



HOUSE BILL 74: Regulatory Reform Act of 2013

2013-2014 General Assembly

Committee:	Rules and Operations of the Senate	Date:	July 14, 2013
Introduced by:	Reps. Murry, Moffitt, Samuelson, Bryan	Prepared by:	Giles S. Perry, Jennifer Mundt, Jeff Hudson, Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to Second Edition H74-CSRW-77		

SUMMARY: *The Senate Committee Substitute for House Bill 74 makes numerous changes to rulemaking laws and procedures, State and local government regulations, business and labor regulations, and various environmental and public health regulations. The PCS also amends certain environmental and natural resources laws.*

BILL ANALYSIS:

PART I. IMPROVE RULE MAKING PROCESS

Section 1 adds a definition of the term "policy" to the Administrative Procedure Act (APA).

Section 2 amends the APA provision relating to fiscal notes. This amendment would streamline the rulemaking process by making the review of the fiscal note and the public comment period run concurrently rather than consecutively. The amendment also raises the threshold for substantial economic impact notes to \$1 million for all persons affected by a rule in a 12-month period.

Section 3 establishes a three-tiered process for the periodic review of existing rules. The Rules Review Commission is directed to establish a schedule for the review. If an agency fails to conduct the review by the date set in the schedule, the rule will automatically expire. However, if the rule is required to conform to or implement federal law, the rule will not automatically expire. The RRC is directed to report to the Joint Legislative Administrative Procedure Oversight Committee on any rules that do not expire for this reason. The current provision relating to review of existing rules is repealed.

Subsection (d) of this section directs the Rules Review Commission to subject rules related to surface water quality and wetlands to review in the first year of the program.

Section 4 directs the Joint Legislative Administrative Procedure Oversight Committee to study the exemptions from rulemaking contained in the APA and elsewhere in the General Statutes. The Committee shall evaluate the continued need for exemption and possible consequences of repeal of the exemption and report to the 2014 session of the General Assembly.

PART II. STATE AND LOCAL GOVERNMENT REGULATIONS

Section 5(a) & (b) prohibits local governments from requiring a private contractor to abide by any restriction the locality could not impose on all employers as a condition of bidding on a contract.

Section 5(c) provides this section is effective when it becomes law and applies to contracts entered on or after that date.

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Section 6(a) & (b) prohibits a local zoning or unified development ordinance from differentiating between fraternities and sororities that are approved or recognized by a college or university and those that are not.

Section 7 amends the definition of the term "Private club" contained in the Public Health law to include the definition of the term contained in the ABC law.

Section 8(a) & (b) amends the outdoor advertising act to allow vegetation cutting and removal along acceleration and deceleration ramps so long as the view of the outdoor advertising sign is improved and total aggregate amount of cut area is not increased. Also, prohibits local governments from restricting the repair or reconstruction of outdoor advertising, without just compensation, as long as the advertising surface area is not increased. Reconstruction includes changing an existing multi-pole to a monopole structure.

Section 9 directs the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to amend its Records Retention and Disposition Schedule Manual to provide that if a Medicaid service has been eliminated by the State, the provider must retain records for three years after the last date of the service, unless federal law requires a longer period. At the termination of that time period, records must be destroyed or transferred to a State agency or contractor identified by the Department of Health and Human Services.

Section 10 directs the Joint Legislative Program Evaluation Oversight Committee to include in the 2013-2014 Work Plan for the Program Evaluation Division a study to evaluate the structure, organization, and operation of the various independent occupational licensing boards. The study must include:

- (1) Consideration of the feasibility of establishing a single state agency to oversee the administration of all or some of the occupational licensing boards.
- (2) Whether greater efficiency and cost-effectiveness can be realized by combining the administrative functions of the boards, while allowing the boards to continue performing the regulatory functions.
- (3) Whether the total number of boards should be reduced by combining and/or Eliminating Some Boards.

Section 10.1(a) and (b) prohibit local governments from enacting or enforcing ordinances that require an employer to assume responsibility for the mitigation of their employees' commute or transportation to or from the workplace, which may result in the employer being subject to fines or other negative consequences.

PART III. BUSINESS AND LABOR REGULATIONS

Section 11 amends the law to allow a bed and breakfast to offer three meals per day to its guests.

Section 12 amends the law providing for mandatory criminal history checks for child care providers to require that the check be performed within 15 days of the request for the check.

Section 13 allows an insurer to cancel a workers' compensation policy using any method of service provided in Rule 4 of the North Carolina Rules of Civil Procedure and would allow electronic communications and records to satisfy requirements that communications be provided in writing.

Section 14 allows private, nonpublic employers in the State to provide an employment preference to veterans and spouses of honorably discharged veterans who have a service connected permanent and

total disability. The provision specifically provides that granting of the preference is not a violation of any State or local equal employment opportunity law.

