



2023-2024 General Assembly

HOUSE BILL 600: Regulatory Reform Act of 2023, Sec. 21-22: Modify the Application of Riparian Buffer Rules Regarding Airport Facilities; Modify Certain Provisions of the Floodplain Regulation Statutes to Direct the Department of Public Safety to Issue Floodplain Permits for Certain Airport Projects

Committee:
Introduced by:
Analysis of: Sec. 21-22 of S.L. 2023-137

Date: December 11, 2023
Prepared by: Kyle Evans
Staff Attorney

OVERVIEW: Sections 21 and 22 of S.L. 2023-137 modify the application of riparian buffer rules and modify certain provisions of the floodplain regulation statutes to allow certain airport projects to receive necessary permits and authorizations to proceed.

This bill was vetoed by the Governor on October 2, 2023, and that veto was overridden by the General Assembly on October 10, 2023. These sections became effective on October 10, 2023.

CURRENT LAW & BILL ANALYSIS:

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

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Director



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Section 21:

- Modifies 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 also applies this modified definition, as relevant, in other sections of the Subchapter.
- Provides that notwithstanding any provisions of the Neuse River Basin Buffer Rules, no Authorization Certificate is required for any work in connection with an Airport Impacted Property, but such work must provide for mitigation in conformance with applicable Neuse River Basin Riparian Buffer Rules.

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, DPS can 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 DPS deems appropriate.
- Authorize DPS to prepare a floodplain map that identifies the 100-year floodplain, in certain circumstances.

Section 22 requires 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 DPS 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" are established by the act. A "no-rise certificate" is defined as a certificate "that has been accepted by DPS 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."

EFFECTIVE DATE: This bill was vetoed by the Governor on October 2, 2023, and that veto was overridden by the General Assembly on October 10, 2023. This section became effective on October 10, 2023.

Jennifer McGinnis, LAD, substantially contributed to this summary.