

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1870

Short Title: Safe Artificial Slope Construction Act. (Public)

Sponsors: Representatives Goforth, Whilden (Primary Sponsors); Hughes and Insko.

Referred to: Environment and Natural Resources, if favorable, Finance, if favorable, Appropriations.

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO (1) REQUIRE LOCAL GOVERNMENTS TO ADOPT ORDINANCES TO REGULATE SITE PLANNING, DESIGN, AND CONSTRUCTION OF ARTIFICIAL SLOPES IN MOUNTAINOUS AREAS TO PROMOTE SAFE AND STABLE SLOPES FOR DEVELOPMENT, TO REDUCE THE LIKELIHOOD OF SLOPE FAILURES ON DEVELOPED OR DISTURBED LAND, AND TO PROTECT HUMAN SAFETY AND PROPERTY; AND (2) DIRECT THE SEDIMENTATION CONTROL COMMISSION TO ASSIST LOCAL GOVERNMENTS IN DEVELOPMENT AND IMPLEMENTATION OF SAFE SLOPE CONSTRUCTION PROGRAMS AND TO DEVELOP A MODEL ORDINANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 113A of the General Statutes is amended by adding a new Article to read as follows:

"Article 19.

"Safe Artificial Slope Construction.

"§ 113A-261. Short title.

This act shall be known as the Safe Artificial Slope Construction Act of 2010.

"§ 113A-262. Definitions.

The definitions set forth in G.S. 113A-52 apply to this Article. In addition, the following definitions apply to this Article:

- (1) 'Affected area' means an area located on a mountain face or steep hillside that (i) has an average slope of forty percent (40%) or greater, or (ii) is designated with a slide hazard ranking of 'moderate' or 'high' on a Stability Index Map prepared by the North Carolina Geological Survey.
- (2) 'Artificial slope construction' means any slope-disturbing activity that creates or changes any slope, or attempts to do so.
- (3) 'Construction' means any slope-disturbing activity and includes reconstruction, repair, stabilization, alteration, or expansion.
- (4) 'Slope-disturbing activity' means any use of the land by any person in residential, industrial, educational, institutional, or commercial development, and highway and road construction and maintenance that results in removal of ground cover or a change in topography of the land.
- (5) 'Slope' means an inclined ground or earth material surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

"§ 113A-263. Legislative findings.



1 Improper development on steep slopes poses a threat to human safety and property.
2 Economic pressures, unknown site conditions, inadequate or inappropriate design, and
3 inexperienced persons conducting slope-disturbing activity can affect the quality, safety, and
4 stability of development on steep slopes. It is the intent of this Article to require
5 implementation of reasonable, effective control standards for artificial slope construction and to
6 improve construction and development practices that will result in higher levels of safety and
7 stability on developed land and to decrease the potential for damage to human health, property,
8 and natural resources.

9 **"§ 113A-264. Purpose.**

10 This Article provides for a cooperative program of safe artificial slope construction to be
11 administered by local governments consistent with minimum statewide management
12 requirements established by the Sedimentation Control Commission.

13 **"§ 113A-265. Applicability of this Article.**

14 (a) This Article applies to artificial slope construction in any affected area as defined in
15 G.S. 113A-262 that is located within a county designated pursuant to subdivision (1) of Section
16 3 of S.L. 2005-1.

17 (b) This Article shall not apply to artificial slope construction activities conducted in
18 connection with the following:

- 19 (1) Graves for the burial of human remains.
- 20 (2) Local government operation of a landfill.
- 21 (3) Excavations for wells or tunnels.
- 22 (4) Exploratory excavations not requiring a building permit that are less than
23 one-half acre of disturbed area conducted under the direction of a
24 professional engineer licensed under Chapter 89C of the General Statutes or
25 other professional approved by the agency having jurisdiction.
- 26 (5) Natural slope failures, including, but not limited to, landslides.
- 27 (6) Underground storage tanks exempt from regulation under the Occupational
28 Safety and Health Act.
- 29 (7) Ditches exempt from regulation under the Occupational Safety and Health
30 Act.
- 31 (8) Artificial slope construction for below grade portions of a residential or
32 commercial structure for which an unexpired building permit has been
33 issued if the construction complies with all applicable local, State, and
34 federal regulations, including, but not limited to, the North Carolina State
35 Building Code.
- 36 (9) Activities set forth in G.S. 113A-52.01.