Section 15 amends the Right to Work statute to prohibit agreements that condition the purchase of agricultural products on the agricultural producer's status as a union or non-union employer by making such agreements invalid and unenforceable as against public policy in restraint of trade or commerce.

Section 17 creates a rebuttable presumption that taxi operators who own or lease their vehicles are independent contractors not covered under the Workers Compensation Act. The section also provides that the presumption is not rebutted solely because a taxicab accepts a trip request to be at a specific place at a specific time; provides that the presumption may be rebutted by application of the common law test for determining independent contractor status.

PART IV. ENVIRONMENTAL AND PUBLIC HEALTH REGULATIONS

Section 18 amends a provision enacted in 2012, which required the Department of Environment and Natural Resources to adopt rules to prohibit permitted scrap tire collectors from contracting with a scrap tire processing facility unless the processing facility documents that it has access to a facility permitted to receive scrap tires. The PCS would codify this requirement in the statutes and eliminate the rulemaking requirement.

Section 19 directs the Building Code Council to adopt rules to require lodging establishments to install electrical carbon monoxide detectors in every enclosed space having a fossil-fuel burning heater, appliance, or fireplace, and in any enclosed space, including a sleeping room, that shares a common wall, floor, or ceiling with an enclosed space having a fossil-fuel burning heater, appliance, or fireplace. The section also establishes an identical requirement in the statute providing for permitting of lodging establishments.

Sections 20 and 21 provide for alternative implementation of a rule governing closure requirements for containment basins, such as lagoons or waste storage structures, permitted at a cattle facility to allow for an alternative closure process if the cattle facility no longer meets the definition of an animal operation under the statutes. and directs the Environmental Management Commission (EMC) to adopt a rule consistent with the provisions of the act. Would direct the EMC to amend the definition for "new animal waste management system" under the Administrative Code.

Section 22 provides for alternative implementation of a rule governing various required setbacks applicable to reclaimed water irrigation and directs the EMC to adopt a rule consistent with the provisions of the act.

Section 23 directs the Commission for Public Health to amend and clarify its rules for the implementation of the prohibition on smoking in restaurants and bars to ensure consistent interpretation and enforcement and to specifically clarify the definition of enclosed areas.

Section 24 directs the Environmental Review Commission to study the statutory models for establishing, operating, and financing certain organizations that provide water and sewer services in the State and to report to the 2014 Session of the General Assembly.

PART V. AMEND ENVIRONMENTAL LAWS

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Section 25 directs the Environmental Management Commission to repeal the "Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Requirements" (15A NCAC 02D .1009) rule on or before December 1, 2013. The rule provides that no model year 2008 or subsequent model year heavy-duty vehicle may be leased or registered in North Carolina unless the vehicle or its engine has been certified by the California Air Resources Boards as meeting the applicable model year requirements of the California Code of Regulations.

Section 26 directs the Department of Environment and Natural Resources to study whether all of the counties covered under the emissions testing and maintenance program are needed to maintain the current and proposed federal ozone standards in the State.

Section 27 provides the Environmental Management Commission with the flexibility to determine whether rules are necessary for controlling the effects of complex sources on air quality.

Section 28 amends the rules in the North Carolina Administrative Code (NCAC) that pertain to open burning for land clearing or right-of-way maintenance to provide that an air quality permit is not required if materials are not carried offsite or transported over public roads for open burning unless the materials are carried or transported to: (i) facilities permitted for the operation of an air curtain burner; or (ii) a location where the material is burned no more than 4 times per year; that is at least 500 feet from any dwelling or occupied structure not located on the property; there are no more than 2 piles, each 20 feet in diameter burned at one time; and the location is not a permitted solid waste facility. This section also makes conforming statutory changes.

Section 29 provides that with the exception of permits issued pursuant to Title V of the federal Clean Air Act, air quality permits must be issued for a term of eight years. This section also provides that in addition to a permit applicant and a permittee, a third party who is dissatisfied with a decision of the Environmental Management Commission may commence a contested case within 30 days of the Commission notifying the applicant of its decision.

Section 30 amends the Department of Environment and Natural Resources' notice requirements for minor permits issued pursuant to the Coastal Area Management Act.

Section 31(a) amends the direction to the Mining and Energy Commission (Commission) concerning adoption of rules governing disclosure of information pertaining to hydraulic fracturing fluid chemicals and constituents such that the rules must provide that the Commission and the Department of Environment and Natural Resources (Department) may review, but must not possess or take ownership of data and information related to chemicals and constituents used in fracking fluids that is designated as a trade secret. For information that is designated as a trade secret, the Commission must develop rules that require public disclosure through an online chemical registry of the applicable chemical families or other descriptions provided the descriptions do not violate State or federal law.

