

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 211*
Committee Substitute Favorable 4/16/97

Short Title: Amend Env. Laws.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) PROVIDE
3 FOR CONTINUING EDUCATION REQUIREMENTS FOR, AND THE
4 EXPIRATION AND RENEWAL OF, CERTIFICATES ISSUED BY THE WATER
5 POLLUTION CONTROL SYSTEM OPERATORS CERTIFICATION
6 COMMISSION; (2) INCLUDE CONSIDERATION OF THE COMPLIANCE
7 HISTORY IN OTHER STATES OF AN APPLICANT FOR A PERMIT UNDER
8 THE COASTAL AREA MANAGEMENT ACT; (3) CLARIFY THE DISTINCTION
9 BETWEEN A PUBLIC HEARING AND A PUBLIC MEETING IN CONNECTION
10 WITH AN APPLICATION FOR A WATER QUALITY PERMIT; (4) ALLOW THE
11 ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE ITS
12 POWERS BY RESOLUTION RATHER THAN BY RULE; (5) CLARIFY THE
13 ASSESSMENT OF CIVIL PENALTIES FOR CONTINUING VIOLATIONS OF
14 AIR QUALITY STANDARDS; (6) REESTABLISH A SCHEDULE OF SIX-YEAR
15 STAGGERED TERMS FOR THE MINING COMMISSION; AND (7)
16 REESTABLISH A SCHEDULE OF TWO-YEAR STAGGERED TERMS FOR THE
17 NORTH CAROLINA PARKS AND RECREATION AUTHORITY, AS
18 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

19 The General Assembly of North Carolina enacts:

1 Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new
2 section to read:

3 **"§ 90A-46.1. Expiration and renewal of certificates; continuing education**
4 **requirements.**

5 A certificate issued under this Part expires on 31 December of the year in which it is
6 issued or renewed. The Commission may establish minimum continuing education
7 requirements that an applicant must meet to renew a certificate. The Commission shall
8 renew a certificate if the applicant meets the continuing education requirement and pays
9 the required renewal fee, any renewal fee in arrears, and any late application penalty."

10 Section 2. G.S. 113A-120(b1) reads as rewritten:

11 "(b1) In addition to those factors set out in subsection (a) of this section, and
12 notwithstanding the provisions of subsection (b) of this section, the responsible official or
13 body may deny an application for a permit upon finding that an applicant, or any parent
14 or subsidiary corporation if the applicant is a corporation:

- 15 (1) Is conducting or has conducted any activity causing significant
16 environmental damage for which a major development permit is
17 required under this Article without having previously obtained such
18 permit or has received a notice of violation with respect to any activity
19 governed by this Article and has not complied with the notice within the
20 time specified in the notice;
- 21 (2) Has failed to pay a civil penalty assessed pursuant to this Article, a local
22 ordinance adopted pursuant to this Article, or Article 17 of Chapter 113
23 of the General Statutes which is due and for which no appeal is pending;
- 24 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S.
25 113-229(k), or any criminal provision of a local ordinance adopted
26 pursuant to this Article; or
- 27 (4) Has failed to substantially comply with ~~State~~state rules or local
28 ordinances and regulations adopted pursuant to this Article or with other
29 federal and ~~State~~state laws, regulations, and rules for the protection of
30 the environment."

31 Section 3. G.S. 143-215.1(c) reads as rewritten:

32 "(c) Applications for Permits and Renewals for Facilities Discharging to the
33 Surface Waters. –

- 34 (1) All applications for permits and for renewal of existing permits for
35 outlets and point sources and for treatment works and disposal systems
36 discharging to the surface waters of the State shall be in writing, and the
37 Commission may prescribe the form of such applications. All
38 applications shall be filed with the Commission at least 180 days in
39 advance of the date on which it is desired to commence the discharge of
40 wastes or the date on which an existing permit expires, as the case may
41 be. The Commission shall act on a permit application as quickly as
42 possible. The Commission may conduct any inquiry or investigation it
43 considers necessary before acting on an application and may require an

1 applicant to submit plans, specifications, and other information the
2 Commission considers necessary to evaluate the application.

- 3 (2) a. The Department shall refer each application for permit, or renewal of
4 an existing permit, for outlets and point sources and treatment works
5 and disposal systems discharging to the surface waters of the State to its
6 staff for written evaluation and proposed determination with regard to
7 issuance or denial of the permit. If the Commission concurs in the
8 proposed determination, it shall give notice of intent to issue or deny the
9 permit, along with any other data that the Commission may determine
10 appropriate, to be given to the appropriate State, interstate and federal
11 agencies, to interested persons, and to the public.

