



The Daily Bulletin: Wednesday, August 20, 2014

PUBLIC/SENATE BILLS

S 729 (2013-2014) **COAL ASH MANAGEMENT ACT OF 2014 (NEW)**. Filed May 14 2014, *A BILL TO BE ENTITLED AN ACT TO (1) PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (2) ESTABLISH A MORATORIUM ON CERTAIN RATE CASES; (3) CREATE THE COAL ASH MANAGEMENT COMMISSION TO REVIEW AND APPROVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS CLASSIFICATIONS AND CLOSURE PLANS AND OTHERWISE STUDY AND MAKE RECOMMENDATIONS ON LAWS GOVERNING MANAGEMENT OF COAL COMBUSTION RESIDUALS; (4) REQUIRE EXPEDITED REVIEW BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES OF ANY PERMIT NECESSARY TO CONDUCT ACTIVITIES REQUIRED BY THIS ACT; (5) ESTABLISH VARIOUS REPORTING REQUIREMENTS TO THE GENERAL ASSEMBLY, INCLUDING A QUARTERLY REPORT FROM THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ON ITS OPERATIONS, ACTIVITIES, PROGRAMS, AND PROGRESS WITH RESPECT TO ITS OBLIGATIONS UNDER THIS ACT FOR COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (6) PROHIBIT LOCAL GOVERNMENT REGULATION OF MANAGEMENT OF COAL COMBUSTION RESIDUALS OR COAL COMBUSTION PRODUCTS; (7) PROHIBIT CONSTRUCTION OF NEW OR EXPANSION OF EXISTING COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS EFFECTIVE OCTOBER 1, 2014; (8) PROHIBIT THE DISPOSAL OF COAL COMBUSTION RESIDUALS INTO COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS AT COAL-FIRED GENERATING UNITS THAT ARE NO LONGER PRODUCING COAL COMBUSTION RESIDUALS EFFECTIVE OCTOBER 1, 2014; (9) PROHIBIT DISPOSAL OF STORMWATER TO COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS EFFECTIVE DECEMBER 31, 2018; (10) REQUIRE ALL ELECTRIC GENERATING FACILITIES TO CONVERT TO GENERATION OF DRY FLY ASH ON OR BEFORE DECEMBER 31, 2017, AND DRY BOTTOM ASH ON OR BEFORE DECEMBER 31, 2020, OR RETIRE; (11) REQUIRE THE ASSESSMENT OF GROUNDWATER AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (12) REQUIRE CORRECTIVE ACTION FOR THE RESTORATION OF GROUNDWATER QUALITY AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (13) REQUIRE A SURVEY OF DRINKING WATER SUPPLY WELLS AND REPLACEMENT OF CONTAMINATED WATER SUPPLIES; (14) REQUIRE THE IDENTIFICATION, ASSESSMENT, AND CORRECTION OF UNPERMITTED DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (15) REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO, AS SOON AS PRACTICABLE, BUT NO LATER THAN DECEMBER 31, 2015, PRIORITIZE FOR THE PURPOSE OF CLOSURE AND REMEDIATION COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS, INCLUDING ACTIVE AND RETIRED SITES, BASED ON THESE SITES' RISKS TO PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES; (16) REQUIRE OWNERS OF COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS TO SUBMIT A PROPOSED PLAN FOR CLOSURE OF ALL IMPOUNDMENTS TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES; (17) REQUIRE CLOSURE AND REMEDIATION OF CERTAIN COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS AS SOON AS PRACTICABLE, BUT NO LATER THAN AUGUST 1, 2019; (18) REQUIRE THE A SCHEDULE AND PROCESS FOR CLOSURE AND REMEDIATION OF ALL COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS BASED UPON THE DEPARTMENT'S RISK ASSESSMENT OF THESE SITES, BASELINE REQUIREMENTS SET BY THE GENERAL ASSEMBLY, EVALUATION OF PROPOSED CLOSURE PLANS SUBMITTED BY IMPOUNDMENT OWNERS, AND INPUT FROM THE PUBLIC AND OTHER STAKEHOLDERS; (19) ESTABLISH MINIMUM STATUTORY REQUIREMENTS FOR STRUCTURAL FILL PROJECTS USING COAL COMBUSTION PRODUCTS AND REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO INSPECT CERTAIN STRUCTURAL FILL PROJECTS; (20) PLACE A MORATORIUM ON CERTAIN PROJECTS USING COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL UNTIL AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE*

