

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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BILL DRAFT 2011-ROz-12 [v.6] (05/02)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: Regulatory Reform Act of 2012.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO (1) REESTABLISH THE JOINT LEGISLATIVE ADMINISTRATIVE
PROCEDURE OVERSIGHT COMMITTEE; (2) MAKE VARIOUS TECHNICAL AND
CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURES ACT; (3)
EXTEND THE EFFECTIVE DATE FOR CHANGES TO FINAL DECISION MAKING
AUTHORITY IN CERTAIN CONTESTED CASES, (4) LIMIT THE PERIOD DURING
WHICH RECORDS OF UNCLAIMED PROPERTY MUST BE MAINTAINED, (5)
REQUIRE AGENCIES TO GIVE WRITTEN NOTICE BEFORE AUDITING OR
EXAMINING A BUSINESS, (6) CLARIFY THAT THE DISCHARGE OF WASTE INTO
WATERS OF THE STATE DOES NOT INCLUDE THE RELEASE OF AIR
CONTAMINANTS INTO THE OUTDOOR ATMOSPHERE, (7) AUTHORIZE RATHER
THAN REQUIRE THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES
FOR THE TESTING OF WATER FROM NEW DRINKING WATER WELLS FOR
CERTAIN VOLATILE ORGANIC COMPOUNDS, (8) DIRECT THE DEPARTMENT
OF ENVIRONMENT AND NATURAL RESOURCES TO TRACK AND REPORT ON
PERMIT PROCESSING TIMES, (9) DELAY THE EFFECTIVE DATE FOR
COMPLIANCE WITH WADING POOL FENCING REQUIREMENTS FROM JULY 1,
2012 TO JANUARY 1, 2013, AND (10) DIRECT THE COMMISSION FOR PUBLIC
HEALTH TO AMEND THE RULES GOVERNING THE DURATION OF PERMITS FOR
SANITARY LANDFILLS AND THE PERIOD IN WHICH THOSE PERMITS ARE
REVIEWED, AS RECOMMENDED BY THE JOINT REGULATORY REFORM
COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.3 of S.L. 2011-291 is repealed.

SECTION 2. G.S. 150B-18 reads as rewritten:

§ 150B-18. Scope and effect.

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. An agency shall not seek to implement or enforce against any person a policy, guideline, or other ~~nonbinding~~ interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other ~~nonbinding~~ interpretive statement has not been adopted as a rule in accordance with this Article."

SECTION 3. G.S. 150B-19.1 reads as rewritten:



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1 **"§ 150B-19.1. Requirements for agencies in the rule-making process.**

2 (a) In developing and drafting rules for adoption in accordance with this Article,
3 agencies shall adhere to the following principles:

- 4 (1) An agency may adopt only rules that are expressly authorized by federal or
5 State law and that are necessary to serve the public interest.
6 (2) An agency shall seek to reduce the burden upon those persons or entities
7 who must comply with the rule.
8 (3) Rules shall be written in a clear and unambiguous manner and must be
9 reasonably necessary to implement or interpret federal or State law.
10 (4) An agency shall consider the cumulative effect of all rules adopted by the
11 agency related to the specific purpose for which the rule is proposed. The
12 agency shall not adopt a rule that is unnecessary or redundant.
13 (5) When appropriate, rules shall be based on sound, reasonably available
14 scientific, technical, economic, and other relevant information. Agencies
15 shall include a reference to this information in the notice of text required by
16 G.S. 150B-21.2(c).
17 (6) Rules shall be designed to achieve the regulatory objective in a
18 cost-effective and timely manner.

19 (b) Each agency subject to this Article shall conduct an annual review of its rules to
20 identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the
21 principles set forth in subsection (a) of this section. The agency shall repeal any rule identified
22 by this review.

23 (c) Each agency subject to this Article shall post on its ~~Web site when the agency~~
24 ~~submits the notice of text for publication in accordance with G.S. 150B-21.2~~ website no later
25 than the publication date of the notice of text in the North Carolina Register all of the
26 following:

- 27 (1) The text of a proposed rule.
28 (2) An explanation of the proposed rule and the reason for the proposed rule.
29 (3) The federal certification required by subsection (g) of this section.
30 (4) Instructions on how and where to submit oral or written comments on the
31 proposed rule.
32 (5) Any fiscal note that has been prepared for the proposed rule.