12 a1. The Commission shall prescribe the form and content of the
13 notice. ~~The notice required herein~~ Public notice shall be given at
14 least 45 days prior to any proposed final action granting or
15 denying the permit. Public notice shall be given by publication
16 of the notice one time in a newspaper having general circulation
17 within the county.

18 b. Repealed by Session Laws 1987, c. 734.

- 19 (3) If any person desires a public ~~meeting-hearing~~ on any application for
20 permit or renewal of an existing permit provided for in this subsection,
21 he shall so request in writing to the Commission within 30 days
22 following date of the notice of intent. The Commission shall consider
23 all such requests for ~~meeting-hearing~~, and if the Commission determines
24 that there is a significant public interest in holding such ~~meeting-~~
25 hearing, at least 30 days' notice of such ~~meeting-hearing~~ shall be given to
26 all persons to whom notice of intent was sent and to any other person
27 requesting notice. At least 30 days prior to the date of ~~meeting-hearing~~,
28 the Commission shall also cause a copy of the notice thereof to be
29 published at least one time in a newspaper having general circulation in
30 such county. In any county in which there is more than one newspaper
31 having general circulation in that county, the Commission shall cause a
32 copy of such notice to be published in as many newspapers having
33 general circulation in the county as the Commission in its discretion
34 determines may be necessary to assure that such notice is generally
35 available throughout the county. The Commission shall prescribe the
36 form and content of the notices.

37 The Commission shall prescribe the procedures to be followed in
38 ~~such meetings-hearings~~. If the ~~meeting-hearing~~ is not conducted by the
39 Commission, detailed minutes of the ~~meeting-hearing~~ shall be kept and
40 shall be submitted, along with any other written comments, exhibits or
41 documents presented at the ~~meeting-hearing~~, to the Commission for its
42 consideration prior to final action granting or denying the permit.

- 1 (4) Not later than 60 days following notice of intent or, if a public hearing is
2 held, within 90 days following consideration of the matters and things
3 presented at such hearing, the Commission shall grant or deny any
4 application for issuance of a new permit or for renewal of an existing
5 permit. All permits or renewals issued by the Commission and all
6 decisions denying application for permit or renewal shall be in writing.
- 7 (5) No permit issued pursuant to this subsection (c) shall be issued or
8 renewed for a term exceeding five years.
- 9 (6) The Commission shall not act upon an application for a new
10 nonmunicipal domestic wastewater discharge facility until it has
11 received a written statement from each city and county government
12 having jurisdiction over any part of the lands on which the proposed
13 facility and its appurtenances are to be located which states whether the
14 city or county has in effect a zoning or subdivision ordinance and, if
15 such an ordinance is in effect, whether the proposed facility is consistent
16 with the ordinance. The Commission shall not approve a permit
17 application for any facility which a city or county has determined to be
18 inconsistent with its zoning or subdivision ordinance unless it
19 determines that the approval of such application has statewide
20 significance and is in the best interest of the State. An applicant for a
21 permit shall request that each city and county government having
22 jurisdiction issue the statement required by this subdivision by mailing
23 by certified mail, return receipt requested, a written request for such
24 statement and a copy of the draft permit application to the clerk of the
25 city or county. If a local government fails to mail the statement required
26 by this subdivision, as evidenced by a postmark, within 15 days after
27 receiving and signing for the certified mail, the Commission may
28 proceed to consider the permit application notwithstanding this
29 subdivision."

30 Section 4. G.S. 143-215.4(b) reads as rewritten:

31 "(b) Procedures for Public Input. –

- 32 (1) The Commission may, on its own motion or when required by federal
33 law, request public comments on or hold public hearings on matters
34 within the scope of its authority under this Article or Articles 21A or
35 21B of this Chapter. To request public comments on a matter, the
36 Commission shall notify appropriate agencies of the opportunity to
37 submit written comments to the Commission on the matter and shall
38 publish a notice in a newspaper having general circulation in the
39 affected area, stating the matter under consideration by the Commission
40 and informing the public of its opportunity to submit written comments
41 to the Commission on the matter. A public comment period shall extend
42 for at least 30 days after the notice is published.

