HOUSE BILL 600:
Regulatory Reform Act of 2023.

2023-2024 General Assembly

Committee:		**Date:**	July 12, 2023
Introduced by:	Reps. Riddell, Zenger, Brody, Chesser	**Prepared by:**	Kyle Evans
Analysis of:	Sixth Edition		Staff Attorney

OVERVIEW: House Bill 600 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. AGRICULTURE, ENERGY, ENVIRONMENT, AND NATURAL RESOURCES PROVISIONS

STORMWATER PERMITTING MODIFICATIONS (SECTIONS 1–4)

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 rules[1].

[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.

WATER SUPPLY WATERSHED PROTECTION CHANGES

Section 1 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 either:

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

STORMWATER PROGRAM CHANGES

Section 2 would:

- Modify the statutory provision governing development in the vegetative buffer to provide that the entire impervious area of a development shall not include any portion of a project that is within a Department of Transportation or municipal right-of-way.
- Modify the language providing that when a preexisting development is redeveloped, either in whole or in part, increased stormwater controls may only be required for impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment irrespective of whether the impervious surface that existed before the redevelopment is to be demolished or relocated during the development activity.
- Make a conforming change to the water supply watershed statute regarding changes made in Section 1 of this act allowing a property owner to treat only the stormwater resulting from the net increase in built-upon areas.
- Add a new provision to allow an applicant for a new stormwater permit, or a reissuance of a permit due to transfer, modification, or renewal, to submit that application, at the applicant's option to a unit of local government with permitting authority in the relevant jurisdiction, or to any local government in a joint stormwater program where a local government in the joint program has permitting authority in the relevant jurisdiction.

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.

EXEMPTION FROM REQUIREMENTS OF POST-CONSTRUCTION STORMWATER RULE

Section .1000 of 15A NCAC 02H establishes post-construction stormwater requirements for certain development projects. 15A NCAC 02H .1001 (Post Construction Stormwater Management: Purpose and Scope) sets forth various exemptions from the section's requirements, including linear transportation projects undertaken by an entity other than the NCDOT, when:

- The project is constructed to NCDOT standards and is in accordance with the NCDOT Stormwater Best Management Practices.
- Upon completion, the project will be conveyed either to the NCDOT or another public entity and will be regulated in accordance with that entity's NPDES MS4 stormwater permit; and
- The project is not part of a common plan of development.

Section 4 would require the Environmental Management Commission to modify 15A NCAC 02H .1001 to strike the reference to "common plan of development" in the exemption described above, thereby allowing an exemption for public linear transportation projects undertaken by an entity other than the North Carolina Department of Transportation, which are part of a common plan of development (and comply with the other two criteria), from requirements under the rule. Under those rules, the following relevant definitions apply:

- "Public linear transportation project" means a project consisting of a road, bridge, sidewalk, greenway, or railway that is on a public thoroughfare plan or provides improved access for existing development and that is owned and maintained by a public entity.
- "Common plan of development" means a site where multiple separate and distinct development activities may be taking place at different times on different schedules but governed by a single development plan regardless of ownership of the parcels. Information that may be used to determine a "common plan of development" include plats, blueprints, marketing plans, contracts, building permits, public notices or hearings, zoning requests, and infrastructure development plans.

MODIFY CERTAIN RULES RELATED TO DEVELOPMENT DENSITY IN WATER SUPPLY WATERSHEDS, AS APPLICABLE IN IREDELL COUNTY AND THE TOWN OF MOORESVILLE

Pursuant to 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.

15A NCAC 02B .0624(7) authorizes local governments to exercise the "10/70 option" whereby a maximum of 10 percent of the land area of a water supply watershed outside of the critical areas may be developed up to 70 percent built-upon area.

Section 5 would direct the EMC to implement 15A NCAC 02B .0624 to authorize Iredell County and the Town of Mooresville to regulate development in water supply watersheds within their planning jurisdiction so that a maximum of 20 percent of the land area of a water supply watershed outside of the critical areas may be developed up to 70 percent built-upon area.

PHASED IN MANDATORY COMMERCIAL AND RECREATIONAL REPORTING OF CERTAIN FISH HARVESTS

Section 6 would require that any person holding a recreational fishing license that harvests red drum, flounder, spotted seatrout, striped bass, or weakfish from coastal fishing waters, joint fishing waters, or inland fishing waters adjacent to coastal fishing waters must report that harvest to the Division of Marine Fisheries (DMF). Additionally, any person holding a commercial fishing license engaged in a commercial fishing operation who harvests any fish, regardless of sale, would be required to report that harvest to DMF. The Marine Fisheries Commission and the Wildlife Resources Commission (WRC) would be required to adopt rules to implement this section.

