



SENATE BILL 166: 2024 Building Code Regulatory Reform.

2023-2024 General Assembly

Committee:		Date:	September 12, 2024
Introduced by:		Prepared by:	Howard Marsilio Staff Attorney
Analysis of:	S.L. 2024-49		

OVERVIEW: *Session Law 2024-49 amends various development regulations, amends various North Carolina State Building Codes, amends various construction contractors and design professionals' regulations, amends various environment and environmental health regulations, and reorganizes the Building Code Council.*

This bill was vetoed by the Governor on July 5, 2024, and that veto was overridden by the General Assembly on September 11, 2024. This act has various effective dates. Please see the full summary for more details.

CURRENT LAW/BILL ANALYSIS:

PART I. DEVELOPMENT REGULATIONS

PROHIBIT CERTAIN BACKFLOW PREVENTER INSTALLATIONS

Section 1.1: Subchapter 18C of Title 15A of the North Carolina Administrative Code governs public water supplies. Under the Subchapter, "backflow preventer" means an assembly, device, or method that prohibits the backflow of water into potable water supply systems.

Prior to 2019, 15A NCAC 18C. 0406, included within that Subchapter, provided:

(4) All cross-connections between potable water supplies and non-potable or unprotected supplies that are not specifically covered in the categories in this Paragraph will be considered special problems and the protective devices required shall be determined by the Department on the basis of the degree of health hazard involved.

Effective July 1, 2019, the rule was amended with additional detail for backflow preventer requirements.

The State's Plumbing Code (Code) also includes requirements for backflow preventers. Generally, under the Code:

- New plumbing systems must comply with the Code that is in effect during the time of construction.
- There is grandfathering that allows existing plumbing systems to remain in effect until a retrofit, upfit/fit-up, or facility addition takes place, but only if the original construction met the Code at the time of construction and there is no hazard to life, health, or property.

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This section prohibits any public water system owned or operated by a local government unit from requiring a customer to install a backflow preventer on an existing nonresidential or residential connection, including multifamily dwellings, not otherwise required by State or federal law except where the degree of hazard from the customer's connection is determined to be high by the Department of Environmental Quality (Department). The limitation, however, does not prohibit requirements for installation of backflow preventers pursuant to the State Plumbing Code or the North Carolina Fire Code due to retrofit or upfit/fit-up to the customer's plumbing, facility addition on the customer's property, or change in use of the property served by the connection. The single act of a retrofit or upfit/fit-up to the customer's plumbing limited to the service line between the home or building and the meter, and without a change in use or facility addition, does not necessitate a backflow preventer. An increase in the flow of water to the home or building, without a change in use or facility addition, does not necessitate a backflow preventer.

A public water system and its employees are immune from civil liability in tort from any loss, damage, or injury arising out of or relating to the backflow of water into potable water supply systems where a backflow preventer is not required by State or federal law, or where the degree of hazard from the customer's connection is not determined to be high by the Department.

Where a backflow preventer is not otherwise be required by law, or by determination of high hazard by the Department, a local government is authorized to require installation of backflow preventer on a customer's property if the public water system pays all costs associated with the backflow preventer, including the device, installation, and appropriate landscaping.

This section also limits local government public water system periodic testing to once every three years for certain residential irrigation backflow preventers, limits civil liability when in compliance with periodic testing requirements, and authorizes the acceptance of backflow preventer testing results conducted by licensed plumbing contractors or certified testers.

This section became effective September 11, 2024, and applies to requirements for installation of backflow preventers made by a public water supply on or after that date.

PROHIBIT DUPLICATIVE WATER SERVICE SHUT-OFF VALVE REQUIREMENTS IN CERTAIN RESIDENTIAL DWELLINGS

Section 1.2: Current law outlines the responsibilities of various entities for providing water service to users within this State. Additionally, various technical codes address the use and placement of water shut-off valves for water service lines.

This section prohibits entities involved with providing water service to customers from requiring the installation of redundant inline water service shut-off valves between a water service meter box and the customer receiving water service in a dwelling subject to the North Carolina Residential Code.

This section becomes effective January 1, 2025.

BUILDING PERMIT FEES FOR INSPECTION DEPARTMENT CLARIFICATION

Section 1.3: A local government is authorized to set reasonable fees for administration and implementation of development regulations and programs. Fees are to be used for administration and implementation of development regulations and programs and for no other purpose.

