

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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HOUSE BILL 579  
Committee Substitute Favorable 5/31/23

Short Title: Sedimentation Act & Other Env'l. Changes.

(Public)

Sponsors:

Referred to:

April 6, 2023

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND SEDIMENTATION CONTROL PERMITTING REQUIREMENTS  
3 AND TO ESTABLISH OTHER REQUIREMENTS FOR DEQ TO FACILITATE THE  
4 EFFICIENT AND EFFECTIVE ADMINISTRATION OF ENVIRONMENTAL  
5 PROGRAMS IN NORTH CAROLINA.

6 The General Assembly of North Carolina enacts:

7  
8 **STREAMLINE PERMITTING FOR LAND-DISTURBING ACTIVITIES**

9 **SECTION 1.(a)** G.S. 113A-57 reads as rewritten:

10 **"§ 113A-57. Mandatory standards for land-disturbing activity.**

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

- 13 (1) No land-disturbing activity during periods of construction or improvement to  
14 land shall be permitted in proximity to a lake or natural watercourse unless a  
15 buffer zone is provided along the margin of the watercourse of sufficient width  
16 to confine visible siltation within the twenty-five percent (25%) of the buffer  
17 zone nearest the land-disturbing activity. Waters that have been classified as  
18 trout waters by the Environmental Management Commission shall have an  
19 undisturbed buffer zone 25 feet wide or of sufficient width to confine visible  
20 siltation within the twenty-five percent (25%) of the buffer zone nearest the  
21 land-disturbing activity, whichever is greater. Provided, however, that the  
22 Sedimentation Control Commission may approve plans which include  
23 land-disturbing activity along trout waters when the duration of said  
24 disturbance would be temporary and the extent of said disturbance would be  
25 minimal. This subdivision shall not apply to a land-disturbing activity in  
26 connection with the construction of facilities to be located on, over, or under  
27 a lake or natural watercourse.
- 28 (2) The angle for graded slopes and fills shall be no greater than the angle that can  
29 be retained by vegetative cover or other adequate erosion-control devices or  
30 structures. In any event, slopes left exposed will, within 21 calendar days of  
31 completion of any phase of grading, be planted or otherwise provided with  
32 temporary or permanent ground cover, devices, or structures sufficient to  
33 restrain erosion.
- 34 (3) Whenever land-disturbing activity that will disturb more than one acre is  
35 undertaken on a tract, the person conducting the land-disturbing activity shall  
36 install erosion and sedimentation control devices and practices that are



1 sufficient to retain the sediment generated by the land-disturbing activity  
2 within the boundaries of the tract during construction upon and development  
3 of the tract, and shall plant or otherwise provide a permanent ground cover  
4 sufficient to restrain erosion after completion of construction or development  
5 within a time period to be specified by rule of the Commission. Requirements  
6 for ground cover necessary to terminate coverage under an erosion and  
7 sedimentation control plan, whether those requirements are established by  
8 State law or a local government that administers a delegated erosion and  
9 sedimentation control program, shall not exceed the requirements for final  
10 vegetative or non-vegetative stabilization set forth in Part 2.2.14c. of the  
11 National Pollutant Discharge Elimination System (NPDES) Construction  
12 General Permit (CGP) for Stormwater Discharges from Construction  
13 Activities issued by the United States Environmental Protection Agency as  
14 noticed at 87 Federal Register 3522.

15 (4) No person shall initiate any land-disturbing activity that will disturb more than  
16 one acre on a tract unless, 30 or more days prior to initiating the activity, an  
17 erosion and sedimentation control plan for the activity is filed with the agency  
18 having jurisdiction and approved by the agency. An erosion and sedimentation  
19 control plan may be filed less than 30 days prior to initiation of a  
20 land-disturbing activity if the plan is submitted under an approved express  
21 permit program, and the land-disturbing activity may be initiated and  
22 conducted in accordance with the plan once the plan has been approved. The  
23 agency having jurisdiction shall forward to the Director of the Division of  
24 Water Resources a copy of each erosion and sedimentation control plan for a  
25 land-disturbing activity that involves the utilization of ditches for the purpose  
26 of de-watering or lowering the water table of the tract.