This section would become effective December 1, 2024. Violations of this section would be punishable only by a verbal warning beginning December 1, 2024. Beginning December 1, 2025, violations would be punishable by issuance of a warning ticket. Beginning December 1, 2026, violations would be punishable as an infraction with a fine of no more than $35 and provide that DMF or WRC, as appropriate, may suspend, revoke, or refuse to reissue fishing licenses for repeat violations or refusal to pay the fine.

ESTABLISH CERTAIN REQUIREMENTS FOR ISSUANCE OF 401 CERTIFICATIONS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR PROJECTS INVOLVING THE DISTRIBUTION OR TRANSMISSION OF ENERGY OR FUEL

Under Section 401 of the Clean Water Act (Section 401), 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.

As of the date of this summary, the United States Environmental Protection Agency has pending regulations governing states' issuance of 401 certifications, which include, among other things, a requirement that states consider activity "as a whole," rather than just point source discharges from a proposed project.

Section 7.1 of the bill would establish statutory requirements for DEQ's handling of applications for 401 certifications for 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 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.

DIRECT DEPARTMENT OF ENVIRONMENTAL QUALITY TO PREPARE A HUMAN HEALTH RISK ASSESSMENT FOR 1,4-DIOXANE IN DRINKING WATER AND EVALUATE COMMERCIALLY AVAILABLE TECHNOLOGY TO REMOVE 1,4 DIOXANE FROM WASTEWATER EFFLUENT

Section 7.3(a) would direct DEQ to prepare a human health risk assessment of 1,4-dioxane in drinking water supported by peer-reviewed scientific studies. The Department would be required to deliver the assessment to the Joint Legislative Commission on Governmental Operations no later than October 1, 2023.

Section 7.3(b) would direct DEQ to evaluate the technologies that are commercially available to remove 1,4-dioxane from wastewater effluent at facilities at various flow volumes, including at flow volumes of greater than 1 million gallons per day. The Department would be required to report its findings of the technical and economic feasibility and limitations of each treatment technology and a cost benefit analysis to the Joint Legislative Commission on Governmental Operations no later than January 15, 2024.

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 8 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, and instead allow funds to be used for the siting and acquisition of dredged disposal sites.
- Require that any invoices submitted to the Secretary for reimbursement or payment from the Fund for eligible dredging projects must be signed by the representative of the unit of local government sponsoring the project.
- Clarify that the term "shallow draft navigation channel" means a waterway connection with a maximum depth of 18 feet, including the depth of overdepth for navigational depth compliance, and includes Mason Inlet, Rich Inlet, Tubbs Inlet, and the Southport Small Boat Harbors.

SHALLOW DRAFT RULES APPLICABILITY CHANGE

Section 12.1(a) of S.L. 2022-74 provided that the Secretary of DEQ was only authorized to accept applications for grants from the Shallow Draft Fund for nonfederal costs of projects sponsored by units of local government for dredging projects in State waters. DEQ was directed to adopt rules pursuant to this change, and those rules provide that the projects funded by the Shallow Draft Fund that are related to dredging federally authorized channels where the work is performed by the US Army Corps of Engineers (Corps) are exempt from those rules.

Section 8.5 would direct DEQ to implement its Shallow Draft rules such that dredging projects in federally authorized channels where the work is performed by the Corps are not exempt from the rules otherwise applicable to local governments applying for grant funds from the Shallow Draft Fund, and readopt its rules consistent with that implementation. Rules readopted pursuant to this section would be required to be submitted to the Rules Review Commission, pursuant to Chapter 150B of the General Statutes.

FLOTATION DEVICES REQUIREMENTS

Section 9 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.

ADD NEW PROCEDURAL REQUIREMENTS FOR COASTAL AREA MANAGEMENT ACT GUIDELINES

Section 10 would require DEQ to make available to the public on DEQ's website either (i) the entirety of any State guidelines for the coastal area or (ii) a link to those guidelines in the Administrative Code on the Office of Administrative Hearings website. The guidelines must include a citation to the law under which the rule was adopted, consistent with existing administrative law requirements.

