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HOUSE BILL 201
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Short Title: Building Reutilization for Economic Dev. Act.

(Public)

Sponsors:

Referred to:

March 5, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE APPLICABILITY OF THE ENERGY CONSERVATION CODE
3 TO CERTAIN EXISTING NONRESIDENTIAL BUILDINGS, TO CLARIFY
4 STORMWATER PROGRAM IMPERVIOUS SURFACE CALCULATIONS FOR
5 REDEVELOPMENT, TO CREATE AN EXEMPTION FROM THE NORTH CAROLINA
6 ENVIRONMENTAL PROTECTION ACT FOR THE REOCCUPATION OF AN
7 EXISTING BUILDING OR FACILITY, TO AMEND THE STATUTE GOVERNING
8 THE DEPARTMENT OF COMMERCE RURAL ECONOMIC DEVELOPMENT
9 DIVISION, AND TO REINSTATE GRAVEL UNDER STORMWATER LAWS.

10 The General Assembly of North Carolina enacts:

11
12 **PART I. APPLICABILITY OF THE ENERGY CONSERVATION CODE TO**
13 **CERTAIN EXISTING NONRESIDENTIAL BUILDINGS**

14 **SECTION 1.** G.S. 143-138 is amended by adding a new subsection to read:

15 "(b15) Exclusion from Energy Code Requirements for Existing Commercial Buildings. –
16 The alteration of commercial buildings and structures that received a certificate of occupancy
17 prior to January 1, 2012, may be subject to the rules pertaining to energy efficiency and energy
18 conservation that were in effect on December 31, 2011. The addition to commercial buildings
19 and structures that received a certificate of occupancy on January 1, 2012, may be subject to the
20 rules pertaining to energy efficiency and energy conservation that were in effect on December
21 31, 2011, so long as the addition does not increase the building area of the existing commercial
22 building or structure to more than one hundred fifty percent (150%) of the building area of the
23 commercial building or structure as it was in existence on December 31, 2011. For the purpose
24 of this subsection, the term "commercial buildings and structures" shall include all structures
25 and buildings that are not classified as a Group R occupancy by the Building Code Council."

26
27 **PART II. STORMWATER PROGRAM IMPERVIOUS SURFACE CALCULATIONS**
28 **FOR REDEVELOPMENT**

29 **SECTION 2.** G.S. 143-214.7 reads as rewritten:

30 **"§ 143-214.7. Stormwater runoff rules and programs.**

31 (a) Policy, Purpose and Intent. – The Commission shall undertake a continuing
32 planning process to develop and adopt a statewide plan with regard to establishing and
33 enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the



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1 purpose and intent of this section that, in developing stormwater runoff rules and programs, the
2 Commission may utilize stormwater rules established by the Commission to protect classified
3 shellfish waters, water supply watersheds, and outstanding resource waters; and to control
4 stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the
5 intent of this section that the Commission phase in the stormwater rules on a priority basis for
6 all sources of pollution to the water. The plan shall be applied evenhandedly throughout the
7 State to address the State's water quality needs. The Commission shall continually monitor
8 water quality in the State and shall revise stormwater runoff rules as necessary to protect water
9 quality. As necessary, the stormwater rules shall be modified to comply with federal
10 regulations.

11 (a1) Definitions. – The following definitions shall apply to this section.

12 (1) Built-upon area. – Impervious surface and partially impervious surface to the
13 extent that the partially impervious surface does not allow water to infiltrate
14 through the surface and into the subsoil. "Built-upon area" does not include a
15 slatted deck or the water area of a swimming pool.

16 (2) Development. – Any land-disturbing activity that increases the amount of
17 built-upon area or that otherwise decreases the infiltration of precipitation
18 into the subsoil. When additional development occurs at a site that has
19 existing development, the built-upon area of the existing development shall
20 not be included in the density calculations for additional stormwater control
21 requirements, and stormwater control requirements cannot be applied
22 retroactively to existing development, unless otherwise required by federal
23 law.

24 (3) Redevelopment. – Any land-disturbing activity that does not result in a net
25 increase in built-upon area and that provides greater or equal stormwater
26 control to that of the previous development.

27 (b) The Commission shall implement stormwater runoff rules and programs for point
28 and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards
29 and best management practices for the protection of the State's water resources in the following
30 order of priority:

31 (1) Classified shellfish waters.

32 (2) Water supply watersheds.

33 (3) Outstanding resource waters.

34 (4) High quality waters.

35 (5) All other waters of the State to the extent that the Commission finds control
36 of stormwater is needed to meet the purposes of this Article.

37 (b1) The Commission shall develop model practices for incorporation of stormwater
38 capture and reuse into stormwater management programs and shall make information on those
39 model practices available to State agencies and local governments.