This section clarifies that fees collected by a building inspection department must be used to support the administration and operations of the building inspection department and for no other purpose.

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This section became effective July 1, 2024.

RESIDENTIAL PLAN REVIEW FEE REIMBURSEMENT

Section 1.4: Currently, a local government is not required to review residential building plans unless deemed necessary. If a local government chooses to review residential building plans, they must be reviewed within 15 business days from submission.

This section requires a local government reviewing residential building plans for issuance of a building permit to perform the initial residential building plan review concurrently with development approvals required by other government agencies. Failure to conduct initial building plan reviews within 20 business days of submission will entitle a building permit applicant to a refund of 10% of the building permit application fee for each business day, up to 10 business days.

This section became effective July 1, 2024, and applies to permit applications submitted on and after that date.

CLARIFY PUBLIC SAFETY ISSUES FOR WITHHOLDING BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY

Section 1.5: A local government is prohibited from withholding issuance of a building permit or certificate of occupancy eligible for issuance to compel completion of work on other property under a separate permit or compel compliance with land use regulations unless (i) otherwise authorized by law or (ii) the local government reasonably determines existence of a public safety issue related to issuance of the building permit or certificate of occupancy.

This section clarifies that landscaping around dwellings, landscaping within common areas, and street lighting fixtures within common areas do not establish the existence of a public safety issue, and requires developers to submit an affidavit to the local government why the required site improvements are not complete, the expected date of completion and compliance, and a statement promising to complete the required site improvements.

PROHIBIT UNRESTRICTED RIGHT OF ENTRY AS A CONDITION TO DEVELOPMENT APPROVALS

Section 1.6: Article 4, within Chapter 160D, Local Planning and Development Regulation, outlines the laws that relate to administration, enforcement, and appeals for development regulations found in that Chapter. G.S. 160D-403(e) outlines staff authorization to enter premises for inspection purposes.

This section prohibits administrative staff from requiring unrestricted written consent from permit applicants to enter premises not open to the public as a condition to accepting or issuing development approvals, and prohibits local governments from acting upon unrestricted written consents obtained by local governments, as described above.

PROHIBIT TECHNICAL CODE COMPLIANCE AFFIDAVITS

Section 1.7: Current law requires inspections of work performed under various development approvals, and specifically work which is subject to the North Carolina State Building Code.

This section prohibits inspectors from requiring affidavits attesting that work is compliant with the North Carolina Residential Code in lieu of conducting inspections required by that Code.

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LOCAL GOVERNMENT CURB AND GUTTER DESIGN STANDARDS

Section 1.8: Current laws authorize local governments to regulate the construction of driveway connections into streets.

This section clarifies that curb and gutter design standard regulations cannot limit or prohibit the use of curb and gutter design standards adopted by the North Carolina Department of Transportation for subdivision roads serving dwellings subject to the North Carolina Residential Code.

This section becomes effective January 1, 2025, and applies to permit applications submitted on or after that date.

MUNICIPAL PEDESTRIAN FACILITY REQUIREMENTS WITHIN ETJ FOR SUBDIVISION STREETS DESIGNATED AS PUBLIC

Section 1.9: Current law sets out procedures for subdivision road planning and permitting, and the relationship between local governments and the North Carolina Department of Transportation when subdivision roads contemplate intersecting (to potentially being adopted) the State road system.

This section specifies that municipal development regulations cannot require a developer to design and construct pedestrian facilities, including sidewalks, for certain subdivision developments unless the municipality accepts long-term maintenance of those facilities. This section also requires a city that required a developer to construct pedestrian facilities after January 1, 2020, as described above, to coordinate with the Department of Transportation to accept long-term maintenance responsibilities for those facilities.

G.S. 160D-804 TECHNICAL CORRECTION

Section 1.10 This section makes a technical correction to reference the subsection.

CLARIFY REQUIREMENTS FOR MODEL HOMES

Section 1.11(a) There is no current law establishing Statewide treatment of model homes within subdivision developments.

This section (i) defines a model home; (ii) allows an area of the model home to be designated a Business Group B occupancy, including for use as a sales office and for conducting development related business; (iii) authorizes a local government's issuance of a temporary certificate of occupancy if the permit holder designates certain areas within the model home as a Business Group B occupancy; (iv) requires areas of the model home designated as Business Group B occupancy to meet accessibility requirements under State and federal law; (v) requires the permit holder to post signs identifying display areas for viewing developer's products; (vi) requires utility providers to connect services requested by the permit holder upon issuance of the temporary certificate of occupancy; (vii) requires a permit holder receiving a temporary certificate of occupancy to shut off all water to model home bathroom facilities; and (viii) provides equitable bath facilities for accessibility on the premises.