REQUIRE STATUTORY OR REGULATORY CITATION FOR ANY CONDITIONS IN A PERMIT ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY

Section 10.5 would require DEQ to include in any permit issued by DEQ the statutory or regulatory authority for any permit conditions required in the permit.

REVISE 2020 FARM ACT TMDL TRANSPORT FACTOR CALCULATION APPLICABILITY

Sections 15.(a) and 15.(b) of S.L. 2020-18 provided that nutrient offset credits must be applied to a wastewater permit by applying the Total Maximum Daily Load (TMDL) transport factor to the permitted wastewater discharge and to the nutrient offset credits. These sections apply only to wastewater discharge permit applications for a local government located in the Neuse River Basin with a customer base of fewer than 15,000 connections.

Section 15.(c) provided that no later than August 1, 2020, the Department of Environmental Quality (DEQ), in conjunction with affected parties, must begin modeling necessary to determine new transport zones and delivery factors for the Neuse River Basin for point source discharges and nutrient offset credits. Once DEQ completed that modeling, the Environmental Management Commission must then adopt new transport zones and delivery factors by rule, using the DEQ modeling and other information provided during the public comment period.

This section became effective June 12, 2020. Sections 15.(a) and 15.(b) expire when the rule required by Section 15.(c) becomes effective.

States are generally responsible for developing TMDLs, but must submit those TMDLs to the Environmental Protection Agency for approval pursuant to the federal Clean Water Act and 40 C.F.R. 130.7.

Section 11 would make the following changes to Section 15 of S.L. 2020-18:

- Amend subsection (a) to direct that nutrient offset credits be applied as specified in the 1999 Phase I TMDL.
- Repeal subsection (b), limiting the provision to local governments located in the Neuse River Basin with a customer base of fewer than 15,000 connections.
- Amend subsection (c) to provide that DEQ is permitted, but no longer required, to begin modeling to determine new transport zone and delivery factors for the Neuse River Basin for point source discharges and nutrient offset credits. Once DEQ completes the modeling, it must provide EMC with a list of qualified professionals from which EMC must select at least two to validate the modeling. The EMC may use the modeling, if validated, to adopt new transport zone and delivery factors.

CLARIFY CERTAIN ENVIRONMENTAL PERMITTING LAWS APPLICABLE TO AGRICULTURAL ACTIVITIES

Current law requires any person who constructs or operates an animal waste management system to obtain a permit under either the general Control of Pollution Part of the Water and Air Resources Article or under the Animal Waste Management Systems Part of that Article.

G.S. 143-215.1(i) and (k) provide that any person required to obtain an individual permit from the Commission for a disposal system under the authority of that section or Chapter 130A of the General Statutes must have a compliance boundary established by rule or permit for various categories of disposal

systems and beyond which groundwater quality standards may not be exceeded, and that the EMC must require the permittee to undertake corrective action to restore the groundwater quality.

Section 12(a) would provide that a person who constructs or operates an animal waste management system only need obtain a permit under the Animal Waste Management Systems Part. This would not eliminate a permittee's responsibility to obtain an NPDES permit. **Subsection (b)** would provide that, for animal waste management systems, the EMC could not deny a permit application, or attach a condition to the permit except when the EMC determines that a denial or condition is required by the statutes governing the permitting of animal waste management systems. **Subsection (b)** would also provide that permitted animal waste management systems must have compliance boundaries and must undertake corrective action in the event that groundwater standards are violated, consistent with the requirements for other disposal systems, and that a permit applicant, permittee, or dissatisfied third party may commence a contested case by filing a petition within 30 days of the EMC notifying the applicant or permittee of its permit decision. If a petition is not filed within 30 days, the EMC's decision is final and not subject to review.

PROHIBIT SALE OF NUTRIENT OFFSETS FROM MUNICIPAL NUTRIENT OFFSET BANKS TO ANY ENTITY OTHER THAN A GOVERNMENT ENTITY OR A UNIT OF LOCAL GOVERNMENT

Various river basins and watersheds in the State are subject to nutrient reduction strategies for nitrogen and phosphorus (Neuse River Basin, Tar-Pamlico River Basin, Jordan Lake Watershed, and Falls Lake Watershed). The rules regulate sources of nutrient pollution in each basin or watershed including wastewater, stormwater, and agricultural nutrient sources. Where nutrient reduction requirements exist Nutrient Offset Mitigation may be required for any new or existing development. The statutes authorize the purchase of nutrient offset credits to offset nutrient loadings to surface waters as follows:

- A government entity[2] may purchase nutrient offset credits through either:
    (1) Participation in a nutrient offset bank that has been approved by DEQ if DEQ approves the use of the bank for the required nutrient offsets.
    (2) Payment of a nutrient offset fee established by DEQ into the Riparian Buffer Restoration Fund.
- A party other than a government entity, may purchase nutrient offset credits through either:
    (1) Participation in a nutrient offset bank that has been approved by DEQ if DEQ approves the use of the bank for the required nutrient offsets.
    (2) Payment of a nutrient offset fee established by DEQ into the Riparian Buffer Restoration Fund if the applicant who demonstrates that the option previous option is unavailable.

