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Short Title: Sedimentation Act Improvements.

(Public)

Sponsors:

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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

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

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

3 **"§ 113A-57. Mandatory standards for land-disturbing activity.**

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

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

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

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

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

1 Director of the Division of Water Quality a copy of each erosion and
2 sedimentation control plan for a land-disturbing activity that involves
3 the utilization of ditches for the purpose of de-watering or lowering the
4 water table of the tract."

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

6 "**§ 113A-60. Local erosion and sedimentation control programs.**

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

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

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

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

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

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

24 **"§ 113A-67. Annual report.**

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

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

1 other relevant factors. The Department shall report its findings and recommendations to
2 the Environmental Review Commission on or before 1 February 2004.

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

6 **SECTION 8.** Sections 6 and 8 of this act become effective when this bill
7 becomes law. All other sections of this act become effective 1 January 2003. This act
8 shall not apply to the following land-disturbing activities:

- 9 (1) Activities, including the breeding and grazing of livestock, undertaken
10 on agricultural land for the production of plants and animals useful to
11 man, including, but not limited to:
12 a. Forages and sod crops, grains and feed crops, tobacco, cotton,
13 and peanuts.
14 b. Dairy animals and dairy products.
15 c. Poultry and poultry products.
16 d. Livestock, including beef cattle, llamas, sheep, swine, horses,
17 ponies, mules, and goats.
18 e. Bees and apiary products.
19 f. Fur producing animals.
20 (2) Activities undertaken on forestland for the production and harvesting
21 of timber and timber products and conducted in accordance with best
22 management practices set out in Forest Practice Guidelines Related to
23 Water Quality, as adopted by the Department.
24 (3) Activities for which a permit is required under the Mining Act of 1971,
25 Article 7 of Chapter 74 of the General Statutes.
26 (4) For the duration of an emergency, activities essential to protect human
27 life.