The section becomes effective January 1, 2025, and applies to applications for temporary certificates of occupancy submitted on or after that date.

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PERFORMANCE GUARANTEES FOR SUBDIVISIONS

Section 1.12(a) Under current law, a local government subdivision regulation can provide for performance guarantees to assure successful completion of required improvements. The local government must release the performance guarantee in a timely manner when the local government acknowledges that the required improvements are complete. The performance guarantee must only be used for completion of required improvements and not for repairs and maintenance after completion.

This section (i) requires a local government to inspect improvements within 30 days of the developer's request and to advise the developer whether required improvements are completed to specifications; (ii) allows a developer to obtain certification from a licensed engineer that required improvements are complete if the developer and local government disagree; (iii) requires return or release of a performance guarantee within 30 days upon acknowledgement or certification that required improvements are complete; and (iv) clarifies that no performance guarantee can be required for maintenance of any improvement once completed to the local government specification or licensed professional engineer certification that improvement is complete.

This section becomes effective January 1, 2025, and applies to permit applications submitted on and after that date.

PART II. NORTH CAROLINA STATE BUILDING CODE

LOCAL FIRE PREVENTION CODE UNIFORMITY WITHIN DWELLINGS SUBJECT TO THE NORTH CAROLINA RESIDENTIAL CODE

Section 2.1: G.S. 143-138(e) authorizes political subdivisions to adopt a local fire prevention code and floodplain management regulations within its jurisdiction, subject to limitations.

This section prohibits a political subdivision from adopting a local fire prevention code provision which would apply to certain dwellings that are not prescriptively required by the North Carolina Residential Code.

FIRE-RESISTANCE REQUIREMENTS FOR TOWNHOUSE END UNITS

Section 2.2: Townhouses are subject to the North Carolina Residential Code, and that code specifies fire resistance requirements for common wall assemblies, etc.

This section directs that code be amended to clarify that townhouse end unit walls can have fire separation distances of less than 3 feet with 0-hour fire resistance rated walls when adjacent structures are equal to or greater than 6 feet away, and if less, end walls must provide a minimum cumulative fire-resistance rating of 2 hours.

GROUND FAULT CIRCUIT-INTERRUPTER (GFCI) PROTECTION FOR SUMP PUMPS LOCATED IN CRAWLSPACES AND BASEMENTS

Section 2.3: Generally speaking, the North Carolina Electric Code outlines electrical system requirements, including requirements for Ground Fault Circuit Interrupters (GFCI).

This section directs that code be amended to clarify GFCI reset accessibility and add indicators for sump pumps located in basements and crawlspaces.

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STAIRWAY ADJACENT GLAZING REQUIREMENTS

Section 2.4: The North Carolina Residential Code outlines requirements for glazing (i.e. glass) located in certain locations.

This section directs that code be amended to clarify that glazing adjacent to the top landing of a stairway or ramp is not considered a hazardous location for the purposes of application of other code requirements.

ELECTRIC WATER HEATER ELEVATION REQUIREMENTS

Section 2.5: The North Carolina Residential Code outlines requirements for the elevation of ignition sources within water heaters.

This section directs that code be amended to clarify that the elevation requirement for ignition sources does not apply to electric water heaters.

IMPLEMENTATION OF CODE CHANGES FOR USE OF CERTAIN INSULATION IN UNVENTED ATTIC AND ENCLOSED RAFTER ASSEMBLIES

Section 2.6: Section 6 of S.L. 2023-108, required the Building Code Council to adopt rules to amend Section 402 within the Energy Conservation Code to include provisions for an optional insulation requirement alternative to ceiling insulation minimums when air-impermeable insulation (for example, certain spray-foam insulations) is used in unvented attic and unvented enclosed rafter assemblies in residences meeting certain criteria.

This section modifies that directive to amend that code to provide for additional implementation requirements for local governments and Code-enforcement officials enforcing the code while that amendment is pending.

