

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

S

1

SENATE BILL 1263*

Short Title: Sedimentation Act Amendments. (Public)

Sponsors: Senators Albertson; Clodfelter and Odom.

Referred to: Agriculture/Environment/Natural Resources.

June 6, 2002

A BILL TO BE ENTITLED
AN ACT TO AMEND 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 reads as rewritten:

"§ 113A-54.1. Approval of erosion control plans.

(a) A draft erosion control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. The Commission shall approve, approve with modifications, or disapprove a draft erosion control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion control plan or a revised erosion control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion control plans approved under this Article.

(b) If, following commencement of a land-disturbing activity pursuant to an approved erosion control plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require any revision of the plan that is necessary to comply with this Article. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan.

1 (c) The Commission shall disapprove an erosion control plan if implementation
2 of the plan would result in a violation of rules adopted by the Environmental
3 Management Commission to protect riparian buffers along surface waters. The Director
4 of the Division of Land Resources may disapprove an erosion control plan upon finding
5 that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- 6 (1) Is conducting or has conducted land-disturbing activity without an
7 approved plan, or has received notice of violation of a plan previously
8 approved by the Commission or a local government pursuant to this
9 Article and has not complied with the notice within the time specified
10 in the notice;
- 11 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a
12 local ordinance adopted pursuant to this Article by the time the
13 payment is due;
- 14 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or
15 any criminal provision of a local ordinance adopted pursuant to this
16 Article; or
- 17 (4) Has failed to substantially comply with State rules or local ordinances
18 and regulations adopted pursuant to this Article.

19 (d) In the event that an erosion control plan is disapproved by the Director
20 pursuant to subsection (c) of this section, the Director shall state in writing the specific
21 reasons that the plan was disapproved. The applicant may appeal the Director's
22 disapproval of the plan to the Commission. For purposes of this subsection and
23 subsection (c) of this section, an applicant's record may be considered for only the two
24 years prior to the application date.

25 (e) An approved erosion and sedimentation control plan shall contain a schedule
26 for the inspection of the area covered by the plan after each phase of the plan has been
27 completed and after establishment of temporary ground cover in accordance with G.S.
28 113A-57(2). The person submitting the erosion and sedimentation control plan or an
29 agent of the person submitting the erosion and sedimentation control plan shall perform
30 each inspection. The person who performs each inspection shall post a record of the
31 inspection on the site of the land-disturbing activity. The record shall certify that the
32 work has been completed in accordance with the approved erosion and sedimentation
33 control plan and is being maintained in a manner that satisfies the requirements of this
34 Article. The inspections required by this subsection shall be in addition to inspections
35 required by G.S. 113A-61.1."

36 **SECTION 2.** G.S. 113A-54.2 reads as rewritten:

37 **"§ 113A-54.2. Approval Fees.**

38 (a) The fee for the review of an erosion and sedimentation control plan and
39 related compliance activities shall be one hundred fifty dollars (\$150.00) per acre of
40 disturbed land as shown on an erosion and sedimentation control plan or of land
41 disturbed during the life of the project, whichever is greater. The Commission may
42 establish a fee schedule for the review and approval of erosion control plans under this
43 Article. In establishing the fee schedule, the Commission shall consider the
44 administrative and personnel costs incurred by the Department for reviewing the plans

1 and for related compliance activities. An application fee may not exceed fifty dollars
2 (\$50.00) per acre of disturbed land shown on an erosion control plan or of land actually
3 disturbed during the life of the project.

4 (b) The Sedimentation Account is established as a nonreverting account within
5 the Department. Fees collected under this section shall be credited to the Account and
6 shall be applied to the costs of administering this Article.

7 (c) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 1039, s. 3.

8 (d) This section may not limit the existing authority of local programs approved
9 pursuant to this Article to assess fees for the approval of erosion control plans."

10 **SECTION 3.** G.S. 113A-56 reads as rewritten:

11 "**§ 113A-56. Jurisdiction of the Commission.**

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

15 (1) Conducted by the State; State.

16 (2) Conducted by the United States; States.

17 (3) Conducted by persons having the power of eminent domain; domain
18 other than a local government.

19 (4) Conducted by local governments; or

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

21 (b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a),
22 in whole or in part, to any other State agency that has submitted an erosion control
23 program to be administered by it, if such program has been approved by the
24 Commission as being in conformity with the general State program.

