SENATE BILL 607:
Regulatory Reform Act of 2024.

2023-2024 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	**Date:**	June 26, 2024
Introduced by:	Sens. Alexander, Jarvis, Ford	**Prepared by:**	Kyle Evans Jennifer McGinnis Chris Saunders Aaron McGlothlin Staff Attorney
Analysis of:	Fourth Edition		

OVERVIEW: Senate Bill 607 would amend State laws related to occupational licensing, rulemaking, State and local government, and other miscellaneous regulations.

CURRENT LAW & BILL ANALYSIS:

PART I. OCCUPATIONAL LICENSING AND ADMINISTRATIVE PROCEDURES

ESTABLISH THE NORTH CAROLINA HEALING ARTS COMMISSION AND TO CREATE LICENSURE PROCESSES FOR REFLEXOLOGISTS, MUSIC THERAPISTS, AND NATUROPATHIC DOCTORS

Section 1.(a) would create the Healing Arts Article (Article) within Chapter 90 of the General Statutes and establish the North Carolina Healing Arts Commission (Commission) to regulate and oversee the practice and provision of healing arts in the State. The three initial healing arts professions that would be regulated under the Commission are reflexology, music therapy, and naturopathy.

The Article broadly defines "healing arts" as the "use of allopathic, complementary, or alternative approaches to the art and science of medicine for the prevention, identification, and treatment of human physical or mental conditions, diseases, ailments, illnesses, infirmities, pain, defects, or injuries and the promotion and restoration of health and wellness."

NORTH CAROLINA HEALING ARTS COMMISSION

The Commission would initially be comprised of seven members appointed by the Governor and the General Assembly, as follows:

- Two reflexologists (one appointed by the Governor, one by the Senate).
- Two music therapists (one appointed by the Governor, one by the House).
- Two naturopathic doctors (one appointed by the Governor, one by the House).
- One public member (appointed by the Governor).

After the initial appointments expire, Commission terms would be for three years. Furthermore, the music therapist appointment would alternate each subsequent term between the Senate and the House.

The Commission would have the authority to administer the provisions of the Article, adopt rules, appoint advisory committees to oversee each healing arts profession, issue, revoke, or deny North Carolina

Healing Arts Licenses, discipline licensees, conduct any necessary administrative hearings, establish fees, authorize expenditures from those collected fees, and remit funds to the advisory committees.

The Commission may establish fees for healing arts professions not exceeding the following amount:

- Issuance of a North Carolina Healing Arts License: $300
- License application and examination: $200
- North Carolina Healing Arts License renewal (annually): $350
- Late renewal fee: $200

Violations of the Article would result in a written warning for the first violation, a civil penalty of no more than $200 for the second violation, and a civil penalty of no more than $200 and a Class 1 misdemeanor for the third and each subsequent violation. The Commission would also be permitted to seek an injunction against any person found violating the Article. The clear proceeds of any civil penalty would be remitted to the Civil Penalty and Forfeiture Fund.

PRACTICE OF REFLEXOLOGY

Part 2 of the Article would provide that the practice of reflexology would be considered a healing arts profession and therefore regulated under the Article. The Article defines "reflexology" as a "protocol of manual techniques, including thumb and finger walking, hook and backup and rotating on a point, that are applied to specific reflex areas predominantly on the feet and hands and that stimulate the complex neural pathways linking body systems and support the body's efforts to function optimally" and further clarifies that the practice of reflexology is not massage and bodywork therapy as defined in Article 36 of Chapter 90.

Reflexology Advisory Committee

Part 2 would direct the Commission to create a Reflexology Advisory Committee (Reflexology AC) comprised of two reflexologists from a list of names submitted by the North Carolina Reflexology Association and a public member not engaged in the practice of reflexology or otherwise having a significant financial interest in a health service or profession. The Reflexology AC would be responsible for administering the Part, establishing and determining qualifications for the Healing Arts License in reflexology, providing proof of licensure to licensed reflexologists, maintaining a list of certified reflexologists, and making recommendations to the Commission to adopt rules; to issue, deny, revoke, or suspend licenses; and to discipline licensed reflexologists, including advising the Commission to seek civil or criminal penalties against noncertified individuals engaging in the practice of reflexology in the State.

Healing Arts License in Reflexology

To obtain a Healings Arts License in reflexology, an applicant must meet all the following criteria:

- The applicant must be at least 18 years of age.
- The applicant is of good moral character, as determined by the Reflexology AC.
- The applicant holds a national certification in reflexology from the American Reflexology Certification Board (ARCB).
- The applicant has paid an application or renewal fee to the Commission as required by this Article.

A Healing Arts License in reflexology issued by the Commission must be renewed annually on or before January 1.

Under this Article, compensation may be received for reflexology services only when those services are performed by an individual holding a North Carolina Healing Arts License in reflexology. Nonlicensed individuals providing reflexology services would be subject to the injunctive, civil, and criminal penalties of the Article, unless the individual is a reflexology student working to obtain certification from the ARCB or the individual holds a certification from the ARCB and that certification was obtained no more than six months prior to that individual receiving compensation for reflexology services.

No individual may use the title "North Carolina Certified Reflexologist" unless that individual holds a valid North Carolina Healing Arts Certificate in reflexology issued by the Commission. Individuals holding themselves out as North Carolina Certified Reflexologists must always carry a Reflexology AC-issued identification card when providing reflexology services. Individuals in violation of this subsection are subject to the injunctive, civil, and criminal penalties of the Article.