IMPLEMENTATION OF CODE REQUIREMENTS DURING INCORPORATION OF 3- AND 4- FAMILY DWELLINGS INTO THE RESIDENTIAL CODE

Section 2.7: Generally, the North Carolina Residential Code applies to one- and two- family dwellings and townhomes, and outlines minimum prescriptive requirements to address the alteration, design, repair, and construction of those dwellings. Three- and four-family dwellings are currently classified as multi-family construction, and fall outside the Residential Code. Section 9 of S.L. 2023-108, required the Building Code Council to adopt rules to amend the Residential Code to include three- and four-family dwellings and make conforming changes in North Carolina State Building Code.

This section modifies that directive to amend that code to provide for additional implementation requirements for local governments and Code-enforcement officials enforcing the code, and to the applicable Councils, while that amendment is pending.

GROUND FAULT CIRCUIT INTERRUPTER (GFCI) PROTECTION FOR RECREATIONAL VEHICLE SITE EQUIPMENT

Section 2.8: Generally, the North Carolina Electric Code outlines electrical system requirements, including requirements for Ground Fault Circuit Interrupters (GFCI).

This section directs that code be amended to clarify GFCI protection is only required for 125-volt, single-phase, 15- and 20-ampere, recreational vehicle site equipment receptacles.

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EXCLUDE ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE) LOAD FROM FEEDER AND SERVICE LOAD CALCULATIONS FOR DWELLINGS SUBJECT TO THE NORTH CAROLINA RESIDENTIAL CODE

Section 2.9: Generally, the North Carolina Electric Code outlines electrical system requirements, including calculations for service loads utilized for sizing branch-circuit feeders.

This section directs that code be amended to exempt electric vehicle supply equipment (EVSE) loads for the purpose of calculating loads for electrical feeder or service to dwellings subject to the North Carolina Residential Code.

AMEND EMERGENCY RESPONDER COMMUNICATION COVERAGE EXCEPTION

Section 2.10: Generally, the North Carolina Fire Code outlines requirements for structures, processes, premises, and safeguards that relate to fire hazards, fire suppression and alarm systems, and conditions affecting the safety of fire fighters and emergency responders during emergency operations, and includes requirements for emergency responder radio coverage within new buildings.

This section directs that code be amended to exempt new one-story buildings not exceeding 12,000 square feet without below-ground areas from the requirement that new buildings have approved radio coverage for emergency responders.

PART III. CONSTRUCTION CONTRACTORS AND DESIGN PROFESSIONALS

COURT AWARDS FOR CONTRACTOR VIOLATIONS

Section 3.1: Article 2 of Chapter 87 of the General Statutes outlines the authority of the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors and the laws that relate to plumbing, heating, and fire sprinkler contracting. Article 4 of Chapter 87 of the General Statutes outlines the authority of the State Board of Examiners of Electrical Contractors and the laws that relate to electrical contracting. Both articles contain provisions that authorize those Boards to apply to a court for a restraining order and injunction against any person, firm, or corporation in violation of these articles.

This section amends both articles with provisions that require a court to award the applicable Board reasonable attorney's fees, not to exceed \$5,000, plus costs for the investigation and prosecution of violations. An applicant for examination would be prohibited from taking an examination unless awards are satisfied.

This section became effective September 11, 2024, and applies to actions filed or commenced on or after that date.

AMEND ELECTRICAL CONTRACTOR LICENSURE REQUIREMENTS

Section 3.2: Article 4 of Chapter 87 of the General Statutes outlines the authority of the State Board of Examiners of Electrical Contractors, and the laws that relate to electrical contracting, including the requirements for various license classifications. A limited electrical contracting licensee is limited to equipment or installations rated at not more than 600 volts.

This section increases this limitation from 600 to 1000 volts.

This section becomes effective January 1, 2025.

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FUEL GAS CODE REFERENCE FOR ELECTRICAL CONTRACTOR EXEMPTION

Section 3.3: Article 4 of Chapter 87 of the General Statutes outlines the authority of the State Board of Examiners of Electrical Contractors and the laws that relate to electrical contracting, which include types of projects and work that are exempted from this Article. Currently, the bonding of corrugated stainless steel tubing gas piping systems as required under Section 310.1.1 of the 2012 North Carolina Fuel Gas Code is exempt from the application of this Article.

This section clarifies this exemption is valid under any current revision of the North Carolina Fuel Gas Code.

