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HOUSE BILL 1063*
Committee Substitute Favorable 4/24/01
Third Edition Engrossed 4/26/01
Senate Agriculture/Environment/Natural Resources Committee Substitute
Adopted 9/20/01

Short Title: Pay for Performance/LUST Cleanups.

(Public)

Sponsors:

Referred to:

April 10, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR PERFORMANCE-BASED CLEANUPS OF
DISCHARGES OR RELEASES OF PETROLEUM FROM UNDERGROUND
STORAGE TANKS AND TO AUTHORIZE THE STATE BUILDING
COMMISSION TO ADOPT RULES TO AUTHORIZE OPEN-END DESIGN
AGREEMENTS FOR WETLANDS MITIGATION AND SIMILAR PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.94B is amended by adding a new subsection to
read:

"(f) On the first day of each fiscal quarter, the Department may allocate up to fifty percent (50%) of the funds in the Commercial Fund that are not otherwise obligated for performance-based cleanups as provided in this subsection. The Department may also use any funds that are available from any other source and that are specifically intended to be used for performance-based cleanups as provided in this section. Each performance-based cleanup shall comply with the requirements of this Part and any other provisions of law that govern the cleanup of environmental damage resulting from the discharge or release of a petroleum product from a commercial underground storage tank. The Department may contract for performance-based cleanups with environmental services firms that the Department has determined to be qualified to satisfactorily complete the work associated with a cleanup. A performance-based contract shall provide that cleanup will be completed within the time and for the cost stated in the contract. The Department shall select environmental services firms for performance-based cleanup through a competitive bidding process. The Commission shall adopt rules governing the competitive bidding process. The rules shall establish qualifications for environmental services firms and for individuals and firms that

1 provide engineering services as part of a contract to satisfactorily complete work
2 associated with cleanup."

3 **SECTION 2.** G.S. 143-215.94D is amended by adding a new subsection to
4 read:

5 "(f) On the first day of each fiscal quarter, the Department may allocate up to fifty
6 percent (50%) of the funds in the Noncommercial Fund that are not otherwise obligated
7 for performance-based cleanups as provided in this subsection. The Department may
8 also use any funds that are available from any other source and that are specifically
9 intended to be used for performance-based cleanups as provided in this section. Each
10 performance-based cleanup shall comply with the requirements of this Part and any
11 other provisions of law that govern the cleanup of environmental damage resulting from
12 the discharge or release of a petroleum product from a noncommercial underground
13 storage tank. The Department may contract for performance-based cleanups with
14 environmental services firms that the Department has determined to be qualified to
15 satisfactorily complete the work associated with a cleanup. A performance-based
16 contract shall provide that cleanup will be completed within the time and for the cost
17 stated in the contract. The Department shall select environmental services firms for
18 performance-based cleanup through a competitive bidding process. The Commission
19 shall adopt rules governing the competitive bidding process. The rules shall establish
20 qualifications for environmental services firms and for individuals and firms that
21 provide engineering services as part of a contract to satisfactorily complete work
22 associated with cleanup."

23 **SECTION 3.** G.S. 143-215.94G is amended by adding a new subsection to
24 read:

25 "(a3) The Department may implement the provisions of subsection (a) of this
26 section as provided in G.S. 143-215.94B(f) and G.S. 143-215.94D(f)."

27 **SECTION 4.** G.S. 143-135.27 reads as rewritten:

28 **"§ 143-135.27. Definition of capital improvement project.**

29 As used in this Article, 'State capital improvement project' means the construction of
30 and any alteration, renovation, or addition to State buildings, as defined in G.S.
31 143-336, for which State funds, as defined in G.S. 143-1, are used and which is required
32 by G.S. 143-129 to be publicly advertised. 'State capital improvement project' does not
33 include a performance-based cleanup of environmental damage resulting from the
34 discharge or release of a petroleum product from an underground storage tank pursuant
35 to G.S. 143-215.94B(f) and G.S. 143-215.94D(f)."