25 (c) The Commission shall have concurrent jurisdiction with local governments
26 that have an approved erosion and sediment control program over all other
27 land-disturbing activities. In addition to the authority granted to the Commission in
28 G.S. 113A-60(c), the Commission has the following authority with respect to an
29 approved erosion and sediment control program:

30 (1) To review and amend an erosion and sedimentation control plan
31 approved by an approved erosion and sediment control program if the
32 Commission determines that the plan does not comply with the
33 requirements of this Article and the rules adopted pursuant to this
34 Article.

35 (2) To take inspection and enforcement action if the Commission
36 determines that the local government has failed to take appropriate
37 inspection or enforcement action."

38 **SECTION 4.** G.S. 113A-57 reads as rewritten:

39 "**§ 113A-57. Mandatory standards for land-disturbing activity.**

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

42 (1) No land-disturbing activity during periods of construction or
43 improvement to land shall be permitted in proximity to a lake or
44 natural watercourse unless a buffer zone is provided along the margin

1 of the watercourse of sufficient width to confine visible siltation within
2 the twenty-five percent (25%) of the buffer zone nearest the
3 land-disturbing activity. Waters that have been classified as trout
4 waters by the Environmental Management Commission shall have an
5 undisturbed buffer zone 25 feet wide or of sufficient width to confine
6 visible siltation within the twenty-five percent (25%) of the buffer
7 zone nearest the land-disturbing activity, whichever is greater.
8 Provided, however, that the Sedimentation Control Commission may
9 approve plans which include land-disturbing activity along trout
10 waters when the duration of said disturbance would be temporary and
11 the extent of said disturbance would be minimal. This subdivision
12 shall not apply to a land-disturbing activity in connection with the
13 construction of facilities to be located on, over, or under a lake or
14 natural watercourse.

- 15 (2) The angle for graded slopes and fills shall be no greater than the angle
16 which can be retained by vegetative cover or other adequate
17 erosion-control devices or structures. In any event, slopes left exposed
18 will, within ~~15~~ 10 working days or ~~30~~ 21 calendar days of completion
19 of any phase of grading, whichever period is shorter, be planted or
20 otherwise provided with ground cover, devices, or structures sufficient
21 to restrain erosion.
- 22 (3) Whenever land-disturbing activity is undertaken on a tract comprising
23 more than one acre, if more than one acre is uncovered, the person
24 conducting the land-disturbing activity shall install such sedimentation
25 and erosion control devices and practices as are sufficient to retain the
26 sediment generated by the land-disturbing activity within the
27 boundaries of the tract during construction upon and development of
28 said tract, and shall plant or otherwise provide a permanent ground
29 cover sufficient to restrain erosion after completion of construction or
30 development within a time period to be specified by rule of the
31 Commission.
- 32 (4) No person shall initiate any land-disturbing activity of more than one
33 acre on a tract ~~if more than one acre is to be uncovered~~ unless, 30 or
34 more days prior to initiating the activity, an erosion and sedimentation
35 control plan for such activity is filed with the agency having
36 jurisdiction. The agency having jurisdiction shall forward to the
37 Director of the Division of Water Quality a copy of each erosion and
38 sedimentation control plan for a land-disturbing activity that involves
39 the utilization of ditches for the purpose of de-watering or lowering the
40 water table of the tract."

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

42 "**§ 113A-60. Local erosion control programs.**

43 (a) ~~Any~~ A local government may submit to the Commission for its approval an
44 erosion and sediment control program for its jurisdiction, and to this end local

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

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

19 (c) If the Commission determines that any local government is failing to
20 administer or enforce an approved erosion and sediment control program, it shall notify
21 the local government in writing and shall specify the deficiencies of administration and
22 enforcement. If the local government has not taken corrective action within 30 days of
23 receipt of notification from the Commission, the Commission shall assume
24 administration and enforcement of the program until such time as the local government
25 indicates its willingness and ability to resume administration and enforcement of the
26 program.

27 (d) A local government may submit to the Commission for its approval a limited
28 erosion and sediment control program for its jurisdiction that grants the local
29 government the responsibility only for the inspection of land-disturbing activities within
30 the jurisdiction of the local government. The Commission shall be responsible for
31 administering all components of the erosion and sediment control program other than
32 the inspection of land-disturbing activities. The local government may adopt ordinances
33 and regulations necessary to establish and enforce a limited erosion and sediment
34 control program and that establish a fee for the Commission's review of an erosion and
35 sedimentation control plan and related compliance activities performed under the
36 direction of the local government or the Commission. A local government that
37 administers a limited erosion and sediment control program shall pay an amount equal
38 to one hundred twenty dollars (\$120.00) per acre of disturbed land subject to inspection
39 under the limited erosion and sediment control program to the Department of
40 Environment and Natural Resources for deposit in the Sedimentation Account
41 established by G.S. 113A-54.2(b). A local government may create or designate agencies
42 or subdivisions of the local government to administer and enforce the limited program.
43 An ordinance adopted by a local government that establishes a limited program shall at
44 least meet and may exceed the minimum requirements regarding the inspection of land-

