

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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HOUSE BILL 1568  
Committee Substitute Favorable 6/25/02  
Committee Substitute #2 Favorable 9/26/02

Short Title: Sedimentation Act Improvements.

(Public)

Sponsors:

Referred to:

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN 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-56(a) reads as rewritten:

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

- (1) Conducted by the ~~State;~~ State.
- (2) Conducted by the United ~~States;~~ States.
- (3) Conducted by persons having the power of eminent ~~domain;~~ domain other than a local government.
- (4) ~~Conducted by local governments; or~~
- (5) Funded in whole or in part by the State or the United States."

1           **SECTION 3.** G.S. 113A-57 reads as rewritten:

2    "**§ 113A-57. Mandatory standards for land-disturbing activity.**

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

5           (1) No land-disturbing activity during periods of construction or  
6 improvement to land shall be permitted in proximity to a lake or  
7 natural watercourse unless a buffer zone is provided along the margin  
8 of the watercourse of sufficient width to confine visible siltation within  
9 the twenty-five percent (25%) of the buffer zone nearest the  
10 land-disturbing activity. Waters that have been classified as trout  
11 waters by the Environmental Management Commission shall have an  
12 undisturbed buffer zone 25 feet wide or of sufficient width to confine  
13 visible siltation within the twenty-five percent (25%) of the buffer  
14 zone nearest the land-disturbing activity, whichever is greater.  
15 Provided, however, that the Sedimentation Control Commission may  
16 approve plans which include land-disturbing activity along trout  
17 waters when the duration of said disturbance would be temporary and  
18 the extent of said disturbance would be minimal. This subdivision  
19 shall not apply to a land-disturbing activity in connection with the  
20 construction of facilities to be located on, over, or under a lake or  
21 natural watercourse.

22           (2) The angle for graded slopes and fills shall be no greater than the angle  
23 ~~which that~~ can be retained by vegetative cover or other adequate  
24 erosion-control devices or structures. In any event, slopes left exposed  
25 will, within ~~15-12~~ working days or ~~30-25~~ calendar days of completion  
26 of any phase of grading, whichever period is shorter, be planted or  
27 otherwise provided with ground cover, devices, or structures sufficient  
28 to restrain erosion.

29           (3) Whenever land-disturbing activity is undertaken on a tract comprising  
30 more than one acre, if more than one acre is uncovered, the person  
31 conducting the land-disturbing activity shall install ~~such erosion and~~  
32 ~~sedimentation and erosion~~ control devices and practices ~~as that~~ are  
33 sufficient to retain the sediment generated by the land-disturbing  
34 activity within the boundaries of the tract during construction upon and  
35 development of ~~said the~~ tract, and shall plant or otherwise provide a  
36 permanent ground cover sufficient to restrain erosion after completion  
37 of construction or development within a time period to be specified by  
38 rule of the Commission.

39           (4) No person shall initiate any land-disturbing activity that will disturb  
40 more than one acre on a tract ~~if more than one acre is to be uncovered~~  
41 unless, 30 or more days prior to initiating the activity, an erosion and  
42 sedimentation control plan for such activity is filed with the agency  
43 having jurisdiction. The agency having jurisdiction shall forward to the  
44 Director of the Division of Water Quality a copy of each erosion and

1 sedimentation control plan for a land-disturbing activity that involves  
2 the utilization of ditches for the purpose of de-watering or lowering the  
3 water table of the tract."

4 **SECTION 4.** G.S. 113A-60 reads as rewritten:

5 **"§ 113A-60. Local erosion and sedimentation control programs.**

6 (a) ~~Any~~A local government may submit to the Commission for its approval an  
7 erosion and ~~sediment~~sedimentation control program for its jurisdiction, and to this end  
8 local governments are authorized to adopt ordinances and regulations necessary to  
9 establish and enforce erosion and ~~sediment~~sedimentation control programs. An  
10 ordinance adopted by a local government may establish a fee for the review of an  
11 erosion and sedimentation control plan and related compliance activities. Local  
12 governments are authorized to create or designate agencies or subdivisions of local  
13 government to administer and enforce the programs. An ordinance adopted by a local  
14 government shall at least meet and may exceed the minimum requirements of this  
15 Article and the rules adopted pursuant to this Article. Two or more units of local  
16 government are authorized to establish a joint program and to enter into any agreements  
17 that are necessary for the proper administration and enforcement of the program. The  
18 resolutions establishing any joint program must be duly recorded in the minutes of the  
19 governing body of each unit of local government participating in the program, and a  
20 certified copy of each resolution must be filed with the Commission.

