

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

FILED SENATE
Feb 14, 2019
S.B. 70
PRINCIPAL CLERK

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SENATE BILL DRS55012-MHz-5B*

Short Title: Erosion & Sedimentation Program/PED. (Public)

Sponsors: Senators Foushee and Waddell (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE STATE'S EROSION AND SEDIMENTATION PROGRAMS BY DIRECTING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO REVIEW AND MAKE RECOMMENDATIONS REGARDING REPORTING BY DELEGATED LOCAL PROGRAMS, BY PROVIDING LIMITED LOCAL PROGRAMS ADDITIONAL FLEXIBILITY FOR CONDUCTING INSPECTIONS, BY REQUIRING PERIODIC REVIEW OF DELEGATED LOCAL PROGRAMS, BY DIRECTING THE PROGRAM TO COLLECT AND REPORT DATA ON ITS INTERNAL TARGETS FOR EROSION AND SEDIMENTATION PLAN REVIEW AND APPROVAL, BY REQUIRING THE USE OF SITE-SPECIFIC FACTORS TO PRIORITIZE MONITORING AND COMPLIANCE ACTIVITIES, BY REQUIRING THAT CERTAIN ROUTINE INSPECTIONS BE COORDINATED WITH THE REGULATED COMMUNITY, BY ADJUSTING PLAN REVIEW FEES TO MORE FULLY REFLECT PROGRAM OPERATIONAL COSTS, AND BY DIRECTING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ESTABLISH INFORMATION MANAGEMENT POLICIES AND A PERFORMANCE MANAGEMENT SYSTEM, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

PART I. STUDY AND REVISE REPORTING REQUIREMENTS FOR DELEGATED LOCAL PROGRAMS AND PROVIDE FOR PERIODIC PROGRAM REVIEW

SECTION 1.1.(a) By January 1, 2020, the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality shall study and report to the Environmental Review Commission, the Joint Legislative Program Evaluation Oversight Committee, and the Sedimentation Control Commission regarding adequacy and compliance with reporting requirements for delegated local erosion and sedimentation control programs. In its report, the Division and Commission shall consider at a minimum the following:

- (1) Whether current delegated local program reporting includes all data elements the State is required to submit to the U.S. Environmental Protection Agency.
- (2) Whether current data reporting and submission format and reporting frequency is sufficient for proper oversight of delegated local programs.
- (3) Whether current reporting requirements (and the level of compliance with those requirements by delegated local programs) is sufficient to validate delegated local program activities and thereby ensure accountability of delegated local program operations.



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1 **SECTION 1.1.(b)** Based on the findings of the study and report required by
2 subsection (a) of this section, the Sedimentation Control Commission shall (i) issue rules revising
3 delegated local program reporting requirements to ensure compliance with existing law and (ii)
4 amend existing agreements with delegated local programs to incorporate the revised
5 requirements.

6 **SECTION 1.2.** G.S. 113A-60(b) reads as rewritten:

7 "(b) The Commission shall review each program submitted and within 90 days of receipt
8 thereof shall notify the local government submitting the program that it has been approved,
9 approved with modifications, or disapproved. The Commission shall only approve a program
10 upon determining that its standards equal or exceed those of this Article and rules adopted
11 pursuant to this Article. Thereafter, the Commission shall review each local program for
12 compliance with the requirements of this Article no less frequently than every five years."

13
14 **PART II. COLLECT AND REPORT DATA ON COMPLIANCE WITH INTERNAL**
15 **TARGETS FOR REVIEW AND APPROVAL OF EROSION AND SEDIMENTATION**
16 **CONTROL PLANS**

17 **SECTION 2.** G.S. 113A-54.1 is amended by adding a new subsection to read:

18 "(d2) The Department shall collect and maintain, for at least two years, data regarding
19 compliance with its internal targets for review and approval of erosion and sedimentation control
20 plans under this section. The data shall be reported quarterly to the Commission in a format that
21 permits evaluation of performance in reaching internal targets in each regional office and
22 statewide. The Commission shall use these reports to determine whether the Department should
23 modify the internal targets to ensure continued improvement in program efficiency."

