

VOTE DO NOT CONCUR on House Bill 765 Senate PCS - "Regulatory Reform Act of 2015"

H 765, as passed by the House, was a one-provision bill about transporting gravel. As passed by the Senate, the bill is a 50+ page omnibus polluter protection bill with many terrible environmental provisions, including:

Section 1.4: Attorney's Fees

- This provision provides for the automatic recovery of attorneys' fees any time the state is the prevailing party in a case dealing with environmental impact or the construction of transportation infrastructure. This provision would have an extreme chilling effect, further limiting the ability of citizens to ensure enforcement of environmental laws. While plaintiff groups may be prevented from recovering fees if there are "special circumstances" that would make the award of attorney's fees "unjust" there is no similar provision limiting the state from recovering fees. If the intent is to prevent frivolous lawsuits, then the award of attorney fees should hinge on whether the lawsuit is frivolous.

Section 4.1: Environmental Self-Audit Privilege and Limited Immunity

- Broadly applied immunity for environmental violations undercuts the effectiveness of penalties and fines as a deterrent to future violations (because the polluter can always avoid the penalty by "confessing"). Failure to enforce water quality laws pollutes our waters, harms the public and punishes **responsible** companies that comply with the law. As amended on the floor, exempts coal ash and requires DENR to submit the self audit provision to the EPA and EPA to approve before becoming law.

Section 4.2: Repeal Recycling Requirements for Discarded Computer Equipment and Televisions

- Currently, NC has an electronics recycling program that is comprehensive, free and convenient. The local recycling programs are funded by fees on television and computer manufacturers. H 765 repeals that funding mechanism and would undermine progress the state has made to deal with a unique and growing waste stream.

Section 4.7: Risk Remediation

- This section significantly expands a state program that currently allows incomplete cleanup of soil and groundwater contamination. As expanded, the program will cover virtually all sources of contamination, past, present and future, and will sharply reduce final protections for neighbors, communities, and the environment at most of those sites.

Section 4.9: Brownfields

- This section would change the state Brownfields law to adopt some federal definitions from the Superfund law (CERCLA) in place of existing state definitions. The problem is that the federal and state definitions are used for different purposes. This change in our state definition might allow an owner **who actually caused contamination** to get liability protection.

Section 4.14: Wastewater

- This section would allow engineers to essentially self-permit onsite wastewater systems. These are wastewater systems, such as septic systems, currently permitted by local health departments. This bill would make the property owner's engineer completely responsible for both design and installation of the system.

Section 4.17 Contested Cases for Air Permits

- This section effectively eliminates the rights of third parties to challenge air permits by provides that the filing for a contested case by a permit applicant or permittee would stay the EMC's decision while the filing for a contested case by a person who is not the permit applicant would not. Once permit has issued and been implemented, it would be highly unlikely for a court to alter the permit.

Section 4.18: Isolated Wetlands

- This section limits the ability of DENR to protect the state's water quality and reduce flooding by severely limiting the scope of state regulated wetlands.

Section 4.19: Coastal Stormwater Requirements

- This section would allow more development to be considered "low density" under the coastal stormwater rules, and would eliminate one of the current triggers for requiring non-residential development to comply with the coastal stormwater rules.

Section 4.24: Idling Rules

- This section would repeal heavy-duty vehicle idling restrictions, which will be extremely detrimental to air quality.

Section 4.25: Air Monitors

- The provision would significantly reduce the number of state monitors used to assess air quality. Without these monitors, the public and the N.C. Division of Air Quality will be kept in the dark about increases in pollution, which is especially concerning since many of these monitors are located in areas with historically poor air quality.

Section 4.30: Intermittent Streams

- This section prohibits all mitigation for impacts to intermittent streams by development.