Section 13 would prohibit nutrient offset banks approved by DEQ and owned by a unit of local government from selling nutrient offset credits to any entity other than a government entity or unit of local government. This section would become effective when law and would apply to nutrient offset banks owned by a unit of local government and approved by DEQ on or after that date, except that it would not

[2] Defined as "[t]he State and its agencies and subdivisions, or the federal government. 'Government entity' does not include a unit of local government unless the unit of local government was a party to a mitigation banking instrument executed on or before July 1, 2011, notwithstanding subsequent amendments to such instrument executed after July 1, 2011."

apply to a unit of local government that has a nutrient offset banking instrument approved by DEQ prior to the effective date of this section.

SHORTEN SEPTAGE MANAGEMENT PERMITTING REVIEW AND CLARIFY PUMPER TRUCK FEE

Septage management firms must obtain permits from DEQ before commencing or continuing operation. DEQ must act on a permit within 90 days of receiving a complete permit application. Septage management firms are also required to pay an annual fee of $550 for operating a single pumper truck or an annual fee of $800 for operating two or more pumper trucks.

Section 13.5 would shorten the permit review period to 60 business days, require DEQ to cite the reason for permit denial, provide that a septage management firm is deemed permitted if DEQ fails to act within the 60-day period if all other applicable waste management requirements are met, and clarify that, for the purposes of calculating the truck fee, the number of pumper trucks shall be limited to only those pumper trucks and vehicles used in the transportation, containment, or consolidation of liquid septage that transport septage on State-maintained roads.

PROHIBIT COUNTIES FROM REGULATING BY ORDINANCE CERTAIN OFF-SITE WASTEWATER SYSTEMS

Current law provides that municipalities shall not prohibit or regulate by ordinance the use of off-site wastewater systems or other Department-approved systems when the proposed systems meet those requirements.

Section 14 would extend this prohibition to counties.

AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO AMEND WASTEWATER DESIGN FLOW RATE RULES CONSISTENT WITH S.L. 2023-55

As a part of its National Pollutant Discharge Elimination System (NPDES) wastewater permit, a wastewater treatment system must meet certain minimum design and capacity requirements, including a requirement that the system can handle the proposed flow of the various users and uses of the system. S.L. 2023-55 codified the design flow rate for new dwellings to 75 gallons per day per bedroom. Current rule sets the flow rate at 120 gallons per day per bedroom.

Section 15 would direct the Environmental Management Commission (EMC) to readopt its existing rule for design daily flow rate rule consistent with a rate of 75 gallons per day per bedroom pursuant to S.L. 2023-55.

PROHIBIT DISPOSAL OF LITHIUM-ION BATTERIES IN LANDFILLS; LIMIT DISPOSAL OF SOLAR PANELS TO LINED LANDFILLS AND OTHER APPROVED FACILITIES

Section 16 would prohibit the disposal of a lithium-ion battery in a landfill or incinerator. This section would also prohibit the disposal of a photovoltaic (PV) module, or components thereof, in a sanitary landfill for the disposal of construction and demolition debris waste that is unlined or in any other unlined landfill. A PV module, or components thereof, not shipped for reuse or not recyclable would need to properly be disposed of in an industrial landfill or a municipal solid waste landfill. Any PV modules that meet the definition of hazardous waste must comply with applicable hazardous waste requirements for disposal and recycling.

DEQ may adopt rules to establish a regulatory framework for the proper handling of end-of-life for lithium batteries and PV modules.

This section would become effective December 1, 2026, and apply to offenses committed on or after that date.

CLARIFY 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 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 17 would amend the brownfields' statute to provide that the law must not be construed to limit or preclude a prospective developer from performing an investigation of a brownfields property without prior approval from the Department.