Section 31(b) provides that the Commission must adopt the rules as required by Section 31(a) no later than December 1, 2013 and those rules will be subject to legislative review.

Section 32 exempts the Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health from preparing fiscal notes for proposed rules for the creation of a modern regulatory program for the management of oil and gas exploration activities in the State, including the use of horizontal drilling and hydraulic fracturing.

Section 33 clarifies the process for appeals from civil penalties assessed by a local government that has established and administers a State-approved erosion and sedimentation control program. This section also provides that civil penalties assessed by a local government under the Sedimentation and Pollution Control Act of 1973 must be remitted to the Civil Penalty and Forfeiture Fund.

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Section 34 amends the rules in the North Carolina Administrative Code to provide for reduced flow alternatives to the Daily Flow Rate for Design for wastewater systems as required by Table No. 1 in 15A NCAC 18A .1949(b). This section would exempt proposed wastewater systems from complying with the Daily Flow Rate for Design and any design flow standard established by the Commission for Public Health or the Department of Health and Human Services provided (i) the daily flow rate for design of the system is less than the rate listed by rule (Table No. 1, 15A NCAC 18A .1949(b)), (ii) the daily flow rate for design can be achieved through engineering design that utilizes low-flow fixtures and low-flow technologies, and (iii) the design is prepared, sealed, and signed by a professional engineer licensed in North Carolina. This section further provides that proposed wastewater systems with a daily flow for design of less than 3,000 gallons per day are not required to obtain State-level review for the system.

Section 35 directs the Commission for Public Health (Commission) to adopt rules governing permits issued for private drinking water wells for circumstances in which the local health department has determined that the proposed site for the well is located within 1,000 feet of a known source of contamination. The rules adopted by the Commission must provide for notice and information of the known sources of contamination and any known risk of issuing a permit for the construction and use of a private drinking water well on such a site. This section also directs local health departments to either issue a permit or deny an application for a permit for the construction, repair, or operation of a private drinking water well within 30 days of receipt of an application. The provision requiring a local health department to issue or deny an application for a permit to construct or repair a private drinking water well within 30 days becomes effective when this act becomes law and applies to applications to construct or repair a well that are received by a local health department on or after that date.

Section 36 provides that underground storage tanks and systems installed after January 1, 1991, and prior to April 1, 2001, are not required to comply with well setback requirements or provide secondary containment until January 1, 2020.

Section 37 amends various statutes governing protected species, marine, and wildlife resources to conform to analogous federal law.

Section 38(a) amends the statute regulating ownership or use of venomous reptiles to correctly refer to the term "antivenin," not "antivenom," as the serum or treatment for venom.

Section 38(b) amends the statute governing the investigation of suspected violations, seizure, and disposition of reptiles to direct law enforcement personnel to consult with representatives of the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park to identify appropriate and safe methods to seize a reptile. If there is an immediate risk to public safety, the officer is not required to first consult with Museum or Zoo representatives. This section further provides that representatives of the Museum or the Zoological Park may euthanize a venomous reptile for which antivenin is not readily available.

Section 39 amends the Administrative Procedure Act to provide the Wildlife Resources Commission with temporary rulemaking authority for manner of take.

Section 40 prohibits certain public entities from purchasing or acquiring an ownership interest in real property with known contamination without approval of the Governor and the Council of State. This section becomes effective September 1, 2013 and applies to a purchase or acquisition of interest in real property occurring on or after that date.

Section 41 clarifies that no building permit is required under the Building Code for routine maintenance on fuel dispensing pumps and other dispensing devices.

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Section 42 clarifies that the Secretary of Environment and Natural Resources may, in addition to adopting a schedule of entrance fees for the aquariums, may do so for the piers operated by the aquariums, and may adopt fees for facility rentals and educational programs.

Section 43 repeals the Mountain Resources Planning Act.

Sections 44(a) and 44(b) provide an exemption from the 25 acre or more size requirement for local governments entering into development agreements for developable properties of any size provided the property is subject to an executed brownfields agreement.

Section 45 directs the Department of Transportation to adopt rules for selective pruning within highway rights-of-way for vegetation that obstructs a motorists' view of properties on which agritourism activities occur. The Department is exempt from preparing fiscal notes for any rules proposed pursuant to this section.

Section 46(a) amends the statute that regulates sources of water pollution and the activities for which a permit is required by requiring any source that must obtain a permit must also have a compliance boundary established, either by the permit or by a rule adopted by the Environmental Management Commission, beyond which groundwater quality standards may not be exceeded. The compliance boundary must be established at the property boundary, unless otherwise established by the Commission. Multiple contiguous properties under common ownership and permitted for use as a disposal site must be treated as a single property.

