10** would require DEQ to directly reference the enabling statute or rule for all State guidelines, statements of objectives, policies, and standards to be followed in the use of land and water within the coastal area, pursuant to the Coastal Area Management Act, and make those guidelines and statements available on DEQ's website.

**REQUIRE STATUTORY OR REGULATORY CITATION FOR ANY CONDITIONS IN A PERMIT ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

**Section 10.5** would require DEQ to include in any permit issued by DEQ the statutory or regulatory authority for any permit conditions required in the permit.

**REVISE 2020 FARM ACT TMDL TRANSPORT FACTOR CALCULATION APPLICABILITY**

Sections 15.(a) and 15.(b) of S.L. 2020-18 provided that nutrient offset credits must be applied to a wastewater permit by applying the Total Maximum Daily Load (TMDL) transport factor to the permitted wastewater discharge and to the nutrient offset credits. These sections apply only to wastewater discharge permit applications for a local government located in the Neuse River Basin with a customer base of fewer than 15,000 connections.

Section 15.(c) provided that no later than August 1, 2020, the Department of Environmental Quality (DEQ), in conjunction with affected parties, must begin modeling necessary to determine new transport zones and delivery factors for the Neuse River Basin for point source discharges and nutrient offset credits. Once DEQ completed that modeling, the Environmental Management Commission must then adopt new transport zones and delivery factors by rule, using the DEQ modeling and other information provided during the public comment period.

This section became effective June 12, 2020. Sections 15.(a) and 15.(b) expire when the rule required by Section 15.(c) becomes effective.

States are generally responsible for developing TMDLs, but must submit those TMDLs to the Environmental Protection Agency for approval pursuant to the federal Clean Water Act and 40 C.F.R. 130.7.

**Section 11** would make the following changes to Section 15 of S.L. 2020-18:

- Amend subsection (a) to direct that nutrient offset credits be applied as specified in the 1999 Phase I TMDL.
- Repeal subsection (b), limiting the provision to local governments located in the Neuse River Basin with a customer base of fewer than 15,000 connections.
- Amend subsection (c) to provide that DEQ is permitted, but no longer required, to begin modeling to determine new transport zone and delivery factors for the Neuse River Basin for point source discharges and nutrient offset credits. Once DEQ completes the modeling, it must provide EMC with a list of qualified professionals from which EMC must select at least two to validate the modeling. The EMC may use the modeling, if validated, to adopt new transport zone and delivery factors.

**CLARIFY CERTAIN ENVIRONMENTAL PERMITTING LAWS APPLICABLE TO AGRICULTURAL ACTIVITIES**

Current law requires any person who constructs or operates an animal waste management system to obtain a permit under either the general Control of Pollution Part of the Water and Air Resources Article or under the Animal Waste Management Systems Part of that Article.

G.S. 143-215.1(i) and (k) provide that any person required to obtain an individual permit from the Commission for a disposal system under the authority of that section or Chapter 130A of the General Statutes must have a compliance boundary established by rule or permit for various categories of disposal systems and beyond which groundwater quality standards may not be exceeded, and that the EMC must require the permittee to undertake corrective action to restore the groundwater quality.

**Section 12(a)** would provide that a person who constructs or operates an animal waste management system only need obtain a permit under the Animal Waste Management Systems Part. This would not eliminate a permittee's responsibility to obtain an NPDES permit. **Subsection (b)** would provide that, for animal waste management systems, the EMC could not deny a permit application, or attach a condition to the permit except when the EMC determines that a denial or condition is required by the statutes governing the permitting of animal waste management systems. **Subsection (b)** would also provide that permitted animal waste management systems must have compliance boundaries and must undertake corrective action in the event that groundwater standards are violated, consistent with the requirements for other disposal systems, and that a permit applicant, permittee, or dissatisfied third party may commence a contested case by filing a petition within 30 days of the EMC notifying the applicant or permittee of its permit decision. If a petition is not filed within 30 days, the EMC's decision is final and not subject to review.