24
25 **PART III. REQUIRE USE OF SITE-SPECIFIC FACTORS TO PRIORITIZE**
26 **MONITORING AND COMPLIANCE ACTIVITIES**

27 **SECTION 3.** G.S. 113A-54(c) reads as rewritten:

28 "(c) The rules and regulations adopted pursuant to G.S. 113A-54(b) for carrying out the
29 erosion and sedimentation control program shall:

30 ...

31 (4) Provide for the use of site-specific risk factors in determining the frequency
32 of inspections of land-disturbing activities conducted by the Department
33 under G.S. 113A-61.1."

34
35 **PART IV. COORDINATE WITH THE REGULATED COMMUNITY FOR THE**
36 **PERFORMANCE OF SITE INSPECTIONS AND PROVIDE ADDITIONAL**
37 **FLEXIBILITY FOR PERFORMANCE OF INSPECTIONS**

38 **SECTION 4.1.** G.S. 113A-61.1(a) reads as rewritten:

39 "(a) The Commission, a local government that administers an erosion and sedimentation
40 control program approved under G.S. 113A-60, or other approving authority shall provide for
41 inspection of land-disturbing activities to ensure compliance with this Article and to determine
42 whether the measures required in an erosion and sedimentation control plan are effective in
43 controlling erosion and sedimentation resulting from the land-disturbing activity. Notice of this
44 right of inspection shall be included in the certificate of approval of each erosion and
45 sedimentation control plan. The Department of Agriculture and Consumer Services may inspect
46 land-disturbing activities undertaken on forestland for the production and harvesting of timber
47 and timber products to determine compliance with the Forest Practice Guidelines Related to
48 Water Quality adopted pursuant to G.S. 113A-52.1. A local government or group of local
49 governments establishing a limited program or joint limited program under this section may also
50 contract with a professional engineer licensed under Chapter 89C of the General Statutes or a

1 landscape architect licensed under Chapter 89A of the General Statutes to conduct inspections
2 on their behalf."

3 **SECTION 4.2.** G.S. 113A-60(d) reads as rewritten:

4 "(d) A local government may submit to the Commission for its approval a limited erosion
5 and sedimentation control program for its jurisdiction that grants the local government the
6 responsibility only for the assessment and collection of fees and for the inspection of
7 land-disturbing activities within the jurisdiction of the local government. The Commission shall
8 be responsible for the administration and enforcement of all other components of the erosion and
9 sedimentation control program and the requirements of this Article. The local government may
10 adopt ordinances and regulations necessary to establish a limited erosion and sedimentation
11 control program. An ordinance adopted by a local government that establishes a limited program
12 shall conform to the minimum requirements regarding the inspection of land-disturbing activities
13 of this Article and the rules adopted pursuant to this Article regarding the inspection of
14 land-disturbing activities. The local government shall establish and collect a fee to be paid by
15 each person who submits an erosion and sedimentation control plan to the local government. The
16 amount of the fee shall be an amount equal to eighty percent (80%) of the amount established by
17 the Commission pursuant to G.S. 113A-54.2(a) plus any amount that the local government
18 requires to cover the cost of inspection and program administration activities by the local
19 government. The total fee shall not exceed one hundred dollars (\$100.00) per acre. A local
20 government that administers a limited erosion and sedimentation control program shall pay to
21 the Commission the portion of the fee that equals eighty percent (80%) of the fee established
22 pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and
23 enforcement of other components of the erosion and sedimentation control program. Fees paid
24 to the Commission by a local government shall be deposited in the Sedimentation Account
25 established by G.S. 113A-54.2(b). A local government that administers a limited erosion and
26 sedimentation control program and that receives an erosion control plan and fee under this
27 subsection shall immediately transmit the plan to the Commission for review. A local
28 government may create or designate agencies or subdivisions of the local government to
29 administer the limited program. Two or more units of local government may establish a joint
30 limited program and enter into any agreements necessary for the proper administration of the
31 limited program. The resolutions establishing any joint limited program must be duly recorded
32 in the minutes of the governing body of each unit of local government participating in the limited
33 program, and a certified copy of each resolution must be filed with the Commission. A local
34 government or group of local governments establishing a limited program or joint limited
35 program under this section may also contract with a professional engineer licensed under Chapter
36 89C of the General Statutes or a landscape architect licensed under Chapter 89A of the General
37 Statutes to conduct inspections on their behalf. Subsections (b) and (c) of this section apply to
38 the approval and oversight of limited programs."
39

