

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 107

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/20/17

Short Title: Streamline Dam Removal.

(Public)

Sponsors:

Referred to:

February 20, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO REMOVE SAFETY HAZARDS AND RESTORE NORTH CAROLINA'S
3 NATURAL RIVERINE RESOURCES BY FACILITATING THE REMOVAL OF
4 OBSOLETE AND UNWANTED DAMS.

5 The General Assembly of North Carolina enacts:

6
7 **EXEMPT CERTAIN DAM REMOVALS FROM PERMITTING REQUIREMENTS**

8 **SECTION 1.(a)** G.S. 143-215.25 reads as rewritten:

9 **"§ 143-215.25. Definitions.**

- 10 (1) ~~"Dam" means a~~Dam. – A structure and appurtenant works erected to
11 impound or divert water.
12 (2) ~~"Minimum stream flow" or "minimum flow" means a~~Minimum stream flow
13 or minimum flow. – A stream flow of a quantity and quality sufficient in the
14 judgment of the Department to meet and maintain stream classifications and
15 water quality standards established by the Department under G.S. 143-214.1
16 and applicable to the waters affected by the project under consideration, and
17 to maintain aquatic habitat in the length of the stream that is affected.
18 (3) Professionally supervised dam removal. – The removal of a low or
19 intermediate hazard dam that (i) is not operated primarily for flood control or
20 hydroelectric power generation purposes and (ii) is designed and supervised
21 by a qualified engineer.
22 (4) Qualified engineer. – An engineer licensed as a professional engineer under
23 Chapter 89C of the General Statutes."

24 **SECTION 1.(b)** G.S. 143-215.27 reads as rewritten:

25 **"§ 143-215.27. Repair, alteration, or removal of dam.**

26 (a) Before commencing the repair, alteration or removal of a dam, application shall be
27 made for written approval by the Department, except as otherwise provided by this Part. The
28 application shall state the name and address of the applicant, shall adequately detail the changes
29 it proposes to effect and shall be accompanied by maps, plans and specifications setting forth
30 such details and dimensions as the Department requires. The Department may waive any such
31 requirements. The application shall give such other information concerning the dam and
32 reservoir required by the Department, such information concerning the safety of any change as
33 it may require, and shall state the proposed time of commencement and completion of the
34 work. When an application has been completed it may be referred by the Department for
35 agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of



1 original construction. This subsection shall not apply to a professionally supervised dam
2 removal.

3 ...
4 (c) A professionally supervised dam removal is not subject to the procedures set forth
5 in subsection (a) of this section, provided that the dam removal complies with all of the
6 following:

7 (1) A qualified engineer determines, based on good engineering practices, that
8 the removal of the dam can be accomplished safely, certifies that the dam is
9 a low or intermediate hazard dam, and the removal plan reflects (i) the
10 geomorphology of the streambed upriver and downriver from the dam site
11 and (ii) the most desirable longitudinal profile for the post-removal stream
12 channel that will minimize physical impacts on riparian landowners.

13 (2) The person who proposes to remove the dam notifies the director of the
14 Division of Energy, Mineral, and Land Resources of the Department of the
15 proposed removal no less than 60 days prior to removal. The notice shall
16 include information identifying the dam, including the stream and county
17 where the dam is located, the dam's height and impoundment capacity, a
18 map showing the dam location and vicinity, the qualified engineer's name
19 and North Carolina license number, and a notarized certification from the
20 owner of the dam that the dam is a low or intermediate hazard dam not
21 currently operated for the purposes of flood control or hydroelectric power
22 generation. The notification and certification required by this subdivision
23 may be provided electronically.

24 (3) The person who proposes to remove the dam notifies the North Carolina
25 Floodplain Mapping Program of the Department of Public Safety, the North
26 Carolina Department of Transportation, adjacent property owners of the dam
27 and reservoir, and all impacted local governments of the proposed removal
28 no less than 60 days prior to removal. The notice shall include a qualified
29 engineer's determination that (i) the removal plan for the dam is based on the
30 criteria set forth in subdivision (1) of this subsection and (ii) the removal
31 will lower or maintain water levels above the location of the dam and will
32 not cause an increase in the risk of flood damage or impacts to downstream
33 bridges or road crossings. For purposes of the notice required by this
34 subdivision, an "impacted local government" shall mean any unit of local
35 government that could experience changes to its base floodplain, as defined
36 in G.S. 143-215.54, as a result of the dam removal."

37 **SECTION 1.(c)** G.S. 143-215.28A reads as rewritten:

38 **"§ 143-215.28A. Application fees.**

39 (a) In accordance with G.S. 143-215.3(a)(1a), the Commission may establish a fee
40 schedule for processing applications for approvals of construction or removal of dams issued
41 under this Part. In establishing the fee schedule, the Commission shall consider the
42 administrative and personnel costs incurred by the Department for processing the applications
43 and for related compliance activities. The total amount of fees collected in any fiscal year may
44 not exceed one-third of the total personnel and administrative costs incurred by the Department
45 for processing the applications and for related compliance activities in the prior fiscal year. An
46 approval fee may not exceed the larger of two hundred dollars (\$200.00) or two percent (2%)
47 of the actual cost of construction or removal of the applicable dam. The fee for notification of a
48 professionally supervised dam removal under G.S. 143-215.27(c)(1) shall be five hundred
49 dollars (\$500.00) and shall be paid to the Department. The provisions of G.S. 143-215.3(a)(1b)
50 do not apply to these fees.