**PROHIBIT SALE OF NUTRIENT OFFSETS FROM MUNICIPAL NUTRIENT OFFSET BANKS TO ANY ENTITY OTHER THAN A GOVERNMENT ENTITY OR A UNIT OF LOCAL GOVERNMENT**

Various river basins and watersheds in the State are subject to nutrient reduction strategies for nitrogen and phosphorus (Neuse River Basin, Tar-Pamlico River Basin, Jordan Lake Watershed, and Falls Lake

Watershed). The rules regulate sources of nutrient pollution in each basin or watershed including wastewater, stormwater, and agricultural nutrient sources. Where nutrient reduction requirements exist Nutrient Offset Mitigation may be required for any new or existing development. The statutes authorize the purchase of nutrient offset credits to offset nutrient loadings to surface waters as follows:

- A government entity[2] may purchase nutrient offset credits through either:
  - (1) Participation in a nutrient offset bank that has been approved by the Department of Environmental Quality if the Department approves the use of the bank for the required nutrient offsets.
  - (2) Payment of a nutrient offset fee established by the Department into the Riparian Buffer Restoration Fund.
- A party other than a government entity, may purchase nutrient offset credits through either:
  - (1) Participation in a nutrient offset bank that has been approved by the Department if the Department approves the use of the bank for the required nutrient offsets.
  - (2) Payment of a nutrient offset fee established by the Department into the Riparian Buffer Restoration Fund if the applicant who demonstrates that the option previous option is unavailable.

**Section 13** would prohibit nutrient offset banks owned by a unit of local government, from selling nutrient offset credits to any entity other than a government entity or unit of local government. This section would become effective when law and would apply to the sale of nutrient offset credits by a nutrient offset bank owned by a unit of local government on or after that date.

**SHORTEN SEPTAGE MANAGEMENT PERMITTING REVIEW AND CLARIFY PUMPER TRUCK FEE**

Septage management firms must obtain permits from DEQ before commencing or continuing operation. DEQ must act on a permit within 90 days of receiving a complete permit. Septage management firms are also required to pay an annual fee of $550 for operating a single pumper truck or an annual fee of $800 for operating two or more pumper trucks.

**Section 13.5** would shorten the permit review period to 30 business days, require DEQ to cite the reason for permit denial, provide that a septage management firm is deemed permitted if DEQ fails to act within the 30-day period if all other vehicle and disposal requirements are met, and clarify that, for the purposes of calculating the truck fee, the number of pumper trucks shall be limited to only those pumper trucks that transport septage on State-maintained roads.

**PROHIBIT COUNTIES FROM REGULATING BY ORDINANCE CERTAIN OFF-SITE WASTEWATER SYSTEMS**

**Section 14** would provide that a "unit of local government" shall not prohibit or regulate by ordinance the use of off-site wastewater systems or other Department-approved systems when the proposed systems

[2] Defined as "[t]he State and its agencies and subdivisions, or the federal government. "Government entity" does not include a unit of local government unless the unit of local government was a party to a mitigation banking instrument executed on or before July 1, 2011, notwithstanding subsequent amendments to such instrument executed after July 1, 2011."

meet those requirements. Current law only prevents municipalities from prohibiting or regulating by ordinance such systems.

**ALLOW ALTERNATIVE PEAK DAILY SEWAGE FLOW RATES AND PERMIT WASTEWATER TREATMENT SYSTEM EXPANSIONS BEYOND EXISTING ALLOCATION IN CERTAIN CIRCUMSTANCES**

As a part of its National Pollutant Discharge Elimination System (NPDES) wastewater permit, a wastewater treatment system must meet certain minimum design and capacity requirements, including a requirement that the system can handle the proposed flow of the various users and uses of the system. For new dwelling units, the current "daily design flow" is 120 gallons per day per bedroom.

**Section 15** would:

- Provide that the permittee for a wastewater treatment system may calculate its wastewater flows for new dwelling units at 75 gallons per day per bedroom, or at a lower rate approved by the DEQ, and require DEQ to adopt rules to implement this change.
- Require that applicants for sewer line extensions, prior to actual flow exceeding 80% of the system's permitted capacity, submit an engineering evaluation of its future wastewater needs, including outlining plans to meet those needs by expansion of the existing system, elimination or reduction of extraneous flows, or water conservation and shall include the source of funding for the improvements. Currently the trigger for obtaining an engineering evaluation is tied to permitted capacity.
- Require that applicants for sewer line extensions must, prior to actual flow exceeding 90% of the system's permitted capacity, obtain all other permits required for expansion of the system and, if construction is needed, submit final plans and specifications for the expansion. Currently the trigger for obtaining all other require permits for expansion is tied to permitted capacity.
- Codify existing rule to allow DEQ to issue sewer line extension permits to facilities exceeding the 80% or 90% disposal capacity thresholds if the additional flow is not projected to result in in the facility exceeding its permitted hydraulic capacity, the facility is in compliance with all other permit limitations and requirements, and adequate progress is being made in developing the required engineering evaluations or plans and specifications.
- Allow a wastewater treatment system permittee, who has signed a contract for expansion of its wastewater system, is in a fast-growing county, and is meeting current permitted flow and pollutant discharge limits, to allocate 110% of its hydraulic capacity and to increase that allocation to 115% when the system expansion is within 24 months of completion. A permittee would not be allowed to allocate more than the permitted capacity after expansion without approval by DEQ, but nothing in this provision would prevent DEQ from authorizing allocations above 115% of a system's hydraulic capacity.

