Guidance for Implementation of

S.L. 2014-120, Section 29: REFORM AGENCY REVIEW OF ENGINEERING WORK

Prepared by the N.C. League of Municipalities and the N.C. Association of County Commissioners

December 12, 2014

OVERVIEW

New requirements for certain local government development plan review procedures became effective December 1. The requirements, included in last session's omnibus regulatory reform bill (S. L. 2014-120, Section 29), sought to standardize some aspects of plan review and use of the title “engineer.” All programs subject to the new law must report to the legislative Environmental Review Commission (ERC) on their implementation of various aspects of the new law before January 14, 2015. This guidance explains the requirements of this new law and includes a template report.

AFFECTED PROGRAMS

To know if the requirements apply to a specific development plan review process, you must answer YES to BOTH of these questions:

1. Is the review being conducted pursuant to a program *approved by* or *delegated by* the N.C. Department of Environment and Natural Resources or the N.C. Department of Health and Human Services?
2. As a result of the review, will the local government grant a permit, license, or approval to a member of the public?

Examples of program areas that must follow the new requirements (detailed below) include those that review sedimentation/erosion control, stormwater, and water/sewer designs, as well as cross-connection plans and 401 certifications. Other programs may also be subject to the requirements of this law. Notably, review of transportation designs is NOT subject to these new requirements.

NEW REQUIREMENTS

If a local government's programs fall under the description above, the law requires those programs to make the following adjustments to their plan review processes by December 1, 2014:

1. ***Identify "required" vs. "suggested" changes***. The new law requires plan reviewers in affected programs to distinguish between plan changes that are *required* by a statutory or other legal authority and those that the reviewer *offers as suggestions* for improvement. The law directs plan reviewers to specifically identify the legal authority for any *required* changes when communicating with the plan submitter.
2. ***Innovative designs involving a Professional Engineer (PE)***. The new law specifies a procedure for local governments to follow when (1) a PE submits a sealed design or practice that is not in the local government’s guidance, manuals, or standard operating procedures (i.e., “innovative” designs), AND (2) the submitting PE requests additional internal review of that design or practice. For these cases, the local government must establish a procedure whereby the plan reviewer's supervisor OR the approving/delegating state agency can provide further review and oversight of the design details. As an additional requirement, if the first local government plan reviewer was not a PE, then the submitting PE may request that a PE conduct this secondary, "escalated" plan

review. If the local government does not employ a PE, the new law makes allowances for the submitting party to pay for an outside PE of the local government's choice.

3. ***Disputes involving changes that are "required."*** The new law also directs local governments to establish an informal internal process to address disputes when a plan reviewer identifies a change to the plans as being "required" under a specific, identified legal authority. Unlike the informal internal review procedure described in (2) above, the law leaves the details for this procedure up to the local government to determine.
4. ***Job titles***. The new law prohibits local government employees whose responsibilities include review of plans in affected programs from including the word "engineer" in their public job titles *unless* that employee is a PE. If the employee does not hold a PE license, then the local government must propose revisions to those employees' public job titles in order to remove the word "engineer." However, in recognition of unintended consequences of this new requirement, the law allows local governments to retain the word "engineer" in job titles for these positions for human resources purposes. For example, an employee without a PE may hold a position called "Civil Engineer I" for job advertisement, recruitment, and classification purposes, yet when that employee communicates with the public, the title that appears on the employee's business cards, emails, and other correspondence must use alternate language such as, "Stormwater Plan Review Technician" or "Engineering Associate."
5. ***Selection of a private-sector PE if local unit does not employ a PE***: The requirements outlined in (2) above note that the local government must provide an opportunity for secondary "escalated" review by a PE, if the submitting PE requests a secondary review by an individual with those qualifications. If the local unit does not employ a PE, the new law directs those local governments to develop a process for developing and maintaining a list of outside consulting PEs.

REPORTING REQUIREMENTS

The new law requires local governments to submit a report to the ERC on how they implemented requirements (1)-(4) above. The first report is due January 14, 2015. After that first report, local governments must make three additional annual reports, due January 15, 2016; January 15, 2017; and January 15, 2018. Unlike the first report, these additional annual reports must only state how many times the local government utilized the informal review procedures detailed in (2) and (3) above, and the outcome of the secondary "escalated" reviews that took place.

Local governments may wish to utilize the reporting template below for the initial report due to the ERC by January 14, 2015.

S.L. 2014-120: Regulatory Reform Act of 2014

REFORM AGENCY REVIEW OF ENGINEERING WORK

SECTION 29.(a) Definitions. – The following definitions apply to Section 6 of this act:

(1) Practice of Engineering. – As defined in G.S. 89C-3.