ENVIRONMENTAL MANAGEMENT COMMISSION TO STUDY THE ADEQUACY OF CURRENT LAW GOVERNING USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL AND FOR BENEFICIAL USE; (21) PLACE A MORATORIUM ON THE EXPANSION AND CONSTRUCTION OF COAL COMBUSTION RESIDUALS LANDFILLS UNTIL AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ASSESS THE RISKS TO PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES OF COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS LOCATED BENEATH THESE LANDFILLS TO DETERMINE THE ADVISABILITY OF CONTINUED OPERATION OF THESE LANDFILLS; (22) STRENGTHEN THE REPORTING AND NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO WATERS OF THE STATE; (23) REQUIRE CERTAIN EMERGENCY CALLS TO BE RECORDED; (24) REQUIRE DEVELOPMENT OF EMERGENCY ACTION PLANS FOR HIGH AND INTERMEDIATE HAZARD DAMS AND AMEND OTHER DAM SAFETY LAW REQUIREMENTS APPLICABLE TO COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (25) TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION; (26) AMEND COMPLIANCE BOUNDARY PROVISIONS; (27) PROVIDE FOR VARIOUS STUDIES; (28) REQUIRE THE STATE CONSTRUCTION OFFICE AND THE DEPARTMENT OF TRANSPORTATION TO DEVELOP TECHNICAL SPECIFICATIONS FOR USE OF COAL COMBUSTION PRODUCTS; AND (29) PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT.

Conference report makes the following changes to the 5th edition:

Changes the long title.

Amends the prohibition/moratorium on the Utilities Commission granting an increase in base rates of an electric public utility for costs related to coal combustion residuals surface impoundments (impoundments) to end on January 15, 2015 (was, December 31, 2016).

Amends the membership of the Coal Ash Management Commission (Commission), requiring that the representative of an electric membership corporation to be appointed to the Commission is to be appointed by the Speaker of the House of Representatives (previously, was to be appointed by the Governor) and that the member of the Commission required to have expertise in determining and evaluating costs associated with electricity generation and establishing rates associated with electricity consumption is to be appointed by the Governor (previously, was to be appointed by the Speaker of the House).

Provides additional provisions regarding the Governor's appointment of the Commission's Chair requiring the Governor to make an initial appointment no later than October 1, 2014. If the appointment has not been made by that date, the Chair must be elected by a vote of the membership. Provides procedures for the appointment of subsequent Chairs, requiring the appointment to be no later than 30 days after the last day of the previous Chair's term. If that appointment has not been made in the provided timeline, the Chair must be elected by a vote of the membership of the Commission.

Provides that the Commission will be administratively located in the Division of Emergency Management of the Department of Public Safety [previously, was located in the Department of Environment and Natural Resources (DENR)]. Makes conforming changes. Provides that the members of the Commission will serve six year terms, effective July 1 of the year of the appointment.

Amends proposed GS 130A-309.205(a), concerning the invalidation of local ordinances that regulate coal combustion residuals or products, clarifying that local ordinances that regulate or have the effect of regulating carbon burn-out plants are invalidated. Makes technical changes.

Amends proposed GS 130A-309.209, providing that if DENR has approved a different time-frame for the submittal of the proposed Groundwater Corrective Action Plan, that time-frame cannot exceed 180 days from the submission date of the Groundwater Assessment Report (previously, no limit on the time-frame was established).