40 **PART V. REDUCE DEPENDENCE ON APPROPRIATIONS BY INCREASING**
41 **REVIEW FEES TO FULLY SUPPORT THE COST OF EROSION AND**
42 **SEDIMENTATION CONTROL PROGRAM OPERATIONS**

43 **SECTION 5.(a)** G.S. 113A-54.2(a) reads as rewritten:

44 "(a) An application fee of ~~sixty-five dollars (\$65.00)~~ one hundred twenty-five dollars
45 (\$125.00) per acre of disturbed land shown on an erosion and sedimentation control plan or of
46 land actually disturbed during the life of the project shall be charged for the review of an erosion
47 and sedimentation control plan under this Article."

48 **SECTION 5.(b)** G.S. 113A-60(d) reads as rewritten:

49 "(d) A local government may submit to the Commission for its approval a limited erosion
50 and sedimentation control program for its jurisdiction that grants the local government the
51 responsibility only for the assessment and collection of fees and for the inspection of

land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for the administration and enforcement of all other components of the erosion and sedimentation control program and the requirements of this Article. The local government may adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control program. An ordinance adopted by a local government that establishes a limited program shall conform to the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. The local government shall establish and collect a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be an amount equal to eighty percent (80%) of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus any amount that the local government requires to cover the cost of inspection and program administration activities by the local government. The total fee shall not exceed ~~one hundred dollars (\$100.00)~~ one hundred seventy dollars (\$170.00) per acre. A local government that administers a limited erosion and sedimentation control program shall pay to the Commission the portion of the fee that equals eighty percent (80%) of the fee established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and enforcement of other components of the erosion and sedimentation control program. Fees paid to the Commission by a local government shall be deposited in the Sedimentation Account established by G.S. 113A-54.2(b). A local government that administers a limited erosion and sedimentation control program and that receives an erosion control plan and fee under this subsection shall immediately transmit the plan to the Commission for review. A local government may create or designate agencies or subdivisions of the local government to administer the limited program. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration of the limited program. The resolutions establishing any joint limited program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission. Subsections (b) and (c) of this section apply to the approval and oversight of limited programs."

SECTION 5.(c) This section becomes effective July 1, 2019.

PART VI. REQUIRE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ESTABLISH INFORMATION MANAGEMENT POLICIES AND A PERFORMANCE MANAGEMENT SYSTEM FOR THE EROSION AND SEDIMENTATION CONTROL PROGRAM

SECTION 6. G.S. 113A-54(d) reads as rewritten:

"(d) In implementing the erosion and sedimentation control program, the Commission shall:

- ...
- (5) Establish information management policies to ensure the collection and use of valid and reliable erosion and sedimentation control program data.
- (6) Direct the Secretary to create a performance management system that includes, at a minimum, the following:
 - a. Internal objectives and associated targets for all components of the erosion and sedimentation control program by regional office.
 - b. Policies and practices for the collection of internal objectives and targets at the regional office level that are specific to regional office operations.
 - c. Benchmarks for each regional office derived from statewide performance standards for each objective and target."

1 **PART VII. REPORT AND EFFECTIVE DATE**

2 **SECTION 7.1.** By January 1, 2020, the Division of Energy, Mineral, and Land
3 Resources of the Department of Environmental Quality shall report to the Environmental Review
4 Commission, the Joint Legislative Program Evaluation Oversight Committee, and the
5 Sedimentation Control Commission regarding its implementation of this act.

6 **SECTION 7.2.** Except as otherwise specified, this act is effective when it becomes
7 law.