(2) Professional Engineer. – As defined in G.S. 89C-3.

(3) Regulatory Authority. – The Department of Environment and Natural Resources, the Department of Health and Human Services, and any unit of local government operating a program (i) that grants permits, licenses, or approvals to the public and (ii) that is either approved by or delegated from the Department of Environment and Natural Resources or the Department of Health and Human Services.

(4) Regulatory Submittal. – An application or other submittal to a Regulatory Authority for a permit, license, or approval. In the case of a unit of local government, Regulatory Submittal shall mean an application or submittal submitted to a program approved by or delegated from the Department of Environment and Natural Resources or the Department of Health and Human Services.

(5) Submitting Party. – The person submitting the Regulatory Submittal to the Regulatory Authority.

(6) Working Job Title. – The job title a Regulatory Authority uses to publicly identify an employee with job duties that include the review of Regulatory Submittals. Working Job Title does not mean job titles that are used by the human resources department of a Regulatory Authority to classify jobs containing technical aspects related to the Practice of Engineering.

SECTION 29.(b) Standardize Certain Regulatory Review Procedures. – No later than December 1, 2014, each Regulatory Authority shall review and, where necessary, revise its procedures for review of Regulatory Submittals to accomplish the following:

(1) Standardize the provision of review and comments on Regulatory Submittals so that revisions or requests for additional information that are required by the Regulatory Authority in order to proceed with the permit, license, or approval are clearly delineated from revisions or requests for additional information that constitute suggestions or recommendations by the Regulatory Authority. For purposes of this subdivision, "suggestions or recommendations by the Regulatory Authority" means comments made by the reviewer of the Regulatory Submittal to the Submitting Party that make a suggestion or recommendation for consideration by the Submitting Party but that are not required by the Regulatory Authority in order to proceed with the permit, license, or approval.

(2) With respect to revisions or requests for additional information that are required by the Regulatory Authority in order to proceed with the permit, license, or approval, the Regulatory Authority shall identify the statutory or regulatory authority for the requirement.

SECTION 29.(c) Informal Review. – No later than December 1, 2014, each Regulatory Authority shall create a process for each regulatory program administered by the Regulatory Authority for an informal internal review at the request of the Submitting Party in each of the following circumstances:

(1) The inclusion in a Regulatory Submittal of a design or practice sealed by a Professional Engineer but not included in the Regulatory Authority's existing guidance, manuals, or standard operating procedures. This review should first be conducted by the reviewing employee's supervisor or, in the case of a Regulatory Authority that is a

unit of local government, either the reviewing employee's supervisor or the delegating or approving State agency. If this initial review was not conducted by a Professional Engineer, then the Submitting Party may request review by (i) a Professional Engineer on the staff of the Regulatory Authority or (ii) the delegating or approving State agency in the case of a Regulatory Authority that is a unit of local government. If the Regulatory Authority or delegating or approving State agency does not employ a Professional Engineer qualified and competent to perform the review, it may provide for review by a consulting Professional Engineer selected from a list developed and maintained by the Regulatory Authority. The Regulatory Authority may charge the Submitting Party for the costs of the review by the consulting Professional Engineer. Nothing in this subdivision is intended to limit the authority of the Regulatory Authority to make a final decision with regard to a Regulatory Submittal following the reviews described in this subdivision.

(2) A disagreement between the reviewer of the Regulatory Submittal and the Submitting Party regarding whether the statutory or regulatory authority identified by the Regulatory Authority for revisions or requests for additional information designated as "required" under the procedures set forth in Section 29(b) of this act justifies a required change.

SECTION 29.(d) Scope. – Nothing in Section 29(c) of this act shall limit or abrogate any rights available under Chapter 150B of the General Statutes to any Submitting Party.

SECTION 29.(e) Procedure to Develop List of Consulting Professional Engineers. – Regulatory Authorities shall develop formal written procedures to prepare and maintain a list of consulting Professional Engineers required pursuant to subdivision (1) of Section 29(c) of this act.

SECTION 29.(f) Pilot Study. – No later than March 1, 2015, the Department of Environment and Natural Resources shall complete a pilot study on the Pretreatment, Emergency Response and Collection System (PERCS) wastewater collection system permitting program and the stormwater permitting program and perform the following activities with the assistance and cooperation of the North Carolina Board of Examiners for Engineers and Surveyors and the Professional Engineers of North Carolina:

(1) Produce an inventory of work activities associated with the operation of each regulatory program.

(2) Determine the work activities identified under subdivision (1) of this subsection that constitute the Practice of Engineering.

(3) Develop recommendations for ensuring that work activities constituting the Practice of Engineering are conducted with the appropriate level of oversight.