51"

1 **SECTION 1.(d)** G.S. 143-215.30 reads as rewritten:

2 "**§ 143-215.30. Notice of completion; certification of final approval; notice of transfer.**

3 (a) ~~Immediately~~ Except as set forth in subsection (d1) of this section, immediately upon
4 completion, enlargement, repair, alteration or removal of a dam, notice of completion shall be
5 given the Commission. As soon as possible thereafter supplementary drawings or descriptive
6 matter showing or describing the dam as actually constructed shall be filed with the Department
7 in such detail as the Commission may require.

8 ...
9 (d1) The requirements of this section shall not apply to a professionally supervised dam
10 removal under G.S. 143-215.27(c) if the person removing the dam provides confirmation of
11 completion of dam removal to the Department within 10 days of completion of the removal.

12 (e) The owner of a dam shall provide written notice of transfer to the Department
13 within 30 days after title to the dam has been legally transferred. The notice of transfer shall
14 include the name and address of the new dam owner."

15 **SECTION 1.(e)** G.S. 143-215.56 is amended by adding a new subsection to read:

16 "**§ 143-215.56. Delineation of flood hazard areas and 100-year floodplains; powers of**
17 **Department; powers of local governments and of the Department.**

18 ...
19 (d) The Department may prepare a floodplain map that identifies the 100-year
20 floodplain and base flood elevations for an area for the purposes of this Part if all of the
21 following conditions apply:

22 (1) The 100-year floodplain and base flood elevations for the area are not
23 identified on a floodplain map prepared pursuant to the National Flood
24 Insurance Program within the previous five years.

25 (2) The Department determines that the 100-year floodplain and the base flood
26 elevations for the area need to be identified and the use of the area regulated
27 in accordance with the requirements of this Part in order to prevent damage
28 from flooding.

29 (3) The Department prepares the floodplain map in accordance with the federal
30 standards required for maps to be accepted for use in administering the
31 National Flood Insurance Program.

32 (e) Prior to preparing a floodplain map pursuant to subsection (d) of this section, the
33 Department shall advise each local government whose jurisdiction includes a portion of the
34 area to be mapped.

35 (f) Upon completing a floodplain map pursuant to subsection (d) of this section, the
36 Department shall both:

37 (1) Provide copies of the floodplain map to every local government whose
38 jurisdiction includes a portion of the 100-year floodplain identified on the
39 floodplain map.

40 (2) Submit the floodplain map to the Federal Emergency Management Agency
41 for approval for use in administering the National Flood Insurance Program.

42 (g) Upon approval of a floodplain map prepared pursuant to subsection (d) of this
43 section by the Federal Emergency Management Agency for use in administering the National
44 Flood Insurance Program, it shall be the responsibility of each local government whose
45 jurisdiction includes a portion of the 100-year floodplain identified in the floodplain map to
46 incorporate the revised map into its floodplain ordinance.

47 (h) To the extent permitted by National Flood Insurance Program requirements, a
48 professionally supervised dam removal, as defined in G.S. 143-215.25, that complies with the
49 requirements of G.S. 143-215.27(c) shall not be required to submit a Letter of Map Revision to
50 the Department."

STREAMLINE ENVIRONMENTAL PERMITTING OF DAM REMOVAL

SECTION 2.(a) G.S. 143-214.7C reads as rewritten:

"§ 143-214.7C. Prohibit the requirement of mitigation for ~~impacts to intermittent streams.~~ certain impacts.

Except as required by federal law, the Department of Environmental Quality shall not require mitigation for ~~impacts~~ any of the following:

(1) Impacts to an intermittent stream. For purposes of this section, "intermittent stream" means a well-defined channel that has all of the following characteristics:

(1)a. It contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table.

(2)b. The flow of water in the intermittent stream may be heavily supplemented by stormwater runoff.

(3)c. It often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.

(2) Impacts associated with the removal of a dam, when the removal complies with the requirements of Part 3 of this Article."

SECTION 2.(b) The Division of Water Resources of the Department of Environmental Quality shall develop a water quality general certification under section 401 of the Clean Water Act for short-term sediment releases associated with the construction phase of a dam removal when all of the following occur:

(1) The removal meets the definition and requirements of a professionally supervised dam removal under G.S. 143-215.27, as amended by Section 1 of this act.

(2) The applicant for the water quality general certification demonstrates that the sediment to be released has similar or lower level of contamination than sediment sampled from downstream of the dam.

DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO AMEND THE DAM HEIGHT RULE TO MEASURE HEIGHT FROM THE LOWEST POINT ON THE CREST OF THE DAM

SECTION 3.(a) Definitions. – "Dam Height Rule" means 15A NCAC 2K .0223 (Dam Height and Storage Determination) for purposes of this section and its implementation.

SECTION 3.(b) Dam Height Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission and the Department of Environmental Quality shall implement the Sediment Criteria Rule, as provided in subsection (c) of this section.

SECTION 3.(c) Implementation. – For purposes of implementing professionally supervised dam removals, the Commission shall measure the height of a dam for purposes of dam size classification from the lowest point on the crest of the dam to the lowest point on the downstream toe.

SECTION 3.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the Dam Height Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 3.(e) Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

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STUDY FURTHER STREAMLINING OF DAM REMOVAL

SECTION 4. The Department of Environmental Quality and the Department of Public Safety shall jointly study the dam removal process in North Carolina and recommend further changes in statutes or rules to reduce regulatory barriers to the removal of obsolete and unwanted dams and consolidate duplicative permit processes. As part of its study, the Departments shall review the dam removal permitting processes in New Hampshire, Massachusetts, and Pennsylvania and other states as the Department finds relevant. The Departments shall jointly submit its report to the Environmental Review Commission no later than March 1, 2020.

EFFECTIVE DATE

SECTION 5. Section 4 of this act is effective when it becomes law. The remainder of this act becomes effective July 1, 2017.