27 (5) The land-disturbing activity shall be conducted in accordance with the  
28 approved erosion and sedimentation control plan.

29 (6) For persons initiating land-disturbing activity that are required to obtain  
30 coverage under NPDES General Permit No. NCG01000 (NCG01), the  
31 requirements of subdivision (4) of this section shall be satisfied through  
32 application for and receipt of the NCG01. To avoid duplication of effort on  
33 the part of persons initiating such activity, unnecessary delays in project  
34 development, and inefficient use of Department personnel as a result of  
35 redundant review of such information, no additional or different requirements  
36 shall be imposed for the submission or approval of an erosion and  
37 sedimentation control plan beyond that required for the NCG01 permit,  
38 whether such permit is issued by the Department or by a local government  
39 pursuant to G.S. 113A-60(a3)."

40 **SECTION 1.(b)** G.S. 113A-60 reads as rewritten:

41 "**§ 113A-60. Local erosion and sedimentation control programs.**

42 (a) A local government may submit to the Commission for its approval an erosion and  
43 sedimentation control program for its jurisdiction and may adopt ordinances and regulations  
44 necessary to establish and enforce erosion and sedimentation control programs. An ordinance  
45 adopted by a local government may establish a fee for the review of an erosion and sedimentation  
46 control plan and related activities. The fee shall be calculated on the basis of either the number  
47 of acres disturbed or in the case of a single-family lot in a residential development or common  
48 plan of development that is less than one acre set at no more than one hundred dollars (\$100.00)  
49 per lot developed. Local governments are authorized to create or designate agencies or  
50 subdivisions of local government to administer and enforce the programs. Except as otherwise

1 provided in this Article, an ordinance adopted by a local government shall at least meet and may  
2 exceed the minimum requirements of this Article and the rules adopted pursuant to this Article.

3 (a1) Two or more units of local government are authorized to establish a joint program  
4 and to enter into any agreements that are necessary for the proper administration and enforcement  
5 of the program. The resolutions establishing any joint program must be duly recorded in the  
6 minutes of the governing body of each unit of local government participating in the program, and  
7 a certified copy of each resolution must be filed with the Commission.

8 (a2) The requirements of an approved local sedimentation control program established  
9 pursuant to subsection (a) or (a1) of this section shall meet, but not exceed, the requirements for  
10 stormwater discharges from construction activities set forth under the 2022 Clean Water Act  
11 National Pollution Discharge Elimination System (NPDES) general permit for stormwater  
12 discharges from construction activities (Construction Permit), 87 Federal Register 3522.

13 (a3) An approved local program shall be required to issue an NPDES General Permit No.  
14 NCG01000 (NCG01) to persons initiating land-disturbing activity in their jurisdictions that are  
15 required to obtain coverage under the NCG01, in lieu of a land disturbance permit or other permit  
16 or certification, issued for purposes of compliance with this Article and rules adopted thereunder.  
17 A local program may charge a fee of no more than two hundred dollars (\$200.00) for issuance of  
18 an NCG01, and no other fee may be charged under this section. Fifty percent (50%) of such fees  
19 charged by a local program shall be retained by the local program and fifty percent (50%) shall  
20 be remitted to the Department.

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

26 ...."

27 **SECTION 1.(c)** G.S. 113A-54 reads as rewritten:

28 "**§ 113A-54. Powers and duties of the Commission.**

29 (a) The Commission shall, in cooperation with the Secretary of Transportation and other  
30 appropriate State and federal agencies, develop, promulgate, publicize, and administer a  
31 comprehensive State erosion and sedimentation control program.