40 ~~(b2) For purposes of implementing stormwater programs, "built upon area" means~~
41 ~~impervious surface and partially impervious surface to the extent that the partially impervious~~
42 ~~surface does not allow water to infiltrate through the surface and into the subsoil. "Built upon~~
43 ~~area" does not include a wooden slatted deck, the water area of a swimming pool, or gravel.~~

44 (b3) Stormwater runoff rules and programs shall not require new or increased stormwater
45 controls for redevelopment activities that do not remove or decrease existing stormwater
46 controls, unless required by federal law.

47 (b4) When determining built-upon area, stormwater programs authorized by subsection
48 (c) of this section shall approve and incorporate data provided by an applicant that is stamped
49 and signed by an engineer licensed in accordance with Chapter 89C of the General Statutes, a
50 geologist licensed in accordance with Chapter 89E of the General Statutes, or a soil scientist
51 licensed in accordance with Chapter 89F of the General Statutes that calculates stormwater

1 variables, including permeability, infiltration, and retention of partially impervious materials,
2 including gravel, mulch, and permeable pavement. If an applicant does not provide such data,
3 the stormwater program shall perform the applicable calculations of stormwater variables.

4"

5 **SECTION 3.** Unless specifically authorized by the General Assembly, the
6 Environmental Management Commission and the Department of Environment and Natural
7 Resources do not have the authority to define the term "gravel" for purposes of implementing
8 stormwater programs. Any rule adopted by the Environmental Management Commission or the
9 Department of Environment and Natural Resources that defines the term "gravel" for purposes
10 of implementing stormwater programs is not effective and shall not become effective.

11 **SECTION 4.** Section 2 of S.L. 2006-246, as amended by Section 51(b) of S.L.
12 2013-413, reads as rewritten:

13 **"SECTION 2.** Definitions. – The following definitions apply to this act and its
14 implementation:

- 15 (1) The definitions set out in 40 Code of Federal Regulations § 122.2
16 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003
17 Edition).
- 18 (2) The definitions set out in ~~G.S. 143-212 and G.S. 143-213.~~G.S. 143-212,
19 G.S. 143-213, and G.S. 143-214.7(a1).
- 20 (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of Terms).
- 21 (4) The definitions set out in 15A NCAC 2H .1002 (~~Definitions~~), ~~except for the~~
22 ~~definitions of "Built-upon area", "Development", and "Redevelopment",~~
23 ~~which are defined below.~~(Definitions).
- 24 (5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be
25 equaled or exceeded, on average, once in 12 months and with a duration of
26 24 hours.
- 27 (6) "BMP" means Best Management Practice.
- 28 (7) Repealed by Session Laws 2013-413, s. 51.(b), effective August 23, 2013.
- 29 (8) ~~"Development" means any land-disturbing activity that increases the amount~~
30 ~~of built-upon area or that otherwise decreases the infiltration of precipitation~~
31 ~~into the soil.~~
- 32 (9) "Division" means the Division of Water Quality in the Department.
- 33 (10) "Planning jurisdiction" means the territorial jurisdiction within which a
34 municipality exercises the powers authorized by Article 19 of Chapter 160A
35 of the General Statutes, or a county may exercise the powers authorized by
36 Article 18 of Chapter 153A of the General Statutes.
- 37 (11) "Public entity" means the United States; the State; a city, village, township,
38 county, school district, public college or university, or single-purpose
39 governmental agency; or any other governing body that is created by federal
40 or State law.
- 41 (12) ~~"Redevelopment" means any land-disturbing activity that does not result in a~~
42 ~~net increase in built-upon area and that provides greater or equal stormwater~~
43 ~~control than the previous development.~~
- 44 (13) "Regulated entity" means any public entity that must obtain a Phase II
45 National Pollutant Discharge Elimination System (NPDES) permit for
46 stormwater management for its municipal separate storm sewer system
47 (MS4).
- 48 (14) "Sensitive receiving waters" means any of the following:
49 a. Waters that are classified as high quality, outstanding resource,
50 shellfish, trout, or nutrient-sensitive waters in accordance with

