

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 107

Short Title: Streamline Dam Removal. (Public)

Sponsors: Senators Wells, Gunn, B. Jackson (Primary Sponsors); and Woodard.

Referred to: Rules and Operations of the Senate

February 20, 2017

A BILL TO BE ENTITLED

AN ACT TO REMOVE SAFETY HAZARDS AND RESTORE NORTH CAROLINA'S
NATURAL RIVERINE RESOURCES BY FACILITATING THE REMOVAL OF
OBSOLETE AND UNWANTED DAMS.

The General Assembly of North Carolina enacts:

EXEMPT CERTAIN DAM REMOVALS FROM PERMITTING REQUIREMENTS

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

"§ 143-215.25. Definitions.

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

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

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

(a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it may be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of original construction. This subsection shall not apply to a professionally supervised dam removal.

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1 (c) A professionally supervised dam removal is not subject to the procedures set forth in
 2 this section, provided that the person proposing to remove the dam complies with all of the
 3 following:

- 4 (1) A qualified engineer determines based on good engineering practices that the
 5 removal of the dam can be accomplished safely and the removal plan reflects (i)
 6 the geomorphology of the streambed upriver and downriver from the dam site
 7 and (ii) the most desirable longitudinal profile for the post-removal stream
 8 channel that will minimize physical impacts on riparian landowners.
- 9 (2) The person notifies the director of the Division of Energy, Mineral, and Land
 10 Resources of the Department of the proposed removal no less than 30 days
 11 prior to removal. The notice shall include information identifying the dam,
 12 including the stream and county where the dam is located, the dam's height and
 13 impoundment capacity, a map showing the dam location and vicinity, and a
 14 certification from the owner of the dam that the dam is currently not operated
 15 for the purposes of flood control or hydroelectric power generation. The
 16 notification and certification required by this subdivision may be provided
 17 electronically.
- 18 (3) The person notifies the North Carolina Floodplain Mapping Program of the
 19 Department of Public Safety and all impacted local governments of the dam
 20 removal. The notice shall include a qualified engineer's determination of (i) the
 21 removal plan for the dam based on the criteria set forth in subdivision (1) of this
 22 subsection and (ii) that the removal will lower or maintain water levels above
 23 the location of the dam and will not cause an increase in the risk of flood
 24 damage. For purposes of the notice required by this subdivision, an "impacted
 25 local government" shall mean any unit of local government that could
 26 experience changes to its base floodplain (as defined in G.S. 143-215.54) as a
 27 result of the dam removal."

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

29 **"§ 143-215.28A. Application fees.**

30 (a) In accordance with G.S. 143-215.3(a)(1a), the Commission may establish a fee
 31 schedule for processing (i) applications for approvals of construction or removal of dams issued
 32 under this ~~Part~~Part and (ii) notifications of professionally supervised dam removals under
 33 G.S. 143-215.27(c). In establishing the fee schedule, the Commission shall consider the
 34 administrative and personnel costs incurred by the Department for processing the applications and
 35 notifications and for related compliance activities. The total amount of fees collected in any fiscal
 36 year may not exceed one-third of the total personnel and administrative costs incurred by the
 37 Department for processing the applications and for related compliance activities in the prior fiscal
 38 year. An approval fee may not exceed the larger of two hundred dollars (\$200.00) or two percent
 39 (2%) of the actual cost of construction or removal of the applicable dam. A fee for notification of
 40 professionally supervised dam removals under G.S. 143-215.27(c) may not exceed the lesser of
 41 one half percent (0.5%) of the actual cost of removal or five hundred dollars (\$500.00). The
 42 provisions of G.S. 143-215.3(a)(1b) do not apply to these fees.

43 "

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

45 **"§ 143-215.30. Notice of completion; certification of final approval; notice of transfer.**

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

51 ...

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

4 (e) The owner of a dam shall provide written notice of transfer to the Department within
5 30 days after title to the dam has been legally transferred. The notice of transfer shall include the
6 name and address of the new dam owner."

7 **SECTION 1.(e)** G.S. 143-215.56 is amended by adding a new subsection to read:
8 "**§ 143-215.56. Delineation of flood hazard areas and 100-year floodplains; powers of**
9 **Department; powers of local governments and of the Department.**

10 ...

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

- 14 (1) The 100-year floodplain and base flood elevations for the area are not identified
15 on a floodplain map prepared pursuant to the National Flood Insurance Program
16 within the previous five years.
- 17 (2) The Department determines that the 100-year floodplain and the base flood
18 elevations for the area need to be identified and the use of the area regulated in
19 accordance with the requirements of this Part in order to prevent damage from
20 flooding.
- 21 (3) The Department prepares the floodplain map in accordance with the federal
22 standards required for maps to be accepted for use in administering the National
23 Flood Insurance Program.

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

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

- 29 (1) Provide copies of the floodplain map to every local government whose
30 jurisdiction includes a portion of the 100-year floodplain identified on the
31 floodplain map.
- 32 (2) Submit the floodplain map to the Federal Emergency Management Agency for
33 approval for use in administering the National Flood Insurance Program.

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

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

43 44 **PRIVATE DUTY TO INSPECT**

45 **SECTION 2.(a)** G.S. 143-215.32(a) and G.S. 143-215.32(a1) are recodified as
46 G.S. 143-215.32(a1) and G.S. 143-215.32(a2).