1 (2) To hold a public hearing on a matter, the Commission shall notify, by
2 personal service or certified mail, persons directly affected by the matter
3 under consideration and shall publish a notice in a newspaper having
4 general circulation in the affected area, stating the matter under
5 consideration by the Commission and the time, date, and place of a
6 public hearing to be held on the matter. A public hearing shall be held
7 no sooner than 20 days after the notice is published. The proceedings at
8 a public hearing held under this subsection shall be recorded. Upon
9 payment of a fee established by the Commission, any person may obtain
10 a copy of the record of the public hearing. After a public hearing, the
11 Commission shall accept written comments for the time period
12 prescribed by the Commission.

13 (3) This subsection does not apply to rule-making proceedings, contested
14 case hearings, or the issuance of permits required under Title V. The
15 Commission shall establish procedures for public hearings, public
16 notice, and public comment respecting permits required by Title V as
17 provided by G.S. 143-215.111(4).

18 (4) The Commission may hold a public meeting on any matter within its
19 scope of authority. The Commission may hold a public meeting in
20 addition to any public hearing that is required under any provision of
21 law, but a public meeting may not be substituted for any required public
22 hearing. Except as may be otherwise provided by law, the Commission
23 may determine the procedures for any public meeting it holds."

24 Section 5. G.S. 143-215.3(a)(4) reads as rewritten:

25 "(4) To delegate such of the powers of the Commission as the Commission
26 deems necessary to one or more of its members, to the Secretary or any
27 other qualified employee of the Department. ~~Department; provided, that~~
28 ~~the provisions of any such delegation of power shall be set forth in the rules of~~
29 ~~the Commission; and provided further that the~~ The Commission shall not
30 delegate to persons other than its own members and the designated
31 employees of the Department the power to conduct hearings with
32 respect to the classification of waters, the assignment of classifications,
33 air quality standards, air contaminant source classifications, emission
34 control standards, or the issuance of any special order except in the case
35 of an emergency under subdivision (12) of this subsection for the
36 abatement of existing water or air pollution. Any employee of the
37 Department to whom a delegation of power is made to conduct a
38 hearing shall report the hearing with its evidence and record to the
39 Commission."

40 Section 6. G.S. 143-215.114A(b) reads as rewritten:

41 "(b) ~~Each day of continuing violation after written notification from the Secretary shall be~~
42 ~~considered a separate offense.~~ If any action or failure to act for which a penalty may be

1 assessed under this section is continuous, the Secretary may assess a penalty not to
2 exceed ten thousand dollars (\$10,000) per day for so long as the violation continues."

3 Section 7. G.S. 143B-291 reads as rewritten:

4 **"§ 143B-291. North Carolina Mining Commission – members; selection; removal;**
5 **compensation; quorum; services.**

6 (a) Members, Selection. – The North Carolina Mining Commission shall consist of
7 nine members appointed by the Governor. ~~The Commission shall be composed of the~~
8 ~~following: one Governor under a specified subdivision of this subsection as follows:~~

9 (1) One member who is the chairman of the North Carolina State University
10 Minerals Research Laboratory Advisory Committee, ex officio.
11 Committee; three representatives of mining industries; three representatives of
12 nongovernmental conservation interests and two who shall represent the
13 Environmental Management Commission and be knowledgeable in the
14 principles of water and air resources management.

15 (2) One member who is a representative of the mining industry.

16 (3) One member who is a representative of the mining industry.

17 (4) One member who is a representative of the mining industry.

18 (5) One member who is a representative of nongovernmental conservation
19 interests.

20 (6) One member who is a representative of nongovernmental conservation
21 interests.

22 (7) One member who is a representative of nongovernmental conservation
23 interests.

24 (8) One who, at the time of the appointment to the Mining Commission, is
25 a member of the Environmental Management Commission and
26 knowledgeable in the principles of water and air resources management.

27 (9) One who, at the time of the appointment to the Mining Commission, is
28 a member of the Environmental Management Commission and
29 knowledgeable in the principles of water and air resources management.