37 **"§ 113A-266. Duties of the Sedimentation Control Commission.**

38 (a) Identification of Affected Areas. – The Commission shall identify the jurisdictions
39 that are required to adopt ordinances pursuant to this Article by showing them on a map or
40 drawing, describing them in a document, or any combination thereof. These maps, drawings, or
41 documents shall identify the affected areas within the jurisdiction. The Commission shall file
42 this information with the governing body of each identified jurisdiction. Determinations by the
43 Commission of affected areas under this section shall be conclusive in the absence of fraud.

44 (b) Development of Safe Artificial Slope Construction Requirements. – The
45 Commission shall adopt rules for the safe construction of artificial slopes in affected areas,
46 including, but not limited to, minimum requirements for:

- 47 (1) Adequate site assessment, planning, design, and technical standards for
48 construction of stable artificial slopes.
- 49 (2) Submission, review, approval and disapproval, and modification procedures
50 for safe artificial slope construction plans. Plans involving construction of
51 retaining walls over eight feet in height shall be prepared by a professional

1 engineer licensed under Chapter 89C of the General Statutes to practice as a
2 professional engineer in the State. All plans shall be approved by the agency
3 having jurisdiction prior to initiation of any artificial slope construction
4 activity in affected areas. Any artificial slope construction in affected areas
5 shall be performed by a general contractor licensed under Article 1 of
6 Chapter 87 of the General Statutes and shall be conducted in compliance
7 with an approved plan.

8 (3) Demonstrations of financial responsibility.

9 (4) Submission of reports to document compliance.

10 (5) Inspection and enforcement procedures, which shall include a requirement
11 that each site on which regulated slope construction activity is being
12 conducted shall be inspected while the work is being performed and after the
13 work is completed to ensure compliance with this Article and that proper
14 measures are implemented to construct a stable artificial slope at the site.

15 (6) Exemptions applicable to certain activities.

16 (c) Assistance to Local Governments. – The Commission shall provide assistance to
17 local governments in the development of safe artificial slope construction programs that
18 comply with this Article. As part of its assistance to local governments, the Commission shall
19 approve and make available a model safe artificial slope construction ordinance. The safe
20 artificial slope construction ordinance shall, at a minimum, address the requirements set forth in
21 subsection (b) of this section.

22 (d) Review and Approval of Local Ordinances Required. – The Commission shall
23 review each ordinance that regulates the construction of artificial slopes in affected areas
24 submitted by a local government pursuant to G.S. 113A-267 and, within 90 calendar days of
25 receipt thereof, shall notify the local government submitting the ordinance that the ordinance
26 has been approved, approved with modifications, or disapproved. The Commission shall
27 approve an ordinance only if it determines that the requirements of the ordinance meet or
28 exceed the requirements of this Article and rules adopted thereunder.

29 **"§ 113A-267. Mandatory local programs.**

30 (a) Adoption of Ordinance Required. – Each county that has within its jurisdiction an
31 affected area shall adopt an ordinance that regulates the construction of artificial slopes in
32 affected areas by any person. The ordinance shall apply in unincorporated areas within the
33 county and to incorporated areas within the county except that a city may adopt an ordinance in
34 which case the municipal ordinance shall apply within the city and the extraterritorial
35 jurisdiction of the city. The ordinance shall at least meet and may exceed the minimum
36 requirements of this Article and rules adopted pursuant to this Article.

37 (b) Review and Approval of Ordinance Required. – Prior to adoption of an ordinance
38 that regulates the construction of artificial slopes in affected areas, or modification of the
39 ordinance, a local government shall submit the ordinance to the Commission for review and
40 receive approval from the Commission for the ordinance.

41 (c) Public Hearing. – The governing body of a local government must hold a public
42 hearing on the question of adoption of an ordinance that regulates the construction of artificial
43 slopes in affected areas prior to adoption. The public hearing required by this section shall be
44 held upon at least 10 calendar days' notice in a newspaper of general circulation in the
45 jurisdiction adopting the ordinance. Testimony at the hearing shall be recorded, and any and all
46 exhibits shall be preserved within the custody of the governing body of the local government.
47 The testimony and evidence shall be made available for inspection and scrutiny by any person.