**PROHIBIT DISPOSAL OF LITHIUM-ION BATTERIES IN LANDFILLS; LIMIT DISPOSAL OF SOLAR PANELS TO LINED LANDFILLS AND OTHER APPROVED FACILITIES**

**Section 16** would prohibit the disposal of a lithium-ion battery in a landfill or incinerator. This section would also prohibit the disposal of a photovoltaic (PV) module, or components thereof, in a sanitary landfill for the disposal of construction and demolition debris waste that is unlined or in any other unlined landfill. A PV module, or components thereof, not shipped for reuse or recycle would need to properly be disposed of in an industrial landfill or a municipal solid waste landfill. Any PV modules that meet the

definition of hazardous waste shall comply with applicable hazardous waste requirements for disposal and recycling.

DEQ may adopt rules to establish a regulatory framework for the proper handling of end-of-life for lithium batteries and PV modules.

This section would become effective December 1, 2026, and apply to offenses committed on or after that date.

**CLARIFY BROWNFIELD PROGRAM CONSTRUCTION**

A brownfields site is any real property that is abandoned, idled, or underutilized where environmental contamination, or perceived environmental contamination, hinders redevelopment. The Brownfields Property Reuse Act (Act) of 1997 was enacted to encourage and facilitate redevelopment of these sites by removing barriers to redevelopment posed by a prospective developer's (PD's) potential liability for clean-up costs. To be eligible for participation in the Brownfields Program (Program), a PD must not have caused or contributed to contamination at a site. The Act does not obviate practical or necessary remediation of properties under any State or federal cleanup program, but it does authorize the Department of Environment Quality to work with PDs toward the safe redevelopment of sites, and to provide PDs regulatory flexibility and liability protection that would not be available to parties who actually caused or contributed to contamination at a site.

If a site is included in the Brownfields Program, the Department will enter into an agreement with the developer that is in effect a covenant not-to-sue contingent on the developer making the site suitable for the reuse proposed. Additionally, a brownfields agreement obtained from the Program entitles the developer to a property tax exclusion on the improvements made to the property for a period of five years, which can more than pay for assessment and cleanup activities on many projects. Site remedies (cleanup requirements) under the Program are also less costly and time consuming than they would be for a party who caused or contributed to the contamination, as site remedies under the Brownfields Program are designed to prevent exposure and make the site suitable for reuse, rather than meet environmental standards required under the traditional cleanup programs.

**Section 17** would amend the brownfields' statute to provide that the law must not be construed to limit or preclude a prospective developer from performing an investigation of a brownfields property without prior approval from the Department.

**MODIFY THE APPLICATION OF RIPARIAN BUFFER RULES REGARDING AIRPORT FACILITIES**

Six river basins or watersheds across the State have specific riparian buffer rules: the Neuse, Tar-Pamlico, Catawba, Randleman Goose Creek, and Jordan rules. These rules generally require a 50-foot riparian buffer that is divided into two zones. The 30 feet closest to the water (Zone 1) must remain undisturbed. The outer 20 feet (Zone 2) can be managed vegetation, such as lawns or shrubbery. The rules do, however allow for uses that are present and ongoing (i.e., existing uses) to remain in the buffer. For new uses, the riparian buffer rules include a Table of Uses that lists activities allowed in each zone of the buffer. There are three different categories of allowable activities:

- Exempt uses are allowed in the riparian buffer without approval from the Division or Local Government.

- Allowable uses may occur in the buffer on a case-by-case basis with approval from the Division or Local Government.
- Allowable with mitigation uses may occur in the buffer on a case-by-case basis with approval from the Division or Local Government when mitigation is provided.