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

26 (c) If the Commission determines that any local government is failing to  
27 administer or enforce an approved erosion and ~~sediment~~sedimentation control program,  
28 it shall notify the local government in writing and shall specify the deficiencies of  
29 administration and enforcement. If the local government has not taken corrective action  
30 within 30 days of receipt of notification from the Commission, the Commission shall  
31 assume administration and enforcement of the program until such time as the local  
32 government indicates its willingness and ability to resume administration and  
33 enforcement of the program.

34 (d) A local government may submit to the Commission for its approval a limited  
35 erosion and sedimentation control program for its jurisdiction that grants the local  
36 government the responsibility only for the inspection of land-disturbing activities within  
37 the jurisdiction of the local government. The Commission shall be responsible for  
38 administering all components of the erosion and sedimentation control program other  
39 than the inspection of land-disturbing activities. The local government may adopt  
40 ordinances and regulations necessary to establish a limited erosion and sedimentation  
41 control program. An ordinance adopted by a local government that establishes a limited  
42 program shall at least meet and may exceed the minimum requirements regarding the  
43 inspection of land-disturbing activities of this Article and the rules adopted pursuant to  
44 this Article regarding the inspection of land-disturbing activities. The local government

1 shall establish a fee to be paid by each person who submits an erosion and  
2 sedimentation control plan to the local government. The amount of the fee shall be the  
3 amount that the local government is required to pay to the Department under this  
4 subsection for review of the erosion and sedimentation control plan and related  
5 compliance activities. In addition, the fee may include the amount that is required to  
6 cover the cost of inspection activities conducted by the local government. A local  
7 government that administers a limited erosion and sedimentation control program shall  
8 pay an amount equal to thirty dollars (\$30.00) per acre of disturbed land subject to  
9 inspection under the limited erosion and sedimentation control program to the  
10 Department for review of each erosion and sedimentation control plan and related  
11 compliance activities. Fees paid to the Department by a local government shall be  
12 deposited in the Sedimentation Account established by G.S. 113A-54.2(b). A local  
13 government may create or designate agencies or subdivisions of the local government to  
14 administer the limited program. Two or more units of local government may establish a  
15 joint limited program and enter into any agreements necessary for the proper  
16 administration of the limited program. The resolutions establishing any joint limited  
17 program must be duly recorded in the minutes of the governing body of each unit of  
18 local government participating in the limited program, and a certified copy of each  
19 resolution must be filed with the Commission. Subsections (b) and (c) of this section  
20 apply to the approval and oversight of limited programs."

21 **SECTION 5.** Article 4 of Chapter 113A of the General Statutes is amended  
22 by adding a new section to read:

23 **"§ 113A-67. Annual report.**

24 The Department of Environment and Natural Resources shall report to the  
25 Environmental Review Commission on the implementation of this Article on or before  
26 1 September of each year. The Department shall include in the report an analysis of how  
27 well the implementation of the Sedimentation Pollution Control Act of 1973 is  
28 preventing the sedimentation of streams, rivers, lakes, and other waters of the State. The  
29 report shall also include an evaluation of whether the fees and civil penalties are  
30 adequate to properly administer and enforce this Article. In addition, the report shall  
31 include a review of the effectiveness of local erosion and sedimentation control  
32 programs."

33 **SECTION 6.** The Department of Environment and Natural Resources shall  
34 study the feasibility of establishing one or more exemptions from the requirement set  
35 out in G.S. 113A-57, as amended by Section 3 of this act, that an erosion and  
36 sedimentation control plan for a land-disturbing activity that will disturb more than one  
37 acre be approved by the Sedimentation Control Commission as provided in G.S.  
38 113A-54.1, as amended by Section 1 of this act, or by a local government as provided in  
39 G.S. 113A-61 for particular classes of land-disturbing activity that will disturb less than  
40 two acres. Proposed exemptions shall be based on topography, soil type, maintenance  
41 of adequate vegetated buffer areas between the land-disturbing activity and surface  
42 waters or other drainage features, use of specified erosion control measures, and any  
43 other relevant factors. The Department shall report its findings and recommendations to  
44 the Environmental Review Commission on or before 1 May 2003.

1           **SECTION 7.** The Department of Environment and Natural Resources shall  
2 submit the first report required by G.S. 113A-67, as enacted by Section 5 of this act, to  
3 the Environmental Review Commission on or before 1 September 2003.

4           **SECTION 8.** Sections 6 and 8 of this act become effective when this bill  
5 becomes law. All other sections of this act become effective 1 January 2003.