CREATE A BUILDING CODE PERMIT TECHNICIAN CERTIFICATION

Section 3.4: Article 9C of Chapter 143 relates to the North Carolina Code Officials Qualification Board (Board) and its regulation of Code-enforcement officials. Qualified Code-enforcement officials are persons qualified to engage in the practice of Code-enforcement and are generally referred to as building inspectors. Current law does not provide for a permit technician certification program or certificate.

This section requires the Board to develop a State Building Code Permit Technician certificate program and certificate.

This section became effective July 1, 2024.

LOCAL GOVERNMENT REVIEW OF SEALS OF DESIGN

Section 3.5: Architect and engineer seals of design are utilized and imprinted as required by law on drawings and specifications prepared for use in this State.

This section clarifies local government responsibilities in reviewing the appropriateness of seals of design when reviewing plans as required by Chapter 160D, Local Planning and Development Regulation.

PART IV. ENVIRONMENT AND ENVIRONMENTAL HEALTH

CLARIFY SECTION 13(B) OF S.L. 2023-108, WHICH PROHIBITED LOCAL GOVERNMENTS FROM REQUIRING PAYMENTS FROM OWNERS OF STORMWATER CONTROL SYSTEMS FOR FUTURE MAINTENANCE OR REPLACEMENT COSTS OF A SYSTEM

Language enacted in 2023 prohibited local governments from requiring an owner of a privately owned and maintained stormwater control project (SCP) to make payments to the local government for the purpose of ensuring assets are available for maintenance, repair, replacement, and reconstruction costs of a SCP. In lieu, a local government was authorized to require an owner of a privately owned and maintained SCP to retain funds for maintenance, repair, replacement, and reconstruction costs of the SCP, not to exceed 10% of the SCP's original cost of construction. For such payments made by a SCP owner to a local government prior to enactment of the legislation, the legislation also required that a local government make those moneys accessible to the owner to cover necessary maintenance, repair, replacement, and reconstruction costs for the SCP.

Section 4.1 modifies the language requiring local governments to make prior payments accessible to an owner, to explicitly require that a local government must immediately refund such moneys upon request of a SCP owner.

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MODIFY RECORDATION REQUIREMENTS FOR OPERATION AND MAINTENANCE AGREEMENTS FOR STORMWATER CONTROL MEASURES

Under current law, the owner of a stormwater management control measure (SCM) must enter into an Operations and Maintenance Agreement (O&M Agreement) with the party responsible for implementing the stormwater program under which the SCMs were approved. The O&M Agreement requires the owner to maintain, repair, or reconstruct the SCMs in accordance with the approved design plans and the O&M Plan. The O&M Agreement must be referenced on the final plat and recorded with the county Register of Deeds upon final plat approval.

Section 4.2 requires the Environmental Management Commission to amend the applicable rule to: (i) eliminate the requirement that the O&M Agreement be referenced on the final plat and recorded; and (ii) require that the O&M Agreement be referenced upon any instrument of title recorded with the county Register of Deeds. For the purposes of this section, "instrument of title" means any recorded instrument that affects title or constitutes the chain of title to real property, including, but not limited to, all deeds, wills, estate documents evidencing transfer of title, plats, surveys, easements, rights-of-way, outstanding mortgages and deeds of trust, judicial orders or decrees, and documents evidencing intestate succession.

AMEND NCDEQ FAST TRACK SEWER CERTIFICATIONS

Section 4.3 makes various changes to statutes governing review and approval of applications for sewer system extension permits for sewer extension projects that meet the applicable Minimum Design Criteria. Specifically, the section:

- Establishes a variety of deadlines, including:
 - 45 days for the Environmental Management Commission (EMC) to perform a review of a new application to determine if the application is approved, and notify the applicant accordingly. This period can be extended if the EMC determines that additional information is required to complete the review. Upon receipt of the requested additional information from the applicant, the EMC will notify the applicant that the application is complete.
 - 14 days for the EMC to issue a receipt of certification after receiving all necessary certifications from a professional engineer that the sewer system extension complies with all applicable rules and Minimum Design Criteria.
- Requires the EMC to commence rulemaking to conform its rules with the statutory changes made by this section.

This section became effective July 1, 2024.

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ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS BOARD CHANGES

The North Carolina On-Site Wastewater Contractors and Inspectors Certification Board (Board) regulates on-site wastewater contractors, inspectors and authorized on-site wastewater evaluators by setting practice standards, licensing the profession, and requiring continuing education.