32 (b) The Commission shall develop and adopt and shall revise as necessary from time to  
33 time, rules and regulations for the control of erosion and sedimentation resulting from  
34 land-disturbing activities. The Commission shall adopt or revise its rules and regulations in  
35 accordance with Chapter 150B of the General Statutes.

36 (c) The rules and regulations adopted pursuant to G.S. 113A-54(b) for carrying out the  
37 erosion and sedimentation control program ~~shall~~ shall include all of the following:

38 (1) Be based upon relevant physical and developmental information concerning  
39 the watershed and drainage basins of the State, including, but not limited to,  
40 data relating to land use, soils, hydrology, geology, grading, ground cover,  
41 size of land area being disturbed, proximate water bodies and their  
42 characteristics, transportation, and public facilities and ~~services;~~ services.

43 (2) Include such survey of lands and waters as may be deemed appropriate by the  
44 Commission or required by any applicable laws to identify those areas,  
45 including multijurisdictional and watershed areas, with critical erosion and  
46 sedimentation ~~problems;~~ and problems.

47 (3) Contain conservation standards for various types of soils and land uses, which  
48 standards shall include criteria and alternative techniques and methods for the  
49 control of erosion and sedimentation resulting from land-disturbing activities.

50 (4) Standards, policies, and procedures for permitting of grading to be adopted by  
51 any local government operating an approved erosion and sedimentation

1 control program within its jurisdiction. A separate permit shall not be required  
2 for grading, however, where the grading is to be conducted as part of  
3 land-disturbing activity that is required to obtain coverage under NPDES  
4 General Permit No. NCG01000 (NCG01) or have an approved erosion and  
5 sedimentation control plan pursuant to the requirements of this Article. Where  
6 a grading permit is required as part of land-disturbing activity that is not  
7 required to obtain coverage under the NCG01 or have an approved erosion  
8 and sedimentation control plan pursuant to the requirements of this Article, no  
9 fee shall be charged in association with the grading permit.

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

- 12 (1) Assist and encourage local governments in developing erosion and  
13 sedimentation control programs and, as a part of this assistance, the  
14 Commission shall develop a model local erosion and sedimentation control  
15 ordinance. The Commission shall approve, approve as modified, or  
16 disapprove local programs submitted to it pursuant to G.S. 113A-60.
- 17 (2) Assist and encourage other State agencies in developing erosion and  
18 sedimentation control programs to be administered in their jurisdictions. The  
19 Commission shall approve, approve as modified, or disapprove programs  
20 submitted pursuant to G.S. 113A-56 and from time to time shall review these  
21 programs for compliance with rules adopted by the Commission and for  
22 adequate enforcement.
- 23 (3) Develop recommended methods of control of sedimentation and prepare and  
24 make available for distribution publications and other materials dealing with  
25 sedimentation control techniques appropriate for use by persons engaged in  
26 land-disturbing activities, general educational materials on erosion and  
27 sedimentation control, and instructional materials for persons involved in the  
28 enforcement of this Article and erosion and sedimentation control rules,  
29 ordinances, regulations, and plans.
- 30 (4) Require submission of erosion and sedimentation control plans by those  
31 responsible for initiating land-disturbing activities for approval prior to  
32 commencement of the activities.

33 (e) To assist it in developing the erosion and sedimentation control program required by  
34 this Article, the Commission is authorized to appoint an advisory committee consisting of  
35 technical experts in the fields of water resources, soil science, engineering, and landscape  
36 architecture.

37 (f) Repealed by Session Laws 1987, c. 827, s. 10, effective August 13, 1987.

38 (g) The Commission is authorized to make the final decision on a request for the  
39 remission of a civil penalty under G.S. 113A-64.2."