Amends GS 130A-309.210, concerning the identification and assessment of discharges, providing that the owner of an impoundment has until October 1, 2014 (was, August 1, 2014), to submit a proposed Plan for the Identification of

New Discharges for review and approval.

Amends GS 130A-309.211 to provide that DENR has until December 31, 2015 (was, August 1, 2015), to develop proposed classifications for all impoundments. Adds the requirement that DENR, in developing the classifications and considering eight other factors, must also consider whether the impoundment is located within an area subject to a 100-year flood. No longer requires that the required notice of the declaration of a classification be given before issuing a proposed classification. Makes technical and clarifying changes.

Amends proposed GS 130A-309.212, concerning the closure of impoundments, providing new requirements for the closure of high-risk and low-risk impoundments, requiring that, at a minimum, (1) impoundments located in whole above the seasonal high groundwater table must be dewatered and (2) impoundments located in whole or in part beneath the seasonal high groundwater table must be dewatered to the maximum extent practicable. Makes reorganizational and clarifying changes. Provides that DENR cannot approve the closure of any low-risk impoundment unless it is established that the proposed closure plan includes design measures to prevent, upon the plan's full implementation, post-closure exceedances of groundwater quality standards beyond the compliance boundary attributable to constituents associated with the presence of the impoundment. Amends proposed GS 130A-309.212(b) concerning proposed Closure Plans for impoundments, providing that in making copies of closure plans available for inspection, DENR must provide for the reasonable availability of the plan in other locations (previously, provided that DENR could provide for the availability of the plan in other locations). Provides additional requirements that must be met in order for the Commission to approve a Closure Plan, including that the implementation of the plan is economically feasible and that it is protective of the public health, safety, and welfare; the environment; and natural resources (previously, must find that the benefits to public health, safety, and welfare; the environment; and natural resources outweigh the negative impacts on electricity costs and reliability). Also provides that the Commission can consider any impact on electricity costs and reliability but provides that this factor cannot be dispositive of the Commission's determination.

Amends proposed GS 130A-309.213, concerning variance authority, providing that the Commission has the authority to grant a variance to extend any deadline for closure of an impoundment (previously, the Secretary of DENR had the authority to grant a variance). Provides that an owner of an impoundment cannot request a variance earlier than two years prior to the applicable deadline. Sets out requirements that must be met to apply and be approved for a variance including providing detailed information that the owner substantially complied with all other requirements and deadlines and that the owner has made a good faith effort to comply with the applicable deadline for closure. Also provides that within 30 days of the receipt of all public input received and required by this subdivision, DENR must submit a proposed variance to the Coal Ash Management Commission. Directs the Commission to evaluate all information submitted as well as any other information the Commission deems relevant. Provides that the Commission can only approve a variance if it determines that compliance with the deadline cannot be achieved by best available technology found to be economically reasonable and would produce serious hardship without equal or greater benefits to the public. Further requires the Commission to issue its determination in writing, including findings in support of its determination and provides that if the Commission fails to act on a variance request within 60 days of receipt, the variance will be deemed denied. Provides that parties aggrieved by a final decision of the Commission can appeal the decision pursuant to GS 150B, Article 3 (was, parties aggrieved by the Secretary of DENR can appeal the decision within 30 days of the date of the decision). Adds new provisions providing that granted variances cannot extend a deadline for an impoundment closure for more than three years beyond the applicable closure date of the impoundment and that no more than one variance can be granted per impoundment.