Reciprocity would be available for individuals who are licensed or certified to practice reflexology in another State, and this Article would not apply to individuals providing reflexology services if the individual is a licensed massage and bodywork therapist, physician, chiropractor, acupuncturist, physical therapist, cosmetologist, registered nurse, or a member of other professions licensed by the State so long as the reflexology services account for less than 25% of the individual's work.

PRACTICE OF MUSIC THERAPY

Part 3 of the Article would provide that the practice of music therapy would be considered a healing arts profession and therefore regulated under the Article. The Article defines "music therapy" as the "clinical and evidence based use of music interventions to accomplish individualized goals within a therapeutic relationship by a credentialed professional who has completed an approved music therapy program, including (i) assessment of a client's emotional, physical, and spiritual health, social functioning, communication abilities, and cognitive skills through the client's history and observation and interaction of the client in music and nonmusic settings; (ii) development and implementation of treatment plans, based on a client's assessed needs, using music interventions, including music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, music performance, learning through music, and movement to music; and (iii) evaluation and documentation of the client's response to treatment."

Part 3 largely matches the provisions of Part 2, except for certain items specific to music therapy, listed below:

- The Music Therapy Advisory Committee (Music Therapy AC) would be comprised of two music therapists from a list of names submitted by the Music Therapy Association of North Carolina and a public member not engaged in the practice of music therapy or otherwise having a significant financial interest in a health service or profession.
- In addition to the age, character, and fee requirements for licensure by the Music Therapy AC, the applicant must meet all the following criteria:
    - The applicant has completed an academic program accredited by the American Music Therapy Association with at least a bachelor's degree in music therapy from an accredited college or university.

- The applicant has successfully completed the certification exam offered by the Certification Board for Music Therapists.
- The applicant has completed a minimum of 1,200 hours of clinical training, with at least 180 hours in pre-internship experience and 900 hours in internship experience.

- A Healing Arts License in music therapy issued by the Commission must be renewed every five years.

PRACTICE OF NATUROPATHIC MEDICINE

Part 4 of the Article would provide that the practice of naturopathic medicine would be considered a healing arts profession and therefore regulated under the Article. The article defines "naturopathic medicine" as "a system of natural health care that employs diagnosis and treatment using diagnostic techniques and natural therapies for the promotion, maintenance, and restoration of health and the prevention of disease," including (i) the administration or provision of natural medicines, natural therapies, natural topical medicines, hydrotherapy, dietary therapy, and naturopathic physical medicine; (ii) the use of diagnostic procedures, including physical and orificial examination, but excluding endoscopy, sigmoidoscopy, and colonoscopy; and (iii) the ordering, performing, and interpretation of laboratory tests and diagnostic imaging.

A naturopathic doctor may not perform any of the following functions unless otherwise licensed by this State to do so: (i) prescribe, dispense, or administer any prescription drug or controlled substance; (ii) use general or spinal anesthetics; (iii) perform surgical procedures; (iv) administer ionizing radioactive substances for therapeutic purposes; (v) child delivery; and (vi) diagnose and treat cancer, except naturopathic doctors may provide adjunctive or complementary care of patients who have previously or currently been diagnosed with cancer.

Naturopathic Medicine Advisory Committee

Part 4 would direct the Commission to create a Naturopathic Medicine Advisory Committee (Naturopathic Medicine AC) comprised of two naturopathic doctors from a list of names submitted by the North Carolina Association of Naturopathic Physicians and a public member not engaged in the practice of naturopathic medicine or otherwise having a significant financial interest in a health service or profession. The naturopathic Medicine AC would be responsible for administering the Part, establishing and determining qualifications for the Healing Arts License in naturopathic medicine, providing proof of licensure to licensed naturopathic doctors, maintaining a list of licensed naturopathic doctors, and making recommendations to the Commission to adopt rules; to issue, deny, revoke, or suspend licenses; and to discipline licensed naturopathic doctors.

Naturopathic Doctors Formulary Council

The Naturopathic Medicine AC would be directed to establish the Naturopathic Doctors Formulary Council to develop and recommend to the Naturopathic Medicine AC, on an ongoing basis, a formulary for naturopathic doctors to use in practice. The Council would consist of six members, including two licensed naturopathic doctors, two physicians, one pharmacist, and one member of the public who is not licensed or employed in a health care profession.

Healing Arts License for Naturopathic Medicine

In addition to the age, character, and fee requirements for licensure by the Naturopathic Medicine AC, the applicant must meet all of the following criteria:

- The applicant has graduated from an approved program of naturopathic medicine offered by an institution of higher education that is accredited by a regional or national institutional accrediting body recognized by the U.S. Secretary of Education, and that is accredited or has achieved candidacy status for accreditation by the Council on Naturopathic Medical Education or an equivalent federally recognized accrediting body for the naturopathic medical profession.
- The applicant has successfully passed the Naturopathic Physicians Licensing Examination (NPLEX) administered by the North American Board of Naturopathic Examiners, or a competency-based state or Canadian province naturopathic licensing examination administered prior to the existence of NPLEX and approved by the Naturopathic Medicine AC.
- The applicant attests to having a collaboration and consultation agreement with a licensed physician.
- The applicant submits to a criminal history record check by the Naturopathic Medicine AC.

