

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1568
Committee Substitute Favorable 6/25/02

Short Title: Sedimentation Act Amendments.

(Public)

Sponsors:

Referred to:

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEDIMENTATION POLLUTION CONTROL ACT OF
1973, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-54.1 is amended by adding a new subsection to
read:

"(e) An approved erosion and sedimentation control plan shall contain a schedule for the inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person submitting the erosion and sedimentation control plan or an agent of the person submitting the erosion and sedimentation control plan shall perform each inspection. The person who performs each inspection shall post a record of the inspection on the site of the land-disturbing activity. The record shall certify that the work has been completed in accordance with the approved erosion and sedimentation control plan and is being maintained in a manner that satisfies the requirements of this Article. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1."

SECTION 2. G.S. 113A-54.2(a) reads as rewritten:

"(a) The fee for the review of an erosion and sedimentation control plan and related compliance activities shall be one hundred fifty dollars (\$150.00) per acre of disturbed land as shown on an erosion and sedimentation control plan or of land disturbed during the life of the project, whichever is greater. The Commission may establish a fee schedule for the review and approval of erosion control plans under this Article. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for reviewing the plans and for related compliance activities. An application fee may not exceed fifty dollars (\$50.00) per acre of disturbed land shown on an erosion control plan or of land actually disturbed during the life of the project."

1 **SECTION 3.** G.S. 113A-56 reads as rewritten:

2 "**§ 113A-56. Jurisdiction of the Commission.**

3 (a) The Commission shall have jurisdiction, to the exclusion of local
4 governments, to adopt rules concerning land-disturbing activities that ~~are:~~ are any of the
5 following:

6 (1) Conducted by the ~~State;~~ State.

7 (2) Conducted by the United ~~States;~~ States.

8 (3) Conducted by persons having the power of eminent ~~domain;~~ domain
9 other than a local government.

10 (4) ~~Conducted by local governments;~~ or

11 (5) Funded in whole or in part by the State or the United States.

12 (b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a),
13 in whole or in part, to any other State agency that has submitted an erosion and
14 sedimentation control program to be administered by it, if such program has been
15 approved by the Commission as being in conformity with the general State program.

16 (c) The Commission shall have concurrent jurisdiction with local governments
17 that have an approved erosion and sedimentation control program over all other
18 land-disturbing activities. In addition to the authority granted to the Commission in G.S.
19 113A-60(c), the Commission has the following authority with respect to an approved
20 erosion and sedimentation control program:

21 (1) To review an erosion and sedimentation control plan approved by an
22 approved erosion and sedimentation control program and to require a
23 revised plan if the Commission determines that the plan does not
24 comply with the requirements of this Article or the rules adopted
25 pursuant to this Article.

26 (2) To take inspection and enforcement action if the Commission
27 determines that the local government has failed to take appropriate
28 inspection or enforcement action."

29 **SECTION 4.** G.S. 113A-57 reads as rewritten:

30 "**§ 113A-57. Mandatory standards for land-disturbing activity.**

31 No land-disturbing activity subject to this Article shall be undertaken except in
32 accordance with the following mandatory requirements:

33 (1) No land-disturbing activity during periods of construction or
34 improvement to land shall be permitted in proximity to a lake or
35 natural watercourse unless a buffer zone is provided along the margin
36 of the watercourse of sufficient width to confine visible siltation within
37 the twenty-five percent (25%) of the buffer zone nearest the
38 land-disturbing activity. Waters that have been classified as trout
39 waters by the Environmental Management Commission shall have an
40 undisturbed buffer zone 25 feet wide or of sufficient width to confine
41 visible siltation within the twenty-five percent (25%) of the buffer
42 zone nearest the land-disturbing activity, whichever is greater.
43 Provided, however, that the Sedimentation Control Commission may
44 approve plans which include land-disturbing activity along trout

1 waters when the duration of said disturbance would be temporary and
2 the extent of said disturbance would be minimal. This subdivision
3 shall not apply to a land-disturbing activity in connection with the
4 construction of facilities to be located on, over, or under a lake or
5 natural watercourse.

6 (2) The angle for graded slopes and fills shall be no greater than the angle
7 ~~which~~that can be retained by vegetative cover or other adequate
8 erosion-control devices or structures. In any event, slopes left exposed
9 will, within ~~15~~ 10 working days or ~~30~~ 21 calendar days of completion
10 of any phase of grading, whichever period is shorter, be planted or
11 otherwise provided with ground cover, devices, or structures sufficient
12 to restrain erosion.