The Neuse and Jordan rules currently include detailed definitions for "airport facilities" and in their respective Table of Uses, designate allowable and allowable with mitigation uses.

In the case where a use is "allowable," or "allowable with mitigation," generally the rules require an Authorization Certificate under 15A NCAC 02B .0611(b) for any work in connection with an Airport Impacted Property.

**Section 18** would:

- Modify the definition for "airport facilities" in these sections of the rules to "include all areas used or suitable for use as borrow areas, staging areas, or other similar areas of the airport that are used or suitable for use directly or indirectly in connection with the construction, dismantling, modification or similar action pertaining to any of the properties, facilities, buildings, or structures" already described in the rules. The provision would also apply this modified definition, as relevant, in other sections of the Subchapter.
- Provide that notwithstanding any provisions of the Neuse River Basin Buffer Rules, no Authorization Certificate would be required for any work in connection with an Airport Impacted Property, but such work would be required to provide for mitigation in conformance with applicable Neuse River Basin Riparian Buffer Rules.

**MODIFY CERTAIN PROVISIONS OF THE FLOODPLAIN REGULATION STATUTES TO DIRECT THE DEPARTMENT OF PUBLIC SAFETY TO ISSUE FLOODPLAIN PERMITS FOR CERTAIN AIRPORT PROJECTS**

The statutes on "floodway regulation":

- Authorize local governments to adopt ordinances to regulate uses in flood hazard areas and grant permits for the use of flood hazard areas.
- Require the Department of Public Safety (DPS) to provide advice and assistance to any local government having responsibilities under the regulations. In exercising this function, the Department may furnish manuals, suggested standards, plans, and other technical data; conduct training programs; give advice and assistance with respect to delineation of flood hazard areas and the development of appropriate ordinances; and provide any other advice and assistance that the Department deems appropriate.
- Authorize DPS to prepare a floodplain map that identifies the 100-year floodplain, in certain circumstances.

**Section 19** would require DPS to grant a permit for the use of an eligible flood hazard area in connection with an airport project for which an airport authority received a no-rise certificate for that airport project where there is no local government that has a clearly demonstrated statutory authority to issue such a permit for the airport project for the use of a flood hazard area. In the event the Department does not issue a permit for the airport project within 30 days of its receipt of a written request submitted by an airport authority for an airport project, the permit is deemed issued to the airport authority for the airport project by operation of law. Various criteria for an "eligible flood hazard area" would be established by the bill.

A "no-rise certificate" would be defined as a certificate "that has been accepted by the Department as demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge."

**UTILITIES COMMISSION AUTHORITY TO ALLOW OWNERS' ASSOCIATIONS TO CHARGE FOR THE COSTS OF PROVIDING WATER AND SEWER SERVICE**

To encourage water conservation, G.S. 62-110(g) authorizes the Utilities Commission (Commission) to adopt procedures that allow a lessor to charge for the costs of providing water or sewer service to persons who occupy a leased premises. The statute required that all charges for water or sewer service be based on the user's metered consumption of water, which must be determined by metered measurement of all water consumed. In 2022, the Commission was authorized to adopt procedures to allow a lessor of a leased residential premise to equally divide the amount of a water and sewer bill for a unit among all the lessees in the unit and bill each lessee accordingly.

**Section 20** would authorize the Commission to adopt procedures to allow an owners' association to charge for the costs of providing water or sewer service to persons who occupy townhomes within a planned community, and a unit owners' association to charge for the costs of providing water or sewer service to persons who occupy a condominium. For purposes of this section, a townhome is a single-family dwelling unit constructed in a group of three or more attached units.

**INCREASE MINIMUM BOND REQUIRED BEFORE A FRANCHISE CAN BE GRANTED TO A WATER OR SEWER UTILITY COMPANY**

Before a franchise may be granted to any water or sewer utility company, the applicant for the franchise must furnish a bond in an amount not less than $10,000. If an emergency operator is appointed by the Utilities Commission, with the consent of the owner or operator of the utility company, the bond is forfeited.

**Section 21** would increase the minimum bond required from $10,000 to $25,000 and would provide that the bond would be forfeited if the Utilities Commission appoints an emergency operator pursuant to the existing statutory procedure for the issuance or temporary or emergency authority by the Utilities Commission.