MODIFY THE APPLICATION OF RIPARIAN BUFFER RULES REGARDING AIRPORT FACILITIES

Six river basins or watersheds across the State have specific riparian buffer rules: the Neuse, Tar-Pamlico, Catawba, Randleman Goose Creek, and Jordan rules. These rules generally require a 50-foot riparian buffer that is divided into two zones. The 30 feet closest to the water (Zone 1) must remain undisturbed. The outer 20 feet (Zone 2) can be managed vegetation, such as lawns or shrubbery. The rules do, however allow for uses that are present and ongoing (i.e., existing uses) to remain in the buffer. For new uses, the riparian buffer rules include a Table of Uses that lists activities allowed in each zone of the buffer. There are three different categories of allowable activities:

- Exempt uses are allowed in the riparian buffer without approval from the Division or Local Government.
- Allowable uses may occur in the buffer on a case-by-case basis with approval from the Division or Local Government.

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

The Neuse and Jordan rules currently include detailed definitions for "airport facilities" and in their respective Table of Uses, designate allowable and allowable with mitigation uses.

In the case where a use is "allowable," or "allowable with mitigation," generally the rules require an Authorization Certificate under 15A NCAC 02B .0611(b) for any work in connection with an Airport Impacted Property.

Section 18 would:

- Modify the definition for "airport facilities" in these sections of the rules to "include all areas used or suitable for use as borrow areas, staging areas, or other similar areas of the airport that are used or suitable for use directly or indirectly in connection with the construction, dismantling, modification or similar action pertaining to any of the properties, facilities, buildings, or structures" already described in the rules. The provision would also apply this modified definition, as relevant, in other sections of the Subchapter.
- Provide that notwithstanding any provisions of the Neuse River Basin Buffer Rules, no Authorization Certificate would be required for any work in connection with an Airport Impacted Property, but such work would be required to provide for mitigation in conformance with applicable Neuse River Basin Riparian Buffer Rules.

MODIFY CERTAIN PROVISIONS OF THE FLOODPLAIN REGULATION STATUTES TO DIRECT THE DEPARTMENT OF PUBLIC SAFETY TO ISSUE FLOODPLAIN PERMITS FOR CERTAIN AIRPORT PROJECTS

The statutes on "floodway regulation":

- Authorize local governments to adopt ordinances to regulate uses in flood hazard areas and grant permits for the use of flood hazard areas.
- Require the Department of Public Safety (DPS) to provide advice and assistance to any local government having responsibilities under the regulations. In exercising this function, the Department may furnish manuals, suggested standards, plans, and other technical data; conduct training programs; give advice and assistance with respect to delineation of flood hazard areas and the development of appropriate ordinances; and provide any other advice and assistance that the Department deems appropriate.
- Authorize DPS to prepare a floodplain map that identifies the 100-year floodplain, in certain circumstances.

Section 19 would require DPS to grant a permit for the use of an eligible flood hazard area in connection with an airport project for which an airport authority received a no-rise certificate for that airport project where there is no local government that has a clearly demonstrated statutory authority to issue such a permit for the airport project for the use of a flood hazard area. In the event the Department does not issue a permit for the airport project within 30 days of its receipt of a written request submitted by an airport authority for an airport project, the permit is deemed issued to the airport authority for the airport project by operation of law. Various criteria for an "eligible flood hazard area" would be established by the bill. A "no-rise certificate" would be defined as a certificate "that has been accepted by the Department as demonstrating through hydrologic and hydraulic analyses performed in accordance with standard

engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge."

UTILITIES COMMISSION AUTHORITY TO ALLOW OWNERS' ASSOCIATIONS TO CHARGE FOR THE COSTS OF PROVIDING WATER AND SEWER SERVICE

To encourage water conservation, G.S. 62-110(g) authorizes the Utilities Commission (Commission) to adopt procedures that allow a lessor to charge for the costs of providing water or sewer service to persons who occupy a leased premises. The statute required that all charges for water or sewer service be based on the user's metered consumption of water, which must be determined by metered measurement of all water consumed. In 2022, the Commission was authorized to adopt procedures to allow a lessor of a leased residential premise to equally divide the amount of a water and sewer bill for a unit among all the lessees in the unit and bill each lessee accordingly.

Section 20 would authorize the Commission to adopt procedures to allow an owners' association to charge for the costs of providing water or sewer service to persons who occupy townhomes within a planned community, and a unit owners' association to charge for the costs of providing water or sewer service to persons who occupy a condominium. For purposes of this section, a townhome is a single-family dwelling unit constructed in a group of three or more attached units.