Section 4.4 makes various changes to the statutes governing how the Board regulates on-site wastewater professionals by raising licensing fees, updating education requirements, and creating a new private compliance inspector license.

This section becomes effective January 1, 2025.

ALLOW PRIVATE COMPLIANCE INSPECTORS TO INSPECT CERTAIN ON-SITE WASTEWATER SYSTEMS

S.L. 2023-90 allowed Authorized On-Site Wastewater Evaluators (AOWEs) to inspect on-site wastewater systems for the purposes of verifying the conditions of the Improvement Permit (IP) and Construction Authorization (CA) have been met and issuing the operation permit.

Section 4.5 allows private compliance inspectors, as created by Section 4.4 of this act, to inspect on-site wastewater systems and verify the conditions of the IP and CA, similar to the authority granted to AOWEs. Like systems inspected and verified by AOWEs, the Department of Health and Human Services, its agents, and local health departments will be discharged and released from any liabilities, duties, and responsibilities imposed by statute or common law from any claim arising out of or attributed to the on-site wastewater system installation.

This section becomes effective January 1, 2025.

INCREASE FEES FOR LICENSED SOIL SCIENTISTS

Section 4.6 raises various fees charged by the North Carolina Board for Licensing of Soil Scientists and creates new fees for the corporate soil scientist certificate application and renewal. These fees have not been raised since they were enacted in 1995.

REGISTERED ENVIRONMENTAL HEALTH SPECIALISTS DEFENSE AND LIABILITY

Currently, any registered environmental health specialists, registered environmental health specialist interns, or registered environmental health associates (formerly referred to as "local sanitarians") enforcing the rules of the Commission for Public Health (CPH) under the authority of the Department of Health and Human Services (DHHS) is entitled to legal defense by the Attorney General and protected from liability in any civil or criminal action brought against the registered environmental health specialist, registered environmental health specialist intern, or registered environmental health associate when acting in their official capacity on account of any act or omission made in the scope and course of enforcing CPH rules. DHHS is required to pay the full amount of any judgment against the professional or any settlement made on the professional's behalf.

Section 4.7 updates the statute governing how legal defense is provided to registered environmental health specialists, registered environmental health specialist interns, or registered environmental health associates. This section requires all local health departments to contract with DHHS for the provision of environmental health services, and the agreement must include quality assurance requirements. Additionally, any registered environmental health specialist, registered environmental health specialist intern, or registered environmental health associate contracted to work for a local health department

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without a contract with DHHS will not be entitled to the defense or liability protections provided by the statute, nor will they be entitled to defense or liability protections for enforcing a local on-site wastewater rule, regardless of contract status. In the event of a judgment against or settlement on behalf of a registered environmental health specialist, registered environmental health specialist intern, or registered environmental health associate, this section requires that DHHS pay half of the amount and the local health department is required to pay the other half. The DHHS can agree, in its sole discretion, to an alternate arrangement with the local health department wherein DHHS pays more than half of the judgment or settlement depending on the individual circumstances of the case.

WATER SUPPLY WELL SETBACK CHANGES

The Environmental Management Commission is responsible for adopting rules regulating the installation of water supply wells. Currently, 15A NCAC 02C .0107 requires a minimum setback of 100 feet between any water supply well and an on-site wastewater system and drainfield, including the system's drainfield repair area in a saprolite system. For on-site wastewater systems and drainfields not in a saprolite system the minimum setback is 50 feet.

Section 4.8 reduces the minimum setback required between water supply wells and on-site wastewater systems in a saprolite system to 50 feet.

CLARIFY CHANGES TO ON-SITE WASTEWATER STATUTES

Section 4.9 makes various corrections to the changes in the on-site wastewater statutes made by S.L. 2023-90, including clarifying the responsibilities of the system owner, eliminating a redundant reference to a fee, and restoring contracting language to its pre-S.L. 2023-90 status.

This section makes conforming changes to language in S.L. 2024-1, which amends the same on-site wastewater statutes.

This section is effective retroactively to July 10, 2023.

ON-SITE WASTEWATER RULE IMPLEMENTATION CHANGES

The Commission for Public Health (CPH) adopted a new suite of rules (18E rules) regulating the installation, operation, use, and maintenance of on-site wastewater treatment systems to replace its existing on-site wastewater rules on August 4, 2021. The Rules Review Commission approved the 18E rules on September 16, 2021.

