



SENATE BILL 16: Business & Agency Reg. Reform Act of 2017.

**This Bill Analysis
reflects the
contents of the bill
as it was presented
in committee.**

2017-2018 General Assembly

Committee:	House Regulatory Reform	Date:	June 14, 2017
Introduced by:	Sens. Wells, Barringer, Daniel	Prepared by:	Jeff Hudson
Analysis of:	PCS to Second Edition S16-CSSB-24		Karen Cochrane-Brown Jeremy Ray Committee Counsel

OVERVIEW: *The Proposed Committee Substitute for Senate Bill 16 (PCS) would amend several State laws related to State and local government regulation, business regulation, and environmental regulation.*

CURRENT LAW AND BILL ANALYSIS:

AUTHORIZE RULE TECHNICAL CORRECTIONS

Under current law, an agency can make certain types of technical changes to its rules without publishing notice of the text in the North Carolina Register or holding a public hearing, but such a change must still be submitted to the Rules Review Commission.

Section 1.(a) would provide that these technical changes would not need to be submitted to the Rules Review Commission.

Section 1.(b) would authorize the Codifier of Rules to make certain types of technical changes to an agency's rules. The Codifier could only do this after consulting with the agency.

CLARIFY CONTESTED CASE POLICY

Under current law, a person aggrieved by an agency action is not required to petition the agency for rule making or to seek or obtain a declaratory ruling before seeking judicial review.

Section 2.(a) would provide that a person aggrieved by an agency action is not required to petition the agency for rule making or to seek or obtain a declaratory ruling before commencing a contested case.

Section 2.(b) would make a conforming change.

AMEND PERIODIC REVIEW OF RULES PROCESS

Under the current process for the periodic review of rules, agencies must classify their rules as necessary with substantive public interest, necessary without substantive public interest, or unnecessary. Agencies must then readopt the rules that were classified as necessary with substantive public interest. Such rules

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are subject to notice and public comment requirements and review by the Rules Review Commission. Rules that are classified as unnecessary or necessary without substantive public interest are not subject to readoption.

Section 3.(a) would eliminate the category of necessary without substantive public interest so that all rules would be classified as either necessary or unnecessary. Rules that are classified as necessary would be subject to readoption.

Section 3.(b) would provide that the revisions to the process for the review and periodic readoption of existing rules would apply to agency rule reports submitted to the Office of Administrative Hearings on or after October 1, 2017.

REQUIRE AGENCIES AND THE OFFICE OF ADMINISTRATIVE HEARINGS TO PROVIDE ADDITIONAL NOTICE OF PETITIONS FOR RULEMAKING

Under current law, a person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition. If the rule-making petition requests that the agency create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change.

Section 4 would provide that an agency receiving a rule-making petition must send the proposed text of the requested rule change and statement of the effect of the requested rule change to the Office of Administrative Hearings (OAH) within three business days of receipt. OAH must distribute the information via its mailing list and publish the information on its website within three business days of receipt. This section would become effective October 1, 2017,

WILDLIFE RESOURCES COMMISSION PRIVATE IDENTIFYING INFORMATION

Under current law, the Department of Agriculture and Consumer Services collects various statistical information related to agriculture. The Department is required to classify the information so as to prevent it from being used to identify individual farm operators

Section 5 would require that the Wildlife Resources Commission treat such information that it receives from the Department as confidential.

PROVIDE FOR HEIGHTENED ENVIRONMENTAL MANAGEMENT COMMISSION OVERSIGHT OF CERTAIN REPORTS

Under current law, the Department of Environmental Quality (DEQ) submits numerous environmental reports to the General Assembly's Environmental Review Commission (ERC). The Environmental Management Commission (EMC) is an appointed regulatory board with jurisdiction over environmental matters.

Section 6 would authorize the EMC to identify, review, and assess reports prepared by DEQ and report its assessments of the reports to the ERC.

ALLOW OPTIONAL MEALS FOR BED AND BREAKFAST GUESTS

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Current law defines a "bed and breakfast home" as a business in a private home of not more than eight guest rooms that offers bed and breakfast accommodations for a period of less than one week and a "bed and breakfast inn" as a business of not more than 12 guest rooms that offers bed and breakfast accommodations to at least nine but not more than 23 persons per night for a period of less than one week.

Both bed and breakfast homes and bed and breakfast inns are limited as follows:

- Serve food or drink only to overnight guests (Bed and breakfast inn may only serve breakfast).
- Include the price of any meals served in the room rate.
- Permanent residence of the owner or the manager.

Section 7.(a) would allow a "bed and breakfast home" to charge separately for lunch and dinner.

Section 7.(b) would set nine as the minimum number of rooms for a bed and breakfast inn to differentiate an "inn" from a "home" and would eliminate the limit on the number of persons that may be accommodated. Bed and breakfast inn would also be allowed to serve all meals and charge separately for lunch and dinner.

This section would become effective October 1, 2017.

AMEND ALARM SYSTEM BUSINESS LICENSING STATUTES

Under current law, an alarm systems business must employ a designated resident qualifying agent who is licensed by the Alarm Systems Licensing Board. Alarm systems businesses must also register all of the businesses employees with the Alarm Systems Licensing Board. Registration includes providing fingerprints and criminal records.

Section 8.(a) would remove the requirement that the qualifying agent of the alarm systems business be a resident of the State.

Section 8.(b) would exempt from licensing requirements employees of alarm systems businesses who are only engaged in sales or marketing and who do not have access to information regarding location specific electronic security systems and who do not install or service electronic security systems in personal residences.

AMEND THE INSPECTION REQUIREMENTS FOR USED VEHICLES SOLD BY DEALERS ON A SALVAGE CERTIFICATE OF TITLE

Under current law, a salvage motor vehicle is defined as any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer.

Section 9 would exempt from safety and emission inspections used salvage vehicles sold by a motor vehicle dealer if no repairs were made to the vehicle after issuance of the salvage certificate of title and the dealer discloses in writing that no inspection was performed.

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AMEND REQUIREMENTS FOR HEALTH BENEFIT PLANS COVERING SMALL EMPLOYERS

Under current law, no small employer carrier, insurer, subsidiary of an insurer, or controlled individual of an insurance holding company can provide stop loss, catastrophic, or reinsurance coverage to small employers who employ fewer than 26 employees that does not comply with underwriting, rating, and other standards found in G.S. 58-50-100 through G.S. 58-50-156, known as the North Carolina Small Employer Group Health Coverage Act.

Section 10 would prohibit stop loss, catastrophic, or reinsurance coverage that does not comply with the standards found in the North Carolina Small Employer Group Health Coverage Act from being provided to small employers who employ fewer than *five* employees.

ELIMINATE DUPLICATIVE AND UNNECESSARY ELECTRICAL EQUIPMENT AND APPLIANCE CERTIFICATION REQUIREMENTS

Section 11 would amend G.S. 66-25 which requires acceptable testing of electrical goods. Under current law, electrical materials, devices, appliances, and equipment must be evaluated for safety and suitability by a qualified testing laboratory. The Commissioner of Insurance is charged with approving suitable standards and qualified testing laboratories. This section would add a provision prohibiting the Department of Administration, Division of Purchase and Contract from requiring acceptance inspections or additional testing for electrical goods purchased by State agencies, departments, and institutions. The Division is also directed to publish a notice on its website reflecting the change in policy.

AMEND LAW ON CONTRACTS WITH AUTOMATIC RENEWAL CLAUSES

Under current law, persons engaged in commerce that sells, leases, or offers to sell or lease, any products or services to a consumer by contract, where the contract automatically renews unless the consumer cancels the contract, must follow certain conditions. For automatic renewal clauses exceeding 60 days, these conditions include providing written notice to the consumer at least 15 days but no earlier than 45 days before the contract is set to be automatically renewed, the renewal date and notification that the contract will automatically renew unless canceled by the consumer prior to the renewal date. The term "consumer" is not defined.

Section 12 would exempt real estate professionals from the requirements of the statute that governs contracts with automatic renewal clauses. Section 12 would also amend G.S. 75-41 to define "consumer" as "any natural person who purchases or leases any products or services pursuant to a contract containing an automatic renewal clause for personal, family, household, or agricultural purposes."

AUTHORIZE PRIVATE CONDEMNATION OF LAND FOR PIPELINES AND MAINS ORIGINATING OUTSIDE OF NORTH CAROLINA

Under current law, private condemners are given the power of eminent domain, for the public use or benefit, for certain purposes, including: the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains originating in

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North Carolina for the transportation of petroleum products, coal, gas, limestone or minerals. The statute goes on to provide that land condemned for any liquid pipelines shall:

- Not be less than 50 feet nor more than 100 feet in width; and
- Comply with provisions in Chapter 62 (Public Utilities) that govern the right of eminent domain conferred upon pipeline companies.

Section 13 would provide that private condemnation could only be exercised for the public use by eliminating the ability to exercise private condemnation for the public benefit. Section 13 would also, with respect to private condemners' power of eminent domain over pipelines and mains, delete the limitation that such pipelines or mains "originat[e] in North Carolina."

CLARIFY STORMWATER LAWS

Under current law, Stormwater runoff rules and programs may not require private property owners to install new or increased stormwater controls for preexisting development or redevelopment activities that do not remove or decrease existing stormwater controls.

Section 14 would provide that when a preexisting development is redeveloped, 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.

AMEND THE THRESHOLD FOR COASTAL STORMWATER REQUIREMENTS FOR RESIDENTIAL PROJECTS

Under a prior coastal stormwater rule of the Environmental Management Commission (EMC), a State stormwater permit was required if development would exceed 10,000 square feet and exceed 12% built upon area. The EMC adopted a new coastal stormwater rule, effective January 1, 2017, that provides that a State stormwater permit is required if development would exceed 12% built upon area – the 10,000 square foot threshold was eliminated.

Section 15 would provide that the EMC and the Department of Environmental Quality may not require a State stormwater permit unless the development would cumulatively exceed 10,000 square feet.

CLARIFY STAFFING STANDARDS FOR BOARDING KENNELS OFFERING DOG DAY CARE SERVICES

Under current law, a boarding kennel that offers dog day care services and has a ratio of dogs to employees or supervisors, or both, of not more than 10 to one, is not subject to any further regulations that restrict the number of dogs that are permitted within any primary enclosure. A primary enclosure is a structure used to immediately restrict an animal or animals to a limited amount of space.

Section 16.(a) would create a new definition for "common area" to mean any area within a housing facility providing an open space where more than four dogs are free to exercise or play together. It would expand the definition of "housing facility" to include common areas. It would also define "primary enclosure" to mean any structure used to immediately restrict four or fewer animals.

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Section 16.(b) would increase the ratio of dogs to employees allowed for exemption from further regulations restricting the number of dogs permitted within any primary enclosure, from 10 to one presently, to 15 to one; and would impose an additional exemption requirement that no more than 50 dogs are in any common area at any time. This ratio would apply to the common area. Under these new exemption requirements, a qualifying boarding kennel would not as to such day care services, be subject to any regulations that impose further supervisory requirements on the number of dogs that are permitted within the common area or any primary enclosure beyond a requirement that at least one staffer be present in a common area at all times that five or more dogs are within the common area.

This section would become effective October 1, 2017.

LRC STUDY OF REGULATORY BARRIERS IN COASTAL ECONOMIES

Section 17 would direct the Legislative Research Commission (LRC) to study the regulatory, financial, and infrastructure burdens in coastal communities, which is any county in the State containing or to the east of Interstate 95. The LRC would make its final report to the 2018 Regular Session of the 2017 General Assembly.

STUDY ELECTRICAL SAFETY FOR SWIMMING POOLS

Section 18 would direct the Building Code Council to review electrical safety requirements for swimming pools to determine if the requirements should be amended in order to better protect public safety. The Council would report its findings and recommendations, including any actions the Council has taken related to electrical safety requirements for swimming pools, to the General Assembly no later than December 1, 2017.

STUDY USE OF UNGRADED LUMBER IN CERTAIN CIRCUMSTANCES

Section 19 would direct the Building Code Council to study under what circumstances it would be appropriate to use lumber that has not been grade-stamped under the authority of a lumber grading bureau in construction in North Carolina. The Council would report its findings and recommendations to the General Assembly no later than December 1, 2017.

STUDY DECREASING THE FREQUENCY OF VEHICLE INSPECTIONS

Section 20 would direct the Department of Transportation and the Department of Environmental Quality to jointly study whether the frequency of vehicle safety inspections and vehicle emissions inspections should be decreased. As part of the study, the Department of Transportation would also consider whether backup lights should be included in the vehicle safety inspection. The Departments would jointly report their findings and recommendations to the Joint Legislative Transportation Oversight Committee no later than March 1, 2018.

STUDY CREATION OF BOARD TO MEDIATE AND ARBITRATE DISPUTES BETWEEN LOCAL GOVERNMENTS AND OWNERS AND DEVELOPERS OR PROPERTY

Section 21 would direct the Legislative Research Commission (LRC) to study the creation of a mediation and arbitration board that would serve as a mediator and arbitrator of disputes between local governments and owners or developers of property regarding regulation of the use or development of

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property. The LRC would report its findings and recommendations to the 2018 Regular Session of the 2017 General Assembly when it convenes.

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