**PART II. STATE AND LOCAL GOVERNMENT PROVISIONS**

**LIMIT LOCAL GOVERNMENT ZONING AUTHORITY TO REQUIRE FIRE ACCESS ROADS IN EXCESS OF THE FIRE CODE OF THE NORTH CAROLINA RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS**

Under current law, local government zoning and development regulations may not (i) set a minimum square footage of structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings, or (ii) set a maximum parking space size larger than 9 feet wide by 20 feet long unless the parking space is designated for handicap, parallel, or diagonal parking.

**Section 22** would additionally prohibit local government zoning and development regulations from requiring additional entrances into a residential subdivision that are not in compliance with the number of entrance requirements into a residential subdivision set forth in the Fire Code of the North Carolina Residential Code for One- and Two-Family Dwellings.

This section would be effective when it becomes law and would apply to existing municipal or county ordinances. Any municipal or county ordinance inconsistent with this section would be void and unenforceable.

**PROHIBIT COUNTIES AND CITIES FROM REGULATING CERTAIN ONLINE MARKETPLACES**

**Section 22.5** would prohibit counties or cities from doing the following:

- Regulating the operation of an online marketplace.
- Requiring an online marketplace to provide personally identifiable information of users, unless pursuant to a subpoena or court order.

This section would also define "online marketplace" as a person or entity that does both of the following:

- Provides for consideration, regardless of whether the consideration is deducted as a fee from the transaction, an online application, software, website, system, or other medium through which a service is advertised in this State or is offered to the public as available in this State.
- Provides, directly or indirectly, or maintains a platform for services by performing any of the following:
    - Providing a payment system that facilitates a transaction between two platform users.
    - Transmitting or otherwise communicating the offer or acceptance of a transaction between the two platform users.
    - Owning or operating the electronic infrastructure or technology that brings two or more users together.

The term "online marketplace" would not include any local or State entity or vendor. This section would not affect any authority otherwise granted to counties and cities in State statute.

**SYSTEM DEVELOPMENT FEE CHANGE**

Local governments are authorized to adopt system development fees for water and sewer service. System development fees may be imposed on “new development to fund costs of capital improvements necessitated by and attributable to such new development, to recoup costs of existing facilities which serve such new development, or a combination of those costs….”

**Section 23** would provide that a local government may impose a system development fee to recoup costs incurred by the local government unit to purchase capacity in, or reserve capacity supplied by, capital improvements or facilities owned by another local government unit. **Sections 23(b) and 23(c)** would provide that purchase capacity must be included in the written analysis used to calculate the system development fee and that revenue from system development fees may be used to pay contractual obligations to a local government for capacity in facilities owned by the local government.

This section would be effective when it becomes law. This section would clarify and restate the intent of existing law and applies to ordinances adopted before, on, and after the effective date.

**EXEMPT MINOR LEAGUE BASEBALL PLAYERS EMPLOYED UNDER A COLLECTIVE BARGAINING AGREEMENT FROM STATE MINIMUM WAGE, OVERTIME, AND RECORD KEEPING REQUIREMENTS**

Employees who work for employers with at least two employees and that meet either of the following conditions are covered by the federal Fair Labor Standards Act (FLSA):

- The employer has an annual dollar volume of sales or business of at least $500,000.
- The employer is a hospital, a provider of medical or nursing care for residents, a school, a preschool, or a government agency.

The FLSA requires that covered employers pay their employees at least the federal minimum wage and overtime pay (i.e., at time and one-half the regular rate of pay after 40 hours in a workweek), except for certain classes of exempt employees. States may elect to either apply the federal exemptions or to apply minimum wage and overtime requirements that are more protective than the FLSA.

In 2018, the United States Congress enacted the Save America's Pastime Act, which exempts baseball players from federal minimum wage and overtime requirements if compensated under a contract that provides a weekly salary at a rate not less than a weekly salary equal to the federal minimum wage for a 40-hour workweek, irrespective of the number of hours the employee devotes to baseball related activities.

**Section 24** would exempt minor league baseball players employed under a collective bargaining agreement from State minimum wage, overtime, and record keeping requirements.

This section would become effective August 1, 2023.

**CODIFY MEDICAL RECORD RETENTION REQUIREMENT FOR HEALTH CARE PROVIDERS**

Pursuant to 10A NCAC 13B .3903 (Preservation of Medical Records), the North Carolina Medical Care Commission requires hospitals to maintain patient records for a minimum of 11 years following the discharge of an adult patient, or in the case of a minor, until the patient's 30th birthday.