INCREASE MINIMUM BOND REQUIRED BEFORE A FRANCHISE CAN BE GRANTED TO A WATER OR SEWER UTILITY COMPANY

Before a franchise may be granted to any water or sewer utility company, the applicant for the franchise must furnish a bond in an amount not less than $10,000. If an emergency operator is appointed by the Utilities Commission, with the consent of the owner or operator of the utility company, the bond is forfeited.

Section 21 would increase the minimum bond required from $10,000 to $25,000 and would provide that the bond would be forfeited if the Utilities Commission appoints an emergency operator pursuant to the existing statutory procedure for the issuance or temporary or emergency authority by the Utilities Commission.

PART II. STATE AND LOCAL GOVERNMENT PROVISIONS

LIMIT LOCAL GOVERNMENT ZONING AUTHORITY TO REQUIRE FIRE ACCESS ROADS IN EXCESS OF THE FIRE CODE OF THE NORTH CAROLINA RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS

Under current law, local government zoning and development regulations may not (i) set a minimum square footage of structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings, or (ii) set a maximum parking space size larger than 9 feet wide by 20 feet long unless the parking space is designated for handicap, parallel, or diagonal parking.

Section 22 would additionally prohibit local government zoning and development regulations from requiring additional entrances into a residential subdivision that are not in compliance with the number of entrance requirements into a residential subdivision set forth in the Fire Code of the North Carolina Residential Code for One- and Two-Family Dwellings.

This section would be effective when it becomes law and would apply to existing municipal or county ordinances. Any municipal or county ordinance inconsistent with this section would be void and unenforceable.

PROHIBIT COUNTIES AND CITIES FROM REGULATING CERTAIN ONLINE MARKETPLACES

Section 22.5 would prohibit counties or cities from doing the following:

- Regulating the operation of an online marketplace.
- Requiring an online marketplace to provide personally identifiable information of users, unless pursuant to a subpoena or court order.

This section would also define "online marketplace" as a person or entity that does both of the following:

- Provides for consideration, regardless of whether the consideration is deducted as a fee from the transaction, an online application, software, website, system, or other medium through which a service is advertised in this State or is offered to the public as available in this State.
- Provides, directly or indirectly, or maintains a platform for services by performing any of the following:
    - Providing a payment system that facilitates a transaction between two platform users.
    - Transmitting or otherwise communicating the offer or acceptance of a transaction between the two platform users.
    - Owning or operating the electronic infrastructure or technology that brings two or more users together.

The term "online marketplace" would not include any local or State entity or vendor. This section would not affect any authority otherwise granted to counties and cities in State statute.

EXEMPT MINOR LEAGUE BASEBALL PLAYERS EMPLOYED UNDER A COLLECTIVE BARGAINING AGREEMENT FROM STATE MINIMUM WAGE, OVERTIME, AND RECORD KEEPING REQUIREMENTS

Employees who work for employers with at least two employees and that meet either of the following conditions are covered by the federal Fair Labor Standards Act (FLSA):

- The employer has an annual dollar volume of sales or business of at least $500,000.
- The employer is a hospital, a provider of medical or nursing care for residents, a school, a preschool, or a government agency.

The FLSA requires that covered employers pay their employees at least the federal minimum wage and overtime pay (i.e., at time and one-half the regular rate of pay after 40 hours in a workweek), except for certain classes of exempt employees. States may elect to either apply the federal exemptions or to apply minimum wage and overtime requirements that are more protective than the FLSA.

In 2018, the United States Congress enacted the Save America's Pastime Act, which exempts baseball players from federal minimum wage and overtime requirements if compensated under a contract that provides a weekly salary at a rate not less than a weekly salary equal to the federal minimum wage for a 40-hour workweek, irrespective of the number of hours the employee devotes to baseball related activities.

Section 24 would exempt minor league baseball players employed under a collective bargaining agreement from State minimum wage, overtime, and record keeping requirements.

This section would become effective August 1, 2023.

CODIFY MEDICAL RECORD RETENTION REQUIREMENT FOR HEALTH CARE PROVIDERS

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.

Rules adopted by the North Carolina Board of Pharmacy require licensed practitioners to maintain records for a period of three years.

Rules adopted by the North Carolina Veterinary Medical Board require licensed practitioners to maintain records for a period of three years following the last office visit or discharge of the animal from a veterinarian facility.