30 ~~The initial members of the North Carolina Mining Commission shall be those~~
31 ~~members of the present North Carolina Mining Council who shall meet the above~~
32 ~~requirements for membership on the North Carolina Mining Commission and who shall~~
33 ~~serve on the North Carolina Mining Commission for a period equal to the remainder of~~
34 ~~their current terms on the North Carolina Mining Council. The remaining initial~~
35 ~~members shall be appointed by the Governor to staggered terms of six years.~~

36 (b) Terms. – The term of office of a member of the Commission is six years. Any
37 appointment to fill a vacancy on the Commission created by the resignation, dismissal,
38 death or disability of a member shall be for the balance of the unexpired term.—At the
39 expiration of each member's term, the Governor shall replace the member with a new
40 member of like qualifications for a term of six years. The term of members appointed
41 under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on 30
42 June of years that precede by one year those years that are evenly divisible by six. The
43 term of members appointed under subdivisions (3) and (6) of subsection (a) of this

1 section shall expire on 30 June of years that follow by one year those years that are
2 evenly divisible by six. The term of members appointed under subdivisions (4), (7), and
3 (9) of subsection (a) of this section shall expire on 30 June of years that follow by three
4 years those years that are evenly divisible by six. Upon the expiration of a six-year term,
5 a member may continue to serve until a successor is appointed and duly qualified as
6 provided by G.S. 128-7.

7 (c) Vacancies. – An appointment to fill a vacancy shall be for the unexpired
8 balance of the term.

9 (d) Removal. – The Governor shall have the power to may remove any member of
10 the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance
11 with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973. G.S. 143B-
12 13.

13 (e) Compensation. – The members of the Commission shall receive per diem and
14 necessary traveling and subsistence expenses in accordance with the provisions of G.S.
15 138-5.

16 (f) Quorum. – A majority of the Commission shall constitute a quorum for the
17 transaction of business.

18 (g) Staff. – All clerical and other services required by the Commission shall be
19 supplied by the Secretary of the Department."

20 Section 8. In order to reestablish a schedule of six-year staggered terms for the
21 Mining Commission as required by G.S. 143B-291, as amended by Section 7 of this act,
22 the Governor, in making appointments to replace the two members of the Mining
23 Commission who represent the mining industry and whose terms both expire on 30 June
24 1997, shall appoint one member under G.S. 143B-291(a)(2) to a full six-year term
25 expiring on 30 June 2003 and shall appoint one member under G.S. 143B-291(a)(4), to a
26 four-year term expiring 30 June 2001.

27 Section 9. G.S. 143B-313.2 reads as rewritten:

28 **§ 143B-313.2. North Carolina Parks and Recreation Authority; members; selection;**
29 **compensation; meetings.**

30 (a) Membership. – The North Carolina Parks and Recreation Authority shall
31 consist of 11 members. The members shall include persons who are knowledgeable about
32 park and recreation issues in North Carolina or with expertise in finance. ~~Three members~~
33 ~~shall be appointed by the Governor, four members shall be appointed by the General Assembly~~
34 ~~upon the recommendation of the Speaker of the House of Representatives in accordance with~~
35 ~~G.S. 120-121, and four members shall be appointed by the General Assembly upon the~~
36 ~~recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.~~
37 ~~The members shall serve at the pleasure of the appointing authority. The Governor shall appoint~~
38 ~~one of the members to be Chair of the North Carolina Parks and Recreation Authority. Vacancies~~
39 ~~shall be appointed by the original appointing authority, and the term shall be for the balance of~~
40 ~~the unexpired term. The North Carolina Parks and Recreation Authority shall meet at a time and~~
41 ~~place as designated by the Chair, but no less frequently than quarterly. In making~~
42 ~~appointments, each appointing authority shall specify under which subdivision of this~~
43 ~~subsection the person is appointed. Members shall be appointed as follows:~~

- 1 (1) One member appointed by the Governor.
- 2 (2) One member appointed by the Governor.
- 3 (3) One member appointed by the Governor.
- 4 (4) One member appointed by the General Assembly upon the
5 recommendation of the Speaker of the House of Representatives, as
6 provided in G.S. 120-121.
- 7 (5) One member appointed by the General Assembly upon the
8 recommendation of the Speaker of the House of Representatives, as
9 provided in G.S. 120-121.
- 10 (6) One member appointed by the General Assembly upon the
11 recommendation of the Speaker of the House of Representatives, as
12 provided in G.S. 120-121.
- 13 (7) One member appointed by the General Assembly upon the
14 recommendation of the Speaker of the House of Representatives, as
15 provided in G.S. 120-121.
- 16 (8) One member appointed by the General Assembly upon the
17 recommendation of the President Pro Tempore of the Senate, as
18 provided in G.S. 120-121.
- 19 (9) One member appointed by the General Assembly upon the
20 recommendation of the President Pro Tempore of the Senate, as
21 provided in G.S. 120-121.
- 22 (10) One member appointed by the General Assembly upon the
23 recommendation of the President Pro Tempore of the Senate, as
24 provided in G.S. 120-121.
- 25 (11) One member appointed by the General Assembly upon the
26 recommendation of the President Pro Tempore of the Senate, as
27 provided in G.S. 120-121.