Naturopathic doctors would be required by complete at least 20 hours of continuing education approved by the Naturopathic Medicine AC as a condition for license renewal. A Healing Arts License for naturopathic medicine issued by the Commission must be renewed annually on or before January 1.

Exemptions to the Naturopathic Medicine Licensing Requirement

All of the following individuals are exempt from the prohibition against practicing naturopathic medicine without a license: (i) licensed professions under other laws of this State performing services within the authorized scope of practice for their licensed profession; (ii) the practice of naturopathic medicine by a person employed by the federal government engaged in the performance of duties prescribed by federal law; (iii) a person rendering emergency aid without compensation; (iv) the practice of naturopathic medicine by a naturopathic doctor licensed in another state when called into North Carolina to consult with a licensed health care provider for a period not to exceed six months; (v) the practice of naturopathic medicine by students completing clinical requirements; and (vi) a person who does not hold themselves out to be a naturopathic doctor when furnishing information to customers or selling, administering, or utilizing nutritional supplements, herbs, food, or homeopathic preparations at the person's retail, health spa, or health consulting establishment.

Section 1.(b) of the bill would provide that the practice of naturopathic medicine by a licensed naturopathic doctor does not constitute the practice of medicine or surgery under Article 1 of Chapter 90.

Section 1.(c) would provide that a licensed reflexologist engaged in the practice of reflexology is not required to obtain licensure under the Massage and Bodywork Therapy Practice Act.

Section 1.(d) would authorize the Department of Public Safety to provide criminal history records to the North Carolina Healing Arts Commission for applicants for licensure and to charge fees to offset the cost incurred by conducting these criminal history record checks.

The statutes imposing penalties for violating the North Carolina Healing Arts Act would become effective on the date that is the first day of a month that begins 180 days after the Chair of the Healing Arts Commission certifies to the Revisor of Statutes that the Commission has begun accepting applications for Healing Arts Licenses, and applies to acts committed on or after that date. The remainder of this section would become effective when it becomes law.

EXEMPT CERTAIN ACTIVITIES FROM REQUIRING LICENSURE AS A BARBER OR COSMETOLOGIST

The practice of barbering is regulated by the North Carolina Board of Barber and Electrolysis Examiners, and involves the following practices: (i) cutting hair, or shaving or trimming beards; (ii) dyeing hair or applying hair tonics, permanent waving or marcelling hair; and (iii) giving facial or scalp massages, or treatments with oils, creams, lotions or other preparations either by hand or mechanical appliances. Current law exempts certain persons engaged in the proper discharge of their duties from having to become a licensed barber.

The practice of cosmetology is regulated by the North Carolina Board of Cosmetic Art Examiners, and involves the acts of arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of a person by any means, including the use of hands, mechanical or electrical apparatus, or appliances or by use of cosmetic or chemical preparations or antiseptics. Current law exempts certain persons engaged in the proper discharge of their duties from having to become a licensed cosmetologist.

Section 3 would exempt persons who are employed by barbershops and whose duties are expressly confined to shampooing or blow drying of hair from having to become a licensed barber. These persons must still comply with the sanitary rules and regulations applicable to barbershops and other places where barber service is rendered.

This section would also exempt persons who are employed by cosmetic art shops whose duties are expressly confined to shampooing or blow drying of hair from having to become a licensed cosmetologist. These persons must still comply with the rules adopted by the Board of Cosmetic Art Examiners relating to sanitary management of cosmetic art shops.

INCREASE THE AMOUNT OF TRAINING REQUIRED FOR LICENSURE BY THE NORTH CAROLINA BOARD OF MASSAGE AND BODYWORK THERAPY

Under current law, 500 hours of in-class training are necessary for licensure as a massage therapist. Most massage schools in North Carolina require 650 hours for graduation even though State law only requires 500 hours for licensure. Due to a change in federal regulations effective July 1, 2024, federal financial aid will only be available for the number of education hours required for licensure in the State.

Section 4 would raise the number of in-class training hours required for licensure as a massage therapist to 650.

This section would be effective July 1, 2024, and apply to licenses issued on or after that date.

REPEAL THE RESIDENCY REQUIREMENT FOR ELECTROLOGISTS

Effective January 1, 2023, the State Board of Barber Examiners and the North Carolina Board of Electrolysis Examiners were merged into the North Carolina Board of Barber and Electrolysis Examiners (Board). Under current law, in order for a person to be licensed as an electrologist in North Carolina, the person must:

- Submit an application on a form approved by the Board.
- Be a resident of North Carolina.
- Be 21 years of age or older.
- Meet the education or experience requirements set in statute.
- Pass an examination given by the Board.

- Submit the application and examination fees required in G.S. 86B-70.

There is no residency requirement for a person to receive a license to practice barbering in North Carolina.

Section 5 would repeal the residency requirement for electrologists. An applicant for licensure would still have to meet the other requirements in current law.

AMEND EFFECTIVE DATES FOR RULES SUBMITTED TO THE CODIFIER OF RULES BY CERTAIN AGENCIES EXEMPT FROM THE STANDARD RULEMAKING PROCESS

Under current law, State agencies that are exempt from the standard rulemaking requirements under the Administrative Procedure Act, including the State Bar, are directed to submit new rules to the Codifier of Rules within 30 days after adoption. The Codifier of Rules must compile, make available for inspection, and publish these rules in the North Carolina Administrative Code.