Section 25 would codify 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. This section would not apply to a pharmacy maintaining a valid pharmacy permit, or a person licensed by the Veterinary Medical Board to practice veterinary medicine.

MODIFY THE RULES RELATED TO THE INSPECTION OF ESTABLISHMENTS THAT PREPARE OR SERVE FOOD

The Commission for Public Health (CPH) is charged with adopting rules regulating the inspection of establishments that prepare or serve food. Food establishments are routinely inspected and assigned a letter grade. Upon the request of a food establishment permittee, a reinspection shall be made. If the reinspection is requested for the purpose of raising the establishment's letter grade, the regulatory authority shall make an unannounced inspection within 15 calendar days of the request. A food establishment designated Risk Category IV shall be inspected at least once every three months.

Sections 25.1, 25.2, and 25.3 would direct CPH to implement certain food establishment rules as follows, and readopt its rules consistent with this implementation:

- Reduce the period in which a reinspection to raise a letter grade may be made from 15 calendar days to 5 business days.
- Reduce the frequency of Risk Category IV food establishments inspections from four times a year to three times a year but require that local health departments make an educational visit to these establishments at least once a year to review any previous priority violations, public health risk factors, and the Hazard Analysis Critical Control Plan, if applicable.
- Make a conforming change regarding inspection frequency and the new educational visit requirement.

CODIFY EXISTING STROKE CENTER DESIGNATIONS AND ADD A THROMBECTOMY-CAPABLE STROKE CENTER DESIGNATION

S.L. 2013-44 directed the Department of Health and Human Services (DHHS) to designate a qualified hospital as primary stroke center if that hospital submits an application that demonstrates the hospital is certified as a primary stroke center by the Joint Commission or other nationally recognized body that requires conformance to best practices for stroke care. DHHS maintains a list of hospitals designated as primary stroke centers on its website. Rules adopted by DHHS provide criteria for designating a hospital as a primary stroke center, comprehensive stroke center, or acute stroke ready hospital.

Section 26 would amend the existing stroke designation statute to codify the criteria for designating a hospital as a primary stroke center, comprehensive stroke center, or acute stroke ready hospital, and would provide that in addition to a certification from the Joint Commission, a certification from the American Heart Association would suffice to qualify as a designated stroke center. This section would also create a new designation for a thrombectomy-capable stroke center for hospitals that are so certified by the American Heart Association, Joint Commission, or other DHHS-approved certifying body. This section would also require certified hospitals to report that certification to DHHS within 90 days of receiving certification.

VOLUNTARY CONNECTION TO NORTH CAROLINA HEALTH INFORMATION EXCHANGE FOR CHIROPRACTORS

The Health Information Exchange Network (HIE Network) is a voluntary, statewide health information exchange network overseen and administered by the North Carolina Health Information Exchange Authority. Despite the voluntary nature of the HIE Network, hospitals, most physicians, physician assistants and nurse practitioners have been required to submit at least demographic and clinical data through the HIE Network pertaining to services rendered to Medicaid beneficiaries and to other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds since 2018. Beginning January 1, 2023, several other entities were required to submit demographic and clinical data.

Section 26.5 would allow chiropractors to voluntarily submit data to the HIE Network.

EXPANSION OF THE HOMESCHOOL COOPERATIVE EXEMPTION TO THE DEFINITION OF CHILD CARE

Child care facilities are regulated by the Department of Health and Human Services (DHHS) pursuant to Article 7 of Chapter 110 of the General Statutes. Child care facilities subject to regulation by DHHS must register with DHHS and meet certain operating requirements.

Section 27 would revise the homeschool cooperative exemption to the definition of "child care" to allow cooperative arrangements to provide for the academic instruction of school age children to occur in a location outside the home of one of the cooperative participants.

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 28 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.

PRESERVE EXISTING NORTH CAROLINA BUILDING CODE LIMITATION ON THE USE OF PLASTIC PIPE IN CERTAIN BUILDINGS

The 2018 North Carolina Building Code prohibits the use of plastic pipes, plastic pipe fittings, and plastic appurtenances with an inside diameter 2 inches and larger in either of the following circumstances:

(1) Drain, waste, and vent conductors in buildings in which the top occupied floor exceeds 75 feet (23 meters) in height.
(2) Storm drainage conductors in buildings in which the top occupied floor exceeds 75 feet (23 meters) in height.

Section 28.5 would codify the plastic pipe limitation.