In 2022, the Medical Care Commission readopted 10A NCAC 13B .3903 with amendments. However, the Rules Review Commission objected to the readoption of this administrative rule on the basis that it exceeded the statutory authority delegated to the Commission.

Rules adopted by the North Carolina Board of Pharmacy require licensed practitioners to maintain records for a period of three years.

Rules adopted by the North Carolina Veterinary Medical Board require licensed practitioners to maintain records for a period of three years following the last office visit or discharge of the animal from a veterinarian facility.

**Section 25** would codify a requirement that health care providers retain medical records for a minimum of ten years from the date of service to which the medical record pertains, or in the case of a minor, until the patient's 28th birthday. This section would not apply to a pharmacy maintaining a valid pharmacy permit, or a person licensed by the Veterinary Medical Board to practice veterinary medicine.

**CODIFY EXISTING STROKE CENTER DESIGNATIONS AND ADD A THROMBECTOMY-CAPABLE STROKE CENTER DESIGNATION**

S.L. 2013-44 directed the Department of Health and Human Services (DHHS) to designate a qualified hospital as primary stroke center if that hospital submits an application that demonstrates the hospital is certified as a primary stroke center by the Joint Commission or other nationally recognized body that requires conformance to best practices for stroke care. DHHS maintains a list of hospitals designated as primary stroke centers on its website. Rules adopted by DHHS provide criteria for designating a hospital as a primary stroke center, comprehensive stroke center, or acute stroke ready hospital.

**Section 26** would amend the existing stroke designation statute to codify the criteria for designating a hospital as a primary stroke center, comprehensive stroke center, or acute stroke ready hospital, and would provide that in addition to a certification from the Joint Commission, a certification from the American Heart Association would suffice to qualify as a designated stroke center. This section would also create a new designation for a thrombectomy-capable stroke center for hospitals that are so certified by the American Heart Association, Joint Commission, or other DHHS-approved certifying body. This section would also require certified hospitals to report that certification to DHHS within 90 days of receiving certification.

**EXPANSION OF THE HOMESCHOOL COOPERATIVE EXEMPTION TO THE DEFINITION OF CHILD CARE**

Child care facilities are regulated by the Department of Health and Human Services (DHHS) pursuant to Article 7 of Chapter 110 of the General Statutes. Child care facilities subject to regulation by DHHS must register with DHHS and meet certain operating requirements.

**Section 27** would revise the homeschool cooperative exemption to the definition of "child care" to allow cooperative arrangements to occur in a location outside the home of one of the cooperative participants.

**RESTORE 2009 BUILDING CODE STANDARDS FOR PIERS AND DOCKS CONSTRUCTED IN ESTUARINE WATERS**

Currently, Chapter 36 of the 2018 North Carolina Building Code (Code) sets standards for the construction of piers and docks throughout the State.

**Section 28** would direct the North Carolina Building Code Council to implement the Code so that no building requirements for piers or docks built in estuarine waters are inconsistent with the requirements of the applicable "Docks, Piers, Bulkheads, and Water Structures" Chapter in the 2009 North Carolina Building Code.

**PRESERVE EXISTING NORTH CAROLINA BUILDING CODE LIMITATION ON THE USE OF PLASTIC PIPE IN CERTAIN BUILDINGS**

The 2018 North Carolina Building Code prohibits the use of plastic pipes, plastic pipe fittings, and plastic appurtenances with an inside diameter 2 inches and larger in either of the following circumstances:

(1) Drain, waste, and vent conductors in buildings in which the top occupied floor exceeds 75 feet (23 meters) in height.
(2) Storm drainage conductors in buildings in which the top occupied floor exceeds 75 feet (23 meters) in height.

**Section 28.5** would codify the plastic pipe limitation.

**DISAPPROVE CERTAIN DOA PROCUREMENT RULES**

The Administrative Procedure Act provides the mechanism for legislative disapproval of rules adopted by a State agency. G.S. 150B-21.3 governs the effective date of rules, including rules disapproved by legislation.

Pursuant to 150B-21.3(b1), if a bill that specifically disapproves a rule subject to legislative review is introduced in either chamber of the General Assembly before the 31st legislative day the rule becomes effective on the earlier of the bill being voted down or the General Assembly adjourning without ratifying the bill. If the disapproval bill becomes law, the disapproved rule does not become effective.