1 disturbing activities of this Article and the rules adopted pursuant to this Article
2 regarding the inspection of land-disturbing activities. Two or more units of local
3 government may establish a joint limited program and enter into any agreements
4 necessary for the proper administration and enforcement of the limited program. The
5 resolutions establishing any joint limited program must be duly recorded in the minutes
6 of the governing body of each unit of local government participating in the limited
7 program, and a certified copy of each resolution must be filed with the Commission.
8 Subsections (b) and (c) of this section apply to the approval and oversight of limited
9 programs."

10 **SECTION 6.** G.S. 113A-64 reads as rewritten:

11 **"§ 113A-64. Penalties.**

12 (a) Civil Penalties. –

13 (1) Any person who violates any of the provisions of this Article or any
14 ordinance, rule, or order adopted or issued pursuant to this Article by
15 the Commission or by a local government, or who initiates or
16 continues a land-disturbing activity for which an erosion control plan
17 is required except in accordance with the terms, conditions, and
18 provisions of an approved plan, is subject to a civil penalty. The
19 maximum civil penalty for a violation is five thousand dollars
20 ~~(\$5,000).~~ (\$5,000), except that the Secretary may assess a civil penalty
21 of up to ten thousand dollars (\$10,000) for the first day of a violation.

22 A civil penalty may be assessed from the date of the violation. Each
23 day of a continuing violation shall constitute a separate violation.

24 (2) The Secretary or a local government that administers an erosion and
25 sediment control program approved under G.S. 113A-60 shall
26 determine the amount of the civil penalty and shall notify the person
27 who is assessed the civil penalty of the amount of the penalty and the
28 reason for assessing the penalty. The notice of assessment shall be
29 served by any means authorized under G.S. 1A-1, Rule 4, and shall
30 direct the violator to either pay the assessment or contest the
31 assessment within 30 days by filing a petition for a contested case
32 under Article 3 of Chapter 150B of the General Statutes. If a violator
33 does not pay a civil penalty assessed by the Secretary within 30 days
34 after it is due, the Department shall request the Attorney General to
35 institute a civil action to recover the amount of the assessment. If a
36 violator does not pay a civil penalty assessed by a local government
37 within 30 days after it is due, the local government may institute a civil
38 action to recover the amount of the assessment. The civil action may
39 be brought in the superior court of any county where the violation
40 occurred or the violator's residence or principal place of business is
41 located. A civil action must be filed within three years of the date the
42 assessment was due. An assessment that is not contested is due when
43 the violator is served with a notice of assessment. An assessment that

1 is contested is due at the conclusion of the administrative and judicial
2 review of the assessment.

3 (3) In determining the amount of the penalty, the Secretary shall consider
4 the degree and extent of harm caused by the violation, the cost of
5 rectifying the damage, the amount of money the violator saved by
6 noncompliance, whether the violation was committed willfully and the
7 prior record of the violator in complying or failing to comply with this
8 Article.

9 (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

10 (5) The clear proceeds of civil penalties collected by the Department or
11 other State agency under this subsection shall be remitted to the Civil
12 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
13 Civil penalties collected by a local government under this subsection
14 shall be credited to the general fund of the local government as nontax
15 revenue.

16 (b) Criminal Penalties. – Any person who knowingly or willfully violates any
17 provision of this Article or any ordinance, rule, regulation, or order duly adopted or
18 issued by the Commission or a local government, or who knowingly or willfully
19 initiates or continues a land-disturbing activity for which an erosion control plan is
20 required, except in accordance with the terms, conditions, and provisions of an
21 approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to
22 exceed five thousand dollars (\$5,000)."

23 **SECTION 7.** Article 4 of Chapter 113A of the General Statutes is amended
24 by adding a new section to read:

25 "**§ 113A-67. Annual report.**

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

34 **SECTION 8.** The Department of Environment and Natural Resources shall
35 submit the first report required by G.S. 113A-67, as enacted by Section 7 of this act, to
36 the Environmental Review Commission on or before 1 September 2003.

37 **SECTION 9.** This act becomes effective 1 August, 2002.