



SENATE BILL 686: Regulatory Reform Act of 2023.

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

2023-2024 General Assembly

Committee:	Senate Agriculture, Energy, and Environment.	Date:	May 2, 2023
	If favorable, re-refer to Rules and Operations of the Senate		
Introduced by:	Sens. Sanderson, Johnson, Woodard	Prepared by:	Kyle Evans
Analysis of:	PCS to First Edition		Committee Counsel
	S686-CSBRf-8		

OVERVIEW: *The Proposed Committee Substitute (PCS) to Senate Bill 686 would amend State laws related to State and local government, agriculture, energy, environment, natural resources, and other various regulations.*

CURRENT LAW & BILL ANALYSIS:

PART I. STORMWATER CONTROL AND DEVELOPMENT PROVISIONS

CHANGES TO REQUIREMENTS FOR DEVELOPMENT IN VEGETATIVE BUFFERS

[G.S. 143-214.7](#) governs requirements for stormwater control.

- In 2015, the General Assembly enacted legislation to provide that development may occur within an area that would otherwise be required to be placed within a vegetative buffer required by statute to protect classified shellfish waters, outstanding resource waters, and high-quality waters provided the stormwater runoff from the development is collected and treated from the entire impervious area and discharged so that it passes through the vegetative buffer and is managed so that it otherwise complies with all applicable State and federal stormwater management requirements.
- In 2017, the General Assembly modified that legislation to provide that when a preexisting development is redeveloped, either in whole or in part, increased stormwater controls may only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment.
- In 2021, language was added to provide that a property owner may voluntarily elect to treat all stormwater from preexisting development or redevelopment activities for the purpose of exceeding allowable density under the applicable water supply watershed rules¹.

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

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Senate 686 PCS

Page 2

Section 1 would modify the statutory provision governing development in the vegetative buffer to:

- Eliminate the requirement that stormwater runoff from the entire impervious area of the development is collected, treated, and discharged so that it passes through a segment of the vegetative buffer and is managed so that it otherwise complies with all applicable State and federal stormwater management requirements.
- In lieu, require that stormwater runoff from the built-upon area of the vegetative buffer be collected, treated, and discharged so that it passes through a segment of the vegetative buffer and is managed so that it otherwise complies with all applicable State and federal stormwater management requirements.

CHANGES TO STORMWATER TREATMENT REQUIRED FOR EXEMPTION FROM DENSITY LIMITATIONS IN WATER SUPPLY WATERSHED

Section 2 would modify the statutory provision authorizing a property owner to voluntarily elect to treat all stormwater from preexisting development or redevelopment for the purpose of exceeding allowable density under the applicable water supply watershed rules to:

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

AMEND STORMWATER FEE CONSIDERATIONS

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

Section 3 would add stormwater control measures in use by the property as a basis on which stormwater fees may vary. This section would also provide that a fee may not be charged for properties where stormwater control measures capture all stormwater on the property.

STORMWATER TRANSPORTATION PROJECT EXEMPTION RULE CHANGE

Section 4 would direct the Commission to implement 15A NCAC 02H .1001 to exempt from stormwater program requirements any linear transportation projects undertaken by a non-Department of Transportation (DOT) that are (i) constructed in accordance with DOT Stormwater Best Management Practices Toolbox and (ii) will be conveyed to DOT or another public entity and regulated in accordance with the entity's NPDES stormwater permit. This section would also provide that this exemption applies regardless of whether the project is part of a common plan of development.

This section would become effective when law and would expire when the Commission adopts rules consistent with the implementation in Section 4(c).

Senate 686 PCS

Page 3

WETLANDS RULE CHANGE

Prior to an amendment in 2019, 15A NCAC 02B .0202 restricted the definition of "wetlands" to only those "waters of the United States as defined by 33 C.F.R. § 328.3 and 40 C.F.R. § 230.3." That restriction was removed during the Environmental Management Commission's (Commission) rule readoption process in 2019.