Section 2.(a) of S.L. 2022-11 delayed the effective date of the 18E rules until January 1, 2024, and S.L. 2023-77 directed the CPH to implement some of those 18E rules differently from how the CPH adopted them.

Sections 4.10–4.47 again directs the CPH to implement some of its 18E rules as provided in these sections and readopt those rules consistent with that implementation.

In general, the implementation required by this section amends and clarifies the responsibilities of on-site wastewater system owners, professional engineers and Authorized On-Site Wastewater Evaluators who design and install on-site wastewater systems, and local health departments. The implementation also allows for on-site wastewater systems and products to be used in a wider variety of site conditions and configurations, and provides additional options for installation, testing, operation, and maintenance.

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CLARIFY THE APPLICABILITY OF STATUTORY BUILT-UPON AREA REQUIREMENTS FOR STATE AND LOCAL GOVERNMENT STORMWATER PROGRAMS AND SPECIFY THAT CERTAIN ARTIFICIAL TURF IS NOT BUILT-UPON AREA

Under current law, "built-upon area" is defined as impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. Several specific surfaces are explicitly excluded from being considered built-upon area for purposes of State and local stormwater programs. However, some local governments may use other sources of statutory authority to classify these surfaces as built-upon area.

Section 4.48 adds artificial turf, installed over a pervious surface according to the manufacturer's specifications, to the list of surfaces not considered built-upon area, and clarifies that except as specifically required by federal law, a local government ordinance, comprehensive plan, or stormwater program cannot have a definition of "built-upon area" or impervious surface that does not comply with the statutory list of surfaces that are not built-upon area.

PROHIBIT PUBLIC WATER AND SEWER SYSTEMS FROM IMPOSING UNAUTHORIZED CONDITIONS AND IMPLEMENTING PREFERENCE SYSTEMS FOR ALLOCATING SERVICE TO RESIDENTIAL DEVELOPMENT

Cities and counties can adopt zoning and development regulations as authorized under Chapter 160D of the General Statutes, subject to various limitations that include the following:

- G.S. 160D-702(b) prohibits cities and counties from regulating "building design elements"¹ for residential structures, with exceptions for safety regulations, floodplain management regulations, and regulations for structures that are historic sites or manufactured housing. Property owners can voluntarily consent to building design element requirements as part of obtaining a zoning amendment or zoning, subdivision, or development approval.
- G.S. 160D-702(c) prohibits cities and counties from adopting zoning or development regulations that: (i) set a minimum square footage requirement for residential structures; (ii) require a parking space to be larger than 9 feet by 20 feet long unless the parking space is designed for handicap, parallel, or diagonal parking; or (iii) require additional entrances into a residential subdivision that are not in compliance with the number of entrance requirements for residential subdivisions set forth in the North Carolina Fire Code.

Article 8, Chapter 162A of the General Statutes authorizes local government units to impose system development fees on new development within its territorial jurisdiction to fund certain capital costs attributable to that new development.

For purposes of this fee, "local government units" are counties, cities, sanitary districts, water and sewer authorities, metropolitan water districts, metropolitan sewerage districts, metropolitan water and sewerage districts, and county water and sewer districts.

Section 4.49 prohibits local government units from requiring an applicant for water or sewer service for residential development to agree to any condition not otherwise authorized by law, or to accept any offer

¹ "Building design elements" include exterior building color; type, or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors; the number and type of rooms; and the interior layout of rooms. The phrase "building design elements" specifically excludes the height, bulk, orientation, or location of a structure on a zoning lot; the use of buffering or screening to minimize visual impacts or mitigate the impacts of light or noise; and regulations governing permitted uses of land.

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by the applicant to consent to any condition not otherwise authorized by law. These conditions include, without limitation, any of the following:

- Payment of taxes, impact fees or other fees, or contributions to any fund.
- Adherence to any restrictions related to land development or land use, including those within the scope of G.S. 160D-702(c).
- Adherence to any restrictions related to building design elements within the scope of G.S. 160D-702(b).

This section also prohibits local government units from implementing a scoring or preference system to allocate water or sewer service among applicants for water or sewer service for residential development that does any of the following:

- Includes consideration of building design elements, as defined in G.S. 160D-702(b).
- Sets a minimum square footage of any structures subject to regulation under the North Carolina Residential Code.
- Requires a parking space to be larger than 9 feet wide by 20 feet long unless the parking space is designated for handicap, parallel, or diagonal parking.
- Requires additional fire apparatus access roads into developments of one- or two-family dwellings that are not in compliance with the required number of fire apparatus access roads into developments of one- or two-family dwellings set forth in the Fire Code of the North Carolina Residential Code.

