

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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SENATE BILL 70\*

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

Sponsors: Senators Foushee and Waddell (Primary Sponsors).

Referred to: Rules and Operations of the Senate

February 18, 2019

A BILL TO BE ENTITLED

1 AN ACT TO IMPROVE THE STATE'S EROSION AND SEDIMENTATION PROGRAMS  
2 BY DIRECTING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO REVIEW  
3 AND MAKE RECOMMENDATIONS REGARDING REPORTING BY DELEGATED  
4 LOCAL PROGRAMS, BY PROVIDING LIMITED LOCAL PROGRAMS ADDITIONAL  
5 FLEXIBILITY FOR CONDUCTING INSPECTIONS, BY REQUIRING PERIODIC  
6 REVIEW OF DELEGATED LOCAL PROGRAMS, BY DIRECTING THE PROGRAM TO  
7 COLLECT AND REPORT DATA ON ITS INTERNAL TARGETS FOR EROSION AND  
8 SEDIMENTATION PLAN REVIEW AND APPROVAL, BY REQUIRING THE USE OF  
9 SITE-SPECIFIC FACTORS TO PRIORITIZE MONITORING AND COMPLIANCE  
10 ACTIVITIES, BY REQUIRING THAT CERTAIN ROUTINE INSPECTIONS BE  
11 COORDINATED WITH THE REGULATED COMMUNITY, BY ADJUSTING PLAN  
12 REVIEW FEES TO MORE FULLY REFLECT PROGRAM OPERATIONAL COSTS,  
13 AND BY DIRECTING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO  
14 ESTABLISH INFORMATION MANAGEMENT POLICIES AND A PERFORMANCE  
15 MANAGEMENT SYSTEM, AS RECOMMENDED BY THE JOINT LEGISLATIVE  
16 PROGRAM EVALUATION OVERSIGHT COMMITTEE.  
17

18 The General Assembly of North Carolina enacts:

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

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

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



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."

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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."

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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."  
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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.