Section 5 would direct the Commission to implement 15A NCAC 02B .0202 consistent with the pre-2019 definition of "wetlands" restricting those waters to only those waters of the United States as defined by 33 C.F.R. § 328.2 and 40 C.F.R. § 230.2, and readopt its rule consistent with that implementation. The rule would also specify that wetlands do not include prior converted cropland, consistent with the existing rule.

WASTEWATER DESIGN FLOW RATE RULE CHANGE

The current design daily flow for new dwellings, established in 15A NCAC 02T .0114, is 120 gallons per day per bedroom. The minimum volume of sewage from each dwelling unit shall be 240 gallons per day and each additional bedroom above two bedrooms shall increase the volume by 120 gallons per day.

Section 6 would direct the Commission to implement 15A NCAC 02T .0114 to set the design daily flow for dwelling units to 75 gallons per day per bedroom. This section would also set the minimum volume of sewage from each dwelling unit to 75 gallons per day and each additional bedroom above two bedrooms shall increase the volume by 75 gallons per day.

PART II. MARINE FISHERIES PROVISIONS

DIRECT THE MARINE FISHERIES COMMISSION TO ADOPT CERTAIN RULES

The Marine Fisheries Commission (MFC) is authorized to adopt rules regulating marine and estuarine resources in the State.

Section 7 would direct the MFC to adopt rules providing for the voluntary reporting of all coastal and marine finfish harvested by holders of recreational and commercial fishing licenses.

ESTABLISH AN EXPIRATION DATE FOR FISHERIES PROCLAMATIONS AND PROVIDE FOR A PERSON TO PETITION FOR A CONTESTED CASE TO CHALLENGE THE ISSUANCE OR RENEWAL OF A PROCLAMATION

Under current law, pursuant to a delegation of authority from the Marine Fisheries Commission (MFC), the Director of the Division of Marine Fisheries is authorized to issue proclamations suspending or implementing rules of the MFC that are affected by variable conditions. These proclamations are not subject to the Administrative Procedure Act. The Chair of the MFC may call an emergency meeting on the request of at least 5 members of the MFC to review an issued or proposed proclamation or to review the desirability of directing the Fisheries Director to issue a proclamation to prohibit or allow the taking of certain fisheries resources. The MFC may, at the emergency meeting, approve, cancel, or modify the proclamation, or direct the Fisheries Director to issue a proclamation that prohibits or allows the taking of certain fisheries resources. The decisions of the MFC are final and may not be set aside on judicial review unless they are found to be arbitrary and capricious.

Section 8 would:

Senate 686 PCS

Page 4

- Limit the duration of a proclamation that prohibits the taking of certain fisheries resources for public health reasons or that governs a quota-managed fishery to 12 months, unless renewed by the Fisheries Director.
- Allow for proclamation decisions of the MFC to be set aside on judicial review for other reasons besides being arbitrary and capricious.
- Allow a person aggrieved by the issuance or renewal of a proclamation to file a petition for a contested case.

PART III. WATER PERMITTING AND QUALITY PROVISIONS

DREDGE PERMIT SHOTCLOCK FOR UNITED STATES COAST GUARD MARKED NAVIGATIONAL CHANNELS

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

Section 9 would, for applications for activities in a United States Coast Guard marked navigational channel, shorten the deadline from 75 days to 30 days, with an option for DEQ to extend the deadline by another 30 days. Failure by DEQ to act within the shortened time frame would automatically approve the permit.

SHALLOW DRAFT NAVIGATION CHANNEL DREDGING AND AQUATIC WEED FUND CHANGES

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

Section 10 would:

- Repeal the authorization for funds in the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund to be used to provide funding for siting and acquisition of dredged disposal easement sites associated with the maintenance of the Atlantic Intracoastal Waterway between the border with the state of South Carolina and the border with the Commonwealth of Virginia.
- Prohibit the award of grants or other funding from the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund to the United States Army Corps of Engineers.