This Section also provides that the Commission must only require a permitted disposal system to remedy an exceedance of groundwater quality standards within the compliance boundary when certain conditions are met. Where operation of a disposal system results in an exceedance of groundwater quality standards at or beyond the compliance boundary, the exceedance must be remedied through clean-up, recovery, containment, or other response as directed by the Commission.

Section 46(b) provides that the statutory amendments described above in Section 46(a) apply to exceedances of groundwater quality standards within a compliance boundary rather than certain requirements of the Restricted Designations rule (15A NCAC 2L .0104(d) and (e)) until the Department of Environment and Natural Resources revises the rules to comply with Section 46(a).

Section 47 adds radio towers to those towers exempt from applicability with the Military Lands Protection Act of 2013 under certain conditions.

Section 48(a) clarifies a provision enacted in 2012 that extended the duration of permits for sanitary landfills and transfer stations such that permits are for both construction and operation of the facility.

Section 48(b) provides that if Senate Bill 328, 2013 Regular Session becomes law, Section 48(a) would be repealed.

Section 49 codifies existing factors and adds the amount of money a violator saved as a new factor for consideration in assessing solid waste penalties. Current law under the General Statutes and the North Carolina Administrative Code (15A NCAC 13B .0702) requires the Secretary of Environment and Natural Resources to consider numerous factors to determine the amount of a penalty for violations of solid waste management laws.

Section 50 prohibits a local government from impeding the storage, retention, or use of nonhazardous recycled materials, including asphalt pavement, rap, or roofing shingles in properly zoned storage facilities through regulation of the height of recycled materials stockpiles, except when such facilities are located on lots within 200 yards of residential districts.

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For purposes of implementing stormwater programs, **Section 51** amends the definition of "built-upon area" to mean " impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface into the subsoil. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or gravel. This Section directs the Environmental Management Commission to amend its rules to be consistent with the definition of "built-upon area." The definition of "built-upon area" applies to projects for which permit applications are received on or after the effective date of this act.

Section 52 exempts freshwater ponds that are constructed and used for agriculture (as that term is defined in G.S. 106-581.1), provided the pond is not a component of an animal waste management system, from the: (i) Neuse River Basin riparian buffer rules; (ii) Tar-Pamlico River Basin riparian buffer rules; (iii) Jordan Water Supply Watershed riparian buffer rules; (iv) Randleman Lake Water Supply Watershed riparian buffer rules; (v) riparian buffer rules in the Catawba River Basin; (vi) riparian buffer rules in the Goose Creek Watershed (Yadkin Pee-Dee River Basin) and; (vii) any similar rule adopted for the protection and maintenance of riparian buffers.

This section provides that the riparian buffer rules must apply if the use of the property adjacent to the pond changes such that it no longer is used for agriculture.

This section becomes effective when this act becomes law and applies to ponds used for agriculture that were either in existence on or constructed after July 22, 1997.

Section 53 provides that in addition to a permit applicant and a permittee, a third party who is dissatisfied with a decision of the Environmental Management Commission regarding a water quality permit may commence a contested case within 30 days of the Commission notifying the applicant of its decision.

Section 54 repeals the Article that provides alternative requirements for land-disturbing activity that results in an increase in vehicular surface area of one acre or more.

Section 55 amends the notice procedure to riparian property owners that adjoin property subject to an application for a dredge and fill permit.

Section 56 provides that water treatment systems with expired authorizations may obtain new authorizations that allow the systems to withdraw surface water from the same water body and at the same rate as was approved in the expired authorization and such new authorizations are not required to prepare an environmental document pursuant to the State Environmental Policy Act. This section applies only those systems whose authorization for the water treatment plant expired within the last ten calendar years of the effective date of this act.

Section 57(a) directs the Department of Environment and Natural Resources to combine the Division of Water Quality and the Division of Water Resources to create a new Division of Water Resources.

Sections 57(b) through (gg) make conforming statutory and Session Law changes related to combining the Division of Water Quality with the Division of Water Resources.

Section 58 provides that the State and political subdivisions must not, in the course of conducting a technical review of an application for a permit or a plan for approval by the entity, require revisions to that part of the application or plan that constitutes the practice of engineering and that has been supervised and sealed by a professional engineer (PE) unless the employee or official reviewing the application is also a PE or engineering intern under the supervision of a PE. Revisions to an application that constitute the practice of engineering must be provided by written notice to the applicant on agency letterhead and signed by the PE reviewing the submission and include the engineer's state license number.

PART VI. SEVERABILITY CLAUSE AND EFFECTIVE DATE

Section 59(a) provides that if any section or provision of the act is declared unconstitutional or invalid by the courts, it would not affect the validity of the act as a whole or any part other than the part declared to be unconstitutional or invalid.

Section 59(b) Except as otherwise provided, the act would be effective when it becomes law.