SECTION 29.(g) Report. – The Department shall report the results of the pilot study to the Environmental Review Commission no later than April 15, 2015.

SECTION 29.(h) Review of Working Job Titles. – No later than December 1, 2014, each Regulatory Authority and the Department of Transportation shall do the following:

(1) Review the Working Job Titles of every employee with job duties that include the review of Regulatory Submittals.

(2) Propose revisions to the Working Job Titles identified under subdivision (1) of this subsection or other administrative measures that will eliminate the public identification as "engineers" of persons reviewing Regulatory Submittals who are not Professional Engineers.

SECTION 29.(i) Initial Report. – Each Regulatory Authority shall report to the Environmental Review Commission prior to the convening of the 2015 Regular Session of the 2015 General Assembly on implementation of the following, if applicable:

(1) The standardized procedures required by Section 29(b) of this act.
(2) The informal review process required by Section 29(c) of this act.
(3) The review of Working Job Titles required by Section 29(h) of this act.

SECTION 29.(j) Annual Report. – Beginning in 2016, each Regulatory Authority shall annually report to the Environmental Review Commission no later than January 15 on the informal review process required by Section 29(c) of this act. The report shall include the number of times the informal review process was utilized and the outcome of the review.

SECTION 29.(k) Annual Reporting Sunset. – Section 29(j) of this act expires on January 1, 2019.

Report to the Environmental Review Commission

Pursuant to S.L. 2014-120, Sec. 29 REFORM AGENCY REVIEW OF ENGINEERING WORK

January 14, 2015

Name of Local Government Unit: ***Type name***

Approved/delegated program subject to reporting requirements:

X **Sedimentation/erosion control**

X **Stormwater**

X **Water/sewer**

X **Cross-connection**

☐**401 certifications**

☐**Other** ***Type program name***

Type name of person preparing report ***Type date***

Daniel B. Gerald **Date 12/15/2014**

Submit this report electronically to Mariah Matheson, Commission Assistant, Environmental Review Commission, at Mariah.Matheson@ncleg.net.

Name of local government unit: [Type name]

Please attach any written procedures that may have been developed to implement the provisions of this law.

X Check to indicate that this plan review program implemented procedures whereby plan reviewers distinguish between plan changes that are required by statutory or other legal authority and those that the reviewer offers as suggestions for improvement. Refer to S.L. 2014-120, Section 29.(b)(1) for further details about this requirement.

> X Check to indicate that this plan review program identifies the statutory or regulatory authority for any revisions or requests for additional information that are required by the program in order to grant the requested plan permit, approval, or license. Refer to S.L. 2014-120, Section 29.(b)(2) for further details about this requirement.

X Check to indicate that this plan review program implemented procedures for local governments to follow when (1) a Professional Engineer submits a sealed design or practice that is not in the local government's guidance, manuals, or standard operating procedures, and (2) the submitting Professional Engineer requests additional internal review of that design or practice. Refer to S.L. 2014-120, Section 29.(c)(1) for further details about this requirement.

> X Check to indicate that this plan review program established a procedure whereby the plan reviewer's supervisor OR the approving/delegating state agency can provide further review and oversight of these design details. Refer to S.L. 2014-120, Section 29.(c)(1) for further details about this requirement.
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> ☐Check to indicate that this plan review program either employs a Professional Engineer who can conduct further review of these innovative designs, or maintains a list of consulting Professional Engineers of the local government unit's choice that may conduct this review, if requested by and paid for by the submitting Professional Engineer. Refer to S.L. 2014-120, Section 29.(c)(1) for further details about this requirement.

X Check to indicate that this plan review program established an informal internal process to address disputes when a plan reviewer identifies a change to the plans as being "required" under a specific, identified legal authority. Refer to S.L. 2014-120, Section 29.(c)(2) for further details about this requirement.

☐Check to indicate that this plan review program discontinued use of the word "engineer" in the job titles of all program employees whose responsibilities include review of plans in affected programs, *unless* those employees hold Professional Engineer licenses. Refer to S.L. 2014-120, Section 29.(h) for further details about this requirement.

Name of local government unit: [The Town of Green Level]

☒Check to indicate that this plan review program reviewed the titles of all employees conducting plan reviews for this program. Refer to S.L. 2014-120, Section 29.(h)(1) for further details about this requirement.

☐Check to indicate that this plan review program proposed revisions to those employees' job titles in order to eliminate use of the word "engineer" when publicly identifying those employees, if those employees do not hold Professional Engineer licenses. Refer to S.L. 2014-120, Section 29.(h)(2) for further details about this requirement.

Additional information: