

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 810\*  
Commerce Committee Substitute Adopted 5/24/12  
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Short Title: Regulatory Reform Act of 2012.

(Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

1 AN ACT TO (1) REESTABLISH THE JOINT LEGISLATIVE ADMINISTRATIVE  
2 PROCEDURE OVERSIGHT COMMITTEE; (2) MAKE VARIOUS TECHNICAL AND  
3 CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURES ACT; (3)  
4 EXTEND THE EFFECTIVE DATE FOR CHANGES TO FINAL DECISION-MAKING  
5 AUTHORITY IN CERTAIN CONTESTED CASES; (4) LIMIT THE PERIOD DURING  
6 WHICH RECORDS OF UNCLAIMED PROPERTY MUST BE MAINTAINED; (5A)  
7 DIRECT AGENCIES TO SUBMIT A REPORT ON NOTICE GIVEN BEFORE  
8 AUDITING OR EXAMINING A BUSINESS TO THE JOINT LEGISLATIVE  
9 ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE; (5B) REQUIRE THE  
10 DEPARTMENT OF LABOR TO PROVIDE NOTICE PRIOR TO INSPECTIONS; (6)  
11 CLARIFY THAT THE DISCHARGE OF WASTE INTO WATERS OF THE STATE  
12 DOES NOT INCLUDE THE RELEASE OF AIR CONTAMINANTS INTO THE  
13 OUTDOOR ATMOSPHERE; (7) AUTHORIZE RATHER THAN REQUIRE THE  
14 COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES FOR THE TESTING OF  
15 WATER FROM NEW DRINKING WATER WELLS FOR CERTAIN VOLATILE  
16 ORGANIC COMPOUNDS; (8) DIRECT THE DEPARTMENT OF ENVIRONMENT  
17 AND NATURAL RESOURCES TO TRACK AND REPORT ON PERMIT  
18 PROCESSING TIMES; (9) DELAY THE EFFECTIVE DATE FOR COMPLIANCE  
19 WITH WADING POOL FENCING REQUIREMENTS FROM JULY 1, 2012, TO  
20 JANUARY 1, 2013; (10) DIRECT THE COMMISSION FOR PUBLIC HEALTH TO  
21 AMEND THE RULES GOVERNING THE DURATION OF PERMITS FOR SANITARY  
22 LANDFILLS AND THE PERIOD IN WHICH THOSE PERMITS ARE REVIEWED; (11)  
23 EXEMPT FROM SANITATION REGULATIONS OF FOOD AND LODGING  
24 FACILITIES SEASONAL MARKETS AT WHICH THE OPERATOR OF THE  
25 MARKET SELLS PRODUCTS PRODUCED ONLY BY THE OPERATOR; AND (12)  
26 AMEND THE CRITERIA FOR DESIGNATION AS A PORT ENHANCEMENT ZONE.  
27

28 The General Assembly of North Carolina enacts:

29 **SECTION 1.** Section 1.3 of S.L. 2011-291 is repealed.

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

31 **"§ 150B-18. Scope and effect.**

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



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1 guideline, or other ~~nonbinding~~ interpretive statement has not been adopted as a rule in  
2 accordance with this Article."

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

4 **"§ 150B-19.1. Requirements for agencies in the rule-making process.**

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

7 (1) An agency may adopt only rules that are expressly authorized by federal or  
8 State law and that are necessary to serve the public interest.

9 (2) An agency shall seek to reduce the burden upon those persons or entities  
10 who must comply with the rule.

11 (3) Rules shall be written in a clear and unambiguous manner and must be  
12 reasonably necessary to implement or interpret federal or State law.

13 (4) An agency shall consider the cumulative effect of all rules adopted by the  
14 agency related to the specific purpose for which the rule is proposed. The  
15 agency shall not adopt a rule that is unnecessary or redundant.

16 (5) When appropriate, rules shall be based on sound, reasonably available  
17 scientific, technical, economic, and other relevant information. Agencies  
18 shall include a reference to this information in the notice of text required by  
19 G.S. 150B-21.2(c).

20 (6) Rules shall be designed to achieve the regulatory objective in a  
21 cost-effective and timely manner.

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

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

30 (1) The text of a proposed rule.

31 (2) An explanation of the proposed rule and the reason for the proposed rule.

32 (3) The federal certification required by subsection (g) of this section.

33 (4) Instructions on how and where to submit oral or written comments on the  
34 proposed rule.

35 (5) Any fiscal note that has been prepared for the proposed rule.

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

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

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

1 (f) If the agency determines that a proposed rule will have a substantial economic  
2 impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to  
3 the proposed rule. The alternatives may have been identified by the agency or by members of  
4 the public.

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

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

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

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

18 (h) Before an agency that is within the Governor's cabinet submits the proposed text of  
19 a permanent rule change for publication in the North Carolina Register, the agency must submit  
20 the text of the proposed rule change and an analysis of the proposed rule change to the Office  
21 of State Budget and Management and obtain a certification from the Office that the agency  
22 adhered to the principles set forth in this section. Before an agency that is within the  
23 departments of the Council of State other than the Governor submits the proposed text of a  
24 permanent rule change for publication in the North Carolina Register, the agency must submit  
25 the text of the proposed rule change and an analysis of the proposed rule change to the  
26 Commission and obtain a certification from the Commission that the agency adhered to the  
27 principles set forth in this section. The Office of State Budget and Management or the  
28 Commission, respectively, must respond to an agency's request for certification within 20 days  
29 of receipt of the request."

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

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

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

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

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

50 "(a) A contested case shall be commenced by paying a fee in an amount established in  
51 G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except

1 as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who  
2 files the petition shall serve a copy of the petition on all other parties and, if the dispute  
3 concerns a license, the person who holds the license. A party who files a petition shall file a  
4 certificate of service together with the petition. A petition shall be signed by a ~~party or a~~  
5 ~~representative of the party~~ party, an attorney representing a party, or other representative of the  
6 party as may specifically be authorized by law, and, if filed by a party other than an agency,  
7 shall state facts tending to establish that the agency named as the respondent has deprived the  
8 petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise  
9 substantially prejudiced the petitioner's rights and that the agency:

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

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

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

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

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

33 **SECTION 7.1.** G.S. 150B-33(b) reads as rewritten:

34 "(b) An administrative law judge may:

35 ...

- 36 (11) Order the assessment of reasonable attorneys' fees and witnesses' fees  
37 against the State agency involved in contested cases decided under this  
38 Article where the administrative law judge finds that the State agency named  
39 as respondent has substantially prejudiced the petitioner's rights and has  
40 acted arbitrarily or capriciously or under Chapter 126 where the  
41 administrative law judge finds discrimination, harassment, or orders  
42 reinstatement or back pay.

43 ...."

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

45 **"SECTION 63.** Sections 2 through 14 of this act become effective October 1, 2011, and  
46 apply to rules adopted on or after that date. Sections 15 through 55 of this act become effective  
47 January 1, 2012, and apply to contested cases commenced on or after that date. With regard to  
48 contested cases affected by Section 55.2 of this act, the provisions of Sections 15 through 27 of  
49 this act become effective when the United States Environmental Protection Agency approvals  
50 referenced in Section 55.2 have been issued or ~~June 15, 2012,~~October 1, 2012, whichever  
51 occurs first. With regard to contested cases affected by Section 55.1 of this act, the provisions

1 of Sections 15 through 27 and Sections 32 and 33 of this act become effective when the waiver  
2 referenced in Section 55.1 has been granted or February 1, 2013, whichever occurs first. Unless  
3 otherwise provided elsewhere in this act, the remainder of this act is effective when it becomes  
4 law."

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

6 "(a) Except as otherwise provided in subsection (b) of this section, a holder required to  
7 file a report under G.S. 116B-60 shall maintain the records containing the information required  
8 to be included in the report for ~~40 years~~ five years after the holder files the report, unless a  
9 shorter period is provided by rule of the Treasurer."

10 **SECTION 10.(a)** Each State agency, as defined in G.S. 150B-2(1a), shall submit a  
11 report of the audit, examination, and inspection functions performed by the agency and the  
12 amount of notice, if any, that the agency is required, by law or rule, to provide to a business or  
13 individual prior to conducting the audit, examination, or inspection. The agency shall submit  
14 the report to the Joint Legislative Administrative Procedure Oversight Committee, as  
15 reestablished by Section 1 of this act, no later than October 31, 2012.

16 **SECTION 10.(b)** Article 1 of Chapter 95 of the General Statutes is amended by  
17 adding a new section to read:

18 **"§ 95-4.1. Notice of inspections.**

19 Prior to conducting any inspection, the Department of Labor shall provide at least 72 hours'  
20 notice of the inspection to the person subject to the inspection. The Department of Labor shall  
21 not provide notice as required by this section when doing so would be inconsistent with or in  
22 violation of federal law."

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

24 **"§ 143-213. Definitions.**

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

27 ...

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

35 ...

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

38 ...."

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

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

42 **"§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

43 ...

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

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

17 ...."

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

20 "**§ 143B-279.17. Tracking and report on permit processing times.**

21 The Department of Environment and Natural Resources shall track the time required to  
22 process all permit applications received by the Department. The processing time tracked shall  
23 include (i) the total processing time from when an initial permit application is received to  
24 issuance or denial of the permit and (ii) the processing time from when a complete permit  
25 application is received to issuance or denial of the permit. No later than March 1 of each year,  
26 the Department shall report to the Fiscal Research Division of the General Assembly and the  
27 Environmental Review Commission on the permit processing times required to be tracked  
28 pursuant to this section."

29 **SECTION 14.** Section 3(b) of S.L. 2011-39 reads as rewritten:

30 "**SECTION 3.(b)** Wading Pool Fence Compliance. – From the effective date of this act  
31 through ~~July 1, 2012,~~January 1, 2013, the Department of Environment and Natural Resources  
32 shall not require owners and operators of public swimming pools to comply with 15A NCAC  
33 18A .2531(a)(7)."

34 **SECTION 15.** No later than July 1, 2013, the Commission for Public Health shall  
35 adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to  
36 construct a five-year phase of landfill development and apply to amend the permit to construct  
37 subsequent five-year phases of landfill development; or (ii) apply for a permit to construct a  
38 10-year phase of landfill development and apply to amend the permit to construct subsequent  
39 10-year phases of landfill development, with a limited review of the permit five years after  
40 issuance of the initial permit and five years after issuance of each amendment for subsequent  
41 phases of development. In developing these rules, the Department of Environment and Natural  
42 Resources shall examine the current fee schedule for permits for sanitary landfills set forth  
43 under G.S. 130A-295.8, and formulate recommendations for adjustments to the current fee  
44 schedule sufficient to address any additional demands associated with review of permits issued  
45 for 10-year phases of landfill development. The Department shall report its findings and  
46 recommendations, including any legislative proposals, to the Environmental Review  
47 Commission on or before December 1, 2012. The rules required by this section shall not  
48 become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as  
49 necessary to address any additional demands associated with review of permits issued for  
50 10-year phases of landfill development.

51 **SECTION 15.1.(a)** G.S. 143B-437.013(a) reads as rewritten:

1       "(a) Port Enhancement Zone Defined. – A port enhancement zone is an area that meets  
2 all of the following conditions:  
3       (1) It is comprised of part or all of one or more contiguous census tracts, census  
4 block groups, or both, in the most recent federal decennial census.  
5       (2) All of the area is located within 25 miles of a State port and is capable of  
6 being used to enhance port operations.  
7       (3) Every census tract and census block group that comprises the area has at  
8 least eleven percent (11%) of households with incomes of fifteen thousand  
9 dollars (\$15,000) or less."

10       **SECTION 15.1.(b)** This section is effective for taxable years beginning on or after  
11 January 1, 2013.

12       **SECTION 16.** G.S. 130A-250 reads as rewritten:

13       "**§ 130A-250. Exemptions.**

14       The following shall be exempt from this Part:

15       ...

16       (15) Seasonal markets operated from temporary shelters at which the operator of  
17 the market sells products produced only by the operator."

18       **SECTION 17.** This act is effective when it becomes law.