Section 6 would provide that the rules adopted by State agencies that are exempt from the standard rulemaking requirements under the Administrative Procedure Act, including the State Bar, become effective on the first day of the month following submission to the Codifier of Rules for publication in the North Carolina Administrative Code.

FACILITATE THE ELIMINATION OF NONRESPONSIVE BOARDS, COMMITTEES, AND COMMISSIONS

Section 7 would direct the Legislative Library request documentation and confirmation of activity to all boards, committees, and commissions that have not expired or been repealed. The required documentation would include the current membership, last reported minutes, current bylaws, and a listing of the entities to which reports are to be submitted. For any board, committee, or commission that either (i) fails to respond within 120 days to the Library's request or (ii) responds but has not met within the last year, the Library will add the board, committee, or commission to a list and will submit the final compiled list to the Joint Legislative Administrative Procedure Oversight Committee. The Committee would be directed to recommend legislation to repeal the boards, committees, and commissions on the list to the 2025 Regular Session of the 2025 General Assembly upon its convening.

PART II. ENERGY, ENVIRONMENT, NATURAL RESOURCES, AND UTILITIES

DELAY FISHERIES HARVEST REPORTING SYSTEM BY ONE YEAR

Section 6 of S.L. 2023-137 created a phased in reporting requirement for certain commercial and recreational fish harvests, to be managed by the Division of Marine Fisheries of the Department of Environmental Quality and the Wildlife Resources Commission. Pursuant to the act, violation of the reporting requirement would be punishable by a verbal warning starting December 1, 2024, punishable by a warning ticket starting December 1, 2025, and punishable by an infraction and $35 fine starting December 1, 2026.

Section 8 would delay the effective dates of the above punishments by one year.

INCREASE THE PUNISHMENT FOR PROPERTY CRIMES COMMITTED AGAINST CRITICAL INFRASTRUCTURE, INCLUDING PUBLIC WATER SUPPLIES, WASTEWATER TREATMENT FACILITIES, AND MANUFACTURING FACILITIES, AND TO MAKE CONFORMING CHANGES TO UPDATE STATUTES RELATING TO DAMAGE TO UTILITIES

In 2023, legislation was enacted to:

- Update and consolidate statutes that relate to damage to utility property (electric, gas, and telecommunications).
- Increase penalties for acts of damage to energy facilities.
- Increase the penalty for trespass to energy facilities, and add a specific prohibition on trespass to wastewater treatment facilities.
- Increase the penalty for willful injury to wires and other fixtures of telephone, broadband, broadcast, or cable telecommunications.

Section 9 would:

- Update the current statute governing contamination of a public water system to:
  - Add language prohibiting injury to a public water system.
  - Extend coverage under the statute to wastewater treatment facilities (in addition to public water systems).
  - Provide that violation of the statute is punishable as a Class C felony[1], and a fine of $250,000.
  - Authorize any person injured by reason of damage to a public water system or wastewater treatment system to sue for and recover treble damages, punitive damages, costs, and attorneys' fees from the person who committed the violation, and any person who acts as an accessory before or after the fact, aids or abets, solicits, conspires, or lends material support to the violation.
- Update a statute included in the Public Utilities Chapter of the General Statutes governing willful injury to property of a public utility to:
  - Increase the punishment from a Class 1 misdemeanor to a Class C felony.
  - Authorize any person injured by reason of damage to property of a public utility to sue for and recover treble damages, punitive damages, costs, and attorneys' fees from the person who committed the violation, and any person who acts as an accessory before or after the fact, aids or abets, solicits, conspires, or lends material support to the violation.
- Create a new statute making it a Class C felony to knowingly and willfully destroy, injure, or otherwise damage, or attempt to destroy, injure, or otherwise damage, a manufacturing facility. A violation of the statute would also:
  - Be punishable by a fine of $250,000.
  - Authorize any person injured by reason of damage to a manufacturing facility to sue for and recover treble damages, punitive damages, costs, and attorneys' fees from the person who committed the violation, and any person who acts as an accessory before or after the fact, aids or abets, solicits, conspires, or lends material support to the violation.
- Exempt punitive damages that can be recovered from a person committing damage to a public water system, wastewater treatment facility, or manufacturing facility from the cap on such

[1] Contamination of a public water system is currently punishable as a Class C felony. The presumptive range of punishment for a Class C felony, assuming no prior convictions, is incarceration for a period ranging between 58–73 months (see information on punishment for the various classes of felonies (and misdemeanors) here); the aggravated range of punishment is incarceration for a period range of 73-92 months.

damages established under G.S. 1D-25 (three times the amount of compensatory damages or $250,000, whichever is greater).

This section would become effective December 1, 2024, and apply to offenses committed on or after that date.

PROHIBIT THE ACQUISITION OF QUARTZ MINING OPERATIONS AND LANDS CONTAINING HIGH PURITY QUARTZ BY FOREIGN GOVERNMENTS DESIGNATED AS ADVERSARIAL BY THE UNITED STATES DEPARTMENT OF COMMERCE

Section 10 would prohibit any state-controlled enterprise of, or the government of, a foreign nation that has been designated an adversarial foreign government by the United States Secretary of Commerce, from purchasing, acquiring, leasing, or holding any interest in either a quartz mining operation or land containing commercially valuable amounts of high purity quartz. Any transfer of an interest in land or a mining operation in violation of this section would be void. No individual who is not an adversarial foreign government would bear any civil or criminal liability for failing to determine or make inquiry of whether an individual or other entity is an adversarial foreign government.