DISAPPROVE CERTAIN DOA PROCUREMENT RULES

The Administrative Procedure 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 29 would disapprove two rules adopted by DOA subject to legislative review.

EMERGENCY SUPPLY CHAIN DECLARATION FOR LOCAL GOVERNMENTS

The North Carolina Emergency Management Act provides additional authority to the Governor, State agencies, and local governments to prevent, prepare for, respond to, or recover from natural and man-made emergencies or hostile military action.

Article 8 of Chapter 143 of the General Statutes governs how government entities may award or enter into contracts for construction, repair work, and the purchase of goods and services.

Section 30 would expand the definition of "emergency" to include a "disruption in the supply chain that creates a significant threat to a local government's ability … to provide essential services such as electricity and water." This section would further provide that during an emergency created by a supply chain disruption, government entities otherwise subject to Article 8 of Chapter 143 would be exempt from those requirements when awarding contracts for apparatus, supplies, materials, or equipment, or construction or repair work requiring those items, where such apparatus, supplies, materials, or equipment is either (i) listed in a Emergency Declaration issued pursuant to the NC Emergency Management Act, or (ii) listed in an order or regulation issued by the federal government pursuant to the Defense Production Act of 1950.

PART III. MISCELLANEOUS PROVISIONS

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 31 would allow a nonprofit organization to conduct up to five raffles per year and 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 $2,250,000 per calendar year.

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

CLARIFY THAT INFLATABLE DEVICES ARE NOT AMUSEMENT DEVICES

The Amusement Device Safety Act charges the Department of Labor with regulating the use and operation of amusement devices in the State.

Section 32 would clarify that inflatable devices, including air-supported devices made of flexible fabric, inflated by one or more blowers, that relies upon air pressure to maintain its shape, are not considered amusement devices subject to Department of Labor regulation. This section would also make technical and conforming changes to the Amusement Device Safety Act.

COMMERCIAL MOBILE RADIO SERVICE CHANGES

The 911 Board is established within the Department of Information Technology (DIT) and is charged with managing both wireline and wireless 911 throughout the State, including developing the 911 State Plan and administer the 911 Fund.

Commercial mobile radio service (CMRS) providers must comply with certain requirements for enhanced 911 service and may be reimbursed by the 911 Fund for costs incurred due to compliance, including designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required to provide 911 communications service.

A public safety answering point (PSAP) is the public safety agency that receives an incoming 911 call and dispatches appropriate public safety agencies to respond to the call.

Section 33(a) would eliminate one of the alternative criteria triggering a requirement that the CMRS receive prior approval from the 911 Board for invoices for reimbursement.

The remaining subsections would, effective July 1, 2024, repeal the statute providing for 911 Fund distribution to CMRS providers for reimbursement and make other technical and conforming changes.

DELETE CONFLICTING WATER/SEWER PROVISION IN HOUSE BILL 488

Section 10 of Session Law 2023-90 and Section 12 of House Bill 488 both amend the same statute, G.S. 160A-317, and both limit the ability of municipalities to force water/sewer connection. The language in House Bill 488 is an earlier version of the language in S.L. 2023-90 and conflicts with the already enacted language in S.L. 2023-90. House Bill 488 was vetoed by the Governor on July 7, 2023.

Section 33.5 would delete the conflicting language in House Bill 488, if that bill becomes law notwithstanding the Governor's veto.

INCREASE THE PROJECT COST MINIMUM FOR APPLICABILITY OF GENERAL CONTRACTOR LICENSING REQUIREMENTS AND EXEMPT SIGN MANUFACTURING COMPANIES FROM GC LICENSING REQUIREMENT

Current law outlines when certain construction projects would be exempt from permitting requirements based on project cost and other permit limitations. Project cost also determines whether a General Contractor license is required for undertaking certain construction work.

Section 33.6 would increase and conform permitting and General Contractor licensure thresholds from $30,000 to $40,000, would prohibit a local government from requiring more than one residential building permit for simultaneous projects at the time of application located at the same address, and would make various changes tied to that $40,000 cost threshold in related areas, such as lien agent law. This section would also exempt from the General Contractor licensing requirement any person, firm, or corporation that constructs, furnishes, or erects signs or similar features when that person, firm, or corporation is UL Certified.

This section would become effective October 1, 2023.

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

Jennifer McGinnis, Chris Saunders, Aaron McGlothlin, and Howard Marsilio, Legislative Analysis Division, substantially contributed to this summary.