

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1066*

Short Title: Per Diem Erosion Control Penalties. (Public)

Sponsors: Representatives Hall, Luebke, Michaux, Wilkins (Primary Sponsors); Harrison and Lucas.

Referred to: Environment and Natural Resources, if favorable, Judiciary I.

April 6, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE ASSESSMENT OF A CIVIL PENALTY PRIOR TO THE
3 RESTORATION OF THE LAND FOR CONTINUING VIOLATIONS UNDER THE
4 SEDIMENTATION POLLUTION CONTROL ACT OF 1973 AND, FOR VIOLATORS
5 WHO FAIL TO CONTEST THE AMOUNT OF THE PENALTY FOR CONTINUING
6 VIOLATIONS WITHIN THIRTY DAYS AFTER THE PENALTY IS DUE, TO BAR
7 SUBSEQUENT CHALLENGES OF THE AMOUNT OF THE PENALTY.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 113A-64(a)(2) reads as rewritten:

10 "(2) The Secretary or a local government that administers an erosion and
11 sedimentation control program approved under G.S. 113A-60 shall
12 determine the amount of the civil penalty and shall notify the person who is
13 assessed the civil penalty ~~of the amount of the penalty and the reason for~~
14 assessing the ~~penalty~~ penalty and:

15 a. If the violation has ceased, the total amount of the penalty.

16 b. If the violation is a continuing violation, the per diem amount of the
17 penalty.

18 (2a) The notice of assessment under subdivision (2) of this subsection shall be
19 served by any means authorized under G.S. 1A-1, Rule 4, and shall direct
20 the violator to either pay the assessment or contest the assessment within 30
21 days by filing a petition for a contested case under Article 3 of Chapter 150B
22 of the General Statutes. If a violator does not pay a civil penalty assessed by
23 the Secretary within 30 days after it is due, the Department shall request the
24 Attorney General to institute a civil action to recover the amount of the
25 assessment. If a violator does not pay a civil penalty assessed by a local
26 government within 30 days after it is due, the local government may institute
27 a civil action to recover the amount of the assessment. The civil action may
28 be brought in the superior court of any county where the violation occurred
29 or the violator's residence or principal place of business is located. A civil
30 action must be filed within three years of the date the assessment was due.
31 An assessment that is not contested is due when the violator is served with a
32 notice of assessment. An assessment that is contested is due at the
33 conclusion of the administrative and judicial review of the assessment. This
34 subdivision is subject to subdivision (2b) of this subsection.

35 (2b) If a violator receives a notice of assessment for a continuing violation under
36 subdivision (2) of this subsection and fails to contest the amount of the



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1 penalty within 30 days after it is due, the violator is barred from
2 subsequently challenging the amount of the penalty under subdivision (2a)
3 of this subsection."

4 **SECTION 2.** This act becomes effective October 1, 2009, and applies to violations
5 that occur on or after that date.