48 (d) Filing of Documents. – Each local government that adopts an ordinance pursuant to
49 the provisions of this Article shall file a copy of the ordinance with the Commission. The local
50 government shall file the information provided by the Commission pursuant to
51 G.S. 113A-266(a) with the register of deeds in the jurisdiction where the affected area is

1 located. Copies of the maps, drawings, or documents that are certified by the register of deeds
2 shall be admitted in evidence in all courts and shall have the same force and effect as would the
3 original.

4 (e) Application of Ordinance by Local Governments. – An ordinance adopted pursuant
5 to the provisions of this Article shall apply to all affected areas as defined in G.S. 113A-262
6 within the jurisdiction. Determinations by a local government of affected areas made pursuant
7 to the provisions of this Article shall be conclusive in the absence of fraud.

8 (f) Fees. – An ordinance adopted by a local government may establish a fee, not to
9 exceed one hundred dollars (\$100.00), for the review of an artificial slope construction plan and
10 related activities.

11 (g) Implementation and Enforcement. – Each local government that is required to adopt
12 an ordinance pursuant to the provisions of this Article shall implement and enforce the
13 ordinance in accordance with the requirements of this Article and rules adopted thereunder.

14 (h) Creation or Designation of Agencies to Administer; Joint Programs. – Local
15 governments are authorized to create or designate agencies or subdivisions of local government
16 to administer and enforce the ordinance. Two or more units of local government are authorized
17 to establish a joint program and to enter into any agreements that are necessary for the proper
18 administration and enforcement of a safe artificial slope construction ordinance. The
19 resolutions establishing any joint program must be duly recorded in the minutes of the
20 governing body of each local government participating in the program, and a certified copy of
21 each resolution must be filed with the Commission.

22 **"§ 113A-268. Enforcement and penalties.**

23 (a) Civil Penalties. –

24 (1) The Commission may assess a civil penalty of not more than five thousand
25 dollars (\$5,000) per year against any local government that fails to adopt a
26 safe artificial slope construction ordinance as required by this Article or
27 willfully fails to administer or enforce the provisions of its program in
28 substantial compliance with the minimum statewide safe slope construction
29 requirements of this Article.

30 (2) A local government that administers a safe slope construction program may
31 assess a civil penalty against any person who violates any of the provisions
32 of this Article or any ordinance, rule, or order adopted or issued pursuant to
33 this Article by the Commission or by a local government or who initiates or
34 continues a slope construction activity for which an artificial slope
35 construction plan is required except in accordance with the terms,
36 conditions, and provisions of an approved plan. The maximum civil penalty
37 for a violation is five thousand dollars (\$5,000) per year.

38 a. Prior to assessing a civil penalty against a person pursuant to this
39 section, a local government that administers a safe slope construction
40 program shall immediately serve a notice of violation upon the
41 person. The notice may be served by any means authorized under
42 G.S. 1A-1, Rule 4. A notice of violation shall specify a date by which
43 the person must comply and inform the person of the actions that
44 need to be taken for compliance. Any person who fails to comply
45 within the time specified shall then be subject to civil and criminal
46 penalties for violations as provided in this section.

47 b. A local government that administers a safe slope construction
48 program shall determine the amount of the civil penalty and shall
49 notify the person who is assessed the civil penalty of the amount of
50 the penalty and the reason for assessing the penalty. The notice of
51 assessment shall be served by any means authorized under

1 G.S. 1A-1, Rule 4, and shall direct the violator to either pay the
2 assessment or contest the assessment within 30 calendar days by
3 filing a petition for a contested case under Article 3 of Chapter 150B
4 of the General Statutes. If a violator does not pay a civil penalty
5 assessed by a local government within 30 calendar days after it is
6 due, the local government may institute a civil action to recover the
7 amount of the assessment. The civil action may be brought in the
8 superior court of any county where the violation occurred or the
9 violator's residence or principal place of business is located. A civil
10 action must be filed within three years of the date the assessment was
11 due. An assessment that is not contested is due when the violator is
12 served with a notice of assessment. An assessment that is contested is
13 due at the conclusion of the administrative and judicial review of the
14 assessment.

