



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

# SENATE BILL 166: 2024 Bldg. Code Regulatory Reform.

2023-2024 General Assembly

<b>Committee:</b>	House Finance. If favorable, re-refer to Rules, Calendar, and Operations of the House	<b>Date:</b>	May 8, 2024
<b>Introduced by:</b>	Sens. Krawiec, Jarvis, Lowe	<b>Prepared by:</b>	Howard Marsilio
<b>Analysis of:</b>	PCS to Third Edition S166-CSBRf-30		Trina Griffin Jennifer McGinnis Kyle Evans Staff Attorneys

**OVERVIEW:** *Senate Bill 166 would amend various development regulations, amend various North Carolina State Building Codes, amend various construction contractors and design professionals regulations, amend various environment and environmental health regulations, reorganize the Building Code Council. and eliminate ETJ within the County of Moore.*

*This PCS: rewrites Section 1.1, concerning backflow prevention; modifies Section 1.4, concerning residential plan review fee reimbursements; modifies Section 1.5, concerning withholding building permits or certificates of occupancy; deletes Section 1.9, concerning supplemental remote residential parking facilities; modifies Section 1.11, concerning model homes; modifies Section 2.2, concerning townhouse end walls; modifies Sections 5.1 & 5.2, concerning reorganization of the Building Code Council; and makes various changes to the sections concerning on-site wastewater; and deletes Part VI, concerning removing ETJ authority within the County of Moore.*

*The Finance sections are as follows:*

- *Section 1.3, which would clarify that fees collected by a local government's building inspection department may only be used to support the administration and operations of said department.*
- *Section 1.4, which would require a local government to refund a building permit applicant 10% of the application fee for each day the initial review is issued outside the required 20-day window, up to a maximum of 10 business days.*
- *Section 3.4, which would authorize a new North Carolina State Building Code permit technician certification program with corresponding fees for certification and renewal.*
- *Section 3.5, which would expand the class of individuals who may sit for the architecture licensing examination, and, therefore, pay examination fees, to those who have specified years of experience in place of an accredited master's or bachelor's degree in architecture.*
- *Section 4.4, which would increase licensing fees for on-site wastewater professionals.*
- *Section 4.6, which would increase licensing fees for soil scientists.*

Jeffrey Hudson  
Director



Legislative Analysis  
Division  
919-733-2578

# Senate 166 PCS

Page 2

## 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.

This section would generally prohibit 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. The limitation, however, would 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, would 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, would not necessitate a backflow preventer.

A public water system and its employees would be 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 would not otherwise be required by law, or by determination of high hazard by the Department, a local government would be 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 would become effective when it becomes law and applies to requirements for installation of backflow preventers made by a public water supply on or after that date.

# Senate 166 PCS

Page 3

## **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 would prohibit 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 would become 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 would clarify that fees collected by a building inspection department must be used to support the administration and operations of the building inspections department and for no other purpose.

This section would be 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 would require 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 would entitle a building permit applicant to a refund of ten percent of the building permit application fee for each business day, up to 10 business days.

This section would become effective July 1, 2024, and apply 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 separate permit or compel compliance with land use regulations unless (1) otherwise authorized by law or (2) the local government reasonably determines existence of a public safety issue related to issuance of the building permit or certificate of occupancy.

This section would clarify 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 require developers to submit an affidavit to 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

# Senate 166 PCS

Page 4

## **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 would prohibit 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 would prohibit local government 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 would prohibit inspectors from requiring affidavits attesting that work is compliant with the North Carolina Residential Code in lieu of conducting inspections required by that Code.

## **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 would clarify that curb and gutter design standard regulations shall not 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 would become effective October 1, 2024, and would apply 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 would specify that municipal development regulations shall not 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 would also require 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 would make 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 would (i) define a model home; (ii) allow 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) authorize a local government's issuance of a temporary certificate of occupancy if the permit

# Senate 166 PCS

Page 5

holder designates certain areas within the model home as a Business Group B occupancy; (iv) require areas of the model home designated as Business Group B occupancy to meet accessibility requirements under State and federal law; (v) require the permit holder to post signs identifying display areas for viewing developer's products; (vi) require utility providers to connect services requested by the permit holder upon issuance of the temporary certificate of occupancy; and (vii) require a permit holder receiving a temporary certificate of occupancy to shut off all water to model home bathroom facilities; and (viii) provide equitable bath facilities for accessibility on the premises.

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

## **PERFORMANCE GUARANTEES FOR SUBDIVISIONS**

**Section 1.12(a)** Under current law, a local government subdivision regulation may 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 would: (i) require 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) allow a developer to obtain certification from a licensed engineer that required improvements are complete if the developer and local government disagree; (iii) require return or release of a performance guarantee within 30 days upon acknowledgement or certification that required improvements are complete; and (iv) clarify that no performance guarantee may be required for maintenance of any improvement once completed to local government specification or licensed professional engineer certification that improvement is complete.

