



# HOUSE BILL 600: Regulatory Reform Act of 2023, Sec. 1-4: Stormwater Permitting Modifications

2023-2024 General Assembly

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<b>Committee:</b>		<b>Date:</b>	December 11, 2023
<b>Introduced by:</b>		<b>Prepared by:</b>	Kyle Evans Staff Attorney
<b>Analysis of:</b>	Sec. 1-4 of S.L. 2023-137		

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## **OVERVIEW: Sections 1–4 of S.L. 2023-137:**

- *Make various changes to stormwater permitting regarding development in excess of the allowable density under applicable water supply watershed rules.*
- *Make various changes to development in the vegetative buffer for Department of Transportation (NCDOT) projects.*
- *Make various changes to requirements for stormwater permit submittal.*
- *Create prohibitions on requiring stormwater permit applicants to take action on unaffiliated adjacent property.*
- *Authorize the Department of Environmental Quality (DEQ) to rescind a stormwater permit in certain circumstances.*
- *Allow local governments to consider existing stormwater control measures when determining stormwater fees.*
- *Direct the Environmental Management Commission to implement a post-construction stormwater rule to allow an exemption for certain public linear transportation projects undertaken by a non-DOT entity.*

*This bill was vetoed by the Governor on October 2, 2023, and that veto was overridden by the General Assembly on October 10, 2023. These sections became effective October 10, 2023.*

## **BACKGROUND LAW & BILL ANALYSIS:**

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

- In 2015, the General Assembly enacted legislation to provide that development can 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 can only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment.

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- In 2021, language was added to provide that a property owner can 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<sup>1</sup>.

## **WATER SUPPLY WATERSHED PROTECTION CHANGES**

**Section 1** amends the statutory provision requiring a local government to authorize a property owner to exceed allowable density under applicable water supply watershed rules in certain circumstances by modifying one of the required criteria to:

- 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 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:**

- Modifies the statutory provision governing development in the vegetative buffer to provide that the entire impervious area of a development cannot include any portion of a project that is within a NCDOT or municipal right-of-way.
- Modifies the language providing that when a preexisting development is redeveloped, either in whole or in part, increased stormwater controls can 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.
- Makes a conforming change to the stormwater statute regarding changes made in Section 1 of this act to the water supply watershed statute.
- Adds 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.
- Adds a new provision that prohibits DEQ from:
  - Requiring an applicant for a new permit to take any action with respect to an unaffiliated adjacent property.
  - Conditioning issuance of a new permit on action to be taken by an existing permit-holder with respect to permitting of an unaffiliated adjacent property.

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<sup>1</sup> 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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For purposes of this section, "unaffiliated adjacent property" means a property: (i) for which the applicant does not have, and has not had, an ownership interest; and (ii) that is not subject to a permit issued pursuant to this section that also governs the property for which the new permit is sought.

- Requires DEQ to rescind a stormwater permit without the consent of the permit-holder where the permitted development has not been initiated within five years after the date of permit issuance. No less than 90 days prior to rescission of the permit, DEQ is required to notify the permit-holder of its intent to rescind the permit, and allow the permit-holder 60 days in which to respond and request an extension of the permit.

## 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 can 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** adds "stormwater control measures in use by the property" as a basis on which stormwater fees can 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** requires 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 NCDOT 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 can be taking place at different times on different schedules but governed by a single development plan regardless of ownership of the parcels. Information that can 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.

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**EFFECTIVE DATE:** This bill was vetoed by the Governor on October 2, 2023, and that veto was overridden by the General Assembly on October 10, 2023. These sections became law October 10, 2023.

*Jennifer McGinnis, LAD, substantially contributed to this summary.*