- 1 subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for
 2 Assignment of Water Quality Standards – General Procedures).
 3 b. Waters that are occupied by or designated as critical habitat for
 4 aquatic animal species that are listed as threatened or endangered by
 5 the United States Fish and Wildlife Service or the National Marine
 6 Fisheries Service under the provisions of the Endangered Species Act
 7 of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et
 8 seq.), as amended.
 9 c. Waters for which the designated use, as described by the
 10 classification system set out in subsections (c), (d), and (e) of 15A
 11 NCAC 2B .0101 (Procedures for Assignment of Water Quality
 12 Standards – General Procedures), have been determined to be
 13 impaired in accordance with the requirements of subsection (d) of 33
 14 U.S.C. § 1313.
- 15 (15) "Shellfish resource waters" means Class SA waters that contain an average
 16 concentration of 500 parts per million of natural chloride ion. Average
 17 concentration is determined by averaging the chloride concentrations of five
 18 water samples taken one-half mile downstream from the project site that are
 19 taken on separate days, within one hour of high tide, and not within 48 hours
 20 following a rain event. The chloride ion concentrations are to be determined
 21 by a State-certified laboratory.
- 22 (16) "Significant contributor of pollutants" means a municipal separate storm
 23 sewer system (MS4) or a discharge that contributes to the pollutant loading
 24 of a water body or that destabilizes the physical structure of a water body
 25 such that the contribution to pollutant loading or the destabilization may
 26 reasonably be expected to adversely affect the quality and uses of the water
 27 body. Uses of a water body shall be determined pursuant to 15A NCAC 2B
 28 .0211 through 15A NCAC 2B .0222 (Classifications and Water Quality
 29 Standards Applicable to Surface Waters and Wetlands of North Carolina)
 30 and 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).
- 31 (17) "Total maximum daily load (TMDL) implementation plan" means a written,
 32 quantitative plan and analysis for attaining and maintaining water quality
 33 standards in all seasons for a specific water body and pollutant."
 34

35 PART III. SEPA EXEMPTION FOR REOCCUPATION OF AN EXISTING BUILDING 36 OR FACILITY

37 SECTION 5. G.S. 113A-12 reads as rewritten:

38 "§ 113A-12. Environmental document not required in certain cases.

39 No environmental document shall be required in connection with:

40 ...

- 41 (7) The redevelopment or reoccupation of an existing building or facility, so
 42 long as any additions to the existing building or facility do not increase the
 43 total footprint to more than one hundred fifty percent (150%) of the footprint
 44 of the existing building or facility and so long as any new construction does
 45 not increase the total footprint to more than one hundred fifty percent
 46 (150%) of the footprint of the existing building or facility."

47 SECTION 6. G.S. 113A-8 reads as rewritten:

48 "§ 113A-8. Major development projects.

49 (a) The governing bodies of all cities, counties, and towns acting individually, or
 50 collectively, may by ordinance require any special-purpose unit of government or private
 51 developer of a major development project to submit detailed statements, as defined in

1 G.S. 113A-4(2), of the impact of such projects for consideration by those governing bodies in
2 matters within their jurisdiction. Any such ordinance may not be designed to apply to only a
3 particular major development project, and shall be applied consistently.

4 (b) Any ordinance adopted pursuant to this section shall exempt those major
5 development projects for which a detailed statement of the environmental impact of the project
6 or a functionally equivalent permitting process is required by federal or State law, regulation, or
7 rule.

8 (c) Any ordinance adopted pursuant to this section shall establish minimum criteria to
9 be used in determining whether a statement of environmental impact is required. A detailed
10 statement of environmental impact may not be required for a project that does not exceed the
11 minimum criteria and any exceptions to the minimum criteria established by the ordinance."

12 (d) Any ordinance adopted pursuant to this section shall exempt from its requirements
13 the certain cases for which an environmental document is not required as set forth in
14 G.S. 113A-12."

15 16 **PART IV. ALLOW ECONOMICALLY DISADVANTAGED AND RURAL AREAS TO** 17 **ACCESS REDD BUILDING REUSE FUNDS**

18 **SECTION 7.** G.S. 143B-472.127(a)(2) reads as rewritten:

19 "(2) To provide matching grants or loans to local government units located in an
20 economically distressed county either (i) a development tier one or tier two
21 area or (ii) a rural census tract in a development tier three area that will
22 productively reuse or demolish vacant buildings and properties or construct
23 or expand rural health care ~~facilities~~ facilities, with priority given to towns or
24 communities with populations of less than 5,000. The development tier
25 designation of a county shall be determined as provided in
26 G.S. 143B-437.08. For purposes of this section, the term "economically
27 distressed county" has the same meaning as in G.S. 143B-437.01. "rural
28 census tract" means a census tract having a population density of less than
29 500 people per square mile according to the most recent decennial federal
30 census."

31 32 **PART V. COMMISSIONS TO AMEND RULES TO CONFORM WITH THIS ACT**

33 **SECTION 8.** The Building Code Council, the Environmental Management
34 Commission, the Coastal Management Commission, and the Department of Environment and
35 Natural Resources shall amend their rules to conform with this act.

36 37 **PART VI. REINSTATE GRAVEL UNDER STORMWATER LAWS**

38 **SECTION 9.** If Senate Bill 38, 2013 Regular Session, becomes law, Section 28 of
39 that act is repealed.

40 41 **PART VII. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

42 **SECTION 10.** If any provision of this act or its application is held invalid, the
43 invalidity does not affect other provisions or applications of this act that can be given effect
44 without the invalid provisions or application, and to this end the provisions of this act are
45 severable.

46 **SECTION 11.** This act is effective when it becomes law.