ESTABLISH A TIME LIMIT FOR REVIEW OF APPLICATIONS SUBMITTED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR WATER DISTRIBUTION SYSTEMS TO CONSTRUCT OR ALTER A PUBLIC WATER SYSTEM

The Department of Environmental Quality (DEQ) must review plans, specifications, and other information submitted by an applicant before approving the construction or alteration of a public water system.

Section 4.50 establishes a time limit for DEQ to review an application for a water distribution system authorization. DEQ is required to review an application within 45 days of receipt of a complete application when a professional engineer provides certification that the design meets or exceeds the Minimum Design Criteria applicable to the project.

Upon receipt of an application, DEQ has to perform an administrative review for completeness within 10 days and notify the applicant whether the application is complete. If it is complete, the 45-day period begins on the date the complete application was received. If not, DEQ must notify the applicant of the missing information. The 45-day review period begins on the day that DEQ receives the remaining required information.

If additional information is still required to complete the technical review, DEQ must request the additional information and the 45-day review period is paused until the additional information is received. If DEQ does not receive the information from the applicant within 30 days, it must return the application to the applicant. If DEQ does receive the information within 30 days, the technical review period time restarts and DEQ must complete the review within the number of days that remained in the technical review period on the date the technical review period was paused by the request for additional information.

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DEQ is required to issue either an authorization to construct or a denial of the application by the last day of the review period. If DEQ does not complete its review within the 45-day review period, the application will be deemed approved.

This section becomes effective December 1, 2024, and applies to applications submitted on or after that date.

CLARIFY SCOPE OF PUBLIC SWIMMING POOL LAWS TO EXEMPT PRIVATE POOLS OFFERED FOR USE THROUGH A SHARING ECONOMY PLATFORM

Current law defines "public swimming pools" as any structure, chamber, or tank containing an artificial body of water used by the public for swimming, diving, wading, recreation, or therapy, together with buildings, appurtenances, and equipment used in connection with the body of water, regardless of whether a fee is charged for its use. Public swimming pools are subject to permitting requirements and rules enforced by the Department of Health and Human Services.

Section 4.51 exempts private pools serving a single-family dwelling meeting certain requirements which are offered to individuals on a temporary basis utilizing a sharing economy platform (i.e. a peer-to-peer marketplace) from the regulations which apply to public swimming pools.

This section becomes effective July 1, 2025.

PART V. REORGANIZE BUILDING CODE COUNCIL

REORGANIZE BUILDING CODE COUNCIL

Section 5.1: Currently, the Building Code Council consists of 17 members, who are appointed by the Governor and who range from licensed architects to licensed engineers to members of local government. Among its various functions, the Building Code Council is tasked with publishing and amending various volumes of the North Carolina State Building Code. Section 1 of S.L. 2023-108, effective January 1, 2025, reorganized and created the Residential Code Council to have 13 members, who are appointed by the General Assembly and the Governor, and made various changes to clarify and conform statutory references affected by that reorganization.

This section reorganizes the Building Code Council to also have 13 members, who are appointed by the General Assembly and the Governor. The section also clarifies and conforms statutory references affected by that reorganization.

This section becomes effective January 1, 2025.

MISCELLANEOUS CHANGES TO IMPLEMENT BUILDING CODE COUNCIL AND RESIDENTIAL CODE COUNCIL REORGANIZATION

Section 5.2: This section clarifies, amends, and conforms statutory references and provisions that relate to both the reorganization of the Residential Code Council, enacted by S.L. 2023-108, and with this reorganization of the Building Code Council in this act, e.g. statutory cross-reference changes; clarifying the subject matter jurisdiction of each Council for each volume of the Code; clarifying APA application to each of the Councils, etc.

This section becomes effective January 1, 2025.

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PART VI. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SEVERABILITY CLAUSE: 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.

EFFECTIVE DATE: This bill was vetoed by the Governor on July 5, 2024, and that veto was overridden by the General Assembly on September 11, 2024. Except as otherwise provided, this act became effective September 11, 2024.

Aaron McGlothlin and Ike McRee, Legislative Analysis Division, substantially contributed to this summary.