Amends GS 130A-309.216, concerning siting requirements for projects using coal combustion products for structural fill, making changes in order to provide that such products, when used as a structural fill, should not be placed (1) within 50 feet of any property boundary (was, within 200 feet); (2) within 300 horizontal feet of a private dwelling or well (was, within 500 horizontal feet of any source of drinking water, such as a well, spring, or other groundwater source); (3) within 50 horizontal feet of the top of the bank of a perennial stream or other surface water body (was, within 300 feet); (4) within 4 feet of the seasonal high groundwater table (same as previous edition); (5) within a 100-year floodplain, except as authorized under GS 143-215.54A(b), provided the site located in the floodplain does not

restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human life, wildlife, or land or water resources (previously, only allowed if the project will be protected from inundation and washout, the flow of water is not restricted, and the storage volume of the floodplain will not be significantly reduced); and (6) within 50 horizontal feet of a wetland, unless, after consideration of the chemical and physical impact on the wetland, the Army Corps of Engineers issues a permit or waiver (was, 100 horizontal feet). Deletes provision that did not allow fill to be placed within 30 feet of a bedrock outcrop.

Requires that for the four specified impoundments, those located wholly above the seasonal high groundwater table must be dewatered while those wholly or partially below the seasonal high groundwater table must be dewatered to the maximum extent practicable.

Establishes beginning dates and initial terms for the initial members of the Commission, providing that the terms of all the appointed members will begin and be effective on July 1, 2014.

Amends effective dates, providing that the first report due pursuant to GS 130A-309.210(e) is due November 1, 2014 (was, October 1, 2014), and that initial members of the Commission must be appointed by October 1, 2014 (was, September 1, 2014).

Provides that the proposed changes to GS 143-215.1C, concerning reporting requirements for wastewater systems, are effective October 1, 2014 (was, September 1, 2014).

Provides that the report required of the Commission regarding the beneficial use of coal combustion products rather than disposal must be submitted to the Environmental Review Commission no later than December 1, 2014.

Appropriates \$1.75 million to DENR from the Coal Combustion Residuals Management Fund (Fund) to fund 25 new positions to carry out oversight of coal combustion products and coal combustion residuals. Appropriates remaining funds from the Fund after the above appropriation to the Department of Public Safety to fund five new positions to support the Commission. Specifies the assignment of the new positions. Effective July 1, 2014.

Makes several technical changes.

Intro. by Apodaca, Berger.

GS 62, GS 130A, GS 143

[View summary](#)

Environment, Environment/Natural Resources, Government, State Agencies, Department of Environment and Natural Resources, Department of Public Safety

ACTIONS ON BILLS

PUBLIC BILLS

H 189: VARIOUS TAX LAW AND FILM GRANT CHANGES.

Senate: Withdrawn From Cal

Senate: Re-ref Com On Rules and Operations of the Senate

H 1276: ADJOURNMENT (NEW).

House: Concurred In S/Com Sub

House: Ordered Enrolled

Ratified

Ch. Res 2014-8

S 3: 2014 BUDGET MODS./PAY RAISES/OTHER CHANGES (NEW).

House: Added to Calendar

House: Reconsidered 3rd Reading

House: Withdrawn From Cal

House: Re-ref Com On Rules, Calendar, and Operations of the House

House: Reptd Unfav

House: Removed From Unfav Cal

House: Added to Calendar

House: Re-ref Com On Rules, Calendar, and Operations of the House

House: Reptd Fav

House: Cal Pursuant Rule 36(b)

House: Added to Calendar

House: Passed 2nd Reading

House: Passed 3rd Reading

House: Ordered Enrolled

Ratified

Pres. To Gov. 08/20/2014

S 42: CONFIDENTIALITY OF UC INFORMATION (NEW).

Senate: Withdrawn From Com

Senate: Placed on Today's Calendar

Senate: Concurred In H/Com Sub

Senate: Ordered Enrolled

Ratified

Pres. To Gov. 08/20/2014

S 729: COAL ASH MANAGEMENT ACT OF 2014 (NEW).

House: Reptd Fav For Adoption

House: Cal Pursuant Rule 36(b)

House: Added to Calendar

House: Conf Report Adopted

Senate: Conf Com Reported

Senate: Placed on Today's Calendar

Senate: Conf Report Adopted

Senate: Ordered Enrolled

Ratified

Pres. To Gov. 08/20/2014

No local actions on bills

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