40 **SECTION 1.(d)** No later than September 1, 2023, the Department of Environmental  
41 Quality shall prepare and submit to the United States Environmental Protection Agency for  
42 approval by that agency proposed changes to the State's Sedimentation Pollution Control Act of  
43 1973 (Act), and its implementation of NPDES General Permit NCG010000 (NCG01 permit), to  
44 (i) eliminate the requirement under the Act that a person submit a draft erosion and sedimentation  
45 control plan for the Department's approval, for persons otherwise required to obtain an NCG01  
46 permit, (ii) authorize local governments, which have delegated authority from the Commission  
47 to administer an erosion and sedimentation control program within their jurisdiction, to issue  
48 NCG01 permits, and (iii) limit local governments administering approved erosion and  
49 sedimentation control programs within their jurisdiction to implementation and enforcement of  
50 requirements for land-disturbing activities that meet, but do not exceed, requirements for  
51 stormwater discharges from construction activities as established by 40 C.F.R. § 122.26 and

1 under the most recent Clean Water Act National Pollution Discharge Elimination System  
2 (NPDES) general permit for stormwater discharges from construction activities (Construction  
3 Permit) issued by the United States Environmental Protection Agency.

4 **SECTION 1.(e)** Subsections (a), (b), and (c) of this section become effective on the  
5 later of the following dates and apply to permits to conduct land-disturbing activity submitted on  
6 or after that date:

7 (1) July 1, 2024.

8 (2) The first day of a month that is 60 days after the Secretary of the Department  
9 of Environmental Quality certifies to the Revisor of Statutes that the United  
10 States Environmental Protection Agency has approved an amendment to the  
11 Sedimentation Pollution Control Act as required by subsection (d) of this  
12 section. The Secretary shall provide this notice along with the effective date  
13 of this act on its website.

14 **SECTION 1.(f)** The Department of Environmental Quality shall report to the  
15 Environmental Review Commission on the status of their activities pursuant to subsection (d) of  
16 this section quarterly, beginning October 1, 2023, until such time as the General Assembly  
17 repeals this reporting requirement.

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19 **DEQ TO REQUEST THAT USEPA CONSULT DEQ ON PROPOSED CHANGES TO**  
20 **ALL APPLICABLE FEDERAL REGULATIONS PRIOR TO NOTICE OF SAME IN**  
21 **THE FEDERAL REGISTER**

22 **SECTION 2.** No later than July 1, 2023, the Department of Environmental Quality  
23 shall request that the United States Environmental Protection Agency (USEPA) consult with the  
24 Department on any proposed changes to federal regulations that would impact the State's  
25 administration of federal environmental programs in North Carolina, prior to the USEPA's notice  
26 of such proposed changes in the Federal Register, so that the State may have opportunity for  
27 meaningful collaborative input on development of regulations that it may be charged with  
28 administering. The Department shall report to the Environmental Review Commission on the  
29 status of their activities pursuant to this section quarterly, beginning August 1, 2023, until such  
30 time as the General Assembly repeals this reporting requirement.

31  
32 **DEQ TO PROVIDE COPIES OF AGREEMENTS WITH USEPA, AND ASSOCIATED**  
33 **FUNDING INFORMATION**

34 **SECTION 3.** No later than July 1, 2023, the Department of Environmental Quality  
35 shall submit copies of any agreements executed between the Department and the United States  
36 Environmental Protection Agency that govern the State's administration of programs under the  
37 Clean Water Act to the House Local Government – Land Use, Planning and Development  
38 Committee. In addition, the Department shall provide information to the Committee on:

39 (1) Any federal funds received by the State in connection with the State's  
40 administration of such programs, and all federal requirements for receipt of  
41 such funds; and

42 (2) The adequacy of funding from all sources to fully implement the requirements  
43 of such agreements.

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45 **SEVERABILITY CLAUSE**

46 **SECTION 4.** If any section or provision of this act is declared unconstitutional or  
47 invalid by the courts, it does not affect the validity of this act as a whole or any part other than  
48 the part declared to be unconstitutional or invalid.

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50 **EFFECTIVE DATE**

1                   **SECTION 5.** Except as otherwise provided, this act is effective when it becomes  
2 law.