Currently, the following foreign governments and foreign non-government persons have been found to be adversarial foreign governments:

- The People's Republic of China, including the Hong Kong Special Administrative Region (China).
- Republic of Cuba (Cuba).
- Islamic Republic of Iran (Iran).
- Democratic People's Republic of Korea (North Korea).
- Russian Federation (Russia).
- Venezuelan politician Nicolás Maduro (Maduro Regime).

This section would be effective when it becomes law and would apply only to ownership interests acquired on or after that date.

EXPAND REQUIREMENTS FOR ISSUANCE OF 401 CERTIFICATIONS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROJECTS LOCATED AT AN EXISTING OR FORMER ELECTRIC GENERATING FACILITY

Under Section 401 of the Clean Water Act, 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 if 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.

In 2023, legislation was enacted to establish statutory requirements for DEQ's handling of applications for 401 certifications for maintenance dredging projects partially funded by the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund and projects involving the **distribution or transmission** of energy or fuel, including natural gas, diesel, petroleum, or electricity, 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 5 days of the date the application is deemed complete, issue a public notice soliciting comment on the application. Within 60 days of the filing of a completed application, DEQ must 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 to 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 (USEPA) to extend that timeframe for a period not to exceed one year.
- Issue a certification upon determining that the proposed discharge into navigable waters would comply with State water quality requirements. DEQ must include as conditions in a certification any applicable effluent limitations or other limitations necessary to assure the proposed discharges into navigable waters will comply with State water quality requirements. DEQ may not impose any other conditions in a certification.
- Deny a certification application only if DEQ determines that no reasonable conditions would provide assurance that the proposed discharges will comply with State water quality requirements and include in the denial a statement explaining the determination.

Section 11 would extend these requirements to electric generation projects located at an existing or former electric generating facility.

This section would be effective when it becomes law and apply to applications for 401 certification pending or submitted on or after that date.

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

Cities and counties may 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"[2] for residential structures, with exceptions for safety regulations, floodplain management regulations, and regulations for structures that are historic sites or manufactured housing. Property owners may

[2] "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.

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: (1) set a minimum square footage requirement for residential structures; (2) 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 (3) 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 12 would prohibit 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 by the applicant to consent to any condition not otherwise authorized by law. These conditions would 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 would also prohibit 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.

NATURAL GAS LOCAL DISTRIBUTION COMPANIES COST RECOVERY MODIFICATIONS

Section 13 would amend statutes governing cost recovery for natural gas local distribution companies to provide that the Utilities Commission may authorize a rate adjustment mechanism for a company's recovery of costs to produce, purchase, and transport natural gas, which may include gas derived from renewable energy biomass resources. For purposes of the provision, "renewable energy biomass" would include agricultural waste, animal waste, wood waste, spent pulping liquors, organic waste, combustible residues, combustible gases, energy crops, landfill methane, or domestic wastewater. The company would be prohibited, however, from recovering the incremental cost of natural gas attributable to renewable energy biomass resources that exceeds the average system cost of gas unattributable to renewable energy biomass resources.

REMOVE TIME LIMITS ON CERTAIN VUR GRANTS

The Viable Utility Reserve (VUR) is an account within the Water Infrastructure Fund established to receive appropriated State funds to be used for grants to local government units for any of the following purposes:

- Providing physical interconnection and extension of public water or wastewater infrastructure to provide regional service.
- Rehabilitating existing public water or wastewater infrastructure.
- Decentralizing an existing public water system or wastewater system into smaller viable parts.
- Funding a study of rates, asset inventory and management, or merger and regionalization options.
- Funding other options deemed feasible which result in local government units generating sufficient revenues to adequately fund management and operations, personnel, appropriate levels of maintenance, and reinvestment that facilitate the provision of reliable water or wastewater services.
- Providing emergency grants for operating deficits if the Local Government Commission has exercised its powers under G.S. 159-181 to assume full or partial control over the affairs of the public water or wastewater system or of the local government unit or public authority that owns or operates the public water or wastewater system.

Under current law, emergency grants from the VUR for operating deficits to any single local government may not exceed $750,000 in any fiscal year and may not be awarded for more than three consecutive fiscal years.

Section 14 would allow emergency grants from the VUR to be awarded for more than three consecutive fiscal years.

EXEMPTION FROM STATE PARKS FEES FOR ELIGIBLE DISABLED VETERANS

The North Carolina State Parks Annual Pass program (Annual Pass Program) allows visitors to utilize equipment rentals, swimming, and more throughout the calendar year for a discounted package rate. The Annual Pass Program offers Seasonal Access Passes, Annual Passes, and Four-Wheel-Drive Beach Access Annual Passes. The Seasonal Access Pass allows unlimited admission of one vehicle at boat ramps and day-use areas at Falls Lake, Jordan Lake, and Kerr Lake State Recreation Areas. The Annual Pass covers admission fees at Falls Lake, Jordan Lake, and Kerr Lake, plus boat rentals and swim passes for up to six people at numerous State parks, boat launches at Carolina Beach and Hammocks Beach State parks, and ferry tickets for six people at Hammocks Beach State Park. The Four-Wheel-Drive Beach Access Annual Pass offers the same benefits as the Annual Pass, plus access to the four-wheel-drive beach

at Fort Fisher State Recreation Area. Without a Four-Wheel-Drive Beach Access Annual pass, a day pass costs $20 per day on weekdays and $30 per day on weekends.

Section 15 would allow a disabled veteran of any branch of the Armed Forces of the United States to apply for a pass from the Annual Pass Program in a form prescribed by the Division of Parks and Recreation (Division) of the Department of Natural and Cultural Resources (DNCR) and receive any pass included within the Annual Pass Program for no fee. A disabled veteran would have to provide to the Division a copy of the veteran's disability certification from the U.S. Department of Veterans Affairs or evidence of benefits received under 38 U.S.C. § 2101.

DNCR would be directed to adopt rules necessary to implement this section.

AUTHORIZE ESTABLISHMENT OF A MEASUREMENT LINE FOR DUNE BUILDING PROJECTS CONDUCTED PURSUANT TO PERMITTED TERMINAL GROIN CONSTRUCTION

Under the rules adopted pursuant to the Coastal Area Management Act the setback for development is typically measured in a landward direction from the vegetation line, which is defined in part as:

> "The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment."

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The rules, however, authorize the Division of Coastal Management to establish a "measurement line" in cases where a storm causes overwash or a loss of vegetation so that not enough vegetation exists to determine oceanfront setbacks. This line is located by using the most current pre-storm aerial photography to map the pre-storm vegetation line, and then moving it landward a distance equal to the average width of the beach recession caused by the storm. Measurement lines are generally temporary until the vegetation is re-established to the point where it can once again be used for determining oceanfront setbacks but may also be permanently designated by the CRC.

Section 16 would authorize the Coastal Resources Commission to, for the purpose of a dune building and beach planting project, authorize local governments that have received a permit to construct a terminal groin to establish a measurement line that represents the location of the first line of stable and natural vegetation that is covered by the dune building and beach planting project. The measurement line must be: (i) established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo dune building and beach planting project; and (ii) applicable for a period of no less than two years from the completion of the dune building and beach planting project. The CRC would be directed to amend their rules for this purpose (but implement the policy, prior to an amended rule becoming effective, once the provision becomes law.

DEQ would be directed to submit this change to the United States National Oceanic and Atmospheric Administration (NOAA) for approval. This subsection would become effective on the later of:

- September 1, 2024.
- The first day of a month that is 60 days after the Secretary of DEQ certifies to the Revisor of Statutes that NOAA has approved the changes.

PART III. STATE GOVERNMENT

EXEMPT CERTAIN FOOD SERVICE ESTABLISHMENTS FROM SEPTAGE MANAGEMENT FIRM PERMITTING REQUIREMENTS

Septage management firms must obtain a permit from the Department of Environmental Quality before commencing or continuing operation. A "septage management firm" is defined in statute as "a person engaged in the business of pumping, transporting, storing, treating, or disposing septage." This definition does not include public or community wastewater systems that treat or dispose septage.

Section 17 would provide that food service establishments not involved in pumping or vacuuming a grease appurtenance do not have to obtain a septage management firm permit.

AMEND OUTDOOR GRILL EXEMPTION FOR FOOD ESTABLISHMENTS TO INCLUDE ADDITIONAL COOKING SURFACES

S.L. 2017-18 authorized food establishments to use outdoor grills for food preparation, provided that certain criteria were met. To be eligible for use in food preparation, the outdoor grill must have a cooking surface of stainless steel or cast iron and must be located in an enclosed area and protected from environmental contamination when not in operation.

Section 18 would authorize the use of outdoor grills with stone surfaces, or any surface similar to stainless steel, cast iron, or stone, that complies with the North Carolina Food Code, as well as remove the requirement that the outdoor grill be located in an enclosed area. The requirement that the outdoor grill be protected from environmental contamination when not in use would remain.

CLARIFY MINIMUM AGE FOR ESCORT VEHICLE DRIVERS, ALLOW THIRD PARTY TRAINING AND CERTIFICATION, AND CREATE ADDITIONAL REQUIREMENTS FOR ESCORT VEHICLES

The Department of Transportation (DOT) is required to issue rules regulating escort vehicles that accompany vehicles carrying oversized or overweight loads. The statute requires that DOT issue certifications to drive escort vehicles and prohibit anyone from operating an escort vehicle without a certification. As part of the escort vehicle program, DOT has created a certification program that includes application standards and training requirements.

Section 19 would do all the following:

(1) Provide that the minimum age to obtain an escort vehicle certification cannot be higher than 18 years and prohibit any requirement that an escort vehicle driver have a commercial drivers license.
(2) Allow anyone with a commercial drivers license to take an escort vehicle certification examination without completing any other training.
(3) Authorize third parties to train and certify escort drivers pursuant to DOT's published rules for certifying escort drivers.
(4) Set certain size, lighting, and operation requirements for escort vehicles.

CLARIFY LIABILITY FOR MISMARKED UNDERGROUND FACILITIES

G.S. 87-120(d) requires anyone who plans to excavate land or demolish any structure to contact 811 Before You Dig ("the Notification Center"). The Notification Center then contacts any utility companies that have facilities on the construction site, who are then required to send a representative to the site of the proposed excavation or demolition and mark the utility lines to avoid damage.

G.S. 87-128 provides that if a utility company fails to come out and mark the property (or if they improperly mark the utility lines), anyone excavating land or demolishing a structure on the property is free to proceed and will not be liable to the utilities company for any subsequent damages to the utility lines if they proceeded with "due care" to protect and prevent damage to existing utility lines. However, G.S. 87-122 provides that an excavator may not begin excavation on an unmarked area if there are "visible indications of a [utility] at the proposed site."

Section 20 would establish a rebuttable presumption of due care by the excavator if the utility company improperly marked utility lines outside the tolerance zone, which is defined in G.S. 87-117(22) to be approximately 24 inches on either side of the utility's designated center line. This presumption would exist regardless of the presence of visible indications of a utility at the proposed site.

DELAY SUNSET FOR CERTAIN DESIGN-BUILD CONTRACTS USING FEDERAL FUNDS

Section 1.6 of S.L. 2021-189 (the 2021 Budget Technical Corrections bill) directed local governments that contract for design-build services using federal funds subject to certain federal procurement standards to comply with certain State procurement procedures. This section is set to expire on December 31, 2025.

Section 21 would delay the sunset to December 31, 2027.

PART IV. MISCELLANEOUS

REQUIRE AN ADDITIONAL MEANS OF NOTICE TO ADVERTISE PROPERTY TAX LIENS IN ADDITION TO THOSE CURRENTLY REQUIRED BY LAW

Tax collectors are required to post notices of tax liens in specific locations. County tax collectors must post a notice of a new tax lien at the county courthouse and at least once in a newspaper that circulates in the taxing district. Municipal tax collectors must post a notice of a new tax lien at the city or town hall and at least once in a newspaper that circulates in the taxing district. Currently, advertisements of tax liens must be posted between March 1 and June 30 of each year.

Failure to post the notice in accordance with G.S. 105-369(c) does not affect the validity of the tax or the tax lien.

Section 22 would require tax collectors to also post a notice of the tax lien in a conspicuous place on the taxed parcel.

This section would become effective for taxes imposed for taxable years on or after January 1, 2025.

ADVANCED AIR MOBILITY RADAR SYSTEMS

Article 10 of Chapter 63 regulates the operation of unmanned aircraft systems (commonly, "drones") in the State. Among other things, the Article requires a permit for the commercial operation of drones within the State.

Section 23 would create a framework for local governments to plan for and regulate the siting, installation, modification, maintenance, and removal of advanced air mobility radar ("radar") for traffic control of unmanned aircraft systems. Local governments would be required to require permit applications for the construction of radar and approve or deny the permits based on whether certain criteria are met, and would be directed to consider the collocation of radar on property owned by the local government.

This section would become effective October 1, 2024.

REQUIRE TRANSPARENCY IN THE SALE OR RESALE OF TICKETS TO AN ENTERTAINMENT EVENT

G.S. 75-1.1 provides that unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are unlawful. The Attorney General may institute a civil suit for violation of G.S. 75-1.1 and knowing violations are punishable by a civil penalty of up to $5,000 per violation. Additionally, individuals harmed by unfair trade practices have a private right of action and may recover treble damages.

Section 24 would require a secondary ticket exchange, ticket issuer, or reseller to meet the following requirements when listing a ticket for sale or resale:

- When the price of the ticket is displayed to the purchaser, the listing must clearly and conspicuously disclose the total price of the ticket, including all mandatory fees and the maximum order processing fee, if any.
- The total price of the ticket displayed at the beginning of the ticketing session must not increase during the ticketing session, except by the addition of the following, which are not mandatory and must be disclosed to the purchaser:
    - Actual charges required to deliver a non-electronic ticket to the address specified by the purchaser by the delivery method designated by the purchaser.
    - Taxes or fees imposed on the transaction by any government.
    - A reasonable fee for processing the order.
- The listing must clearly and conspicuously disclose to the purchaser the existence and actual dollar amount of each mandatory fee, if any, prior to the completion of the transaction. The descriptor used to identify each mandatory fee must not be deceptive or misleading.

A violation of this section would be an unfair trade practice under G.S. 75-1.1.

This section would become effective January 1, 2025, and would apply to tickets listed for sale or resale on or after that date.

TECHNICAL CORRECTION TO SESSION LAW 2023-112 CONCERNING THE WINSTON-SALEM CIVIL REVIEW BOARD

Sections 9 and 10 of S.L. 2023-112 created Civil Review Boards in Greensboro and Winston-Salem, respectively. The law contains a provision which allowed certain individuals to ask for a hearing before the board by complying with the statutory procedures.

Section 25 would restore erroneously deleted language in the Winston-Salem Civil Review Board language concerning the time for which an individual must request a Board hearing.

TECHNICAL CORRECTION TO RESTORE DELETED LANGUAGE CONCERNING FORCED CONNECTION OF COUNTY SEWER, ORIGINALLY ENACTED IN S.L. 2023-90 AND S.L. 2023-108

Section 10 of S.L. 2023-90, effective July 10, 2023, and Section 12 of S.L. 2023-108, effective August 16, 2023, both enacted provisions prohibiting the forced connection of sewer in certain circumstances by cities and counties. The language in S.L. 2023-108 concerning the city prohibition, however, was an outdated version of the language. Section 50 of S.L. 2023-137, effective October 10, 2023, deleted the outdated language in S.L. 2023-108, but also inadvertently deleted the correct language concerning the county prohibition.

Section 26 would restore the inadvertently deleted language prohibiting counties from requiring the forced connection to county sewer in certain circumstances.

COAL COMBUSTION RESIDUAL REPORT REVISION

The Department of Health and Human Servies (DHHS) is required to submit quarterly reports to the Environmental Review Commission on its activities with respect to coal combustion residual impoundments. DHHS is also required to submit annual reports to members of the General Assembly that have coal combustion residual impoundments within their district.

Section 27 would move the required DHHS report on coal combustion residual impoundments from quarterly to annually, before October 1st each year, and would authorize DHHS to combine that report with its annual report to members of the General Assembly whose district contains a coal combustion residual impoundment.

REQUIRE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO REPORT QUARTERLY ON APPLICATIONS FOR PERMITS REQUIRED FOR NATURAL GAS PIPELINES AND GAS-FIRED ELECTRIC GENERATION FACILITIES

Section 28 would require the Department of Environmental Quality to report quarterly to the Joint Legislative Commission on Energy Policy on: any applications received for permits required for siting or operation of natural gas pipelines and gas-fired electric generation facilities within the State; and, activities of DEQ to process such applications, including tracking of processing times.

This section would be effective when it becomes law and apply to applications for permits for natural gas pipelines and gas-fired electric generation facilities pending on or received on or after that date. DEQ must submit the initial report due no later than October 1, 2024.

COMBINE STORMWATER GRANT REPORT WITH WATER INFRASTRUCTURE REPORTS

The Department of Environmental Quality (DEQ) is required to report to the General Assembly annually on the accounts in its Water Infrastructure Fund (Fund), including the beginning and ending balance, grants and loans awarded from the Fund, and other related information.

The State Water Infrastructure Authority within DEQ is required to report to the General Assembly annually on its activities in awarding loans and the use of funds, as well as any legislative proposals. This report can be submitted jointly with the annual report due pursuant to G.S. 159G-26. This joint report is due November 1 of each year.

Section 12.14 of S.L. 2021-180 created the Local Assistance for Stormwater Infrastructure Fund (Stormwater Fund) as a special fund within DEQ to fund certain stormwater infrastructure projects, and required DEQ to report annually, no later than September 1, on the projects and activities funded by the Stormwater Fund.

Section 29 would allow DEQ to submit its required annual report on the Stormwater Fund along with the other required water infrastructure reports, as a single report, and would move the report date for the Stormwater Fund report to November 1.

REQUIRE ANNUAL RIVER BASIN ADVISORY COMMISSION REPORT ONLY IN YEARS WHEN THE COMMISSION MEETS

The General Assembly has established the following river basin advisory commissions: the Roanoke River Basin Bi-State Commission, the Catawba/Wateree River Basin Advisory Commission, and the Yadkin/Pee Dee River Basin Advisory Commission. These river basin advisory commissions were primarily established to provide a forum for discussing issues related to water and other natural resources, and to provide guidance and recommendations regarding the use, stewardship, and enhancement of natural resources for the purposes of integrated river basin management.

Under current law, these three river basin advisory commissions must submit an annual report by October 1 each year to both the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division.

Section 30 would change the reporting requirement for these three river basin advisory commissions. Instead of being required to submit an annual report each year, a river basin advisory commission would only be required to submit an annual report for those years in which it meets.

ELIMINATE ANNUAL REPORT ON STATE EMPLOYEES WHO HAVE BEEN FIRST RECIPIENTS

The Director of the Budget is required to report to the General Assembly on the number of State employees who have received assistance from the Work First Program in the prior calendar year. The Work First Program, within the Department of Health and Human Services, provides financial assistance to qualified families to help them achieve self-sufficiency. The maximum net family annual income eligibility standards for Work First Family Assistance range from $4,344 for a family of one to $9,256 for a family of eight.

Section 31 would eliminate the requirement that the Director of the Budget annually report the number of State employees who are Work First Program recipients.

ELIMINATE CONNECT NC BOND REPORT

S.L. 2015-280 authorized the issuance of $2,000,000 of general obligation bond debt to provide funding for: (i) projects for the UNC System, (ii) projects for the NC Community Colleges system, (iii) matching grants to local governments for parks for children with disabilities and veterans with disabilities, (iv) the Department of Environmental Quality to provide grants and loans for water and sewer improvement, (v) capital improvements for certain National Guard readiness centers, (vi) a new Plant Sciences Building for a partnership between the Department of Agriculture and Consumer Services (DACS) and NC State University, (vii) construction of a new Veterinary/Food/Drug//Motor Fuels Lab for DACS, (viii) replacing the Africa Pavilion at the NC Zoo, (ix) State Parks, and (x) the Department of Public Safety for the Samarcand Training Academy.

All entities receiving proceeds from the Connect NC Bonds are required to report quarterly to the Joint Legislative Committee on Capital Improvements. Since the issuance of these bonds, the projects have either been completed or are now funded through a State Capital Infrastructure Fund grant.

Section 32 would eliminate the NC Connect Bond reporting requirement.

EFFECTIVE DATE: Unless otherwise specified, this act would become effective when law.

Bryson Penley, Legislative Analysis Division Intern, substantially contributed to this summary.