36 **SECTION 5.** G.S. 143-336 reads as rewritten:

37 **"§ 143-336. Definitions.**

38 (a) As used in this Article:

39 (1) 'Agency' includes every agency, institution, board, commission,
40 bureau, council, department, division, officer, and employee of the
41 State, but does not include counties, municipal corporations, political

1 subdivisions, county and city boards of education, and other local
2 public bodies.

3 (2) 'Community college buildings' means all buildings, utilities, and other
4 property developments located at a community college, which is
5 defined in G.S. 115D-2(2).

6 (3) 'Department' means the Department of Administration, unless the
7 context otherwise requires.

8 (4) 'Public buildings' means all buildings owned or maintained by the
9 State in the City of Raleigh, but does not mean any building ~~which that~~
10 a State agency other than the Department of Administration is required
11 by law to care for and maintain.

12 (5) 'Public buildings and grounds' means all buildings and grounds owned
13 or maintained by the State in the City of Raleigh, but does not mean
14 any building or grounds ~~which that~~ a State agency other than the
15 Department of Administration is required by law to care for and
16 maintain.

17 (6) 'Public grounds' means all grounds owned or maintained by the State
18 in the City of Raleigh, but does not mean any grounds ~~which that~~ a
19 State agency other than the Department of Administration is required
20 by law to care for and maintain.

21 (7) 'Secretary' means the Secretary of Administration, unless the context
22 otherwise requires.

23 (8) 'State buildings' mean all State buildings, utilities, and other property
24 developments except the State Legislative Building, railroads, highway
25 structures, bridge structures, ~~and~~ any buildings, utilities, or property
26 owned or leased by the North Carolina Global TransPark
27 ~~Authority~~ Authority, and performance-based cleanups of
28 environmental damage resulting from the discharge or release of a
29 petroleum product from an underground storage tank pursuant to G.S.
30 143-215.94B(f) and G.S. 143-215.94D(f).

31 (b) ~~But under~~ Under no circumstances shall this Article or any part thereof apply
32 to the judicial or to the legislative branches of the State."

33 **SECTION 6.(a)** This act constitutes a recent act of the General Assembly
34 within the meaning of G.S. 150B-21.1.

35 **SECTION 6.(b)** Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC
36 2C.0102(11), the Environmental Management Commission may adopt temporary rules
37 to implement this act until 1 July 2002. Prior to the adoption of a temporary rule under
38 this section, the Commission shall publish a notice of intent to adopt a temporary rule in
39 the North Carolina Register. The notice shall set out the text of the proposed temporary
40 rule and include the name of the person to whom questions and written comment on the
41 proposed temporary rule may be submitted. The Commission shall accept written

1 comment on the proposed temporary rule for at least 30 days after the notice of intent to
2 adopt a temporary rule is published in the North Carolina Register.

3 **SECTION 6.(c)** Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC
4 2C.0102(11), the State Building Commission may adopt temporary rules to authorize
5 open-end design agreements for design and construction of wetland, stream, and buffer
6 creation, mitigation, and restoration projects. Prior to the adoption of a temporary rule
7 under this section, the Commission shall publish a notice of intent to adopt a temporary
8 rule in the North Carolina Register. The notice shall set out the text of the proposed
9 temporary rule and include the name of the person to whom questions and written
10 comment on the proposed temporary rule may be submitted. The Commission shall
11 accept written comment on the proposed temporary rule for at least 30 days after the
12 notice of intent to adopt a temporary rule is published in the North Carolina Register.
13 The State Building Commission is authorized to adopt temporary rules under this
14 section until 1 July 2001.

15 **SECTION 7.** Beginning 1 March 2002, the Department of Environment and
16 Natural Resources shall submit a semiannual report to the Environmental Review
17 Commission on the implementation of Sections 1 through 6 of this act as a part of the
18 report required by G.S. 143-215.94M.

19 **SECTION 8.** Sections 1 through 5 of this act become effective 1 October
20 2001. Sections 6, 7, and 8 of this act are effective when this act becomes law. Sections
21 1, 2, 3, 4, 5, and 7 of this act expire 1 October 2006.