33 ~~The agency shall maintain the information in a searchable database and shall periodically~~
34 ~~update this online information to reflect changes in the proposed rule or the fiscal note prior to~~
35 ~~adoption. If an agency proposes any change to a rule or fiscal note prior to the date it proposes~~
36 ~~to adopt a rule, the agency shall publish the proposed change on its website as soon as~~
37 ~~practicable after the change is drafted. If an agency's staff proposes any such change to be~~
38 ~~presented to the rulemaking agency, the staff shall publish the proposed change on the agency's~~
39 ~~website as soon as practicable after the change is drafted.~~

40 (d) Each agency shall determine whether its policies and programs overlap with the
41 policies and programs of another agency. In the event two or more agencies' policies and
42 programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid
43 unnecessary, unduly burdensome, or inconsistent rules.

44 (e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to
45 the greatest extent possible. Prior to submission of a proposed rule for publication in
46 accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared
47 in connection with the proposed rule ~~with the rule-making body, and the rule-making body~~
48 ~~must and~~ approve the fiscal note before submission.

49 (f) If the agency determines that a proposed rule will have a substantial economic
50 impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to

the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

(1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.

(2) Post the certification on the agency Web site in accordance with subsection (c) of this section.

(3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Before an agency submits the proposed text of a permanent rule change for publication in the North Carolina Register, the agency must submit the text of the proposed rule change and an analysis of the proposed rule change to the Office of State Budget and Management and obtain a certification from the Office that the agency adhered to the principles set forth in this section. This subsection does not apply to agencies that are within the departments of the Council of State other than the Governor."

SECTION 4. G.S. 150B-21.4(a) reads as rewritten:

"(a) State Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office of State Budget and Management and obtain certification from the Office that the funds that would be required by the proposed rule change are available. ~~The Office must also determine and certify that the agency adhered to the principles set forth in G.S. 150B-19.1.~~ The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change."

SECTION 5. G.S. 150B-23.2(b) reads as rewritten:

"(b) Time of Collection. – All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected by the Office of Administrative Hearings at the time of commencement of the contested case ~~(except in suits in forma pauperis);~~ except as may be allowed by rule to permit or complete late payment or in suits in forma pauperis."

SECTION 6. G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a ~~party or a representative of the party~~ party, an attorney representing a party, or other representative of the party as may specifically be authorized by law, and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the

petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) Exceeded its authority or jurisdiction;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article."

SECTION 7. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a ~~decision, by the agency in making a final decision,~~ decision or by the court on judicial review."

SECTION 8. Section 63 of S.L. 2011-398 reads as rewritten:

"SECTION 63. Sections 2 through 14 of this act become effective October 1, 2011, and apply to rules adopted on or after that date. Sections 15 through 55 of this act become effective January 1, 2012, and apply to contested cases commenced on or after that date. With regard to contested cases affected by Section 55.2 of this act, the provisions of Sections 15 through 27 of this act become effective when the United States Environmental Protection Agency approvals referenced in Section 55.2 have been issued or ~~June 15, 2012,~~ October 1, 2012, whichever occurs first. With regard to contested cases affected by Section 55.1 of this act, the provisions of Sections 15 through 27 and Sections 32 and 33 of this act become effective when the waiver referenced in Section 55.1 has been granted or February 1, 2013, whichever occurs first. Unless otherwise provided elsewhere in this act, the remainder of this act is effective when it becomes law.

SECTION 9. G.S. 116B-73(a) reads as rewritten:

"(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for ~~10 years~~ five years after the holder files the report, unless a shorter period is provided by rule of the Treasurer."

SECTION 10. Article 1 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-10.1. Limitations on audits and examinations by agencies.