This section would become effective January 1, 2025, and would apply 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 would prohibit 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 would direct that code be amended to clarify that townhouse end unit walls may 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 shall provide a minimum cumulative fire-resistance rating of 2 hours.

# Senate 166 PCS

Page 6

## **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 would direct that code be amended to clarify GFCI reset accessibility and add indicators for sump pumps located in basements and crawlspaces.

## **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 would direct 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 would direct that code be amended to clarify that the elevation requirement for ignition sources would 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 would modify 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 speaking, 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 6 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 would modify 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.

# Senate 166 PCS

Page 7

## 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 would amend both articles with provisions that would 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 would become effective when it becomes law, and would apply 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 would increase this limitation from 600 to 1000 volts.

This section would become effective October 1, 2024.

### 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 would clarify 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 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 would require the Board to develop a State Building Code Permit Technician certificate program and certificate.

This section would become effective July 1, 2024.

### APPLICATION FOR ARCHITECTURE LICENSURE EXAMINATION

**Section 3.5:** Chapter 83A outlines the laws that relate to licensure as architects and interior designers, which include the laws that apply to The North Carolina Board of Architecture and Registered Interior Designers and its administration of examinations for licensure as an architect within this State.

# Senate 166 PCS

Page 8

This section would authorize certain persons with established engineering practice records and established substantial experience on architectural projects to become eligible to sit for an examination to become licensed as an architect.

This section would become effective October 1, 2024.

## **LOCAL GOVERNMENT REVIEW OF SEALS OF DESIGN**

**Section 3.6:** 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 would clarify that local government reviewing plans as required by Chapter 160D, Local Planning and Development Regulation, shall not make administrative decisions based on the appropriateness of the scope of work covered by seals of design.

## **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** would modify 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.

### **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** would require 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" would mean 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.



# Senate 166 PCS

Page 9

## **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:
  - 30 days for the Environmental Management Commission (EMC) to perform a review of a new application, or a permit renewal, 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 has 10 days to notify the applicant that the application is complete.
  - 10 days for the EMC to deem all necessary certifications approved and issue the permit or permit renewal, as applicable, after receipt of certification from a professional engineer that the sewer system extension complies with all applicable rules and Minimum Design Criteria.
- Prohibits the EMC, once it has requested additional information, from subsequently requesting additional information that was not previously identified as missing or required, except if required for the technical review based on any new information, changed circumstances, or changed designs provided by the applicant.
- Requires the EMC to commence rulemaking to conform its rules with the statutory changes made by this section.

This section would become effective July 1, 2024.

## **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** would make 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 would become 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** would allow private compliance inspectors, proposed to be 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, for the purposes of issuing an operation permit. Like systems inspected and verified by AOWEs, the Department of Health and Human Services, its agents, and local health departments would 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.

# Senate 166 PCS

Page 10

This section would become effective January 1, 2025.

## **INCREASE FEES FOR LICENSED SOIL SCIENTISTS**

**Section 4.6** would raise various fees charged by the North Carolina Board for Licensing of Soil Scientists and create 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 would require 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 without a contract with DHHS would not be entitled to the defense or liability protections provided by the statute, nor would 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 judgement against or settlement on behalf of a registered environmental health specialist, registered environmental health specialist intern, or registered environmental health associate, this section would require that DHHS pay half of the amount and the local health department would be required to pay the other half.

## **WATER SUPPLY WELL SETBACK CHANGES**

The EMC 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 saporlite system. For on-site wastewater systems and drainfields not in a saporlite system the minimum setback is 50 feet.

**Section 4.8** would reduce the minimum setback required between water supply wells and on-site wastewater systems in a saporlite system to 50 feet.

## **CLARIFY CHANGES TO ON-SITE WASTEWATER STATUTES**

**Section 4.9** would make 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 would make conforming changes to language in Senate Bill 508, 2023 Budget Tech/Other Corrections, currently before the Governor for his signature, which amends the same on-site wastewater statutes.

# Senate 166 PCS

Page 11

This section would be 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 direct 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.

## **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** would add artificial turf, installed over a pervious surface according to the manufacturer's specifications, to the list of surfaces not considered built-upon area, and clarify that except as specifically required by federal law, a local government ordinance, comprehensive plan, or stormwater program may not 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.

## **PART V. 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 would reorganize the Building Code Council to also have 13 members, who are appointed by the General Assembly and the Governor. This section would also clarify and conform statutory references affected by that reorganization.

# Senate 166 PCS

Page 12

This section would become effective January 1, 2025.

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

**Section 5.2:** This section would clarify, amend, and conform 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 bill, e.g.: statutory cross-reference changes; clarifying subject matter jurisdiction of each Council for each volume of the Code; clarifying APA application to each of the Councils, etc.

This section would become effective January 1, 2025.

### **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:** Except as otherwise provided, this act would become effective when it becomes law.

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