28 (b) Terms. – Members shall serve two-year terms. Members shall serve no more
29 than two full two-year terms. Upon the expiration of a two-year term, a member may
30 continue to serve until a successor is appointed and duly qualified as provided by G.S.
31 128-7. The term of members appointed under odd-numbered subdivisions of subsection
32 (a) of this section shall expire on 30 June of odd-numbered years. The term of members
33 appointed under even-numbered subdivisions of subsection (a) of this section shall expire
34 on 30 June of even-numbered years.

35 (c) Chair. – The Governor shall appoint one member of the North Carolina Parks
36 and Recreation Authority to serve as Chair.

37 (d) Vacancies. – A vacancy on the North Carolina Parks and Recreation Authority
38 shall be filled by the appointing authority responsible for making the appointment to that
39 position as provided in subsection (a) of this section. An appointment to fill a vacancy
40 shall be for the unexpired balance of the term.

41 (e) Removal. – The Governor may remove, as provided in G.S. 143-13, any
42 member of the North Carolina Parks and Recreation Authority appointed by the Governor
43 for misfeasance, malfeasance, or nonfeasance. The General Assembly may remove any

1 member of the North Carolina Parks and Recreation Authority appointed by the General
2 Assembly for misfeasance, malfeasance, or nonfeasance.

3 ~~(e)~~ (f) Compensation. – The members of the North Carolina Parks and Recreation
4 Authority shall receive per diem and necessary travel and subsistence expenses according
5 to the provisions of G.S. 138-5.

6 ~~(g)~~ Meetings. – The North Carolina Parks and Recreation Authority shall meet at
7 least quarterly at a time and place designated by the Chair.

8 ~~(d)~~ (h) Quorum. – A majority of the North Carolina Parks and Recreation
9 Authority shall constitute a quorum for the transaction of business.

10 ~~(e)~~ (i) Staff. – All clerical and other services required by the North Carolina Parks
11 and Recreation Authority shall be provided by the Secretary of Environment, Health, and
12 Natural Resources."

13 Section 10. In order to reestablish a schedule of two-year staggered terms for
14 the North Carolina Parks and Recreation Authority as required by G.S. 143B-313.2, as
15 amended by Section 9 of this act:

16 (1) The Governor, in making appointments to replace the one member of
17 the North Carolina Parks and Recreation Authority appointed by the
18 Governor whose term expires on 30 June 1997, shall appoint a member
19 under G.S. 143B-313.2(a)(1) to a full two-year term expiring on 30 June
20 1999.

21 (2) The Governor, in making appointments to replace the two members of
22 the North Carolina Parks and Recreation Authority appointed by the
23 Governor whose terms expire on 30 June 1998, shall appoint one
24 member under G.S. 143B-313.2(a)(2) to a full two-year term expiring
25 on 30 June 2000 and shall appoint one member under G.S. 143B-
26 313.2(a)(3) to a one-year term expiring 30 June 1999.

27 (3) The General Assembly, in making appointments to replace the four
28 members of the North Carolina Parks and Recreation Authority
29 appointed by the General Assembly upon the recommendation of the
30 Speaker of the House of Representatives whose terms expire on 30 June
31 1998, shall appoint two members under G.S. 143B-313.2(a)(4) and G.S.
32 143B-313.2(a)(6) to full two-year terms expiring on 30 June 2000 and
33 shall appoint two members under G.S. 143B-313.2(a)(5) and G.S.
34 143B-313.2(a)(7) to one-year terms expiring 30 June 1999.

35 (4) The General Assembly, in making appointments to replace the four
36 members of the North Carolina Parks and Recreation Authority
37 appointed by the General Assembly upon the recommendation of the
38 President Pro Tempore of the Senate whose terms expire on 30 June
39 1998, shall appoint two members under G.S. 143B-313.2(a)(8) and G.S.
40 143B-313.2(a)(10) to full two-year terms expiring on 30 June 2000 and
41 shall appoint two members under G.S. 143B-313.2(a)(9) and G.S.
42 143B-313.2(a)(11) to one-year terms expiring 30 June 1999.

43 Section 11. This act is effective when it becomes law.