On October 22, 2022, the North Carolina Department of Administration (DOA) adopted rules regarding good faith efforts to engage historically underutilized businesses in State contracting. RRC approved these rules on December 15, 2022, and a portion of those rules received 10 or more written objections, subjecting them to legislative review.

**Section 29** would disapprove two rules adopted by DOA subject to legislative review.

**EMERGENCY SUPPLY CHAIN DECLARATION FOR LOCAL GOVERNMENTS**

The North Carolina Emergency Management Act provides additional authority to the Governor, State agencies, and local governments to prevent, prepare for, respond to, or recover from natural and man-made emergencies or hostile military action.

Article 8 of Chapter 143 of the General Statutes governs how government entities may award or enter into contracts for construction, repair work, and the purchase of goods and services.

**Section 30** would expand the definition of "emergency" to include a "disruption in the supply chain that creates a significant threat to a local government's ability … to provide essential services such as electricity and water." This section would further provide that during an emergency created by a supply chain disruption, government entities otherwise subject to Article 8 of Chapter 143 would be exempt from those requirements when awarding contracts for apparatus, supplies, materials, or equipment, or construction or repair work requiring those items, where such apparatus, supplies, materials, or equipment is either (i) listed in a Emergency Declaration issued pursuant to the NC Emergency Management Act, or (ii) listed in an order or regulation issued by the federal government pursuant to the Defense Production Act of 1950.

**PART III. MISCELLANEOUS PROVISIONS**

**INCREASE THE TOTAL APPRAISED VALUE OF ALL REAL ESTATE PRIZES OFFERED DURING A CALENDAR YEAR BY A NONPROFIT ORGANIZATION AS PART OF A RAFFLE**

Under current law, a nonprofit organization, candidate, political committee, or government entity within the State may conduct a raffle. A nonprofit organization may conduct up to four raffles per year. The maximum prize value that may be offered in a raffle is $125,000, except that real property worth up to an appraised value of $500,000 may be offered as a prize in any one raffle. The total appraised value of all real property prizes offered by any nonprofit organization may not exceed five hundred thousand dollars ($500,000) in any calendar year.

**Section 31** would clarify that a nonprofit organization offering real property as a prize in a raffle must provide the property free from all liens, provide an owner affidavit and indemnity agreement, and provide a title commitment for the property and shall make that commitment available for inspection upon request. Additionally, this section would repeal the maximum real property prize value of $500,000 in any one

raffle, but would limit the total appraised value of all real property prizes offered by any nonprofit organization to $2,250,000 per calendar year.

This section would be effective when it becomes law and applies to raffles conducted on or after that date.

## CLARIFY THAT INFLATABLE DEVICES ARE NOT AMUSEMENT DEVICES

The Amusement Device Safety Act charges the Department of Labor with regulating the use and operation of amusement devices in the State.

**Section 32** would clarify that inflatable devices, including air-supported devices made of flexible fabric, inflated by one or more blowers, that relies upon air pressure to maintain its shape, are not considered amusement devices subject to Department of Labor regulation. This section would also make technical and conforming changes to the Amusement Device Safety Act.

## COMMERCIAL MOBILE RADIO SERVICE CHANGES

The 911 Board is established within the Department of Information Technology (DIT) and is charged with managing both wireline and wireless 911 throughout the State, including developing the 911 State Plan and administer the 911 Fund.

Commercial mobile radio service (CMRS) providers must comply with certain requirements for enhanced 911 service and may be reimbursed by the 911 Fund for costs incurred due to compliance, including designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required to provide 911 communications service.

A public safety answering point (PSAP) is the public safety agency that receives an incoming 911 call and dispatches appropriate public safety agencies to respond to the call.

**Section 33(a)** would eliminate one of the alternative criteria triggering a requirement that the CMRS receive prior approval from the 911 Board for invoices for reimbursement.

The remaining subsections would, effective July 1, 2024, repeal the statute providing for 911 Fund distribution to CMRS providers for reimbursement and make other technical and conforming changes.

**EFFECTIVE DATE:** Except as otherwise provided, this act would be effective when it becomes law.

*Jennifer McGinnis, Chris Saunders, and Aaron McGlothlin, Legislative Analysis Division, substantially contributed to this summary.*