Unless otherwise provided by statute or rule, a State agency that is authorized to audit or examine a business or individual shall provide at least seven days written notice to the business or individual before conducting the audit or examination and shall describe with reasonable specificity the records of the business or individual that the agency seeks to review in the audit or examination process."

SECTION 11. G.S. 143-213 reads as rewritten:

"§ 143-213. Definitions.

Unless the context otherwise requires, the following terms as used in this Article and Articles 21A and 21B of this Chapter are defined as follows:

(9) Whenever reference is made in this Article to "discharge" or the "discharge of waste," it shall be interpreted to include discharge, spillage, leakage, pumping, placement, emptying, or dumping into waters of the State, or into any unified sewer system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State. A reference to "discharge" or the "discharge of waste" shall not be interpreted to include "emission" as defined in subdivision (12) of this section.

(12) The term "emission" means a release into the outdoor atmosphere of air contaminants.

SECTION 12.(a) Section 1 of S.L. 2008-198, S.L. 2009-124, and Section 10.10A of S.L. 2010-31 are repealed.

SECTION 12.(b) G.S. 87-97 reads as rewritten:

"§ 87-97. Permitting, inspection, and testing of private drinking water wells.

(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well or ensure that the water obtained from the well has been sampled and tested by a certified laboratory in accordance with rules adopted by the Commission for Public Health. The water shall be tested for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

(i) Commission for Public Health to Adopt Drinking Water Testing Rules. – The Commission for Public Health shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Public Health may by rule require testing for additional ~~parameters~~ parameters, including volatile organic compounds, if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health. If the Commission finds that testing for certain volatile organic compounds is necessary to protect public health and initiates rulemaking to require testing for certain volatile organic compounds, the Commission shall consider all of the following factors in the development of the rule: (i) known current and historic land uses around well sites and associated contaminants; (ii) known contaminated sites within a given radius of a well and any known data regarding dates of contamination, geology, and other relevant factors; (iii) any GIS based information on known contamination sources from databases available to the Department of Environment and Natural Resources; and (iv) visual on-site inspections of well sites.

SECTION 13. Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-279.17. Tracking and report on permit processing times.

The Department of Environment and Natural Resources shall track the time required to process all permit applications received by the Department. The processing time tracked shall include (i) the total processing time from when an initial permit application is received to issuance or denial of the permit and (ii) the processing time from when a complete permit

1 application is received to issuance or denial of the permit. No later than March 1 of each year,
2 the Department shall report to the Fiscal Research Division of the General Assembly and the
3 Environmental Review Commission on the permit processing times required to be tracked
4 pursuant to this section."

5 **SECTION 14.** Section 3.(b) of 2011-39 is rewritten to read:

6 "SECTION 3.(b) Wading Pool Fence Compliance. – From the effective date of
7 this act through ~~July 1, 2012,~~ January 1, 2013, the Department of Environment and Natural
8 Resources shall not require owners and operators of public swimming pools to comply with
9 15A NCAC 18A .2531(a)(7)."

10 **SECTION 15.** No later than July 1, 2013, the Commission for Public Health shall
11 adopt rules to allow applicants for sanitary landfills the option to: (i) apply for a permit to
12 construct a five-year phase of landfill development, and apply to amend the permit to construct
13 subsequent five-year phases of landfill development; or (ii) apply for a permit to construct a
14 10-year phase of landfill development, and apply to amend the permit to construct subsequent
15 ten-year phases of landfill development, with a limited review of the permit five years after
16 issuance of the initial permit and five years after issuance of each amendment for subsequent
17 phases of development. In developing these rules, the Department of Environment and Natural
18 Resources shall examine the current fee schedule for permits for sanitary landfills set forth
19 under G.S. 130A-295.8, and formulate recommendations for adjustments to the current fee
20 schedule sufficient to address any additional demands associated with review of permits issued
21 for 10-year phases of landfill development. The Department shall report its findings and
22 recommendations, including any legislative proposals, to the Environmental Review
23 Commission on or before December 1, 2012. The rules required by this section shall not
24 become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as
25 necessary to address any additional demands associated with review of permits issued for 10-
26 year phases of landfill development.

27 **SECTION 16.** This act is effective when it becomes law.
28