Clarify that the term "shallow draft navigation channel" means a waterway connection with a maximum depth of 16 feet, including the depth of overdepth for navigational depth compliance, and includes Mason Inlet, Rich Inlet, Tubbs Inlet, and the Southport Small Boat Harbors.

Senate 686 PCS

Page 5

FLOATATION DEVICES REQUIREMENTS

Section 11 would require that any polystyrene flotation devices installed on a dock, buoy, or float must be encapsulated by a protective covering to prevent the polystyrene from disintegrating. This provision would not apply to polystyrene used in the construction, maintenance, or operation of boats or vessels, but would require that such polystyrene be effectively contained and lawfully disposed of. This section would also prohibit the sale of polystyrene flotation devices unless encapsulated in compliance with this provision.

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

PART IV. SOLID AND HAZARDOUS WASTE PROVISIONS

PROHIBIT DISPOSAL OF LITHIUM-ION BATTERIES IN LANDFILLS

SECTION 12 would prohibit the disposal of a lithium-ion battery in a landfill, incinerator, or in any waste-to-energy facility. A lithium-ion battery would need to be taken to a collection or recycling facility authorized under the statutes governing solid and hazardous waste or by the United States Environmental Protection Agency. A person violating this provision would be subject to a civil penalty of not more than \$50.00 per violation.

LIMIT DISPOSAL OF SOLAR PANELS TO LINED LANDFILLS AND OTHER APPROVED COLLECTION OR RECYCLING FACILITIES

SECTION 13 would prohibit the disposal of a photovoltaic module in an incinerator, any waste-to-energy facility, or landfill, except for a municipal solid waste landfill (which is lined). A photovoltaic module would need to be taken to a collection or recycling facility authorized under the statutes governing solid and hazardous waste or by the United States Environmental Protection Agency. A person violating this provision would be subject to a civil penalty of not more than \$50.00 per violation.

CLARIFY AND LIMIT BROWNFIELD PROGRAM CONSTRUCTION

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

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

Senate 686 PCS

Page 6

who caused or contributed to the contamination, as site remedies under the Brownfields Program are designed to prevent exposure and make the site suitable for reuse, rather than meet environmental standards required under the traditional cleanup programs.

SECTION 14 would amend the brownfields' statute to provide that the law must not be construed to:

- Authorize the Department to place a restriction on the use of a brownfields property more strict than federal law.
- Limit or preclude a prospective developer from performing an investigation of a brownfields property without prior approval from the Department.

INCREASE FEE FOR CERTAIN HAZARDOUS WASTE GENERATORS

Section 15 would increase the annual fee for a person who generates more than 100 kilograms of hazardous waste per month, but less than 1000 kilograms of hazardous waste per month, from \$175 to \$300.

PART V. STATE GOVERNMENT PROVISIONS

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

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

Section 16 would direct the North Carolina Building Code Council to implement the Code so that no building requirements for piers or docks built in estuarine waters are inconsistent with the requirements of the applicable "Docks, Piers, Bulkheads, and Water Structures" Chapter in the 2009 North Carolina Building Code.

DISAPPROVE CERTAIN DOA RULES

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

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

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

Section 17 would disapprove two rules adopted by DOA subject to legislative review.

Senate 686 PCS

Page 7

RETENTION OF MEDICAL RECORDS

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

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

Section 18 would codify into State statute a requirement that health care providers retain medical records for a minimum of ten years from the date of service to which the medical record pertains, or in the case of a minor until the patient's 28th birthday.

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

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

Section 19 would clarify that a nonprofit organization offering real property as a prize in a raffle must provide the property free from all liens, provide an owner affidavit and indemnity agreement, and provide a title commitment for the property and shall make that commitment available for inspection upon request. Additionally, this section would repeal the maximum real property prize value of \$500,000 in any one raffle, but would limit the total appraised value of all real property prizes offered by any nonprofit organization to \$2,000,000 per calendar year.

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

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

Jennifer McGinnis, Chris Saunders, and Aaron McGlothlin, Committee Counsel, substantially contributed to this summary.