15 c. In determining the amount of the penalty, a local government that
16 administers a safe slope construction program shall consider the
17 degree and extent of harm caused by the violation, the cost of
18 rectifying the damage, the amount of money the violator saved by
19 noncompliance, whether the violation was committed willfully, and
20 the prior record of the violator in complying or failing to comply
21 with this Article.

22 (3) Civil penalties collected by a local government under this subsection shall be
23 used as provided in Section 7 of Article IX of the Constitution of North
24 Carolina.

25 (b) Criminal Penalties. – Any person who knowingly or willfully violates any provision
26 of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the
27 Commission or a local government, or who knowingly or willfully initiates a slope construction
28 activity for which an artificial slope construction plan is required, except in accordance with the
29 terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor
30 that may include a fine not to exceed five thousand dollars (\$5,000).

31 (c) Injunctive Relief. –

32 (1) Whenever the governing body of a local government having jurisdiction has
33 reasonable cause to believe that any person is violating or is threatening to
34 violate any ordinance, rule, regulation, or order adopted or issued by the
35 local government pursuant to this Article, or any term, condition, or
36 provision of an artificial slope construction plan over which it has
37 jurisdiction, may, either before or after the institution of any other action or
38 proceeding authorized by this Article, institute a civil action in the name of
39 the local government for injunctive relief to restrain the violation or
40 threatened violation. The action shall be brought in the superior court of the
41 county in which the violation is occurring or is threatened.

42 (2) Upon determination by a court that an alleged violation is occurring or is
43 threatened, the court shall enter any order or judgment that is necessary to
44 abate the violation, to ensure that restoration is performed, or to prevent the
45 threatened violation. The institution of an action for injunctive relief under
46 subdivision (1) or (2) of this subsection shall not relieve any party to the
47 proceeding from any civil or criminal penalty prescribed for violations of
48 this Article."

49 **SECTION 2.** G.S. 143B-298 reads as rewritten:

50 **"§ 143B-298. Sedimentation Control Commission – creation; powers and duties.**

1 (a) There is hereby created the Sedimentation Control Commission of the Department
2 of Environment and Natural Resources with the power and duty to develop and administer a
3 sedimentation control program as herein provided.

4 (b) The Sedimentation Control Commission has the following powers and duties:

5 (1) In cooperation with the Secretary of the Department of Transportation and
6 Highway Safety and other appropriate State and federal agencies, develop,
7 promulgate, publicize, and administer a comprehensive State erosion and
8 sedimentation control program.

9 (2) Develop and adopt on or before July 1, 1974, rules and regulations for the
10 control of erosion and sedimentation pursuant to G.S. 113A-54.

11 (3) Conduct public hearings pursuant to G.S. 113A-54.

12 (4) Assist local governments in developing erosion and sedimentation control
13 programs pursuant to G.S. 113A-60.

14 (5) Assist and encourage other State agencies in developing erosion and
15 sedimentation control programs pursuant to G.S. 113A-56.

16 (6) Develop recommended methods of control of sedimentation and prepare and
17 make available for distribution publications and other materials dealing with
18 sedimentation control techniques pursuant to G.S. 113A-54.

19 (7) Adopt rules for the safe construction of artificial slopes in affected areas as
20 provided in G.S. 113A-266(b) and develop a model safe artificial slope
21 construction ordinance as provided in G.S. 113A-266(c).

22 (8) Assist local governments in developing safe artificial slope construction
23 programs pursuant to G.S. 113A-266."

24 **SECTION 3.** There is appropriated from the General Fund to the Department of
25 Environment and Natural Resources the sum of ten thousand dollars (\$10,000) for the
26 2010-2011 fiscal year and the sum of ten thousand dollars (\$10,000) for the 2011-2012 fiscal
27 year to implement the provisions of this act.

28 **SECTION 4.** Section 1 of this act becomes effective December 1, 2012, except
29 that G.S. 113A-266, as enacted by Section 1 of this act, is effective when this act becomes law.
30 Each local government that is required to adopt a safe artificial slope construction ordinance
31 pursuant to the provisions of G.S. 113A-267, as enacted by Section 1 of this act, shall submit
32 its ordinance to the Sedimentation Control Commission for approval on or before December 1,
33 2011. Sections 2 and 4 of this act are effective when it becomes law. Section 3 of this act
34 becomes effective July 1, 2010.