13 (3) Whenever land-disturbing activity is undertaken on a tract comprising
14 more than one acre, if more than one acre is uncovered, the person
15 conducting the land-disturbing activity shall install ~~such~~erosion and
16 ~~sedimentation and erosion~~ control devices and practices ~~as~~that are
17 sufficient to retain the sediment generated by the land-disturbing
18 activity within the boundaries of the tract during construction upon and
19 development of said tract, and shall plant or otherwise provide a
20 permanent ground cover sufficient to restrain erosion after completion
21 of construction or development within a time period to be specified by
22 rule of the Commission.

23 (4) No person shall initiate any land-disturbing activity that will disturb
24 more than one acre on a tract ~~if more than one acre is to be uncovered~~
25 unless, 30 or more days prior to initiating the activity, an erosion and
26 sedimentation control plan for such activity is filed with the agency
27 having jurisdiction. The agency having jurisdiction shall forward to the
28 Director of the Division of Water Quality a copy of each erosion and
29 sedimentation control plan for a land-disturbing activity that involves
30 the utilization of ditches for the purpose of de-watering or lowering the
31 water table of the tract."

32 **SECTION 5.** G.S. 113A-60 reads as rewritten:

33 **"§ 113A-60. Local erosion and sedimentation control programs.**

34 (a) ~~Any~~A local government may submit to the Commission for its approval an
35 erosion and ~~sediment~~sedimentation control program for its jurisdiction, and to this end
36 local governments are authorized to adopt ordinances and regulations necessary to
37 establish and enforce erosion and ~~sediment~~sedimentation control programs. An
38 ordinance adopted by a local government may establish a fee for the review of an
39 erosion and sedimentation control plan and related compliance activities. Local
40 governments are authorized to create or designate agencies or subdivisions of local
41 government to administer and enforce the programs. An ordinance adopted by a local
42 government shall at least meet and may exceed the minimum requirements of this
43 Article and the rules adopted pursuant to this Article. Two or more units of local
44 government are authorized to establish a joint program and to enter into any agreements

1 that are necessary for the proper administration and enforcement of the program. The
2 resolutions establishing any joint program must be duly recorded in the minutes of the
3 governing body of each unit of local government participating in the program, and a
4 certified copy of each resolution must be filed with the Commission.

5 (b) The Commission shall review each program submitted and within 90 days of
6 receipt thereof shall notify the local government submitting the program that it has been
7 approved, approved with modifications, or disapproved. The Commission shall only
8 approve a program upon determining that its standards equal or exceed those of this
9 Article and rules adopted pursuant to this Article.

10 (c) If the Commission determines that any local government is failing to
11 administer or enforce an approved erosion and ~~sediment~~sedimentation control program,
12 it shall notify the local government in writing and shall specify the deficiencies of
13 administration and enforcement. If the local government has not taken corrective action
14 within 30 days of receipt of notification from the Commission, the Commission shall
15 assume administration and enforcement of the program until such time as the local
16 government indicates its willingness and ability to resume administration and
17 enforcement of the program.

18 (d) A local government may submit to the Commission for its approval a limited
19 erosion and sedimentation control program for its jurisdiction that grants the local
20 government the responsibility only for the inspection of land-disturbing activities within
21 the jurisdiction of the local government. The Commission shall be responsible for
22 administering all components of the erosion and sedimentation control program other
23 than the inspection of land-disturbing activities. The local government may adopt
24 ordinances and regulations necessary to establish a limited erosion and sedimentation
25 control program. A local government that administers a limited erosion and
26 sedimentation control program shall pay an amount equal to one hundred twenty dollars
27 (\$120.00) per acre of disturbed land subject to inspection under the limited erosion and
28 sedimentation control program to the Department for review of each erosion and
29 sedimentation control plan and related compliance activities. Fees paid to the
30 Department by a local government shall be deposited in the Sedimentation Account
31 established by G.S. 113A-54.2(b). The local government shall establish a fee to be paid
32 by each person who submits an erosion and sedimentation control plan to the local
33 government. The amount of the fee shall be the amount that the local government is
34 required to pay to the Department under this subsection for review of the erosion and
35 sedimentation control plan and related compliance activities. In addition, the fee may
36 include the amount that is required to cover the cost of inspection activities conducted
37 by the local government. A local government may create or designate agencies or
38 subdivisions of the local government to administer the limited program. An ordinance
39 adopted by a local government that establishes a limited program shall at least meet and
40 may exceed the minimum requirements regarding the inspection of land-disturbing
41 activities of this Article and the rules adopted pursuant to this Article regarding the
42 inspection of land-disturbing activities. Two or more units of local government may
43 establish a joint limited program and enter into any agreements necessary for the proper
44 administration of the limited program. The resolutions establishing any joint limited