47 **SECTION 2.(b)** G.S. 143-215.32, as recodified by subsection (a) of this section, reads
48 as rewritten:

49 "**§ 143-215.32. Inspection of dams.**

50 (a) The owner of any dam regulated under this Part, and the owner's heirs, successors, or
51 assigns shall be responsible for regularly inspecting the dam to insure its safety and proper

1 operation and maintenance. The inspection shall be performed by an engineer licensed as a
 2 professional engineer under Chapter 89C of the General Statutes, and a report shall be submitted
 3 to the Department within 30 days of the inspection. The Department shall specify by rule the
 4 inspection frequency, protocol, and reporting format.

5 (a1) ~~The Nothing in this section is intended to limit the power of the Department may~~ at any
 6 time to inspect any dam, including a dam that is otherwise exempt from this Part, upon receipt of a
 7 written request of any affected person or agency, or upon a motion of the Environmental
 8 Management Commission. ~~Within the limits of available funds the Department shall endeavor to~~
 9 ~~provide for inspection of all dams at intervals of approximately five years.~~

10 ...

11 (b) If the Department upon inspection or upon receipt of a report required by this section
 12 finds that any dam is not sufficiently strong, is not maintained in good repair or operating
 13 condition, is dangerous to life or property, or does not satisfy minimum streamflow requirements,
 14 the Department shall present its findings to the Commission and the Commission may issue an
 15 order directing the owner or owners of the dam to make at his or her expense maintenance,
 16 alterations, repairs, reconstruction, change in construction or location, or removal as may be
 17 deemed necessary by the Commission within a time limited by the order, not less than 90 days
 18 from the date of issuance of each order, except in the case of extreme danger to the safety of life or
 19 property, as provided by subsection (c) of this section.

20"

21 STREAMLINE ENVIRONMENTAL PERMITTING OF DAM REMOVAL

22 SECTION 3.(a) G.S. 143-214.7C reads as rewritten:

23 "§ 143-214.7C. **Prohibit the requirement of mitigation for impacts to intermittent**
 24 **streams.** ~~certain impacts.~~

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

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

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

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

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

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

38 SECTION 3.(b) The Division of Water Resources of the Department of
 39 Environmental Quality shall develop a water quality general certification under section 401 of the
 40 Clean Water Act for short term sediment releases associated with the construction phase of a dam
 41 removal when all of the following occur:

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

45 (2) The applicant for the water quality general certification demonstrates that the
 46 sediment to be released has similar or lower level of contamination than
 47 sediment sampled from downstream of the dam.
 48
 49

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

4 **SECTION 4.(a)** Definitions. – "Dam Height Rule" means 15A NCAC 2K .0223 (Dam
5 Height and Storage Determination) for purposes of this section and its implementation.

6 **SECTION 4.(b)** Dam Height Rule. – Until the effective date of the revised permanent
7 rule that the Environmental Management Commission is required to adopt pursuant to subsection
8 (d) of this section, the Commission and the Department of Environmental Quality shall implement
9 the Sediment Criteria Rule, as provided in subsection (c) of this section.

10 **SECTION 4.(c)** Implementation. – The Commission shall measure the height of a
11 dam for purposes of dam size classification from the lowest point on the crest of the dam to the
12 lowest point on the downstream toe.

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

20 **SECTION 4.(e)** Sunset. – This section expires when permanent rules adopted as
21 required by subsection (d) of this section become effective.

22
23 **CLEAN WATER MANAGEMENT TRUST FUND ELIGIBILITY FOR CERTAIN DAM**
24 **REMOVALS**

25 **SECTION 5.** G.S. 143B-135.234(c) reads as rewritten:

26 "(c) Fund Purposes. – Moneys from the Fund are appropriated annually to finance projects
27 to clean up or prevent surface water pollution and for land preservation in accordance with this
28 Part. Revenue in the Fund may be used for any of the following purposes:

- 29 (1) To acquire land for riparian buffers for the purposes of providing environmental
30 protection for surface waters and urban drinking water supplies and establishing
31 a network of riparian greenways for environmental, educational, and
32 recreational uses.
- 33 (2) To acquire conservation easements or other interests in real property for the
34 purpose of protecting and conserving surface waters and enhancing drinking
35 water supplies, including the development of water supply reservoirs.
- 36 (3) To coordinate with other public programs involved with lands adjoining water
37 bodies to gain the most public benefit while protecting and improving water
38 quality.
- 39 (4) To restore previously degraded lands to reestablish their ability to protect water
40 quality.
- 41 (4a) To remove obsolete and unwanted dams, where the removal will enhance or
42 restore ecological functions or improve water quality.

43"

44
45 **STUDY FURTHER STREAMLINING OF DAM REMOVAL**

46 **SECTION 6.** The Department of Environmental Quality shall study the dam removal
47 process in North Carolina and recommend further changes in statutes or rules to reduce regulatory
48 barriers to the removal of obsolete and unwanted dams and consolidate duplicative permit
49 processes. As part of its study, the Department shall review the dam removal permitting process in
50 New Hampshire, Massachusetts, and Pennsylvania and other states as the Department finds

1 relevant. The Department shall submit its report to the Environmental Review Commission no
2 later than March 1, 2018.

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4 **EFFECTIVE DATE**

5 **SECTION 7.** Section 6 of this act is effective when it becomes law. The remainder of
6 this act becomes effective July 1, 2017.