1 program must be duly recorded in the minutes of the governing body of each unit of
2 local government participating in the limited program, and a certified copy of each
3 resolution must be filed with the Commission. Subsections (b) and (c) of this section
4 apply to the approval and oversight of limited programs."

5 **SECTION 6.** G.S. 113A-64(a) reads as rewritten:

6 "(a) Civil Penalties. –

7 (1) Any person who violates any of the provisions of this Article or any
8 ordinance, rule, or order adopted or issued pursuant to this Article by
9 the Commission or by a local government, or who initiates or
10 continues a land-disturbing activity for which an erosion and
11 sedimentation control plan is required except in accordance with the
12 terms, conditions, and provisions of an approved plan, is subject to a
13 civil penalty. The maximum civil penalty for a violation is five
14 thousand dollars ~~(\$5,000).~~ ~~(\$5,000)~~, except that, in order to deter
15 violations, the Secretary may assess a civil penalty of up to ten
16 thousand dollars (\$10,000) for the first day of a violation. A civil
17 penalty may be assessed from the date of the violation. Each day of a
18 continuing violation shall constitute a separate violation.

19 (2) The Secretary or a local government that administers an erosion and
20 ~~sediment~~ sedimentation control program approved under ~~G.S. 113A-60~~
21 G.S. 113A-60(a) shall determine the amount of the civil penalty and
22 shall notify the person who is assessed the civil penalty of the amount
23 of the penalty and the reason for assessing the penalty. The notice of
24 assessment shall be served by any means authorized under G.S. 1A-1,
25 Rule 4, and shall direct the violator to either pay the assessment or
26 contest the assessment within 30 days by filing a petition for a
27 contested case under Article 3 of Chapter 150B of the General
28 Statutes. If a violator does not pay a civil penalty assessed by the
29 Secretary within 30 days after it is due, the Department shall request
30 the Attorney General to institute a civil action to recover the amount of
31 the assessment. If a violator does not pay a civil penalty assessed by a
32 local government within 30 days after it is due, the local government
33 may institute a civil action to recover the amount of the assessment.
34 The civil action may be brought in the superior court of any county
35 where the violation occurred or the violator's residence or principal
36 place of business is located. A civil action must be filed within three
37 years of the date the assessment was due. An assessment that is not
38 contested is due when the violator is served with a notice of
39 assessment. An assessment that is contested is due at the conclusion of
40 the administrative and judicial review of the assessment.

41 (3) In determining the amount of the penalty, the Secretary shall consider
42 the degree and extent of harm caused by the violation, the cost of
43 rectifying the damage, the amount of money the violator saved by
44 noncompliance, whether the violation was committed willfully and the

1 prior record of the violator in complying or failing to comply with this
2 Article.

3 (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

4 (5) The clear proceeds of civil penalties collected by the Department or
5 other State agency under this subsection shall be remitted to the Civil
6 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
7 Civil penalties collected by a local government under this subsection
8 shall be credited to the general fund of the local government as nontax
9 revenue."

10 **SECTION 7.** Article 4 of Chapter 113A of the General Statutes is amended
11 by adding a new section to read:

12 **"§ 113A-67. Annual report.**

13 The Department of Environment and Natural Resources shall report to the
14 Environmental Review Commission on the implementation of this Article on or before
15 September 1 of each year. The Department shall include in the report an analysis of how
16 well the implementation of the Sedimentation Pollution Control Act of 1973 is
17 preventing the sedimentation of streams, rivers, lakes, and other waters of the State. The
18 report shall also include an evaluation of whether the fees and civil penalties are
19 adequate to properly administer and enforce this Article. In addition, the report shall
20 include a review of the effectiveness of local erosion and sedimentation control
21 programs."

22 **SECTION 8.** The Department of Environment and Natural Resources shall
23 submit the first report required by G.S. 113A-67, as enacted by Section 7 of this act, to
24 the Environmental Review Commission on or before 1 September 2003.

25 **SECTION 9.** This act becomes effective 1 August 2002.